Guide to Passing the Colorado Real Estate Exam
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Contract forms for class:


Revised 12-06-13
Preface

Welcome to the American Dream Real Estate School and the Guide to Passing the Colorado State Exam. American Dream has been helping students like you achieve their dreams since 2005. During that time much has been learned about preparing students and curriculum. This book is the latest version of that knowledge. We are continually updating the book to reflect current changes in Colorado law with regards to Real Estate. Upon completion of the online/distance/instructor led course we are confident that you will be ready to take the licensing test. We highly encourage questions, whether with an online instructor, by email or phone, or in a tutorial class with an instructor. We always appreciate your feedback and welcome any comments from you to us.

Good luck on your new adventure and thank you for allowing us to help you on your way.

The content of this book is to be used solely for the purpose of preparing students for the Colorado Real Estate Broker Exam. It is not intended to be complete or give legal advice concerning the purchase or sale of real estate. No assurance of accuracy for purposes other than those intended is given.
Duties and Powers of the Real Estate Commission

Key Words and Terms

Conway-Bogue
Administrative Judge
Letter of Admonishment
Audit
Unlicensed persons

The purpose of the Real Estate Commission law is to protect the public of the State of Colorado in ALL real estate matters.

BROKERS LIMITED RIGHT-TO-PRACTICE LAW

The Conway-Bogue decision was a landmark decision confirming a Licensees right to a limited practice of law. This decision provides that Brokers may not charge a separate fee for preparing documents and that they must use the state’s standard and approved forms.

INVESTIGATION, HEARINGS & PENALTIES PROCESS OF THE REAL ESTATE COMMISSION

INVESTIGATION

The Commission, upon its own motion, may, and upon a verified written complaint, shall investigate Licensees who may be guilty of; false advertising; violating the Colorado Consumer Protection Act, failing to properly handle and manage trust monies, failing to provide a closing statement, failing to keep documents for 4 years, or paying a commission to an unlicensed person for work requiring a license (i.e. negotiating, advising or drafting documents).

Upon written complaint, the Commission will request that the licensee respond, in writing, to the complaint and supply any necessary or pertinent documentation. Prior to receiving a written response, the Commission does not have subpoena power to obtain records from a Brokerage firm. They may NOT take a firm's records without cause. Any removal of documents would occur as a part of the investigation and not as part of the initial response to the complaint.
HEARINGS

Following its investigation, the Commission will do one of the following things; **dismiss the complaint, issue letter of admonishment (warning) - the lowest level of discipline, or send the complaint to a hearing** (in state court with an Administrative Law Judge).

PENALTIES

If the Licensee is found guilty by the judge, the Commission determines the penalty. They may impose a fine-not to exceed **$2,500 for each offense**. The Commission may: **censure; suspend; or permanently revoke the license of those found guilty**. The Commission is **the only entity that can suspend or revoke a Brokers license**. They **may not charge monetary damages or impose jail sentences**; however, they **can refer a case** to the District Attorney for criminal prosecution. Licensee records are available to the public for inspection on the Commission’s website.

AUDITS

The Commission can **audit a Brokers escrow account at any time without notice**, with the purpose to; verify that the Broker has maintained records for **4 years**, that they have not **commingled funds**, and that they have provided all clients with proper closing statements.

ETHICS

The Commission has NO authority and will **not investigate ethics violations or disputes between Brokers**.

Ethical violations are the responsibility of the National Association of Realtors®.

Any criminal violations by a Broker are handled by criminal courts.

Licensees **should disclose immediately**, to a member of the public, if they have an interest in buying a property or if they are principal in the sale of a property. The Broker must **disclose** their license status in writing in any contract.
Test Yourself

1. What is the lowest level action the CREC may take against an agent?

2. Who hears a case that is referred to judicial by the CREC?

3. How many years must a Broker maintain records?

Read pages 1-18 to 1-22 from the Real Estate Manual found on DORA
Licensing Requirements

Key Words and Terms

E&O Insurance  Active and Inactive Licenses  LLC

Why is the Colorado Real Estate License Exam more difficult than many other states? If you have asked this, or will ask it after taking the exam, you are not alone; however, there are good reasons the exam is so detailed and covers so much. Colorado is a leader in ensuring that our Agents represent and protect the public. In doing so we have created some very strict license requirements but we also receive major advantages from our system.

In Colorado we have three levels of license; Associate Brokers, Independent Brokers and Employing Brokers.

One thing that increases our initial testing area, but helps us in the future, is the way we license all three types of Brokers. Colorado has required each licensee to be at the Broker level rather than allowing for a lower level known as Salesperson in other states. Therefore; in Colorado, once you pass the license exam you will not have another license examination. You will be able to move from Associate Broker to Independent or Employing with only 2 years of service and a 24 hour Broker Administration Course.

To move from an Associate Broker position to either Employing or Independent Broker the requirements are that you have 2 years of active license, and that you take a 24 hour Broker Administration course.

So what is required to get an initial license? What must the applicant meet or do?

1. You must take and pass a 168 hour class or its distance/online equivalent hours. Your current class meets this requirement with a combination of online, at home and in-class hours. At completion you will be given a REC-33 Certificate that is your proof of course completion.
2. You must be 18 years of age to obtain a license.
3. You must submit fingerprints to the Colorado Bureau of Investigation.
4. You must pass the background check.
5. You must be lawfully present in the United States.
6. You must take and pass the Colorado Real Estate Broker Exam given by PSI.
Active and Inactive Licenses

How do we renew our license and what does it take to do so in Colorado?

Once you have your license you will need to renew it every three years. In order to do this, the state requires that you complete 24 hours of continuing education.

Twelve of these hours must be the annual update course; each annual update course counts as 4 hours equaling 12 hours over three years. You may only take the update course within it current year. In addition, you would need to take 12 hours of elective credit. The National Association of Realtors Ethics class counts within those credit hours.

What if I did not take the update or for some reason did not complete the 24 hour requirements? A provision has been made for such a circumstance. The first option is to take the Colorado portion of the exam and pass it again. You may only do this one time and it is not the most popular option. A second option is to take and pass a 24 hour Broker Administration course. You may only do this one time as well. Many people choose this option. I would encourage our students to keep up the annual updates and not let them get behind. They contain needed information for the professional licensee each year.

When does the license expire? In Colorado the license expires three years from the date of issue; however, an important thing to know is that you have a 31 day grace period to renew an expired license. You will not have to pay the additional fee for renewal until your license is 32 days late for renewal.

What does it cost to renew your license?

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<th>Cost</th>
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<tr>
<td>From 32 days to one year</td>
<td>$207 renewal</td>
</tr>
<tr>
<td>After 1 year</td>
<td>$276 renewal</td>
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<tr>
<td>Plus</td>
<td>$50 reinstatement fee</td>
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Brokers that put their license in an inactive status will still need to have the 24 hours of continuing education credits inclusive of the 12 hours of annual update courses to reinstate a license. The same rules apply if you do not have the 24 hours. You may take and pass the Broker Administration course or the Colorado exam one time in lieu of the annual update and CE hours.
How can a license become inactive? The most common ways are a broker may place his or her license on inactive status voluntarily or the Real Estate Commission may suspend your license for cause.

A couple of other ways include: Failure of the Employing Broker to notify the Commission of a change of location or failure of the Broker Associate to notify the Commission of a move from one firm or location to another. If the Employing Broker moves their office, the Employing Brokers license and all the licenses under him or her become inactive if the CREC is not notified, and if the Employing Broker’s license is suspended or revoked then all licensee under him are place on inactive status. Remember, you are responsible for your license always.

Who must hold an active license?

Anyone who is engaged in the sale or lease of real property may be required to hold a license with some exceptions. All of the following must hold a license:

1. Those people who are selling or leasing property for others for a fee.
2. Those who sell business opportunity that involves real property.
3. Those selling real estate options.

Note: The sale of real estate securities requires a securities license not a real estate license.

So who is exempt from licensing? There are four exemptions from licensing.

1. A non-licensed salesperson working directly for a new home builder.
2. A regularly salaried employee of an apartment complex who reports to the owner and does not negotiate leases or sales.
3. An attorney may draft contracts or close property for a client.
4. A Broker with an inactive license may work for either a builder or an apartment complex.

Temporary licenses can be issued to a Corporation or LLC. Such a temporary permit will be for 90 days and may be renewed for 90 days. This is a common test item and should be memorized exactly.
E&O Insurance

Who must have Errors and Omission insurance and what does it do?

**E&O insurance protects the Broker against loss from oversights in filling out forms and conducting business. It does not protect the Broker if fraud is involved or alleged in the transaction.**

All active licensed Brokers must carry E&O insurance. The CREC requires that it be on file with them or they may inactivate a license. The insurance is purchased through private carriers and an Employing Broker can help you with obtaining your insurance. Approved vendors are also listed on the DORA web pages. An often asked question for testing is who must carry the insurance. **The answer is all active licensed Agents including the Employing Broker and..... any Corporation or LLC that is doing business as a firm.** This last part trips new Agents up. In this case as in others, a LLC (Limited Liability Corporation) or regular Corporation are viewed as a person or personal entity. As such they also need E&O insurance. The best example is a Broker that wants to have a brokerage firm. Let’s say Gary wishes to be an Employing Broker. Gary could operate as a sole proprietor and just work as such. Later Gary learns that working as a sole proprietor he might be sued one day, and since he is the business, his home and personal assets would be at risk. His attorney tells him he should consider an LLC or limited liability company as a vehicle to protect himself and conduct business. By forming the company, now it is considered its own entity. Gary is protected and has limited his liability to the assets of the company and is less at risk personally. **Since the company has its own liability, it must carry E&O insurance and Gary must carry it for himself also. In addition, any agent Gary hires must have E&O insurance as well.**

**Out of state Colorado Brokers** may conduct business in Colorado under certain circumstances. **An out of state Broker wishing to sell property in Colorado must have an office in the state where he or she is located. They must agree to hold any escrow funds or earnest money funds in a Colorado trust account. They must further agree that if there are any court actions they will subject the matter to Colorado courts.**

Non-Colorado out of state Brokers (Brokers with real estate licenses in other states) can be and often are paid a referral fee. This is legal as long as they have an active real estate license. We may not pay an unlicensed person a referral fee. However, you may pay for a name but nothing more (for example you buy a list of names from a list company).
Test Yourself

1. As above your license expires on May 31st but now it is 32 days overdue. What will it cost to renew your license?

2. Your Employing Broker has moved the office across the street. They forgot to notify the Real Estate Commission. What is the status of their and your license?

3. Who is responsible for notifying the CREC if you move your office or if you relocate your license?

4. How often must a Broker renew his or her license?

5. What is required to renew a license?

6. How many hours of annual update courses must the Broker have to renew normally?

7. What is required to become an Employing Broker or Independent Broker?

8. Who is exempt from licensing?

9. Who must carry E&O insurance?

10. Who may be issued a temporary license? For how long? How long can it be extended and how many times?

11. Can we pay an out of state Agent a referral fee?

12. Can an out of state Agent conduct business in Colorado and under what conditions?

13. What is required to sell real estate securities?
Brokerage Relationships in Colorado

Key Words and Terms

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<th>Single Agency</th>
<th>Dual Agency</th>
<th>Buyers Agency</th>
<th>Sellers Agency</th>
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<td>Customer</td>
<td>Disclosure</td>
<td>Designated Broker</td>
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In Colorado, Agency is a key point in the Broker relationship. Unlike many states, Colorado has gone to great length to ensure that all parties to a transaction are represented and that there are no conflicts in representation. Once you become an Agent, either in writing or in practice, you owe your full allegiance to your client. In Colorado, you must choose how you intend to practice and you must ensure your client or customer fully understands your relationship to the transaction. The real estate commission hears many complaints from the public about agency, and has developed rules to protect and inform the public.

The selection of Agency, Transaction Brokerage or Customer is a decision between the seller or buyer and the licensee. It is very important that you and your buyer or seller understand the agency terms and that you perform according to the agency responsibilities selected.

**Buyers Agent:** As a representative for the Buyer you owe your duty to represent your Buyer throughout the transaction. As with any Agency, you are obligated to exercise: Care, Obedience, Loyalty, Disclosure, Accountability and Confidentiality, COLD AC; which we learned about in the general section. In addition, you are responsible for all the content of the Buyers Agency agreement listed taken in part and listed here:

**BROKERAGE DUTIES.** Brokerage Firm, acting through Broker, as either a Transaction-Broker or a Buyer’s Agent, shall

78. Perform the following **Uniform Duties** when working with Buyer:

79 5.1. Broker shall exercise reasonable skill and care for Buyer, including but not limited to the following:

80 5.1.1. Performing the terms of any written or oral agreement with Buyer;

81 5.1.2. Presenting all offers to and from Buyer in a timely manner regardless of whether Buyer is already a party to a contract to Purchase the Property;

82 5.1.3. Disclosing to Buyer adverse material facts actually known by Broker;

84 5.1.4. Advising Buyer regarding the transaction and advising Buyer to obtain expert advice as to material matters
85. about which Broker knows but the specifics of which are beyond the expertise of Broker;
86 5.1.5. Accounting in a timely manner for all money and property received; and
87 5.1.6. Keeping Buyer fully informed regarding the transaction.
88 5.2. Broker shall not disclose the following information without the informed consent of Buyer:
89 5.2.1. That Buyer is willing to pay more than the purchase price offered for the Property;
90 5.2.2. What Buyers motivating factors are;
91 5.2.3. That Buyer will agree to financing terms other than those offered;
92 5.2.4. Any material information about Buyer unless disclosure is required by law or failure to disclose such
93. information would constitute fraud or dishonest dealing; or
94 5.2.5. Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property.
95 5.3. Buyer consents to Brokers disclosure of Buyers confidential information to the supervising Broker or designee for the
96. purpose of proper supervision, provided such supervising Broker or designee shall not further disclose such information without
97. consent of Buyer, or use such information to the detriment of Buyer.
98 5.4. Broker may show properties in which the Buyer is interested to other prospective Buyers without breaching any duty or
99. obligation to such Buyer. Broker shall not be prohibited from showing competing Buyers the same property and from assisting
100. competing Buyers in attempting to purchase a particular property.
101 5.5. Broker shall not be obligated to seek other properties while Buyer is already a party to a contract to purchase property.
102 5.6. Broker has no duty to conduct an independent inspection of the Property for the benefit of Buyer and has no duty to
103. independently verify the accuracy or completeness of statements made by a Seller or independent inspectors. Broker has no duty to
104. conduct an independent investigation of Buyers financial condition or to verify the accuracy or completeness of any statement
105. made by Buyer.
106 5.7. Broker shall disclose to any prospective Seller all adverse material facts actually known by Broker, including but not
107. limited to adverse material facts concerning Buyers financial ability to perform the terms of the transaction and whether Buyer
108. intends to occupy the Property as a principal residence.

BC60-8-10. EXCLUSIVE RIGHT-TO-BUY LISTING CONTRACT

5.8. Buyer understands that Buyer shall not be liable for Broker’s acts or
omissions that have not been approved,

109. directed,

110. or ratified by Buyer.

111 6. ADDITIONAL DUTIES OF BUYERS AGENT. If the Buyer Agency box at the
top of page 1 is checked, Broker is

112. Buyers Agent, with the following additional duties:

113 6.1. Promoting the interests of Buyer with the utmost good faith, loyalty and
fidelity;

114 6.2. Seeking a price and terms that are acceptable to Buyer; and

115 6.3. Counseling Buyer as to any material benefits or risks of a transaction that
are actually known by Broker.

It can't be stressed enough that as the Buyer’s Agent you are to see only to the
interest of your client except as where law would require you to do otherwise. An
example of this is you may not as stated in line 106 withhold adverse information
concerning your Buyers ability to perform the transaction even if instructed not to
do so.

A Sellers Agent has much the same responsibility to his or her client that the
Buyer’s Agent has. Taken from the Exclusive Right to Sell Contract and presented
here:

79 5. BROKERAGE DUTIES. Brokerage Firm, acting through Broker, as either a
Transaction-Broker or a Sellers Agent, shall

80. perform the following Uniform Duties when working with Seller:

81 5.1. Broker shall exercise reasonable skill and care for Seller, including, but not
limited to the following:

82 5.1.1. Performing the terms of any written or oral agreement with Seller;

83 5.1.2. Presenting all offers to and from Seller in a timely manner regardless of
whether the Property is subject to a

84. contract for Sale;

85 5.1.3. Disclosing to Seller adverse material facts actually known by Broker;

86 5.1.4. Advising Seller regarding the transaction and advising Seller to obtain
expert advice as to material matters

87. about which Broker knows but the specifics of which are beyond the expertise
of Broker;

88 5.1.5. Accounting in a timely manner for all money and property received; and
89 **5.1.6.** Keeping Seller fully informed regarding the transaction.
90 **5.2.** Broker shall not disclose the following information without the informed consent of Seller:
91 **5.2.1.** That Seller is willing to accept less than the asking price for the Property;
92 **5.2.2.** What the motivating factors are for Seller to sell the Property;
93 **5.2.3.** That Seller will agree to financing terms other than those offered;
94 **5.2.4.** Any material information about Seller unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or
95. **5.2.5.** Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property.
97 **5.3.** Seller consents to Broker’s disclosure of Sellers confidential information to the supervising Broker or designee for the purpose of proper supervision, provided such supervising Broker or designee shall not further disclose such information without consent of Seller, or use such information to the detriment of Seller.
100 **5.4.** Brokerage Firm may have agreements with other Sellers to market and sell their property. Broker may show alternative properties not owned by Seller to other prospective Buyers and list competing properties for sale.
102 **5.5.** Broker shall not be obligated to seek additional offers to purchase the Property while the Property is subject to a contract for Sale.
104 **5.6.** Broker has no duty to conduct an independent inspection of the Property for the benefit of a Buyer and has no duty to independently verify the accuracy or completeness of statements made by Seller or independent inspectors. Broker has no duty to conduct an independent investigation of a Buyer’s financial condition or to verify the accuracy or completeness of any statement made by a Buyer.
5.7. Seller understands that Seller shall not be liable for Broker’s acts or omissions that have not been approved, directed, or ratified by Seller.
110 **5.8.** When asked, Broker **Shall /Shall Not** disclose to prospective Buyers and cooperating Brokers the existence of offers on the Property and whether the offers were obtained by Broker, a Broker within Brokerage Firm or by another Broker.
6. ADDITIONAL DUTIES OF SELLERS AGENT. If the Seller Agency box at the top of page 1 is checked, Broker is Sellers Agent, with the following additional duties:

6.1. Promoting the interests of Seller with the utmost good faith, loyalty and fidelity;

6.2. Seeking a price and terms that are set forth in this Seller Listing Contract; and

6.3. Counseling Seller as to any material benefits or risks of a transaction that are actually known by Broker.

TRANSACTION BROKER OR NON-AGENT

In Colorado, Transaction Broker is the default if there is not a written employment contract. If you do not have a written Agency agreement with either a Buyer or a Seller, you will automatically default to Transaction Broker. A Transaction Broker is a non-Agent which means you are NOT an advocate for them. Transaction Brokers facilitate the real estate transaction with communication, negotiation, contracting and closing. Transaction Brokers must still use reasonable skill and care, and fair and honest dealings. Transaction Brokers must disclose any material facts or defects to ALL parties such as; including the Buyers financial inability to complete the transaction or defective material aspects of the subject property.

A simple way to distinguish between the essence of agency and transaction brokerage is in a sports analogy. As an agent you are like the coach for your buyer or seller and part of the team with the same goals and objectives. As a transaction broker you are like a referee, making sure all rules are being followed (honest and fair) and that game is run according to the rules.

DESIGNATED BROKER

So how do we handle a transaction similar to the following case study?

Agent A lists a house for their client Mr. Brown. In doing so, they have started the representation agreement as the Sellers Agent. During the course of business another Agent B from their Brokerage firm shows Mr. Browns’ house to Ms. Smith. How does the firm handle the transaction should Ms. Smith desire agency and makes an offer on the home?

In Colorado it is possible for a Brokerage firm to handle both sides of the transaction as AGENTS, as long as, they are a multiple person firm. The Employing Broker using his or her company policy manual will designate a Broker for the Seller and the Buyer. Normally, whoever took the listing is designated the Sellers
Agent. The other Agent B is now the Buyer’s agent. Because each party is represented by an Agent that owes their full duty to his or her client, there is no conflict of interest.

The Designated Broker is the Broker that the Buyer or Seller signs an Agency contract with. If there is a question as to which Broker will be the Agent, either for the Buyer or Seller, the Employing Broker will make this decision. This process is outlined and handled based on written office policy within any Brokerage. It is important to realize that the employment contract, listing contact or Buyers Agency contract with the client is owned by the Employing Broker and not the Designated Broker/Broker Associate. If a Broker Associate leaves to work for another Brokerage the contract with the client stays with the Employing Broker who will then assign a new Designated Broker. The Employing Broker has no Agency relationship with either the Buyer or the Seller once an Agent has been designated for each.

The benefit of Designated Brokerage is that it makes possible an in-company Agency transaction. For example, a Brokerage can have an Agent working as a designated Buyers Agent and within the same office have another Agent working as a designated Sellers Agent. Those two Agents do not share confidential client information with each other or their Employing Broker. They both have advocacy to their own client and their confidential information does not impute up to the Employing Broker. This means that the Employing Broker does not know the confidential information of either the Buyer or Seller thereby, avoiding a Dual agency. Each Agent keeps the secrets for their clients and remains an advocate for their individual client. This allows for no conflict of interest within a Brokerage.

We cannot have designated Brokerage in a one person office simply because there is only one person and there is no way to be an Agent for two parties. It is impossible to have a Buyers Agency and a Sellers Agency without having Dual Agency in a one person office.

**DISCLOSURE**
As an Agent for a client, there are several things you may NOT disclose. You may not disclose your client’s motivation for wanting to sell or purchase. For example; things like a divorce, job transfer or death in the family. You may not disclose their strategy such as starting high but willing to go lower for a Seller or a Buyer starting low but willing to go higher. You may not disclose the lowest price
a Seller would accept or the highest price a Buyer would pay without written instructions from them.

For example: If the Seller will take an offer of $400,000 when you have the property listed at $450,000 the Agent would write this in your listing agreement in the additional provision section. This allows the Agent the authority to negotiate on your principal’s behalf. Not having this in writing will put you in direct VIOLATION of your Agency agreement & fiduciary responsibility.

You may not disclose any suspicions about the property being stigmatized without the client’s consent. In Colorado, the concept of a stigmatized property is not a material fact and does not need to be disclosed. The Real Estate Commission will not investigate a licensee that fails to disclose that the subject property is stigmatized. It is however, in the best interest of your client to grant you permission to disclose any information about the property that the Buyer may find out throughout the course of the transaction. Should you and your client decide it would be best to disclose a stigma you will want to get permission in writing prior to disclosure.

If both the Broker and the principal are involved in the improper action, such as not disclosing material facts, both are responsible under the law. Material facts are subjective in nature; however, there are several things to keep in mind when considering if something fits the criteria; level of defect is substantial, information that is easily gained from observation, and obvious issues with the property such as foundation and roof issues. On major material fact on the buyer side is the inability of the Buyer to obtain financing. This is a required disclosure by the buyer and the buyer’s agent.

The Broker, whether a Buyers Agent or Sellers Agent, does not have a duty to investigate the property for material defects, or to verify the accuracy of statements made by either party; however, we do have a responsibility observe and inspect the property to our own construction specific nonprofessional knowledge. We are not expected to be construction, law, mortgage or title experts.

CUSTOMERS
A written Brokerage Agency Disclosure is required to buyer or seller prior to collecting confidential information from them. A customer is a third party to the transaction who has not engaged the licensee as an agent or transaction broker.
We owe them honest and fair dealings. We owe them disclosure of all material facts.

AGENCY DISCLOSURE FORMS FOR BUYERS AND SELLERS
To stay in compliance with CREC RULE E35, if we are an Agent for the Seller, we must present the Buyer “The Brokerage Disclosure Form to Buyer”. This disclosure is required before we acquire any confidential information from them. This is a form developed by the Real Estate Commission, and it does require that we obtain the Buyers signature. This form is not a contract between the Buyer and the Agent. It simply affirms to the Buyer that our Agency responsibility and advocacy is with the Seller. The Buyer may choose not to sign this form, but the Agent must keep a copy of it in the property file to be in compliance with RULE E35 and the Real Estate Commission.

There is a similar written disclosure to For Sale by Owner Sellers, “The Brokerage Disclosure to Seller Form”, that discloses to them that we have an Agency relationship with the Buyer. This Agency disclosure form makes unrepresented Sellers aware that the Agent has an Agency relationship with the Buyer. It identically parallels the disclosure to the Buyer form above.

DEFINITIONS OF WORKING RELATIONSHIPS FORM
The Definitions of Working Relationships Form is neither a disclosure nor an Agency agreement/employment contract. It is an informational document written by the Real Estate Commission which outlines the different Agency options in Colorado. Agents are not required to share this document with the public, and the use of this document does not replace any other Agency disclosure or Agency contract forms.

SUMMARY OF AGENCY
To recap Agency in Colorado: we have Single Agency, Transaction Brokers and customers.

Agency is where there is a fiduciary relationship between the client and the principal. The Agent is an advocate for the client. We owe them advocacy, and fiduciary duties which include; care, obedience, loyalty, disclosure, accounting, confidentiality. Agency creates an employment contract and must be in writing according to the statute of frauds.
**Transaction Broker** is a non-Agency relationship where the Transaction Broker treats one or both parties equally and does not advocate for either party. Their primary role is to facilitate the transaction. They owe both parties; reasonable skill & care, honest and fair dealings and disclosure of all material facts/defects. If there is no written agreement, Transaction Broker is the default relationship.

**A customer** is the third party to the transaction whom we owe honest & fair dealings and disclosure. **RULE E35** is the Agency disclosure rule written to protect unrepresented customers in a real estate transaction.

There are two types of Brokerage firms. There are **multiple Agent** firms and **single Agent** firms. In a multiple Agent firm we may have designated Agents for the Buyer and Seller. Once the Employing Broker designates each party the Employing Broker does not have any agency relationship to the transaction. Each designated Broker has his or her own agency relationship and responsibility to his or her client. Normally the listing Broker is automatically the Sellers Agent designee. The office policy manual will spell out this relationship. Each designated Agent is responsible to his or her client and must not disclose confidential information to the other Agents. This makes possible an **in-company agency transaction**.

A one licensee firm is one operated by an Independent Broker with no other Brokers working for him or her. This Broker has the two years required to become independent and has taken the 24 hour Broker Administration course. They are not required to be under any other employment or supervision. They may not hire other Brokers without becoming an Employing Broker. In a One Agent firm there would be no possibility of an in-house **agency** transaction. This is because there would be no two people to appoint as Buyer and Seller representatives. The Agent could still become a Transaction Broker and handle both sides of the contract.

**Dual agency** is **illegal** in Colorado. We require that each side in a transaction be represented by a designated Agent for the Buyer or Seller. The other options are for the Agent to become a Transaction Broker or treat one party as a customer. A Transaction Broker is not an Agent for either side. He or she is a facilitator for the contract.
**Test Yourself**

1. An Agent who is acting as an Agent but does not have an agreement in writing is considered a _________ _____.

2. COLD AC is an acronym for C____, O_______ L_______ D_______ and A_______, C__________.

3. ______Agency is illegal in Colorado.

**True or False**

4. ____ If the Broker and his or her principle are involved in an improper action such as not disclosing a material fact both are responsible under the law.

5. ____ In order to disclose confidential information such as the Seller will accept a lower offer required that you have permission in writing from the client.

6. ____ As the Agent for a party you must investigate information you receive from them such as the information on the disclosure form.

7. ____ Once a Buyer or Sellers Agent have been designated the Employing Broker is assumed to have no relationship to the transaction.

8. ____ A single member Brokerage can act as a Designated Broker for both parties to the transaction.

9. ____ We do not owe a duty of honesty and fair dealings with a customer.

10. ____ We must disclose our Agency relationship to a customer before engaging in an activity where they may reveal confidential information to us.

**Case Study:**

Broker A lists the home of Ms. Hedges for $200,000. Ms. Hedges tells the Broker she will take as little as $190,000. In addition, she checks the box on the contract allowing her Agent to become a Transaction Broker in the event they have an Agency relationship as a Buyer. She then tells the Agent she must sell in 30 days due to a medical emergency. She asks that they not tell the Buyer that the house was burned and rebuilt over a year ago. All the required permits were pulled and all the work was done by a licensed contractor; however, during the fire a child was killed and some people say the house is haunted.
The Broker lists the home as directed. In the course of business they show the house to a friend that is looking for a home. They do not have a written agreement with their friend but have shown him several homes and agreed to help him buy his first house. They tell him they know of a home that he could get for $190,000 and maybe a little less as the Buyer is motivated due to some illness.

1. List all the possible conflicts with COLD AC and why they are a conflict.

2. Since the Broker has checked the box on the contract to sell allowing them to become a Transaction Broker do they need to use the Change of Status form found on the DORA Colorado web site to switch from a Sellers Agency to a Transaction Broker? (hint, ask your instructor or another real estate professional)

You can find the Change of Status form at DORA
http://www.dora.state.co.us/real-estate/contracts/writable/CS23-10-06.pdf

3. What is the Broker's status with their friend?

4. Can the Seller withhold the information concerning the fire from the potential Buyers?

5. Must the Broker reveal the fact that a child died and the house is rumored to be haunted?
Requirements Governing Activities

There are currently ten questions from this section on the Colorado test. We will review these, one topic at a time.

Advertising

In the profession, we often work with newspapers and other print marketing to display homes for sale or to advertise our offices. The Licensee may be engaged in advertising without realizing that they are doing so; i.e. our email or Facebook page. If the Licensee is in any way soliciting business by showing homes or commenting such things as “looking to buy?” they are engaged in advertising. So what are the rules for advertising?

When a Broker advertises on electronic media, newspapers or even business cards they must, at a minimum, include their firm name. For instance, if I work for XYZ Realty and have a business card made, it will say something like:

XYZ Realty

Nothing more is required by the CREC. Why do they require this at least as the minimum? Earlier, you may recall that all firms are listed with the Real Estate Commission. In addition, all licensed Brokers are listed there as well. With this minimum information, the Commission can always find a Broker and their firm should there be any need to contact them. In practice you will likely have your phone number and maybe even your business address on the card, but the CREC does not require them to be there. This is an often asked question on testing for Colorado.

Conway-Bogue Decision

In the past there was a case sent to the courts asking what the rules were for Real Estate Agents to fill out or create a contract. After all we are not attorneys, so the question arose, do we need to be an attorney to fill out the contracts? The court decision is that so long as we only fill in the blanks on state approved forms we do not need to be attorneys. The CREC Rule F covers our ability to fill out a contract without the need for us to be attorneys. There are some very clearly defined guidelines we must follow.

1. We may never use a form that is not exactly copied from the DORA approved forms.
2. We must reproduce the form exactly as written.
3. We may line out an item so long as the words under the line are still readable
4. If we are omitting a subsection in the contract that is not relevant for this contract we can write “omit” next to the headline and omit the rest of the content.
5. We must fill in the blanks using a different font, size or color so that there is no confusion as to what we filled in and what was already there.
6. We may not write an addendum to the contract. If the parties wish to add an addendum they must write it themselves or have an attorney draft it for them.
7. A home builder selling their own homes is exempt from using the DORA contracts.
8. We do not practice law. We only fill in the approved contract blanks and assist our client. We do not give legal advice. If a client asks a question such as: how should we take possession? Should we take it jointly? or if they asked about tax matters we would tell them to seek legal or tax counsel.

**Brokerage Administration**

An Employing Broker has certain administration requirements expected of him or her. Among those is the supervision of new Licensees and Brokers with less than two years of experience. Although a Broker always must supervise those who work for them, there is an expectation that new Brokers will be monitored more closely. **The Broker should review contracts with the new Licensee and be available to answer questions up to and including a contract closing.** He or she is not required to attend the closing but must be available to answer questions. This could be by phone from the Title company or Closing company.

All Employing Brokers are expected to have an office policy manual that is given to all Agents and signed for as received. **The office policy must describe office rules for agency** and have a method for designating Brokers in a multiple person office. A Broker may delegate the responsibility to another qualified Broker, but not an unlicensed individual such as an office manager.
Disclosure of conflicts of interest

All Agents are expected at all times to be ethical and honest in any dealings with the public. They are expected to fully disclose any area where there may be a conflict of interest between them and their client. A brokerage firm may own a title company or own an interest in the company; however, they must fully disclose the relationship to a client before recommending the company for use.

Handling of Documents

Brokers handle documents as a routine function of their business. Care must be exercised in how they are handled and maintained. All documents must be kept at the Brokers office for a minimum of 4 years. In addition, they must be available for inspection by the CREC upon request. Upon closing a contract, the documents must be returned to the office of the brokerage firm as soon as possible, but always within 72 hours of closing.

Personal Assistants

A personal assistant is a person who often works in the real estate office but is not a licensed individual. He or she can do some of the real estate functions but is restricted from others. For instance, he or she might sit an open house for you. As long as they handed out preprinted information there would be no problem; however, if they began to negotiate items such as price or to solicit private information from customers they would be in violation of acting as a Broker without a license. A personal assistant could help to create CMAs so long as the Broker was supervising them. He or she could place yard signs and greet clients, but must never engage in an activity that requires a license.

Listings and Rule E-11

The listing is considered to be an employment contract. Normally a Broker that takes a listing is considered to be designated as the Sellers agent. This is spelled out in the policy manual of the firm. The listing itself is the property of the brokerage firm and not the Agent who takes the listing. Should the Agent leave, the Employing Broker will maintain possession of the listing. In order to be valid, a listing agreement must contain a start and end date.
The hold-over period, if any, must be agreed to by both parties. In the event there is a hold-over period and the contract expires, if the owner then lists with another Agent the hold-over agreement is void.

A Broker taking a listing is expected to visually inspect the property when taking the listing. He or she is responsible for obvious matters that require disclosure; however, the Broker is not required to investigate the truthfulness of the owner. We may take their word for the condition unless it is obviously not true or we come to know it is not true no matter how we find out. For instance, a neighbor might tell you during your inspection that the garage was built without a permit. Once you know of a latent defect, no matter how you know, it you must disclose it.

Rule E-13 Sign Crossing

CP-3 Position Statement Concerning Commission Rule E-13:
Commission Rule E-13, commonly referred to as the "sign-crossing" rule, states as follows:

"A Real Estate Licensee shall not negotiate a sale, exchange, lease or listing contract of real property directly with an owner for compensation from such owner if such Licensee knows that such owner has a written unexpired contract in connection with such property which grants to another Licensee an Exclusive Right to Sell or Lease or which grants an exclusive Agency Right to Sell or Lease. However, when a Licensee is contacted by an owner regarding the sale, exchange, lease or listing of property that is exclusively listed with another Broker, and the Licensee has not initiated the discussion, the Licensee may negotiate the terms upon which the Licensee might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing."

The Commission's intent in promulgating Rule E-13 was (1) to prevent Brokers from interfering with existing listing contracts to the detriment of the owner and (2) to protect the owner from possible claims that two commissions are owed.

Many owners are extremely dependent on the expertise of the Licensee. They may sincerely believe an existing listing contract is not in effect when, in fact, it is. The burden of inquiry is on the Licensee.

Earlier versions of E-13 had been criticized for being too restrictive. The current rule still provides that Licensees shall not negotiate directly with an owner if they know that the owner has a written unexpired Exclusive Right to Sell or Lease; however, the Licensee is now allowed to negotiate the terms for a future listing.
or take a listing effective upon expiration of a current listing so long as the Licensee is first contacted by the owner.

This recognizes the fact that an owner with property currently listed may initiate the negotiations concerning a future listing. In addition, the current rule recognizes that in some instances owners become dissatisfied with the services of the Broker with whom they have a listing and wish to cancel the listing. If a knowledgeable and informed Seller wishes to cancel a listing and list with another company, this cannot be prevented. Of course, the Seller runs the risk that improper cancellation of a listing contract can result in legal consequences. Brokers should never independently advise a Seller in this area. Instead, an inquiring Seller should be advised to seek legal counsel to explain the consequences of canceling an unexpired listing.

If the rule is followed closely, it will provide greater opportunities for Licensees to negotiate listings where a Seller does not wish to re-list with the same Broker while maintaining the integrity of the principal/Agent brokerage relationship.

The short version is that you should never solicit someone who is under contract with another Agent. When filling out the Contract to Buy or the Contract to Sell there are boxes where the Seller or Buyer gives assurances they are not under contract. If for any reason they are under contract, you should exercise care. You may not have initiated contact with the client; however, if they contacted you and asked for a contract, it would be a great idea to get an email from them stating they contacted you for the purpose of writing a future contract. Make sure to look at the contract and not let the new contract overlap in any way.
Test Yourself

1. What are the minimum requirements for disclosure on advertising?

2. Does electronic media such as Facebook count as advertising?

3. What is the minimum information needed on your business card?

4. Under the Conway-Bogue decision and Rule F, answer this and the following six questions. What was the Conway-Bogue case about?

5. When filling in a contract blank we should use a different____,____or ____.

6. If a client asks us how they should take possession of the property, we should do what?

7. If a client asks us to write and addendum may we do this?

8. If we are reproducing the contract from DORA does it need to be reproduced exactly as it is in DORA?

9. Why do we not need to be attorneys to fill in DORA approved contracts?

10. Is anyone exempt from using the DORA contracts and if so, who are they?

11. What extra supervision should an Employing Broker give a new Agent?

12. Must all Employing Brokers have an office policy manual?

13. If they do have a manual must the Brokers working for the company receive and sign for the manual?

14. How long must a Broker maintain his or her records?

15. Where must all records be kept?

16. Can a personal assistant negotiate the sales price of a home or a lease?
17. What is considered to be the employment contract between a Seller and the Agent?

18. Who actually owns the listing?

19. Does a Broker have to investigate the truthfulness of his client?

20. Does a Broker have to disclose obvious latent defects?

21. Is the Broker required to do a visual inspection of his or her listed property?

22. May a Licensee take a future listing from someone under a current contract?
Record Keeping and Trust Accounts

Key Words and Terms

<table>
<thead>
<tr>
<th>General Journal</th>
<th>Brokers Ledger</th>
<th>Ledger</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Trust</td>
<td>Management Trust</td>
<td>Rental Trust</td>
</tr>
<tr>
<td>HOA Trust</td>
<td>Deposit Trust</td>
<td>Comingling</td>
</tr>
</tbody>
</table>

Key Learning Points

- What is a trust account and who may operate it?
- How many trust accounts can a Broker have?
- What types of accounts are common?
- How does the trust account function?
- What is the account journal?
- What is a Brokers ledger and why do we have one?
- What does a client’s ledger card do and why do we have one?
- When must the funds be deposited in the account?
- What is comingling and what are the consequences?

What is a trust account?

In the operation of a real estate company there is often a need to hold funds from one client or another. When such funds are held for someone else’s benefit we place the funds in a trust account. The purpose of the account is to hold the funds for some future purpose and to protect them from loss. There are strict rules for who can operate a trust and how it must be operated. Failure to follow the rules can result in a brokerage firm being fined, having its license suspended or revoked and referral to criminal court. The list below has a few key points and rules a new Licensee must know for the test; however, only an Independent or Employing broker may have a trust account. A Licensee who is working for another Broker will not have a trust account.

The brokerage firm must set up a Trust account with a bank and may not use a savings and loan or credit union for this purpose. All of the following apply:

The account must be labeled Trust Account, have the employing broker name and state the purpose of the trust account. For example it may say XYZ Brokerage, Joe Smith Broker, Management Trust Account.
The accounts typically do not bear interest. If they do, the interest must be donated to an approved housing nonprofit.

The broker may use a third party to hold the trust funds for the broker. For example, many brokers utilize a title company as the depository for his or her trust funds. The check for earnest money is made to the title company and the funds are then held there until closing or a return of funds are made.

The Broker must be able to deposit and withdraw funds from his or her Trust account without any other signature or authorization from any other party. Many non-profit and businesses use checking accounts where two signatures are required. You may have seen checks that require a counter-signature or two signatures to be valid. The Trust may not have such a requirement. The Broker must be able to sign by his or herself. This does not stop the Broker from having another person be able to write checks or make deposits. Many brokerage firms would use an accountant or accounting department to handle the funds. That would not be a problem. It would not violate the rule that the Broker can still sign a check or make a deposit without anyone else approving.

The Broker must ensure that if there are transactions to the Trust account it is reconciled every month. If there are no transactions he or she may reconcile it the next month that has transactions.

The Broker may not **comingle** funds from the Trust account. He or she may not use the Trust funds for any purpose other than the original purpose deposited for. In addition, no other funds may be deposited in the account other than for the original purpose with few exceptions. The Broker may have all the following accounts:

**Sales Trust** Account: This is for funds to be held in connection with a sales transaction pending closing.

**Management Trust** Account: This is for funds held for property management purposes.

**Security Deposit Trust** Account: This is for refundable security deposits collected from tenants or short term occupants, for leases and rental units under Broker management.

**Advance Rental Trust**: This is for funds collected in advance for short term rentals such as vacation resorts that are pre-paid.
 Owners Association Trusts. For funds held on behalf of condo or planned community associations. Use a separate account for each association and identify each account by tax ID. Each association being managed must have its own account.

The brokerage may have as many or as few accounts as the firm needs. For testing purposes, the number of accounts is determined by need.

General Journal of accounts

This journal functions as the record of events that occur in the Brokers Trust account. The items are always listed in chronological order. In years past, a large green book might be seen on the accountants desk. In that book each day the accountant would enter the daily transactions as they occurred. Since they are entered as they occurred they would be dated in the order they appeared. A sample is shown here for you.

XYZ Realty Sales Trust Journal of Accounts

<table>
<thead>
<tr>
<th>Date</th>
<th>Received or Paid To</th>
<th>Amount</th>
<th>Reason for Transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-1-11</td>
<td>XYZ Brokerage</td>
<td>120.00</td>
<td>Bank fees for 2011</td>
</tr>
<tr>
<td>1-12-11</td>
<td>From Tom Payer</td>
<td>$2000.00</td>
<td>Earnest money</td>
</tr>
<tr>
<td>1-13-11</td>
<td>From Sue Mi</td>
<td>$2000.00</td>
<td>Earnest money</td>
</tr>
<tr>
<td>1-31-11</td>
<td>Balance of account</td>
<td>$4120.00</td>
<td>Current balance</td>
</tr>
<tr>
<td>2-1-11</td>
<td>Paid bank fee</td>
<td>-$10.00</td>
<td>Bank fee for January</td>
</tr>
<tr>
<td>2-4-11</td>
<td>To Tom Payer</td>
<td>-$2000.00</td>
<td>Returned earnest funds</td>
</tr>
<tr>
<td>2-28-11</td>
<td>Balance of account</td>
<td>$2110.00</td>
<td>Current Balance</td>
</tr>
</tbody>
</table>

Look at the journal above. You will notice the items are all listed as they occurred in chronological order. The journal is balanced for each month of activity. Although there were different people making deposits or withdrawals, they are all on the same journal and listed as they came into the account. This is the first step to keeping records for the Trust account.

Next we must set up ledger cards for each entity we hold funds for in the account. In the example above we have three separate entities. The first is the Brokerage firm and they have deposited just enough money to cover the bank charges for
having the account. This is allowed and is not considered comingling of funds. These are the only personal funds a broker may deposit into the Trust account. He or she may only deposit enough money to ensure the costs to operate are in the account. Look at the next ledger card. This is called the Brokers Ledger Card and now each account has its own ledger card. This is how the broker tracks each entity separately from the others.

**XYZ REALTY BROKER LEDGER CARD**

XYZ Realty Broker Funds

<table>
<thead>
<tr>
<th>Date</th>
<th>Received From</th>
<th>Amount</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-1-11</td>
<td>XYZ Broker</td>
<td>$120.00</td>
<td>Bank fees for 2011</td>
</tr>
<tr>
<td>2-1-11</td>
<td></td>
<td>-$10.00</td>
<td>January fees to bank</td>
</tr>
<tr>
<td>2-21-11</td>
<td>Balance</td>
<td>$110.00</td>
<td></td>
</tr>
</tbody>
</table>

As you can see, the Broker has deposited just enough to cover the bank fee for the year. Each month it is reconciled and it is maintained on the Broker ledger card and only the brokers funds are on this card. A ledger card is for each separate entity and has only its transactions listed on the card.

**LEDGER CARD XYZ REALTY**

For the account of Tom Payer

<table>
<thead>
<tr>
<th>Date</th>
<th>To or From</th>
<th>Amount</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-12-11</td>
<td>From Tom Payer</td>
<td>$2000.00</td>
<td>Earnest money</td>
</tr>
<tr>
<td>1-31-11</td>
<td>Balance</td>
<td>$2000.00</td>
<td></td>
</tr>
<tr>
<td>2-4-11</td>
<td>To Tom Payer</td>
<td>$2000.00</td>
<td>Return earnest money</td>
</tr>
<tr>
<td>2-28-11</td>
<td>Balance</td>
<td>0.00</td>
<td></td>
</tr>
</tbody>
</table>

As you can see, Tom has his own ledger card with all his transactions recorded here and balanced each month. These transactions can all be found in the account journal on the dates listed on the card. The Broker would have a card similar to this for each account he or she has.

When are deposits made to the account?
Earnest money is held by the listing Broker. The funds must be deposited into the Brokers trust account or a third party account such as a title company within 72 hours of acceptance of a contract to buy and sell.

Property management funds held by a Broker must be deposited within 5 business days from time of receipt of the funds.

Rental deposits must be deposited within the five days but also must be returned within 30 days of termination unless a written security agreement allows for up to 60 days. In no event may they be held for more than 60 days. The Broker may be held liable for treble damages (triple the amount of the deposit) for violations of this rule.

All accounts must be reconciled every month there is activity. In addition, all records must be maintained at the Brokers office for 4 years from the date of the transactions. If a Broker were acting as a property manager and decided to go to work for another Broker he would still keep his records for 4 years. The new Employing Broker would not be responsible for his past actions and would not keep records.

The records must be kept at the office address listed with the Real Estate Commission for the 4 year period. Should the Broker have additional offices, the records are kept at the original office unless the additional office has its own trust accounts. If it maintains its own trust accounts, the records are kept at that office.

Additional Reading is found in your DORA Colorado Real Estate Manual. Refer to your Pacing Guide for your reading assignments for this manual.
**Test Yourself**

True or False

1. ____ A Broker can place any funds he or she desires into the trust account.
2. ____ The Broker must be able to withdraw funds without any other persons signature or authority.
3. ____ The Broker can’t allow anyone else to have signature authority on the trust account.
4. ___ The journal is in chronological order.
5. ___ The Broker is allowed only 2 accounts but must have at least one.
6. ___ A Broker Associate may not have a trust account.
7. ___ A Broker may have as few or as many trust accounts as needed.
8. ___ Records must be maintained for 4 years.
9. ___ If a Broker is acting as an Independent Broker and goes to work for another Employing Broker, the Broker himself is responsible for the records related to his past work. The Employing Broker is not responsible.
10. ___ There may be only one account but many different clients funds deposited and recorded on separate ledgers for the account.
11. ___ The Broker may place enough funds in the account to cover routine bank charges and this is not considered commingling of funds.
12. ___ Funds from property management must be deposited in 5 days.
13. ___ Funds from earnest money transactions must be deposited within three days of acceptance of the contract.
14. ___ The Broker may not elect to use a third party for holding trust funds such as a title company.
15. ___ The DORA Real Estate Manual pages 2-16 to 2-21 are not required reading for this chapter.
Colorado Forms and Contracts

As a Real Estate Broker, you will fill out contracts and help to guide your clients through the process of buying and selling real estate. How is it that you can do this since you are not a lawyer? In Colorado, Rule F allows you to fill out the DORA approved forms without a law degree. This stems from the Conway-Bogue decision by the courts and Rule F is the Commission rule clarifying the rules for Real Estate Brokers.

In this section we will go over the rules pertaining to contracts and we will go over how to fill out the various contracts and their key points. In addition, as the contract covers rules of Agency and other areas, we will reinforce those rules as well. The student should spend time here and not rush, as a quarter or more of the test is from this section.

Now let’s look at the contracts one step at a time. We will not cover everything but we will cover the basics of the process for the test. Please go to the web at

http://www.dora.state.co.us/real-estate/ This is the Department of Regulatory Agencies for the State of Colorado. The Real Estate Commission approved manual and forms can all be found here. It is the most used web page from the state for our purposes and is important that you can navigate and print from the site. The contracts covered below can also be found in the back of this book under Resource Material.

Exclusive Right to Buy

Begin by going online to get the writable version to follow along and print when you are done. We will use this form first. We will be using the line numbers located to the left for our reference points.

Now that you see the Exclusive Right to Buy contract either in print or on the web let’s go.

Line 11: Notice that the first thing asked is what type of Agent you will be for this contract. The normal response is Buyers Agent. Below that you will see the date. This is the date of the contract. Go ahead check Buyers Agent and date the contract.

Line 17: Here we check the box that would let your client know what type Agency you work for. If you are a Broker that licenses with someone they are your Employing Broker. Since there would always be you and the employer at a
minimum, you are a Multiple Person firm. Why is this important? In a Multiple Person firm you can have many Brokers at the firm. Let’s suppose that someone in your firm has a house listed and you wish to show the house to your Buyer. As you know, in Colorado you may not be a Dual Agent. So how do you handle this transaction without becoming a Transaction Broker? Your Employing Broker can handle the transaction as an in-house transaction. He or she would designate the listing Agent as the Broker for the Seller. You will be designated as a Broker for the Buyer. Once the Employing Broker has designated each of you, the Employing Broker is said to no longer have an Agency relationship to the transaction. Each of you has an Agency relationship and each must represent your own client and you owe them your full allegiance. The term in-house transaction refers to a situation such as this where both Agents are from the same Agency but each represents a different person in the transaction. So for now we have informed the client we are a part of a Multiple Person firm. If we had checked one person firm then there could never be an in-house transaction. However, if we were showing our own listing we might become a Transaction Broker. More on this later.

Line 26-32: Who is the Buyer/s? Are there more than one person/s? If so, list all. For instance will it be a couple or investors? On line 29 we put in the name of the brokerage firm. For instance XYZ Realty might be our firm name. At line 30 put your name. At line 31-35 give a description of the type of property the Buyer is looking to purchase. For example, a ranch, three bedroom, two bathroom, that is 10 years old or newer.

Line 40: If you might be looking to negotiate a lease, check this box. For our purposes we will leave it blank and assume we are only looking to buy.

Line 42: As you know by now, all contracts must have a start and end date.

Line 52: Here we have a choice to make. If a deadline falls on a holiday or weekend will it be extended to the next day? You and your client decide.

Line 56: Again, this is where it matters what type of Agency relationship you will have. Read Section 4 carefully. At line 70 you can check this box or not. If you check this box, you are telling your client that should you show them a house or should you have an Agency with the Seller you will become a Transaction Broker. Even if you check this box, you will want to use the Change of Status form when this happens. The client may sign this with you today but you might not come into this issue for weeks or months. Perhaps they forgot about this paragraph. By
using the Change of Status form there will be no confusion. A similar box will be found in the listing agreement. Again, we will cover that later.

Line 77-115: This is a great place to review your duties as an Agent for the Buyer. Any and all of this is fair game for the test. If you are unclear of any duty here, please ask an instructor to clarify this for you.

Line 116-159: This is how you will be paid. There are many ramifications based on your decisions here with your client. Making sure this is correct will save you much grief later. It is wise to take a moment and look this over carefully. Look over 121-142. Although this is not the most common residential situation, it might occur. Will your Buyer pay no matter what? Will there be a success fee or hourly fee? Will they pay a retainer? Will there be other compensation? These questions need to be clear from the start.

Line 143: This is perhaps the most common agreement checked by a Broker. If this box is checked it will be the master of any other boxes. If you check here, no other boxes need to be checked above in this section. Here you are stating that you will be compensated by another party not the Buyer. When a typical transaction occurs, it might be that the Seller agreed to pay a commission to the Buyers Agent upon closing. When this box is checked you will be relying on someone other than the Buyer to pay your fee. Again this is common, but not always the case. Consult with your Employing Broker.

Line 160: Will there be a holdover agreement? If there is, then when this contract date expires if the Buyer buys a house you showed them during this holdover period, you may be entitled to collect your fee. The number of days in the holdover is up to you and your client. A word of caution however is due here. Should your contract expire and the Buyer sign with another firm, your holdover clause is void at that point. There is a similar clause in the agreement to list property and it has similar rules.

Line 172: Here the Buyer is telling you they are or are not a party to another Buyers agreement with another Broker. If the answer is they are not then go ahead. What if the answer is they are? Things can be a bit more complex if they are. First, you would not want to be accused of sign crossing. This is where a Broker knows the client is under contract with another Broker but solicits the parties business anyway. Rule 13 from the Commission prohibits sign crossing. Okay, so what if they contacted you and told you they were working with someone else and that agreement expires in two weeks? Can you write an agreement to become the Buyers agent? Yes you can; however, you would want
it in writing that they contacted you about the agreement not the other way around. Second, you would like to see the other agreement and look at the end date. Next, you would write a future contract so your start date would not be until the other is expired. For our purpose here, let’s assume they do not have another agreement.

Line 192: Does the Buyer wish to have his or her identity revealed? Some clients may not. This is permissible until closing. Perhaps she is a famous person and believes knowing will cause the Seller to not negotiate. In this case she would not want them to know her identity during negotiations. You would not disclose it as part of your duty.

Line 199: Here we advise them to seek legal counsel. If you are ever asked to provide legal or tax advice you will decline to give it. Rule F of Conway-Bogue allows you to fill in the forms, not give legal or tax advice. If the client asked, how should I take possession of the property? Should it be joint tenants? You would advise they seek counsel for legal advice. Of course you could point them toward the information, but you are not an attorney. The same is true if they asked what the tax implications were. Point them to a qualified tax professional.

**Line 202: Mediation is required before going to court in Colorado. All such costs are split between the parties.**

Line 226: How do you wish to take delivery? The more choices the easier for all, but there are cases when you might only want actual wet (real/actual) signatures and would not accept other forms. Here you and the client decide.

Line 241: The Buyer must check for sex offenders living in the area if it is a concern. You may direct them to the web or police for this information.

We now have a Buyers agreement in place. Everyone signs the contract and we are off. Next, we will look to list our first property. Although we skipped items in this contract you must read over all the items and be familiar with them for the test. We covered the blanks, but you may be asked about other areas on this contract.
Great first day as a real estate professional! You had your first Buyer sign with you and already you are working a listing. You are living the dream!

You have met a new client and they have asked you to come to their home and help them sell their house. There are many steps, but we will be focusing on the listing agreement or Exclusive Right to Sell residential contract here.

First, what is an Exclusive Right to Sell? If you have this type of agreement in place, you and you alone have the right to list and negotiate to sell this property. In most cases you will be considered to be the procuring cause and will be paid if the property sells during your time period.

Now that you see the Exclusive Right to Sell contract either in print or on the web let’s go.

Line 1-29: These are the same as the Buyers agreement you have just finished.

Line 30: This is the legal description of the property. Remember, the address is not a legal description. You will find a legal description in county records such as Lot and Block, etc. Be sure to use a full legal description here. For our purposes, we will skip this for training. If you would like to practice go to your county records and enter your current homes legal description.

Line 42: This is similar to the Buyers agreement. We will be focused on sale.

Line 44: As with any contract we must have a start and end date.

51-57: Again will we extend the dates if they fall on a holiday or weekend?

Line 58-78: Read these carefully. Notice on line 72 you will decide what to do if you have an Agency relationship with the Buyer. Will you automatically become a Transaction Broker?

Line 79-116: Read these and make notes. These pertain to all your responsibilities as a Sellers Agent. All of these could be asked on the test. On line 110 your client will tell you if he or she wants you to reveal the presence of another contract if asked.

Line 117-146: Here we find how we will be compensated as well as how another agent who brings the Buyer may be compensated. The key points to remember are that this is normally set up to be some form of split between the Brokers who
bring the Buyer and your firm. Your Employing Brokers office policy will dictate the terms. We never tell a client there is an industry set fee as it would violate the antitrust acts. Your Broker will be able to let you know the company policy for transactions.

156-172: This pertains to marketing the property or showing the property. How will it be listed? Will it be on MLS? Will there be a lock box or how will access be permitted? What other things will you do? Will you hold open houses?

Line 173: This is the same as the Buyers agreement. The Seller gives you assurances they are not a party to another agreement. Again if they were, you can write a future agreement that would start the day after the current agreement expires; however, you must not be the one to initiate contact for this purpose. You would be guilty of sign crossing if you had.

Line 194-203: What price and terms are acceptable to the Seller? How will they receive the funds at closing?

Line 204: Let’s take a minute to explore this line. In Colorado, if the Seller is not a current Colorado resident and if the home was not the principal residence, it is subject to withholding for Colorado income tax. In Colorado the tax is 2% of the selling price. A trick that is often on the test concerns this tax. Suppose the Seller is out-of-state and selling investment property. Now suppose the property is selling for $200,000 and the Seller stands to clear only $1,000 at closing. The Colorado tax code tells us we should withhold 2% or $4,000 so what will happen? In the event that there are not sufficient funds to cover the tax, the lesser amount of the cash due to Seller at closing or 2% will be withheld. In this case, the $1,000 would be withheld. If the Seller was to receive $10,000 at closing we would withhold the $4,000 and give the Seller the balance of $6,000. Ask your instructor if you are unclear on this.

Line 211-231: What is included in the transaction? This portion has cost many a Real Estate Agent the price of a refrigerator or worse! Notice what is listed as fixture. These will stay with the property unless otherwise changed. Notice personal property. These will leave the property unless otherwise negotiated. Simple things like fireplace implements are personal property. Also notice, not so simple things, like storm windows are also personal property. Be careful here! For the test be sure to know what is or is not personal property that will remain and what constitutes a fixture. Ask your instructor if you are not clear. Remember that personal property is transferred by Bill of Sale, not a part of the deed.
Line 234: Water rights are here. If you are talking about water such as shares of water or owned water rights these are always transferred by a separate deed. A well will have the permit transferred by the state engineer’s office. If a house is on 35 or more acres in Colorado, it will likely be granted a well permit for domestic use. The hardest water rights to transfer in order are: Irrigation rights, lake or river water rights, well and city water tap.

Line 259: Association assessments are found here. These are often paid in advance but sometimes monthly. You and the Seller must deliver to the Buyer a copy of all association contracts prior to deadline. If they are delivered, no matter how, it is considered done. So even if the association mails them to the Buyer it is considered to be complied with.

Line 265-275: The property disclosure form is used for this purpose. It is a required part of the contract that we give the Seller this form. It is not mandatory that the Seller fill one out. In the event the Seller refuses, we should advise the Seller that the Buyers may insist upon it as a condition of purchase. In any event, disclosure of latent defects are mandatory. If the Seller and Agent know of a material defect and fail to disclose the fact, both will be held liable in court. If the Broker learns of a defect, no matter how, he or she must disclose it even if the Seller objects. For instance, you are walking the neighborhood and someone tells you the garage was built without a permit. Now you know and must disclose. Normally you may rely on the Seller as being truthful and you are not required to investigate what they tell you; however, you must at a minimum do a visual inspection of the property and, if you discover a latent defect no matter how you discover it, you must disclose it. In some cases, such as a foreclosure, the Seller never lived in the house and therefore will have no knowledge of any defects. Again it is mandatory for you to give the Seller the form. It is not mandatory for them to fill it out.

Line 276: If a house had its building permit issued prior to January 1, 1978 in Colorado, we must use the Lead-Based Paint Disclosure form. Now would be a good time to open another window or print this form and look at it as we go over it here. The Lead-Based Paint Disclosure tells the Buyer there is a hazard to children from Lead-Based paint. It further advises them of health risks and tells them they should have an inspection performed if it is a concern to them. The Seller and Broker, as well as the Buyer and Broker, must sign the disclosure form. This must be done prior to acceptance of an offer to buy and sell signing. Failure to deliver this may result in a $10,000 fine to the selling Broker. Often this form is
loaded in MLS and must be signed and submitted with the Contract to Buy and Sell or the selling Broker will not accept the offer.

Please read through the rest of the contract and note the similarity between the Buyer and Seller agreements. At the bottom anyone who is listed as an owner on the deed must sign the document in order to sell the property. A good agent checks for ownership prior to arrival at the home.

Now we are ready to move on to the next contract steps. Take a short break and then open the Broker’s Disclosure to Buyer or Tenant. We will begin there when you are ready.

**Disclosure Documents**

Now that you have filled out an Exclusive Right to Buy and an Exclusive Right to Sell we need to go a little further in you disclosure documents.

Begin by taking out your copy of the Broker’s Disclosure to Buyer or Tenant. These forms are fairly straight forward and we will just cover them in an overview. You must read each from top to bottom to be sure you understand the information presented on them.

Start with the **Broker Disclosure** form: This form is used to ensure there is no confusion when you are working with a Customer and representing a Seller. Let’s assume you are holding an open house for a client and in walks a family that is looking at the house. When would you need to disclose that you work for the Seller? The rule is “before gaining any private or personal information from them”. If they were looking and asking general questions such as how much or how many rooms? there would be no problem. If you started to gather personal information such as how much do you make? or are you pre-approved? and for how much? or any other personal information like this, you would need to stop and provide this form. The Customer is not required to sign it but you must show it to them. If they refuse, you would make a note of the name, date and time you showed them the form and that they refused. You would keep this for your records. The key to any test question is that you provided this form prior to getting or asking for any personal information that is not just customary small talk.

**Now take out your copy of the Lead-Based Paint Disclosure form. As you know, you will use this form any time a building permit was pulled prior to January 1,**
1978. This form must be signed and received by the buyer prior to the acceptance of an offer to buy the home or the contract is void.

Take out your copy of the Source of Water Addendum document. Here you will ensure the Buyer knows and understands the source of the water for the home. In the city this is often as simple as Longmont City Water or some other provider.

Take out your copy of the Sellers Property Disclosure document and let’s take a look at it. Notice this form might take a while for the Seller to fill out. You may want to leave this with them and pick it up the next day. Do not advise the Seller on what to put or not put on the form. If they don’t know a status they can check the box with that option. Remember that the Seller does not have to fill out this form. You must give it to them but they choose to fill it out or not. If a Seller refuses, your best course of action for an agent is to tell them the Buyer may insist. There is no option for latent defects (these are hidden or not easily noticed defects). If you know of them they must be disclosed to a Buyer, no matter how you came to know. You are not required to investigate what the Seller tells you but you must do a visual inspection and if you know of a material defect you must disclose it.

What about stigmatized property in Colorado? Is it disclosed or not? In Colorado we do not disclose stigmatized property; however, there can be a case where it would be better to disclose than not disclose. For instance, what if the neighbors all know a murder occurred in the house and some people now think it is haunted? Would it be better coming from you than from the neighbors? If you and the Seller agree, get it in writing that you may disclose this stigma. If the Seller does not agree you will not disclose it.

What about a meth lab? Meth labs are not considered stigmatized, they are considered to be latent defects. You must disclose that one was there unless it has been properly remediated and certified by the State of Colorado. If it has been certified you would not be required to disclose this fact and wouldn’t without written consent from the Seller.

Next, take out your Square Footage Disclosure form so we can look at it. If the Broker does not measure the home themselves they must disclose the source of the measurement. The source must be RELIABLE. More often than not you will use the county records as your source of measurement. At any rate, you must disclose how the measurement was derived. The most reliable source is an architect or builder floor plan and the least reliable, yet acceptable method, is the
county records. As you can see, this is a simple form used in Colorado but it must be used as part of the Contract to Buy and Sell.

**Contract to Buy and Sell Real Estate**

**Residential**

The big day has arrived. Your chance to write the Contract to Buy and Sell is here! For our purposes we will allow you to be two different Agents today so we can simulate your being a Sellers and Buyers agent. Remember this is not an allowed practice in Colorado. We do it here only for training purposes. Today we will not concern ourselves with dates as these are negotiable and you will not see them on the test other than as general questions we will cover. Let’s get started.

Find your copy of the Contract to Buy and Sell.

Line 10: Put the date you are writing the contract.

Line 15: List who is buying the home. If this is more than one person, list all who will be taking title to the property and how they will be taking title.

Line 17: Will the contract be assignable? Assignment allows the Buyer to sell the contract or otherwise assign it to a third party without consent of the Seller. Often the Seller will not allow this and will insist on approving in writing any assignment.

Line 20-30: Who is selling the property? Be sure to list all parties to the deed. The property description must be a legal description not just an address.

Line 31-50: This looks much like the contract to list the property. Here the Buyer has a chance to include items such as personal property. Remember these will be transferred by a separate Bill of Sale and not be part of the financing or deed.

Line 51-76: This is much like the contract to list items, so we will not go over them again here.

Line 77: These are the dates that certain things will be performed. An example would be an inspection might be within 10 days from acceptance of the contract. Dates once listed must be met exactly. There is no room for error here. If you say you will have the property inspected and the objection deadline is 10 days, on day 11 you will no longer be able to object. If that date was March 4, 2012 then at midnight it will pass. You might note that items 14 and 15 are used if the Seller is
financing the property. He or she may require you to submit credit information and there can be deadlines for the Seller to approve.

Line 85: The purchase price and details are listed here. For today assume a purchase price of $200,000 with earnest money of $2,000. A new loan of $158,000 and $40,000 cash due from Buyer at closing.

Line 87: Here we list the earnest money and what form it will take. As a reminder, earnest money can be in any form the Seller will accept. If the Seller will accept a brown chicken and brown cow, that is great! We list where it will be held. Will it be with a title company or does the Sellers Agent have a trust account?

Line 110: Buyer certifies to the Seller either they have the funds on hand or not. An explanation may be required if not.

Line 112: In some cases the Seller will agree to pay or assist with closing costs. In these cases the amounts are listed here.

Line 123-162: These items are negotiable between the Seller and Buyer as to who will pay or what will be delivered. On line 144 this only pertains to Seller financing of the home.

Line 163-227: Please read and review these items.

Line 228-257: Read and review.

Line 258-289: Read and review. These items pertain to CIC or HOA documents. Here we say who and how the Buyer will receive the documents. As a reminder once they have been delivered no matter how it is done, you have complied.

Line 290-462: Please read and review these for your own knowledge.

Line 463-529: These items are all closing information. Many items are negotiable between the parties. Read over the items but the test does not go into this much detail. Once you are licensed your Employing Broker will be invaluable in filling these lines out.

Line 534-579: Read and review.

Line 580-597: In Colorado the Seller is always held to specific performance. In other words, if the Seller defaults and refuses to sell, the Buyer may go to court to force the Seller to sell the home. The Buyer however has options. If line 584 is
checked, the Buyer agrees to be held to a higher standard of performance than if it is not checked. If not checked then line 588 applies and the Buyer is only liable for damages in the amount of the earnest money.

Line 600-618: Again, it is worth noting that in the event of a dispute the Buyer and Seller must first go to mediation. The cost of mediation is split between the parties. This mediation is not binding so if no agreement is reached the parties split the cost to mediate and can go forward to a court.

619-674: Please just review.

Wow, we now submit the offer to the Seller. Let’s see how it goes!

Counterproposal

Now we switch to the Sellers agent. The offer to buy has been received. Working with your Seller you note that the offer is below market and perhaps a counter offer is the best option.

Line 9: Maybe the contract has a 72 hour acceptance and let’s assume a day has passed. In the upper right at line 9 you will now date this with today’s date.

Line 11: Here we describe the contract offer and put the date of the contract we are referring to as well as the names of the parties.

Line 18: Once again we place the legal description.

If we have no changes to the dates and deadlines we can skip down to line 27.

Line 27: For our purposes we would like to have $210,000 for the property. We accept $2,000 for earnest money but now want the Buyer to get a new loan for more and to have a little more at closing. Working together with the client we counter at the new price.

For today we assume no other changes to the contract.

On the original contract the Seller will initial only. They will not sign! A signature would mean acceptance of the contract. They will initial the contract and firmly attach the Counterproposal to the top of the contract. They will place an acceptance deadline and sign.

Let’s look at a possible test scenario:
EXTRA SIMULATION

Suppose that we have actually signed for the first offer. Just then the phone rings and a new Buyer has received a better offer. Can we accept the new offer even if we signed the agreement?

The surprising answer would be yes! In order for a contract to be complete the other party must have been notified of acceptance. Since we did not send it back yet or call and tell them, we could simply toss it away and accept the other offer. For an offer to be complete it must be fully communicated to the other party. Remember this fact as you test.

For our purpose let’s just assume we countered and firmly attached it to the original and delivered it to our Buyer. They agreed and accepted. HOOOORAY you are now under contract! There is still much to do, but we are on our way.

Inspection Objection

The Buyer now has the contract and according to the terms of the contract they have ten days to inspect the property and to reject if they do not find it acceptable. In Colorado, the Buyer is always in the best position to reject and walk from a contract. In the area of inspection they are not required to tell the Seller why or to give them a chance to correct the problem. They may choose to do so but are not required to. We use the inspection objection form for this purpose. You will notice that the contract, once objected to, will cancel if an agreement is not reached by the Inspection Resolution deadline. This happens on midnight of the date listed in the original Contract to Buy and Sell.

For our purpose let’s assume the Buyer has objected to a problem with the roof having old wood shingles and wants to have the Seller replace them. The cost is very high and the Seller offers only to fix those that are leaking but not the entire roof. We cannot agree by the objection deadline.

At this point the contract has failed to go to closing. The Buyer will execute a Notice to Terminate using the DORA form found at the DORA web. You have a copy of this form in your Resource Material. The Buyer has requested their earnest money back and the Buyers Agent will execute an Earnest Money Release form on their behalf. You may also find these forms on the DORA web and should review them for general knowledge.
EXTRA SIMULATION

Suppose that there was a dispute over the earnest money release. What would the Sellers Agent do?

1. As a reminder, all disputes go to mediation. Once notified there is a dispute, the Agent would do nothing but wait. In the event it was resolved at mediation they would perform whatever was agreed to be done.
2. The broker could inter-plead the earnest money to the court of jurisdiction.
3. So what if the parties could not agree and are headed to court? Upon notice of the court action the Broker would wait to hear from the court of jurisdiction.
4. What if they don’t hear anything? If the Broker hears nothing for 120 days they will return the money to the Buyer.

Change of Status

Take out your Change of Status form. This form is used when we are changing status from a Buyer or Sellers Agent to a Transaction Broker. The typical use would be when an Agent has a home listed for sale and has a client that is their Buyer. If you are an Agent for both parties and you wish to represent the contract you must become a Transaction Broker. In Colorado, Dual Agency is not allowed. This is different from an in-house transaction. In an in-house transaction the house might be listed with the same Agency but two different Brokers represent the parties. The Employing Broker will designate the Brokers and once done they may move the contract forward each representing one party.

As a Transaction Broker you do not represent either party. You are a facilitator for the transaction and can bring both parties to the table but you would not advise one over the other. If a price is agreed upon you would assist in drawing up the contracts and moving to closing. If both parties are your client and you have an Agency agreement with both you will need to change status with both. Even if the box is checked in the Buyers or Sellers agreement allowing you to become a Transaction Broker, use this form. It may have been months since you signed the agreements and we do not want any confusion during the process.

As you can see it is a straight forward form.
Two other notice forms are used when we buy any property under foreclosure. They are the **Notice of Cancellation** and the **Seller Warning-Equity Skimming**. Both are required under the Foreclosure Protection Act. Please get these forms and review; as well as the **Homeowner Warning Notice** form. This form gives the same information as the other warning but ensures that it is given in the principal language of the Seller.

**Closing Instructions**

You must use the **Closing Instructions** form from DORA when sending the contract for closing. This form tells the title company how to fill out the documents and who will pay for which items. **You will notice it allows the title company to charge for handling of the closing as a scrivener for the listing broker.**

We have covered the contracts most often used in a typical residential buy or sell situation. **There are 22 questions on the Colorado exam that cover these areas, so the student should spend some time on these contracts.** If you have questions, be sure to make notes and ask your instructor.

**Earnest money** is money paid by the Buyer to show good faith to the Seller. It is normally delivered with the offer to buy and sell. Once a contract is accepted the **Sellers Agent must deposit the funds within 72 hours**. If the check does not clear the selling agent would notify the Seller and ask what they would like to do. The Seller could choose to call and get another check or might cancel the contract. It is the Sellers call at that point. Earnest money may take any form the Seller will accept. If the Seller accepts a brown chicken and a brown cow that is acceptable. If there is any dispute regarding earnest money the parties must first go to mediation. **The cost of the mediator is split between the parties always.** Should the dispute go to mediation the Broker will hold the money until notified what the resolution will be. If the parties do not agree at mediation and go to court, when the court contacts the broker he will turn the funds over to the court of jurisdiction. If for some reason the Broker hears nothing for 120 days, he will give the funds back to the Buyer. If there is no dispute, the Buyers Agent will request the funds by executing an **Earnest Money Release** form on behalf of the Buyer.

As with earnest money disputes, any contract dispute must go to mediation first. If the parties do not agree they may go to court. The court will decide who will pay the court costs and attorney fees.
The test often has one question concerning a **Single Party Listing** contract and **Licensee Buy-Out Addendum**.

**Single Party Listing**

What is a Single Party listing? As an Agent you might have a client call and tell you she is selling her home. Maybe this is a friend or an aunt or sister. They then might tell you they have found the Buyer already. Perhaps the neighbor is buying the property. They then ask you to handle the transaction for them. You will need a listing agreement. It will have some different twists and turns. Since they do not want you to list and market the property and they only are authorizing you to work with one person or party you will have a different situation. The most likely item on the test will be in regards to a hold-over period for this type of contract. **Thinking about the situation, there could not be a hold-over period.** Since you are not authorized to show the house to others there will never be a situation arising where this matters. **Should you see a question about hold-over status you would know that in this type of contract there is no hold-over agreement.** The listing must state the buyer’s name in the contract.

**Licensee Buy-out Addendum**

In times when the market is moving quickly, it has not been unusual for a brokerage firm to offer to buy a listing if it does not sell within a specific time frame. A Broker might wish to tell the listing party if the house does not sell within 120 days I will buy your house for X amount. In order to do this, we must use the **Licensee Buy-Out Addendum**. You can open one at DORA and see it is a simple form. **The catch to this is whoever signs the agreement is held responsible for making the purchase if it comes to that situation.** So if your firm wants to offer this, you should never sign the contract. Your Employing Broker should sign the contract if they are the ones who will be buying. If you sign the contract you are on the hook to buy the house. **If this contract is executed there can be no commission charged for the sale.** Normally the offer is below list so this is not an issue.

We are almost done with this section! It is a long and tedious section but it is at the heart of the real estate transaction. With 22 questions on the exam it is wise to be sure you are fully knowledgeable about this section. Just a few more items and we can move on to the next section.
**Promissory Notes**

On DORA under contracts you will see at the bottom a standard Promissory Note. Please read over this form. The Promissory Note is what the Buyer user to guarantee the lender that they will repay the note. The Deed of Trust is security for the note.

**Power of Attorney**

One or more parties to the contract may wish to name an Attorney In Fact. This process is called Power of Attorney. Suppose your Seller will not be at the closing. They might wish to name someone else to sign for them. If so, they will need a Power of Attorney form filled out and notarized for the transaction. Who they name is up to them. **They may name as their Attorney in Fact anyone who they choose to complete the transaction. They could even ask the Agent to do this for them. Be aware of the terms Attorney in Fact and Power of Attorney for the exam.**

**Amend and Extend Contract with Broker**

**Amend and Extend with Broker** If we have a contract to sell real estate or a contract to be a Buyers Agent we may need to extend the contract. Let’s suppose we have a listing and the home does not sell in the time frame expected. **The Seller and the Agent may agree to extend the contract to give the Agent more time. If so, we would use this form. If for any reason our contract was expired we must write a new contract.** This form is used to extend a contract to sell as well as a Buyers Agency contract.

**Amend and Extend Contract to Buy and Sell**

Often when we write a contract and are headed to closing, unforeseen events delay the closing. Perhaps we need more time for an inspection or the lender needs to move the closing date due to missing documents. When this happens, the Buyer and Seller may agree to amend the contract and extend the dates so that the contract does not expire. **We use this form to make any agreed upon changes to the contract.**
Test Yourself

1. In order for a contract to be valid it must have a _______ and _______ date.

2. In order to have an in-company transaction you must be a _______member firm.

3. If a Broker showed a house to someone and they then bought another house and the broker did not get paid, what would be the most likely reason they did not get paid?

4. In an Exclusive Right to Sell contract you can have a hold-over period. Assuming you do and the owner sells it after the contract expires but during the hold-over period will you be paid?

5. Assuming from question 4 the owner lists the home with another firm, will your hold-over period still be enforced?

6. In most offices the Agent taking the listing is designated as the Sellers Agent. If another Agent in the same office brings the Buyer they could be designated as the Buyers Agent. This would be an example of an _______ transaction.

7. In the contract to sell we have an option to become a Transaction Broker if what happens?

8. The legal description on the contracts requires that we use a full legal description not a street _________________.

9. Do all parties that have ownership, or will take ownership, need to sign the agreements?

10. When is the Lead-Based Paint Disclosure required to be given to a prospective Buyer? Is it before or after acceptance of the contract? Is it on homes built before 1978 or is it the building permit date?

11. Water rights in Colorado are based on prior _________________.

12. Water rights in Colorado are real property and transferred by ______.
13. Four homes are located in the same area. One has ditch water rights, one is on a lake, one has a well and one is on city water. Which rights will be the most complicated? Which will be easiest?

14. A home on ___ or more acres will likely be given a well permit?

15. If you have a listing and find a Buyer that you would like to represent as well, you should use what form to go from a Buyers and Sellers Agent to a Transaction Broker?

16. Assuming question 15, would you need to use this form with both the Buyer and the Seller if you previously were an Agent for both?

17. On line 172 of the Buyer agreement you ask if they are currently a party to another agreement with any other broker. If they say they are under contract, under what conditions could you write an agreement?

18. What is Rule E13?

19. Can a Buyer ask that you not reveal his or her identity and remain anonymous until closing?

20. If a Buyer asked you “how should we take title to the property”? What is the proper response from the licensee?

21. In Colorado, if there is a dispute regarding any of the contracts, must the parties first go to mediation prior to court?

22. How is the cost of mediation handled?

23. How is personal property conveyed or using what type instrument?

24. Assuming the Buyer receives a copy of the HOA or CIC documents, does it matter how the received them?

25. Is the Broker liable for failing to disclose latent defects if they knew of them no matter how they came to know?
26. Is the Broker required to do a visual inspection of the property when taking a listing?

27. Concerning the Sellers Disclosure form, must the Broker include them and give them to the Seller? Must the Seller use them? What if the Seller refuses to use them? What should the Broker do?

28. What is the possible fine for not giving the Lead-Based Paint Disclosure to the Buyer prior to accepting the contract?

29. What does the Lead-Based Paint Disclosure advise the Buyer about?

30. If a home had a meth lab but it was properly remediated by a state certified contractor, would you still have to disclose the prior condition?

31. In Colorado are we required to disclose stigmatized property?

32. If the Broker did not measure the property themselves, they are required to disclose the RELIABLE _____ of the measurement.

33. If the there is an inspection objection and it is not cured by the res_____ deadline the contract will become dead at midnight on the date of the inspection res_____ deadline.

34. In Colorado, the Buyer is held to liquidate damages normally but the Seller is always held to __________ damages.

35. Can earnest money be in any form the Buyer will accept?

36. Who holds the earnest money?

37. On the Counterproposal top right, which date goes here? The date of the signing or the date of the old contract? Hint (read down to see another date place)

38. If the contract is initialed by the Seller rather than signed it is being ____________.
39. Must all deadlines be met exactly?

40. If a contract is submitted to the Seller and he/she accepts but has not notified the Buyer of the acceptance, could they still accept another offer?

41. If our Buyers or Sellers Agreement was going to expire, which Amend and Extend form would we use to extend our agreement with the client?

42. If our agreement with the Buyer or Seller was expired could we still use the Amend/Extend forms or would we need to write a new contract?

43. What if we have a contract and dates need to be extended? Which form do we use? Do both parties have to agree?

44. In a single party listing do we have a hold-over agreement? Why or why not?

45. If your firm offers to buy a home if it does not sell in a certain time, what form is used? Is the person signing the form responsible to buy?

46. Suppose you are an Agent and you are looking for a home. You find a home to buy for yourself. Do you need to use the Licensee Buy-Out Addendum? Ask an instructor if you are not sure.

47. Who can be your Attorney in Fact?

48. An Attorney in Fact is the holder of your ________  ___  ____________.
Closing and Settlement

At last we have arrived at the big day for all parties. The closing completes the Contract to Buy and Sell. Today, not only do the Buyer and Seller get what they have been after but the Agents now get paid. As a reminder, an Agent earns the commission when they bring the ready, willing and able Buyer or Seller to the transaction. However, they are not paid until closing. Today they will be paid!

It is the Broker Associates and their Employing Brokers who have a responsibility for the correctness of the figures at closing. In the event a Broker asks someone else to attend the closing in his place than both the Agent who asked them and the Agent that agreed and their employing brokers can be held responsible for the closing.

In many cases, a title company will be used for the purpose of closing the contract. The title company acts as a scrivener for the Listing Broker. This does not relieve the Broker from responsibility for the accuracy of the closing. Before we came to close we executed the closing instruction found in the DORA approved contracts. Because of this, the closing fees charged by the title company will be paid by the Buyer or Seller depending on how the contract is written. If we failed to execute this form, the Broker would be responsible for the closing fees.

As you know from your work in the national books, we are still accountable to RESPA. We will not accept any fee or inducements and any relationships we have to the title company must all be fully disclosed to the parties.

Colorado charges a document fee of .01 per $100 of value to record the deed. This is paid by the Buyer. This is a straight forward calculation so let’s look at an example of one. Suppose the home sold for $213,000. The recording fee would be $21.30. To simplify the process just move the decimal four places left. Another rule of thumb is the fee will have exactly the same numbers as the sale price and be between $1 and $100. Unless you are selling million dollar homes this works well for the test. In Colorado the real estate taxes are paid in arrears. This can be confusing to some students. When you receive your tax bill it is for the last year not the current. So let’s assume an owner is selling his property on June 1 and the taxes are $3,650.00. Colorado uses a 365 day calendar. We need to know how much of
the current year the Seller still owes and how much the Buyer owes. We can follow a few simple steps and arrive at the figures for closing.

1. **Start by dividing the whole tax amount by 365 days.** So in this case we have $10 per day taxes.
2. **Next, we need to know how many days have elapsed in the current year.** In Colorado we count the day of closing as the Buyers day. Since we are working on the Sellers portion we only count the days up to and including May 31. There are 151 days elapsed.
3. **We multiply the daily rate of $10 by the elapsed days and find $1510.00 is what the Seller owes for the year.**
4. **We subtract this amount form the total and that is what the Buyer will owe for the remainder of the year. So $2,140.00 to the Buyer.**

Next we need to know who will get credit and who will be debited. Since the Buyer will pay this year’s tax next year it is obvious the Buyer will want to collect from the Seller. **In this example we will be crediting the Buyer with $1,510 and debiting the Seller with the same amount.** On the worksheet we don’t care for now about the future taxes the Buyer will owe. We only balance between the Buyer and Seller. The lender will charge the Buyer the taxes in advance and that will fall into the closing costs portion for the Buyer.

If we are transferring personal property as part of the sale we would do so by using a separate Bill of Sale. For instance, if we were including the hot tub or swing set out back, it would be transferred by a Bill of Sale outside the closing. Let’s take a look at how to fill out a six-column worksheet for closing. We will work a simple example that assumes a new loan and straight forward residential sale. The purpose will be to see where the charges land and how we use debits and credits to make everything balance.
Working the six-column closing document

How does the six-column sheet function? What kinds of closing questions might they ask me from this sheet?

These are good questions. We have added this to the training based on students requesting such information and the newest testing versions. Here are the basics of the sheet. To do these at home please start by opening the blank six-column, these instructions and the filled in sheet. Okay done? Now you are ready to start. The six-column sheet is a document used at closing time. It details the items being charged and who they are charged to and from for the HUD 1 settlement sheet. You may never see one again but you will see the HUD 1 found in your Modern Real Estate book and this six-column will appear on the test. It is not the purpose of this lesson to go back over either the HUD1 or the manner in which proration's are calculated. We are focusing on how the six-column sheet is put together for a closing.
Please take the blank and completed six-column worksheet.

<table>
<thead>
<tr>
<th>Items</th>
<th>Buyer</th>
<th></th>
<th>Seller</th>
<th></th>
<th>Broker</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Debit</td>
<td></td>
<td>Debit</td>
<td></td>
<td>Debit</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Credit</td>
<td></td>
<td>Credit</td>
<td></td>
<td>Credit</td>
<td></td>
</tr>
</tbody>
</table>
1. First look at the completed sheet. You will notice that line 1 starts with the closing cost and then goes on to list all the various costs for closing. (This is abbreviated, a real closing may have much more). You will refer back to the filled out sheet as an example as we go.

We start by listing those items that are not proration's or charges between the Buyer and Seller. Break the list of charges into two parts. One part is between Buyer and Seller the other is anything else. For instance the Buyer and Seller would be charged property tax proration's. So this is in that column. On the other hand, the cost of the appraisal is not credited between the Buyer and Seller, rather it is charged to one or the other by the closing company and paid to the appraiser. Let's look at the list below.

Let’s now look at the fees for the six-column worksheet shown below. Notice the items in **bold**. These are charged to either the Buyer or the Seller at closing time. Some items, such as appraisal, are negotiable. For negotiable items you would look at the Contract to Buy and Sell and see who agreed to pay. Other items are the borrowers cost. These include closing fees, the new loan, doc fees etc.

<table>
<thead>
<tr>
<th>Sales Info</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>Earnest Money</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>New Loan</td>
<td>$120,000.00</td>
</tr>
<tr>
<td>Payoff</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>Title Insurance</td>
<td>$700.00</td>
</tr>
<tr>
<td>Trust Deed Recording</td>
<td>$15.00</td>
</tr>
<tr>
<td>Taxes Current Year</td>
<td>$600.00</td>
</tr>
<tr>
<td>Document Fee</td>
<td>$15.00</td>
</tr>
<tr>
<td>Interest New Loan</td>
<td>$200.00</td>
</tr>
<tr>
<td>Appraisal Fee</td>
<td>$400.00</td>
</tr>
</tbody>
</table>
Now it is time to look at the blank closing six-column. We start by listing the items charged at closing to one party, Buyer or Seller. Take a pencil and see if you can follow along.

**Line 3**: This is the new loan. We are working with a conventional 20% down loan. So with a $150,000 the loan amount would be $120,000. This is placed as a credit to the Buyer. The funds they received from the loan are given to them, at least on paper.

**Line 4**: This is the payoff or what the Seller still owes on the house. In this case $100,000. This will be a debit to the Seller because it will be subtracted from the funds paid for the house to them.

**Line 6**: This is the fee charged to record the deed of trust and is a Buyer cost thus a debit Buyer.

**Line 8**: This fee is for copies etc. and is called a document fee thus charged to the Buyer.

**Line 9**: Interest on the new loan. It is often the case that you close on a date but the payment is not made until a future date. The interest is calculated and charged to the Buyer from closing for those days. Thus debit the Buyer.

**Line 10**: This is negotiable so the title company looks to the contract to see who pays or paid for the appraisal. In this case the Buyer is paying. This is common. Thus debit the Buyer.

**Line 13**: Closing fee is charged to the Buyer for closing the loan.

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOA Fee</td>
<td>$25.00</td>
</tr>
<tr>
<td>Broker Fee 6%</td>
<td>$9,000.00</td>
</tr>
<tr>
<td>Loan Closing Fee</td>
<td>$150.00</td>
</tr>
<tr>
<td>Closing Credit From Seller</td>
<td>$500.00</td>
</tr>
<tr>
<td>Net Loan Proceeds</td>
<td>$19,220.00</td>
</tr>
</tbody>
</table>
Line 15: Net loan proceeds are debit the Broker. This is a big question mark for students. First how did we arrive at the number? If we take the loan proceeds and subtract all the costs that right now are debit the Buyer we find that the cost of closing is $780. Now add that to the amount of the payoff since we must pay off the old loan and subtract it from line 3 the loan amount we have this figure. This is how much money is left over after all the encumbrances are paid and the closing cost the Buyer owes. You can think of it as the Broker holding the funds until they are ready to settle up all the bills and hand over the money to the party that will be receiving the funds.

Now we are ready to add all the costs that the Buyer and Seller incurred and are paid as a debit and balanced with a corresponding credit.

Line 1: This is the actual sales price of the home. The Seller is credited with the sale and the Buyer is debited.

Line 2: Earnest money was paid by the Buyer to the Broker. Remember the Broker holds the money until closing. Thus debit the Buyer and credit the Broker. This has been asked many times on the test.

Line 5: The insurance for title takes two forms. Here this is the title policy that assures the Buyer of a clean title. The Seller pays for this type of title insurance.

Line 7: Taxes, current year. For our purpose we assumed an exact split. Many students struggle with the idea that he Seller is debited and Buyer credited. Please keep in mind taxes are paid in arrears not in advance. The taxes will be owed for the Seller up to the date of closing. After that date they are owed by the Buyer. Since the Buyer will be paying the taxes for the year they collect from the Seller the amount the Seller owes. Credit the Buyer the amount from the Seller that the Seller owes for the year.

Line 11: HOA in this case is paid monthly and we are closing on the first. Since this is collected at closing and paid, the Broker on paper is holding the payment. Often a test question. Also, if we had closed in mid-month, we would see the Seller had paid and we would prorate this amount and debit the Buyer and credit the Seller for the remainder of the month since this is paid in advance.
Line 12: Broker fees are negotiable and how the buying and selling Agent are paid is in the contract to buy and sell real estate. For this purpose we assume the Seller is paying all fees and a six percent rate is being used. This is normal for a contract. Again the Broker is the credit and the Seller is the debit. We will clear the Broker account after we are done and the Broker will be left with only his or her fee and he or she will then distribute the fees.

Line 14: In this case the Seller has a concession in closing fee of $500. Thus we debit the Seller and credit the Buyer.

Line 17: We add all the columns and put the value here. As a check, if you added all the debit columns and all the credit columns you would get the same numbers for a total in each. The balance sheet is in balance.

Line 19: This is the amount owed to the Seller at the end of the transaction. This is calculated by adding all Seller debits and subtracting them from the sales price of the home.

Line 20: This is the amount due from the Buyer in cash at closing. These must be good funds. Tellers check, cashier's check, wire transfer, or cash. This is shown as credit the Broker and debit the Buyer.

Now each of the debit and credit columns has the same number again and we are done. The Buyer debit and credit are the same and it is true for the Broker and Seller as well. Again the balance sheet balances.

Let’s look again and review a completed six-column worksheet based on the information presented here.

It can be helpful for the test to have some general rules to use for questions of debit and credit. If the debit or credit is between the Buyer and Seller it is easier. In these cases you can see that the debit and credit are identical amounts. We simply decide who owes whom. So in the case of taxes we only care about past taxes and so the Seller owes the Buyer and the calculation follows. If we were asked about a home where it was rented and the Seller had collected rent from the tenant he would owe the Buyer the remainder of the month. If we were talking about a tenants security deposit it would all be given to the Buyer thus debit the Seller and credit the Buyer. Most students can and do work through this well.
What about when the Broker is debited or credited? Now it seems harder. However with a few simple rules we can work through these problems as well. We should ask ourselves if this is a third party to the transaction we are dealing with. We might also ask is this a simple closing cost that the lender will be taking from the proceeds of the loan. The lender is going to get their prepaid items such as escrow for taxes, loan origination before they disperse funds. Those show as simply debit the Buyer. But what about things such as the homeowners dues for the month that need to be paid in advance. Here it is of no concern to the lender. The Seller neither owes nor cares. So the Broker would collect them from the Buyer to pay the HOA. What about title insurance. The lender is not going to pay it if it does not cover them. This is the insurance of title for the Buyer. So the Broker will collect the amount for accounting purposes and disperse it as well. Consider the earnest money. The Broker is the one who holds it in trust. It only makes sense they will be paying it out at closing. The last item is the commission to be paid to the Brokers. In this case the Seller is paying so the Broker will be credited the money and will pay the appropriate commissions.

Try to think through the issue on the test. If it is not going to be between Buyer and Seller is it a closing cost? If not, then the Broker account line will be used.

**In Colorado if an out-of-state investor is selling property and it was not their principal residence we **withhold 2% of the selling price or all proceeds whichever is less for tax purposes.** This is because there may be capital gains on the house due to Colorado from the out-of-state person. If they are in state they would file a Colorado income tax form anyway but an out-of-state Seller would not normally file in Colorado. Withholding ensures that they do file. So how do we handle this? On the worksheet it would be debit the Seller credit the Broker. The Broker then turns the funds over to the state. When the owner files they may get all or none back. A typical test question goes like this:

A home sold for $200,000 by an out-of-state landlord. At closing the proceeds for the seller are $2,000. Since the 2% withholding is 4,000 what do we do?

**In the case where there are insufficient funds to cover the 2% withholding, so we would collect the $2,000 proceeds as the total.**
Good funds

At closing the Buyer must bring good funds. Unlike earnest money where anything the Buyer will accept is acceptable, here there are special rules. Good funds include all of the following:

1. Cash
2. A cashier’s check from a commercial bank
3. Electronic funds
4. A tellers check from a savings and loan

The difference between a cashiers check and tellers check is where they originate. Savings and loans do not do cashiers checks and must issue tellers checks. It is important to note a title company check will not meet the test of good funds. We are to ensure payment is made with funds that are certain. Only those listed above will be acceptable.
Test Yourself

1. If a Broker asks another to attend closing who will be responsible for any errors?

2. Who is responsible for the accuracy of the closing documents if they are prepared by a title company?

3. The title company acts as a sc_____ for the Broker.

4. All documents must be returned to the Brokers office imm________ upon closing and the Broker must maintain the records for ___ years.

5. What must a Broker do if he or she has a relationship with the title company?

6. Can a Broker accept compensation from the mortgage lender for the transaction?

7. What is RESPA?

8. Assuming current taxes of $1875 and a closing date of June 1 how much will the prorated taxes be and who will get what credit and debit?

9. Where will the commission appear on the six-column sheet and who will be debited and credited?

10. What do we use a bill of sale for at closing?

11. Suppose an out-of-state Seller is selling a non-residential home for $400,000 and at closing there was $7600 available in cash due the Seller. How much tax would we withhold considering the 2% rate Colorado charges?

12. Suppose a home sold for $456,000. How much would the cost to record the deed be?

13. What are good funds?
14. Suppose a rental property sold. The tenants had paid $500 security deposit on the rental. In addition the home sold on Jun 8 and they had paid the months’ rent of $1240. How would this be reflected on the six-column sheet? Who gets what debit and credit and how much?

15. Who owns the day of closing in Colorado?

16. What is the Buyers day?
Additional Topics

Key Words and Terms

<table>
<thead>
<tr>
<th>Property Management</th>
<th>Water Rights</th>
<th>Water Disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subsurface Rights</td>
<td>Colorado Taxes</td>
<td>Termination</td>
</tr>
<tr>
<td>Mechanics Liens</td>
<td>Encumbrances</td>
<td>Customers</td>
</tr>
<tr>
<td>Colorado Fair Housing Act</td>
<td>Subdivision</td>
<td>Dual Contract</td>
</tr>
<tr>
<td>Deed of Trust</td>
<td>Usury</td>
<td></td>
</tr>
</tbody>
</table>

Colorado has unique rules governing foreclosure, both for how it occurs, and rules regarding the purchase of property. We will cover the main issues here.

In Colorado, property is most often bought and sold using a **Deed of Trust**. You should remember from the Modern Real Estate Book that a Deed of Trust has three parties. The **beneficiary** is the mortgage or Loan Company, the **trustor** is the homeowner and the **trustee**, in most cases other than owner financing, is the county official (county public trustee). When a homeowner fails to pay for his mortgage there comes a point when the bank tells the trustee to initiate foreclosure. The owner will receive a NED (Notice of Election and Demand). You must be very conversant in the actual days required to foreclose for the test. Beginning with the date of the NED a chain of events is started. The days from NED to actual foreclosure depend on the type of property being foreclosed upon. The days are shown below:

- **Non-Agricultural Property (Residential)** is 110-125 days from the issuing of the NED to actual foreclosure.
- **Agricultural Property** is 215-230 days from NED to actual foreclosure.

Often you will see a question such as “how long from the NED will foreclosure be on non-agricultural property?” Of course the answer is 110-125 days.

In some states the owner has a Right of Redemption after the foreclosure sale. This is not true in Colorado. The owner may elect to cure the problem from the date of the NED until foreclosure. Once foreclosure is complete, the owner no longer has any right to cure.
In Colorado the trustee does not need to go to court to initiate foreclosure. This is called non-judicial foreclosure. If the property sells for less than the Buyer owes, the Buyer may be held responsible for the loss if the lender chooses to pursue them. The lender would get what is called a deficiency judgment and the owner could still be held to pay. If on the other hand more money was received at sale than owed, the owner might get back the difference after the interest, legal and other costs are subtracted.

**Equity skimming is a felony in Colorado.** Equity skimming is the practice of collecting rent and not paying the mortgage (frequently on properties in foreclosure).

Whenever a home is being bought that is currently in a foreclosure process, we must use appropriate disclosure forms. Among these are the Sellers warning that the buyer will not pay or assume the Sellers mortgage. This is from the Foreclosure Protection Act.


Colorado also has unique tax foreclosure rules. In Colorado, if the owner of property fails to pay taxes, the taxing authority may issue a demand for the amount owed. If they are not paid, a tax note is sold on the property. A Buyer can purchase this at auction. They do not receive the property, rather a lien against the property. This lien is interest bearing and the person holding the lien will ask for full payment of the amount plus interest. The owner has three years to cure the lien. As long as it is paid and satisfied nothing more will happen. If after three years it is not paid, the holder will take possession of the property.

The Colorado Fair Housing Act extends some additional protection not covered by the federal acts. Marital status, creed and ancestry are all protected in Colorado.

In addition, the Fair Housing Act applies to commercial as well as residential property in Colorado.
All property managers are accountable for the Fair Housing Acts. They must also allow reasonable accommodations for handicapped persons. This is true even if the person becomes handicapped after moving in.

You may discriminate against persons who are dangerous.

Under no circumstances can discriminatory advertising be used. A good rule of thumb is to describe the property not the tenant. For instance, it is okay to say this is a charming, small one bedroom house. It is not ok to say this is perfect for a single person.

Property managers are most often General Agents working for the owner. They should try to maximize the profit by securing favorable terms and conditions for the owner. When receiving deposits from tenants they must put them in a trust account. The deposit, less any damages, must be returned within 30 days unless the contract allows for longer. In no event may it be held for more than 60 days. The holder of the money may be responsible for treble (triple) damages if they violate these rules. Leases can always be terminated with appropriate notice according to the table below:

1. Month to Month - 10 days notice
2. Tenancy at will - 3 days notice
3. Estate for years - There are no number of days. The estate for years requires a contract and the end date must be listed in the contract, thus notice is already given.

Water Rights

Colorado water rights are governed by prior appropriation. Those holding appropriated rights first, have the first right to the water no matter where they are located. You might be upstream from someone who has prior rights to yours. If so, they are permitted to enforce their rights on you.

In Colorado, if a homeowner is located on 35 or more acres, they will likely be given a well permit. The use of water for domestic purpose has priority. If the house is sold, the well is transferred by transferring title to the well with the county engineer’s office.
The most difficult water rights in Colorado are irrigation or farming rights to water. These rights must be sold as a separate transaction and using a deed for the water rights. They will not automatically transfer with the property. They are sold separate from the property. Conversely, the easiest water right is to a city tap. These transfer with the property.

When selling real estate in Colorado, we use a Source of Water Addendum form that ensures everyone is aware of where the water is coming from. The Buyer must then check to make sure the well or other source is sustainable.

Subsurface Rights

In Colorado, subsurface rights, sometimes called mineral rights, are transferred by a separated deed. The owner of the subsurface rights has the right to mine or claim the minerals without consent of the land owner. In many places, the city or municipality owns the rights.

Mechanics Liens and Encumbrances

Colorado requires that all encumbrances be paid by closing. A mechanics lien could take priority if the work was begun prior to closing. For this reason we would want to ensure the work is completed and paid prior to closing.

Termination of Contracts

Our contract with our client ends in one of three main ways. First, if we perform the contract. We listed and sold the home. The contract is terminated upon the sale of the home. Second, we might both mutually consent to end the contract. Third, the date of expiration might occur and we did not extend the contract. In addition, the death of the Principals would end the contract. What about the death of the Agent? The answer is no. If the Agent died the Employing Broker owns the listing and could appoint another to take their place. What if the Employing Broker died? In this case the contract would terminate because the Broker’s license would become inactive.
Subdivision and Developers

A sub-divider is a developer that creates 20 or more units from one. So if a contractor developed an office building into 20 apartments they would be a subdivision developer. As a subdivision developer they must register with the CREC as such. It is important to note that campground developers are exempt from this requirement in Colorado.

Usury

Under the UCC (Uniform Commercial Code) usury is illegal. Anyone lending money in more than 5 transactions per year is considered a commercial lender and is subject to usury law. If a lender has more than 5 transactions per year, the maximum interest rate is 21%. If they have 5 or less transactions per year, the maximum is 45%.

Bulk Sales and Use Fee

Suppose you are selling a clothing store complete with inventory. In Colorado, under the UCC bulk sales act, the purchaser must pay a use fee on the non-real property used in the business. This applies to all property over $500 in the transaction. The property is transferred by using a bill of sale.

Colorado Tax Rules

In Colorado taxes are paid in arrears. So when we receive our tax bill it is for the prior year. We are permitted to pay in one or two payments. If we elect one payment, the payment must be made by April 30th and is delinquent on May 1st. If we choose to pay in two payments, the first payment must be received by Feb. 28th and the second no later than June 15th. If we pay the first payment and miss the second, the state will charge us interest back to May 1st, which was the beginning of the overdue penalty for single payment. The question is often on the test in one of the following ways:

1. If a homeowner does not pay a payment by March 1st, what is the last date to make a payment without penalty? Since we did not make the first half we are thought to be making one payment and the date would be the last day of April.
2. Another way to ask is “if we make the first half payment, on what date would we be overdue?” The answer would be June 16th and interest would be charged to us backdated to May 1st.

**Dual Contracts**

Dual Contracts are illegal in Colorado. It is unlawful to submit a contract to a lending institution that is different than the contract used to buy and sell or build. An example would be, a person asks a builder to build a home for $100,000 and the builder agrees and draws the contract. The person then gave the bank a contract showing the builder was charging $150,000 and told them he was giving the builder $50,000 cash. **This would be fraud and is a case of dual contracting and is illegal in Colorado.**
Test Yourself

1. How many days on residential property from the issue of the NED to foreclosure?

2. How many days after the NED is issued on non-agricultural land until foreclosure is complete?

3. Does the homeowner have a right of redemption after foreclosure in Colorado?

4. What is non-judicial foreclosure and when is it used?

5. Is equity skimming illegal in Colorado?

6. If the owner will not live in the house for a year after closing what must they do?

7. When is the Warning to Buyer form from the Foreclosure Protection Act used?

8. How long does a homeowner have a right of redemption to the tax lien on their home?

9. What, besides the federal protections, does the Colorado Fair Housing Act protect?

10. How long may a landlord or property manager hold a deposit after the lease expires?

11. How many days before eviction must a manager wait for a lease that is month to month?

12. Why does an estate for years not have a time to wait for eviction?

13. When is it okay to discriminate against a tenant?

14. In Colorado, water rights are governed by prior ________________.
15. If a homeowner has 35 or more acres they will likely be given a _____ permit for ________ use.

16. Subsurface rights are transferred by _____.

17. Water is real property and transferred by _____.

18. We use a source of w______ disclosure in all sales transactions.

19. Can a mechanics lien take a priority position and if so when?

20. What do we owe a customer in the way of our dealings with them?

21. How might a contract terminate between broker and client?

22. Are campsites subject to registration with the CREC?

23. A developer developing ___ apartments in an old office building is considered to be a sub developer.

24. If a lender has 5 or fewer transactions in a year they may charge what maximum interest rate?

25. If a lender has 6 or more transactions what is the maximum interest rate?

26. What is dual contracting?
Self-Study Guide for the PSI Exam

So you finished the course and are ready to take the exam. Well hold on partner you still have some work to do. We will go over the study you need to do before you go for your exam and make sure you are ready for the test. The exam is in two parts. The first portion will cover the National material and the second will cover Colorado rules. You need to score 75% on the National and 71.3% on Colorado. We agree it would seem much easier to make the Colorado test 70% but you will soon find out that nothing with the Colorado exam is simple. First, let us assure you that you have covered all the areas of the test. You have now spent far more than the required hours in study and class if you are ready for the exam. You still have another three or so days to get prepared and study. As you schedule your exam, make sure you allow 72 hours of concentrated study time to make sure you pass the first time. Follow the guidelines below and you will be confident that you are ready to become a real estate professional.

National Exam

1. Go back and Read the Modern Real Estate book cover to cover.
2. Memorize the short answer classroom assignments
3. Take the two Broker exams in the back of the book and make sure you can easily score an 90% or better each time.
4. Go to the PSI Guide to Passing the Real Estate Exam Study Guide. Take the exams at the end of each chapter. Make sure you score 90% or better on each exam.
5. Go to the back of the PSI book. Here you will find two Broker practice exams. Make sure you can score 90% or better on each of these exams. There is one exception. The math can be over represented here. If it is the math questions holding you back do not beat yourself up on them. Just make sure you can score 90% not including the math questions.

Colorado Exam

1. Read the Guide to Passing the Colorado exam from cover to cover.
2. Memorize the short answer classroom assignments
3. Answer all the questions found in the test yourself at the end of each chapter. If you can’t find and answer email your online instructor or ask your in-class recitation instructor. Make sure you can answer all of these questions.
4. Go to your Colorado Real Estate Manual either online or hard edition. Skim/review the chapters you read in class. You may want to take the Colorado Real Estate Manual exams again in your online exams. You may also want to retake the final exams until you get a 90%.

You are now ready. Remember to take your REC-33 to the exam center and two forms of identification. When you take your test you will be given the National Exam and then the Colorado Exam. You will not know your score for either test until you have completed both tests. A good trick to use when taking these tests is to read each question TWICE before looking at the answers. Choose your answer and then REREAD the question one more time. You will find some of these questions are worded tricky and some give you more information than you really need. If you are unsure of the answer you have chosen, you can “flag” that question and come back to it after you have answered the remaining questions. Sometimes you can find the answer to a question through another question.

Between tests, we recommend you take a few moments to just close your eyes, clear your mind and then begin the second test. Sleep well the night before but don’t stay up late cramming or partying. Party time is tomorrow night. Good luck and let us know how you did.
Answers for Duties and Powers of the Real Estate Commission

1. Letter of Admonishment.

2. Administrative Law Judge

3. 4 years.
Answers for Licensing Requirements

1. $205 plus $50 reinstatement fee
2. Inactive
3. Both the broker associate and the employing broker
4. 3 years
5. 24 hours of continuing education of which 12 must be annual updates or, one time only, you may pass the Colorado exam again, or take a 24 hour Broker Administration Course
6. Twelve
7. Two years of experience and the 24 hour Broker Administration Course
8. Home builders, apartment complex operators, attorneys, inactive Licensee working for a new home builder or apartment complex as a regularly salaried employee.
9. Every active Licensee as well as the firm if it is a Corporation or LLC
10. A Corporation or LLC for 90 days and renewable for 90 days
11. Yes
12. Yes if they have an out of state office, agree to litigate in Colorado, and hold all funds in Colorado.
13. A securities license
Answers for Brokerage Relationships

1. Transaction Broker
2. Care, Obedience, Loyalty, Disclosure, Accountability, Confidentiality
3. Dual
4. True
5. True
6. False
7. True
8. False
9. False
10. True

1. Some of the problems would be getting in writing the ability to disclose the Seller will take a lower offer. The Broker should not disclose the need to sell because of illness. The Broker needs to become a Transaction Broker with the owner in order to work with both parties. The Broker must disclose latent defects no matter if the owner wishes that he not do so
2. Yes
3. Since there is no agreement in writing they are a Transaction Broker
4. Yes, since it was properly remediated with permits pulled, it does not require disclosure. However if it is obvious that the Buyer will likely find out about the fire with the owner’s permission the Broker could disclose the fact but they are not required to disclose
5. No. We are not required to disclose stigmatized property in Colorado. Again, if it seems better to disclose because the Buyer will likely ask or know, the Broker must get written permission from the Seller before disclosing the facts
Answers for Requirements Governing the Activities of Licensees

1. Brokerage firm name
2. Yes
3. Business cards must have the same information as advertising
4. Brokers rights to fill out pre-approved contracts from DORA
5. Font, size or color
6. Advise them to seek legal counsel
7. NO we may only use the pre-printed forms. The client of attorney may add a non-approved addenda
8. Yes
9. The Conway–Bogue decision allows us under Rule F
10. Yes, A builder selling his own homes is exempt, Attorneys are exempt
11. They must supervise them more closely including being available to answer questions up to and including the day of closing
12. Yes
13. Yes
14. Four years
15. At the Brokers office
16. No
17. The listing agreement
18. The Employing Broker
19. No
20. Yes
21. Yes
22. Yes, but they may not be the one initiating contact with the owner
Answers for Record Keeping and Trusts

1. False
2. True
3. False
4. True
5. False they may have as many or as few from zero to infinity
6. True
7. True
8. True
9. True
10. True
11. True
12. True
13. True
14. False
15. False
Answers for Colorado Forms and Contracts

1. Start and end date
2. Multiple
3. He did not have an Exclusive Right to Buy contract with the client
4. You may be entitled to payment if you were the procuring cause
5. No if the contract is listed with another Broker the hold-over is void
6. In-company
7. We have an Agency relationship with the other party to the contract
8. Address
9. Yes
10. Before acceptance on all homes with building permits dated before 1-1-1978
11. Appropriation
12. Deed
13. Agricultural water rights, city water
14. Thirty five
15. Change of status
16. Yes
17. You may write a future contract as long as the owner initiated the contact
18. Rule E-13 prohibits sign crossing
19. Yes
20. Please consult your attorney for legal advice
21. Yes
22. Spit between the parties
23. Bill of sale
24. No
25. Yes
26. Yes
27. The disclosure is a mandatory presentation by the Broker; the Seller however may refuse to use them. If they do you should tell them the Buyer may insist. They are not required to use them. You are required to present them
28. $10,000
29. It advises them of the possible hazards to children and advises them if they are concerned to have an inspection done.
30. No
31. No
32. Source
33. Resolution, resolution
34. Specific Performance
35. Yes
36. The selling broker using a Trust account or may allow a third party (title co)
37. The date of the counterproposal. The contract date is on the line that says the contract date on ______
38. Countered
39. Yes unless the parties agree to amend and extend to contract by the date
40. Yes so long as the acceptance was not communicated to the Buyer
41. Amend and Extend with Broker Contract
42. No if the contract to sell has expired you must write a new contract
43. Amend and Extend the Contract to Buy and Sell - both must agree
44. No there is no purpose. You may only sell to the single party (buyer) to the agreement
45. The Licensee Buyout agreement. Whoever signs the form is obligated to buy. Any time a Licensee is buying a listing he or she owns this form is used
46. NO - If buying a home where the listing is not theirs his or hers we do not need the form to purchase the home
47. Power Of Attorney
Answers for Closing and Settlement

1. Both Brokers will become accountable and their employing brokers as well
2. The Listing Broker and the buyer/seller brokers for their client’s side
3. Scrivener
4. Immediately and 4
5. Disclose to the parties in writing
6. No
7. Real Estate Settlement Protection Act
8. $755.69 debit the Seller, credit the Buyer
9. Debit the Seller, credit the Broker
10. Personal property
11. We withhold the lesser amount of proceeds or 2%. This case $7,600
12. $45.60
13. Tellers check, Cashier’s check, Cash and Electronic transfers of funds
14. Security deposit is debit the Seller $500 credit the Buyer $500, Rent is debit the Seller $950.67 and credit the Buyer $950.67
15. The Buyer
16. The Buyer owns all cost associated with the date of closing such as taxes and also receives all rents or monies owed for that day
Answers for Additional Topics

1  110-125
2  110-125
3  No
4  If a deed of trust was used in purchase and held by the county clerk the lender may initiate foreclosure and the clerk may do so without going before a court or judge. This is called non-judicial foreclosure
5  Yes it is a felony
6  Three years
7  Creed, Marital Status, and Ancestry
8  30 days unless the contract specifies more but in no case more than 60
9  Ten Days
10 The contract must be in writing so the end date has already been specified
11 When the tenant is dangerous
12 Appropriation
13 Well permit for domestic use.
14 Deed
15 Deed
16 Water
17 Yes if the work was begun before closing
18 End date, mutual consent, death of the parties, and performance
19 No
20 Twenty
21 45%
22 21%
23 Having two sets of contracts one for the lender and another one for the principals