Definitions of Brokerage Relationships

The first topic we are going to cover is Agency. In Colorado we use single agency. This means you are an agent for one of the parties, but can never be an agent for both parties. When you are an agent for both parties it is known as dual agency and is illegal in Colorado.

To be an agent for your client, such as a seller’s agent or buyer’s agent, you must have a written agreement. The written agreement demonstrates that you will act in that client’s best interest as an advocate for them. You must act with the utmost good faith, loyalty and fidelity to your client.

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, such as 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 that motivation to that party. You may not disclose the lowest price a seller would accept or the highest price a buyer would pay without written instructions from them. You may not disclose any suspicions about the property being stigmatized. 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 the failure of an agent to disclose stigmatized property. It is however in the best interest of your client to obtain permission to disclose any information about the property that the buyer may find out throughout the course of the transaction. This will ultimately help your client. If both the broker and the principal are involved in the improper action, both are responsible.
The broker whether a buyer’s agent or seller’s agent does not have a duty to investigate the property or to verify the accuracy of statements made by either party. This is true for both the principal and the other client. However we do have a responsibility if something is obvious. As noted above, to be an agent for your client you must have a written contract. We also owe several statutory duties as an agent to the seller or buyer such as care, obedience, loyalty, disclosure, accounting and confidentiality. And of course as an agent, brokers are advocates for their clients.

The duties an agent has to his client as an agent are important and quite different if he is working as a Transaction Broker.

In Colorado, transaction broker is the default. If you do not have a written agreement with a client you are showing houses to or are listing their property 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 help throughout the real estate transaction with communication, advice, negotiation, contracting and closing. Transaction brokers must still use reasonable skill and care. Transaction brokers must disclose any material facts to all parties including the buyer’s financial inability to complete the transaction.

A written Brokerage Agency Agreement to Buyer or Agency Agreement to Seller is required to avoid being a transaction-broker by default. If you are an agent for the seller, you have the option of having the buyer as a customer. A customer is a third party to the transaction who has not engaged the agent as a broker. We owe them honest and fair dealings. We owe them disclosure. For instance, if we are an agent for the seller, we owe the buyer Brokerage Disclosure to Buyer. This disclosure is required at the very first opportunity, either over the phone or in person. This is how we stay in compliance with Rule E35. Before we gather any confidential information from the buyer, we must give them the Brokerage Disclosure to Buyer. This is a form developed by the Real Estate Commission. It does not require that we obtain the buyers signature and it is not a contract. It simply affirms to the buyer that our agency responsibility and advocacy is

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with the seller. The buyer may choose not to sign this form, but the agent must keep a copy of it in the buyer’s file to be in compliance with the Real Estate Commission.

There is a similar disclosure to sellers called the Brokerage Disclosure to Seller when the seller is a For Sale by Owner and we have an agency relationship with the buyer. It states that we are in an agency relationship with the buyer and an advocate for the buyer and the seller is in a situation of caveat emptor or “Seller Beware”. In this case, it parallels the disclosure to the buyer we just spoke about.

There is another document called the Definitions of Working Relationships form. This is neither a disclosure nor a contract. It is simply a helpful document put together by the Real Estate Commission which outlines the different agency options that we have in Colorado. We can share this with the public in order to educate them and give them the option as to how they would like to be represented.

In Colorado, we have this term known as Designated Broker. A designated broker is the broker with whom the contract was signed by either the seller or buyer. It is the broker with whom the employing broker decides is the broker who is going to serve the buyer or the seller. It is generally handled through office policy with any brokerage. It is important to realize that the employment contract with the client is owned by the employing broker and not the designated broker or 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.

Because we have designated brokerage in Colorado, it makes it possible for us with an in-company transaction to have an agent working for the buyer as the buyer’s agent, who is also working as the designated broker for that buyer and within the same office have another agent working as the seller’s agent for the seller who is also the designated broker. Those two agents do not share confidential information with each other. They both have advocacy to their own client and their confidential information does not impute to the employing broker. This means it does not automatically go up to
the employing broker. Each agent keeps the secrets for their clients and remains an advocate for their own client. This allows for no conflict of interest within an office. We cannot have designated brokerage in a one person office simply because there is one person and there is no way to be an agent for two parties. There is no way to have a buyer’s agency and a seller’s agency without having dual agency in a one person office. This is why we cannot have designated agency in a one person office.

To recap agency in Colorado, we have agency, transaction brokers and customers. An agency is where there is a relationship between the client and the agent and the agent is an advocate for the client.

Transaction Broker is a non-agency relationship where the transaction broker treats one or both parties equally and does not advocate for either party.

A customer is the third party to the transaction whom we owe honest and fair dealings but there is no relationship with the agent.
Rule F

Rule F stands for forms. A. Colorado Supreme Court landmark decision known as Conway-Bogue. The Conway-Bogue decision said brokers are practicing law when they fill out forms. It also says that the Real Estate Commission will provide forms for real estate agents to use. The real estate agent must use the approved forms if available.

Only licensed real estate brokers are bound by real estate commission rules. If there is an approved form the real estate brokerage may not draft a similar form for use. For instance, the Real Estate Commission produces the standard contract to buy and sell. A real estate brokerage may not draft a new contract to buy and sell. The language of the approved forms must be used exactly as written by the real estate commission however we do have some flexibility of omitting certain elements of the contract that are not pertinent to that specific contract. For instance, in the contract to buy and sell there is a section about owner carried financing. If the buyer and seller in a particular transaction are not doing owner carry financing, you may omit that section, or delete it by simply putting the word OMITTED where the other heading was. You must keep the heading there but underneath in bold type you put the word OMITTED.

Whenever a real estate agent is using a Real Estate Commission form, and just filling in the blanks, what we fill in must be of a different size font or color than the rest of the contract. The parties looking at the contract must be able to clearly see where the agent has added information. Rule F does not apply to new home sales with warranties. Or contracts prepared by subdivision developers. Builders are not required to be real estate agents and therefore are not required to use the standard contract to buy and sell. If there will be an addendum to the contract to buy and sell, it must be created either by the principles (or clients) or attorneys for the clients or the attorneys for the real estate brokerage. The addendum that we will attach to the contract cannot be created by the real estate licensee.
In Colorado, we have several types of listing contracts. Listing contracts are employment contracts. The first one we have is known as the Exclusive Right to Sell. The Exclusive Right to Sell says that the real estate brokerage will get paid when the property is sold. The Exclusive Right to Sell has the option of the agent being a sellers agent or a transaction broker.

As a refresher, it is important to remember that the licensee that takes that listing becomes the designated broker and the agreement itself, the contract between the client and the real estate firm, belongs to the real estate firm. It is required in the listing contract that we have a definite starting and ending date. The broker must disclose known material defects to buyers as part of the listing agreement. The broker should ask questions to determine that there are no material defects that require disclosure. The broker should inspect the property visually and is responsible for obvious matters that require disclosure. However the broker does not have a duty to do an independent inspection. The broker does not have a responsibility to verify the accuracy or completeness of statements made by the seller. The seller agrees to provide a sellers property disclosure in the contract to buy and sell. The seller is also required to provide a lead based paint disclosure if the property’s building permit was issued prior to January 1st, 1978. In Colorado, sellers are also required to disclose the square footage of the property if that is to be added to the listing.

Holdover period

This is also known as the extension clause or protection clause, which allows for the real estate agent to collect commission after his expired listing if the real estate agent provided the seller a list of buyers that came through the property and one of those buyers purchased the property within the holdover period.

If a real estate agent is to receive a bonus that is in excess of the negotiated agreement made with their client, they must disclose this bonus to their client and they must get written permission to receive additional compensation from the transaction. This could
be received from lenders and inspectors but not from title companies. The exclusive rights contract requires mediation between the parties should a conflict arise.

The next contract is the exclusive Agency. It allows the seller to promote and try to sell the property himself. If the seller is successful, no commission is due to the agent. The agent still owes the seller the same disclosure responsibilities and must treat them with the utmost loyalty and fidelity.

The third type of listing is the single party listing. This is when we have a predetermined buyer for a listing. Real Estate Commission Position 13, states that the broker who takes a single party listing should make the listing specific to the buyer who has been predetermined and remove the holdover clause, as there would be no need for it.

Another disclosure that sellers would make to buyers is property disclosure. This is a long form that requires the seller to answer about 150 questions about their property. They are required to answer the questions to their best knowledge. If they do not know the answer to a question, they are free to answer “do not know”. If the seller declines to fill out this form the broker should inform the seller that the buyer will most likely request this form as it is part of the contract to buy and sell. Part of the standard printed wording on the contract to buy and sell states the seller will provide a sellers property disclosure to the buyer.

Agreement to amend/extend with broker

This is a form that the Real Estate Commission that allows for any listing contract to be extended or amended between the parties. The broker must amend or extend the listing with the buyer or seller before any termination date. If the termination date occurs, the contract is void and a new contract would need to be drawn up.
When an agent changes status from an agent to a transaction broker, the Change of status form must be filled out. That form is used at the time of the change in the relationship.

The Exclusive Right to Buy

The buyer and broker negotiate if the broker will act as an agent or transaction-broker and check the appropriate box. As in the listing, there are uniform duties with three additional duties owed to the buyer if the broker is an agent.

1. The broker's compensation is called a "success fee". The form offers two options for payment.
2. The buyer will pay if broker cannot get from listing broker, seller or other sources. If the buyer will not pay, the broker must seek from other sources.

CONTRACT TO BUY AND SELL - KEY PROVISIONS ONLY

Dates and Deadlines - "Time is of the essence hereof"

Must meet all deadlines exactly and the party missing a deadline is in default immediately. Dates only appear here (§2.3) - they are defined in the appropriate referenced sections.

Inclusions and Exclusions

Fixtures (land is NEVER a fixture) Listed items and any other fixtures are included if attached on the date of the contract.

Personal property are not necessarily fixtures. Listed items included as of the date of the contract and will transfer unless specifically excluded.

Inclusions would be listed using a different font in the contract.
Water rights that are to be included would be described here. Trade fixtures and crops would be addressed, if applicable.

Instruments of transfer (for inclusions) is the Bill of sale for personal property.

Deed for Water Rights

Loan application - buyer, if required, agrees to make a loan application.

Loan conditions deadline - Contract is contingent on the buyer obtaining a loan with conditions that are acceptable to the buyer in the buyer's subjective opinion. If the buyer is unable to obtain a loan that is acceptable, they may terminate by written notice to the seller no later than the deadline.

Credit information
The buyer must provide credit information to the seller if the buyer is proposing seller financing or assuming a loan without releasing the seller from liability to repay the loan in case of default. The seller may accept or reject the buyer's credit at the seller's "subjective discretion". The seller may not share credit information with others.

Appraisal Provision gives the buyer the choice to make the contract contingent up receiving an appraisal equal to or greater than the purchase price. If the appraisal is lower, the buyer may terminate by written notice to the seller on or before the deadline and must also give the seller a copy of the appraisal or a letter from the lender. Cost of the appraisal is negotiated.

Evidence of Title
The seller agrees to deliver and pay for a title insurance commitment and owner's policy of title insurance.
CIC (Common Interest Community) documents used are for communities with the authority to levy mandatory assessments for the maintenance of common elements (homeowner's association or HOA). The seller must provide the documents. Once the buyer receives them, the seller has met their obligation - no matter how the buyer obtained the documents. The buyer may review and terminate the contract if conditions are unacceptable by written notice prior to the CIC Documents Objection Deadline. The seller has no ability or obligation to cure CIC document items the buyer is not satisfied with by any deadline.

Title
The title advisory warns that third parties may own rights in minerals or other interests giving them the right to enter and use the property.

Lead-Based Paint disclosure is required if the property has a building permit issued prior to January 1, 1978. Property Disclosure and Inspection.

The seller agrees in the contract to buy and sell to provide a completed Seller's Property Disclosure.

Inspection objection deadline
The buyer has until this deadline to get inspections done and to object to any unsatisfactory inspection condition. If the buyer objects to something as a result of inspection the buyer may terminate the contract by written notice to the seller using an "Inspection Notice Form". The buyer may list items to be corrected by the seller. The parties must resolve the way these items are to be handled before the Resolution Deadline or the contract will automatically terminate one day after the resolution deadline.

Methamphetamine Laboratory Disclosure
The seller is required to disclose if a residential property was used as a laboratory to manufacture methamphetamine. If the seller has cleaned the property to Colorado state standards and certified to state requirements, they are NOT required to disclose. The buyer has the right to have the property tested and if the property was used as a methamphetamine laboratory and is not cleaned or certified to state standards, the buyer may terminate the contract on or before closing.

The date of closing is negotiated and included in Dates and Deadlines. The responsibility to pay settlement service fees is negotiated and specified.

Transfer of Title
Colorado practice presumes a general warranty deed unless another type of deed is specified.

Payment of Encumbrances
The seller agrees to pay monetary encumbrances not specifically assumed by the buyer. Caution: A mechanic's lien for work begun (and even finished) before closing could assume priority from the date prior to closing when the work began.

Insurance; Condition of, and Damage to Property and Inclusions provides for a walk-through inspection before closing to "verify the physical condition of the property and inclusions." The walk-through is not another inspection.

Time is of the Essence and Remedies

If the buyer is in default, there are two possible remedy provisions. The buyer will check a box to indicate which remedy is included in the offer.

1. Specific Performance (NOTE: all commission-approved contracts allow for specific performance): the seller may keep the earnest money, may sue for damages, or may sue to force the buyer to buy.
2. Liquidated Damages: the seller's remedy is limited to keeping the earnest money

If the seller is in default, the buyer has specific performance remedies.

For any termination, the broker must return the earnest money immediately unless there is an earnest money dispute.

Mediation
The parties (seller and buyer) agree to submit any dispute about the contract to mediation for up to 30 days. Mediation is not binding (no resolution will be imposed if not agreed by both parties). A resolution signed by the parties will be binding. The parties jointly agree to a mediator. The parties will split the cost of mediation. Not negotiable! If the dispute is not resolved, either party may seek litigation or arbitration.

Earnest Money Dispute
The buyer and seller will still mediate. The broker may hold the earnest money until the parties give mutual written instructions (Earnest Money Release form); send the money to the appropriate court (interplead the parties) to settle the matter. The broker will notify the buyer and seller to send any information on a lawsuit within 120 days or the broker will return the money to the buyer.

Termination: defines termination as used in the various contingencies in the contract. All payments and things of value shall be returned. The parties shall be relieved of further obligations.

A preprinted or prepared addendum, used to alter or add to the terms of a contract, may be prepared by an attorney representing the broker or brokerage firm; a party to the contract; an attorney for a party to the contract.

In the case of a listing or right-to-buy agreement, the broker may prepare such an addendum as they are a party to the contract.
Only transaction-specific provisions negotiated between the parties may be in Additional Provisions.

Broker personal provisions or exculpatory language may only be in a contract to which the broker is a principal party (not the Contract to Buy and Sell).

Foreclosure Disclosure and Protection
If the buyer will not occupy the property for at least 1 year, the seller and buyer must use the Foreclosure Property Addendum. If the buyer and seller decline to use the addendum, the purchase agreement must be drafted by an attorney, not the broker.

Notice, Delivery and Choice of Law and specifically states that notice to the listing broker is notice to the seller.

Contract provides a choice to allow or not allow facsimile or e-mail documents

Broker Acknowledgments
The brokers involved sign to acknowledge receipt of the earnest money and brokerage relationship in the transaction.
FORMS USED WITH THE CONTRACT TO BUY AND SELL

The Counterproposal terminates the offer and creates a new one. The broker can change any dates and leave all other dates blank or enter "no change." When the abbreviation "NIA" or "deleted" is entered, the date in the original offer is removed. Counterproposal must be attached to the original offer. Offeree (usually the seller) does not sign the offer, only the counteroffer. The seller would be obligated to withdraw their counter in order to accept another offer from a different party.

The Inspection Notice carries out the steps in the inspection section and does NOT change objection or resolution deadline. The buyer must use this form to notify the seller of termination based on inspection. If the parties do not reach a resolution by the resolution deadline, the buyer may revive the transaction by withdrawing the objections. Otherwise, the contract terminates one day after the deadline.

The Agreement to Amend/Extend Contract is used to make changes to (modify) the Contract to Buy and Sell. This form would be used after a Contract to Buy and Sell is accepted to extend or change dates and deadlines before the date arrives, such as the closing. Just like the counterproposal, only those dates that are changing are listed; all other dates are left blank or have no change. Also used for any other change to contract provisions and must be signed by both parties to indicate mutual agreement.

Closing Instructions

A three-party agreement appointing a closing company to prepare the closing for the buyer and seller and appoints closing company as "scrivener’ of the listing broker - sets up broker payment for documents they order, such as the deed and bill of sale.

Earnest Money Receipt contains a receipt for use when (if) the broker delivers earnest money or other trust funds to the closing company.

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Licensee Buyout Addendum (Commission Position Statement CP-23) is used when a broker offers to purchase a property concurrent with listing the property, or the offer to purchase is an inducement to facilitate the property owner's purchase of another property where the broker will receive a commission. This form is used only by the designated listing broker or the employing broker of the listing company and is binding on the listing company only if the employing broker signs at the bottom of the form. The agreement states that the broker/buyer is a licensee and can fund the purchase; the broker/buyer may make a profit on the resale; the broker/buyer will be obligated to pay losses or expenses and does not require the seller to pay any costs or commissions to the buyer/broker if the buyout closes.

There are three approved Deed of Trust forms.

Due on Transfer -- Strict
Due on Transfer - Creditworthy Restriction
Assumable - Not Due on Sale

There are no provisions for an increase in interest rate
TRUST ACCOUNTS

What is a Trust Account? A trust account is a separate account to benefit others, that must follow specific rules, must use a high level of accuracy and care and must follow Commission guidelines.

Any employing or independent broker, when a broker holds money for others needs a trust account. They must establish an account by the time they first receive money belonging to others. Employed or broker associates are not allowed to have trust accounts. A trust account can be held by a title company.

A broker needs enough trust accounts to assure that funds will not be commingled between clients. The Real Estate Commission requires that brokers have the following:

- **SALES TRUST ACCOUNT**: for money held in connection with sales transactions pending closing.

- **MANAGEMENT TRUST ACCOUNT**: for money held in connection with property management services.

- **SECURITY DEPOSIT TRUST ACCOUNT**: for refundable security deposits collected from tenants or short-term occupants, for lease and rental units under management by the broker.

- **ADVANCE RENTAL**: for rental money collected in advance, especially for short-term rentals as experienced in resort and vacation rentals.

- **OWNERS ASSOCIATION TRUST ACCOUNT**: for funds held on behalf of condominium or planned community associations. Use a separate account for each association and identify the account with the Tax Identification Number of each association.
If a broker is soliciting fees from prospective tenants for providing information about available rental properties, an additional account may be required.

Interest Bearing Accounts
All parties must agree if the account is to be interest bearing EXCEPT, the broker can have an interest bearing account to benefit an approved non-profit housing opportunity fund.

Setting up a Trust Account
A trust account must be insured by a government agency and should not be in a credit union as only members are protected. The bank must recognize that the account is a trust account (the word "trust" or "escrow" must be in the account name) and the account must be in the name of the corporation and the designated principal broker. Branch offices do not need to have trust accounts separate from the main office unless they separate bookkeeping systems.

Operating a Trust Account
The employing or managing broker is responsible for supervising their trust accounts and must be able to withdraw funds without a co-signer although other authorized parties (licensed or unlicensed) may sign on the account. They may use enough brokers’ funds to maintain the account (there is no set dollar amount) and must not commingle operating account funds with trust funds. Commissions should be moved from the trust account to the operating account prior to disbursement and ONLY after they are earned. Once earned, commissions should be removed promptly (there is no set date) from the trust account and moved to the operating account.

EARNEST MONEY
Deposits should be given to the listing broker and deposited in the listing brokerage or title company account within three business days after acceptance. The broker is responsible to hold it in a secure place until offer is accepted or rejected. The check
should be identified in the Contract to Buy and Sell and can be deposited with a 3rd party or closing company, with permission of the parties.

Earnest Money Promissory Note should be made out to the listing broker and clearly noted in the Contract to Buy and Sell. The due date should be before closing, so all funds will be "good funds" at closing. The listing broker is responsible for presenting the note to be collected. If the listing broker cannot collect the money, they must inform the seller immediately. The buyer agrees to pay ALL reasonable collection fees and there is no set limit on the amount, if the note goes to court to be collected.

RECORD KEEPING

Transactions
Brokers are responsible to make sure that they have a complete file of all agreements made during the transaction. Only the listing broker needs to have the Exclusive Right-to-Sell listing contract in their file. Only the broker representing the buyer needs to have the Exclusive Right-to-Buy agreement in their file. Both brokers should have copies of the rest of the documents and must have copies of closing statements; may or may not have copies of deeds and deeds of trust, or title work.

Records and Systems - records must be kept for four (4) years
The employing or independent broker must keep account records, including an account journal for cash receipts/disbursement includes chronological record of ALL deposits, withdrawals and activity in the account and would include information on which the check was from and dates deposited - not specific information on the individual. A ledger account system separates funds in the account by single beneficiary or transaction and might have information like the social security or tax identification number. A broker ledger card shows funds belonging to the broker in order to maintain the account and pay any fees charged. Trust accounts must be reconciled every month that there is activity in the account and all disbursements must be supported by documentation. A sole proprietor who closes their office and goes to work at a different
brokerage firm would be responsible for maintaining the records for their old company for 4 years, not the new employing broker.

Safeguards: frequent reconciliation, separation of duties, outside audits and Real Estate Commission assistance.

Commingling of Trust Funds
Trust account funds should not be mixed with operating account funds. Property managers must be careful not to use one owner's funds to pay for another owner's bills, which is called CONVERSION. The broker is personally responsible for accurate accounting. A broker must not put business trust funds (e.g. payroll tax withholding) into their real estate trust account.

Property Management Accounts
Security deposits must be held in a separate account; funds belong to the tenant. The broker can turn the deposit over to the owner only after notifying the tenant. If the management agreement does not state if the owner or broker will keep security deposits, the broker must keep them to protect the tenant. The broker is responsible for deposits and if they are no longer managing the property, they must notify the tenant to tell them the funds have been transferred. The deposit must be returned in full or the tenant must be given an accounting of why the deposit was kept, within one month or if the lease calls for it, up to 60 days. The property manager has five (5) business days to deposit money received. Brokers managing a property in which they have an interest need a separate account for those properties. If a Homeowners’ Association (HOA) terminates a management agreement, the employing broker/manager must return all original records to
Closing Instructions are a three party agreement between the buyer, seller and closing company. The listing broker (responsible for closing) appoints a closing company as a "scrivener," and gives it authority to prepare standard and pre-approved legal documents (standard deeds, etc.) The closing company's job is to close the transaction according to the terms of the contract.

The Contract to Buy and Sell sets terms of transfer and determines who pays for what. For example: closing fees charged by a closing company are negotiable.

Deeds and Bills of Sale

Deeds convey title to real property. A Colorado documentary fee of $.01 per $100 of the purchase price is paid upon the recording of any conveyance deed. (i.e. $245,000 sale = 24.50 doc fee) Bills of sale convey title to personal property.

Certificate of Taxes Due - The county verifies amount of taxes owed.

Real Property Transfer Declaration (TDI000) is filled out at closing; required by the state and sent to county assessor and declares market price (NOT market value) and circumstances of sale. It is used to help ensure fair and uniform property tax assessments and does not transfer personal property.

The 6-Column Settlement Worksheet is a tool for tracking who pays what and is not given to parties. When complete, appropriate information is transferred to buyer's and seller's Statement of Settlement forms. The listing broker is responsible for the overall supervision of the closing.

Statement of Settlement Form is an approved form that must be provided to both the buyer and seller at closing (delivery and acceptance). Buyer's Statement contains only the buyer's debits and credits. Seller's Statement contains only the seller's debits and credits.
The designated broker "who has established a brokerage relationship with the buyer or seller...(shall) be responsible for the proper closing of the transaction and shall provide, be responsible and sign..." the detailed closing statement for the party with whom they are working.

If a broker asks another broker to attend closing for them, both brokers and their employing broker will be responsible for the accuracy of the closing for the party they are designated to represent.

Employing broker will also be responsible along with the other brokers to make sure the party they represent gets an accurate Statement of Settlement and other closing documents.

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<td>6 column worksheet</td>
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<td>Listing broker and brokerage firm also responsible for overall</td>
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<td>Creates closing statements.</td>
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Good Funds

Colorado law requires amounts brought to closing to be in good funds. Good funds may be cashier’s checks from a commercial bank, teller’s checks from a savings and loan, and funds conveyed using the federal funds wire transfer system. Good funds do not include any business check, personal check, money market checks, certificates of deposit or title insurance company check.
2% Non-Resident Seller Income Tax Withholding

The "Closing Entity" is responsible to withhold up to 2% of the sales price for a non-resident seller. The closing entity can be a broker, an attorney or the title/closing company. The rule only applies on property sold for $100,000 or more while sale of a principal residence is exempt from this rule. Withholding is the lesser of the seller's net proceeds of sale; or 2% of the selling price. The broker associate must return all closing documents to the employing broker immediately following the closing.
Subdivisions

A group of 20 or more residential building sites or units constitutes a subdivision and requires registration when sold to the public. The developer must register with the Colorado Real Estate Commission. Residential condominium conversions and timeshare developments are subject to this regulation. Converting apartment buildings, which do not fall under the regulation, to timeshares or condominiums would require registration. Campsite memberships are EXEMPT from subdivision regulations. A Planned Unit Development (PUD), or any subdivision that has been approved by a regional, county or municipal planning authority is excluded from registration.

Colorado Common Interest Ownership Act creates statutory liens for homeowner’s association dues and assessments. A Common Interest Community (HOA: homeowner’s association) has authority from its founding documents to charge a mandatory assessment for maintenance of common elements including greenbelts or recreation facilities.

Foreclosure in Colorado

The lender files a Notice of Election and Demand with Public Trustee. The Public Trustee advertises the foreclosure sale for 5 weeks and notifies the borrower within 10 days of the filing. If there are private trustees, the deed of trust is foreclosed in court, like a mortgage.

Right-to-cure, 110 to 125 days to cure - bring current all past due payments and pay lender fees for all property except agricultural and 215 to 230 days to cure if the property is agricultural.

If the amount received at sale was less than the lien, the lender can file for a deficiency judgment. A default judgment is not used in this type of legal action. A party who takes over a foreclosure and does not make payments but collects rent is guilty of equity skimming which is a felony in Colorado.
Evidence of Title

Recordation provides constructive or legal notice and a documentary fee of $.01 per $100. (Example: A sale of $225,000 would have a fee of $22.50. Remember, move the decimal four places to the left.) The documentary fee is paid whenever a conveyance deed is recorded.

Surface vs. Subsurface rights

Surface rights can be separated from subsurface rights. The holder of the subsurface rights has the right to enter the property and remove the oil, gas, minerals, etc. that they own. They must leave the surface estate intact. They are often held by a third party and not sold with the surface rights.

Statutory Power of Attorney

If a broker is going to be an attorney-in-fact for one of the parties, they must use the approved Colorado Statutory Power of Attorney for Property.

PROPERTY MANAGEMENT

Property managers are usually required to be licensed and are concerned with finding quality tenants and making sure tenants do not create environmental issues for the property.

A property manager is a general agent of the property owner. A property management agreement defines the relationship and is signed by the employing broker for the firm. When an employed broker (associate) manages a property (even for a friend) the management agreement is signed by the employing broker and the employing broker handles the trust accounts. A regularly salaried employee of the owner is exempt, as long as they don't negotiate terms of leases and report to the owner.
Leases

Under the statute of fraud, leases of more than one year must be in writing to be enforceable. Colorado leases have an implied warranty of quiet enjoyment but no warranty of habitability.

Lease notification times:

- Month-to-month = 10 days
- Tenancy at will = 3 days
- Estate for years = lease notice of termination is given at signing

Fair Housing in Property Management

Property managers and their employees are subject to fair housing rules and regulations. Application requirements must be the same for all tenants. Discrimination against a protected class is prohibited. In addition to the list of protected classifications under federal law, marital status, creed and ancestry are protected in Colorado.

For a disabled tenant, the property manager must allow reasonable modifications and reasonable accommodations in rules and regulations. Thus disabled tenants, like all other tenants, may make reversible changes without permission if the tenant pays for them. The tenant may be required to remove modifications and repair damage. If a tenant becomes disabled, the manager must accommodate the disability and may not require the tenant to move. The property manager MAY discriminate against those who may be dangerous but may not use discriminatory language in advertising. Example: single adult young professional woman. Ads should describe the property, not who lives there.

Security Deposits and the Colorado Landlord I Tenant Act

Deposits must be returned within one month (30 days) unless the lease states a longer period but cannot be longer than sixty days (60 days).
Any withholding must be accounted for and adhere to the following guidelines. No withholding for ordinary wear and tear. Failure to comply can cause the landlord to be liable for treble (triple) damages.

WATER RIGHTS

Water rights in Colorado are real property conveyed by a deed. Water rights do NOT automatically transfer with real property in Colorado - they are NOT an appurtenance. Water rights may be severed and sold independently from the land. The most complex water rights tend to be on agricultural property and tied to irrigation. Doctrine of prior appropriation governs Colorado water rights. The first user diverting to beneficial use has the first claim on the water.

Well permits are granted and regulated by the state engineer. Sites that are 35 acres or larger become automatically eligible to apply for a domestic well permit. The state engineer must be notified when the ownership of property with a well permit changes. Brokers can check with the state engineer to determine what type of water use transfers with a domestic well permit.

HOMESTEAD

Homestead: Homeowner's exemption is $60,000 to $90,000 in Colorado - on a principal residence. Standard rights are $60,000 and increase to $90,000 if homeowner is disabled or over 60 years old. The broker should recommend that the seller who is going to finance the transaction have the buyer waive their homestead right. The seller would be advised to get a mortgagee's policy and have an attorney review the note and deed of trust. (All of the above are good safeguards.)
TAXES AND ASSESSMENTS

Ad Valorem Taxes - per property value

Lien on the property on January 1st

Taxes may be paid in two halves on the last day of February and June 15th. If the first payment is made and the second one missed, interest accrues as of March 1st. If not paid in halves, the entire tax bill is due on April 30th. If the payment is missed interest would accrue as of May 1st.

Delinquent Tax Sale and Redemption

Properties with delinquent property taxes may be sold at a county tax sale. Taxpayer can redeem property sold at a tax sale for up to 3 years after the sale. If not redeemed, purchaser of the tax certificate (one who paid the taxes due) can obtain title.

Tax Certificate is a form provided by county to verify amount of taxes due on a property to be sold.

CREDIT LAWS

Uniform Consumer Credit Code (U.C.C.C.) protects the public in consumer credit transactions and sets credit rate limitations for creditors, 21% maximum rate for creditors (.21) and 45% maximum rate for non-creditors (.45). A lender charging more than these maximum amounts is guilty of usury.

The Uniform Commercial Code (UCC) requires bulk sales disclosures in the sale of goods of $500 or more and seller must disclose creditors. In many states, buyer will pay use tax on all inventory conveyed.
TYPES OF LICENSES

There are three levels of license responsibility. Employing broker: may employ other brokers and is responsible for the supervision of all brokers under them. Independent broker: has two years active experience and may work alone. They cannot hire or supervise any other brokers and may work under an employing broker as a broker associate. Associate broker: less than two years active real estate experience and must work under an employing broker for two years.

LICENSE RULES - Renewal and other license rules

Licenses must be renewed every three years. The license expires at midnight on the broker’s anniversary date. Brokers must complete 24 hours of continuing education, including an annual update course or brokers may pass only the state portion of the licensing exam, which counts for all 24 hours in a 3-year renewal cycle. The broker does not have to take the national portion of the licensing exam. NAR (National Association of Realtors®) ethics class would give credit whereas personal marketing, company orientation or exam prep do not count as credit. One time only, a broker may complete the 24-hour Brokerage Administration course to fulfill the requirement for a 3-year cycle. Brokers who choose inactive status will need to complete all 24 hours prior to reactivation of their license. A licensee who does not renew their license on the anniversary date is given 31 days to renew with no penalty. From 32 days on, the licensee renewing will have to pay a renewal fee plus a reinstatement fee of 2/3 of the renewal fee.

Brokers may work for only one employing broker at a time. Both the employing broker and the broker associate are responsible for notifying the Commission that they are changing employing brokers. They must have an office open to the public. The employing broker’s office meets this requirement. A non-resident broker must have an office in their home state, agree to keep all trust funds in a Colorado depository, and accept legal action in Colorado.
Exemptions from Licensing: A regularly salaried employee of the owner of an apartment building or complex acting as an on-site manager must report to the owner and may not negotiate terms of leases. A regularly salaried employee of a new home builder is exempt and an inactive broker could be either an employee of a new home builder or an on-site property manager.

Business Opportunity Brokerage must have a license if the transfer involves any real property or rights under a lease. Business opportunity listings, and like all listings, must have a definite termination date. Colorado Use Tax on personal property is paid by the buyer.

Real Estate Options - A real estate broker's license is required to sell real estate options for a fee. To sell a real estate security, a securities license is required.

Transfer and Inactive License Status

Individual licensees and their employing broker must notify the Commission if the licensee changes firms. If a brokerage firm changes its business location without notification, it will inactivate all licensees, even if an individual licensee notified them. Inactive licensees MAY NOT perform any activities requiring a license (the same as students or any member of the public). Inactive brokers do not need an office or Errors and Omissions Insurance. Inactive brokers may perform unlicensed duties such management as on-site property or salaried new home sales.

Errors and Omissions Insurance, or professional liability insurance, is required when applying for an active license. Insurance is obtained from a state-endorsed carrier or any other state-approved carrier. Claims are not reported to the real estate Commission. Insurance is required for licensed corporations and limited liability companies and is not required for inactive licensees, partnerships buying their own real estate or utility companies buying right-of-ways. It must be renewed every year.
GENERAL POWERS

The purpose of the law is to protect the public of the state of Colorado in real estate matters.

Broker's Limited Right-to-Practice Law

Conway-Bogue Decision was a landmark decision confirming a licensee's right to a limited practice of law. There are no separate fee for preparing documents and they must use standard and approved forms.

Title Insurance Companies - Denver and Colorado Bar Associations v. Title Guaranty Company and the Record Abstract and Title Company

The title company may not prepare legal documents but they may prepare settlement sheets. The title company acts as a "scrivener" of the real estate broker, who is responsible for all documents produced by the title company. The broker is also responsible for payment for the legal documents they request from the title company - deeds and bills of sale for example (CP-7). Brokers may NOT ACCEPT REFERRAL fees or inducements from title companies. A broker who is a partner or affiliated with a title company may, with written disclosure of their relationship to the title company, refer a member of public to their title company.

Requirements for Licensing

Colorado issues only broker licenses. Candidates must complete 168 hours of education, pass the state licensing exam, be able to present valid identification to prove they are lawfully present in the United States, and be at least 18 Years old.

INVESTIGATION, HEARINGS & PENALTIES

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.

The Commission will request that the licensee respond to the complaint and supply written documentation. Prior to receiving a response, the Commission does not have subpoena power, and will not use lawsuits to obtain records. They may NOT take a firm's records without cause. Any removal would occur after the investigation and not as part of the response.

Hearings

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

Penalties

If the licensee is found guilty by a judge, the Commission determines the penalty. They may impose a fine not to exceed $2,500 for each separate offense. The Commission may censure, suspend or permanently revoke the license of those found guilty. The Commission is the only entity that can take a license. They may not charge damages or impose jail sentences. Licensee records are available to the public for inspection on the Commission website.
The Commission can audit a broker's escrow account at any time without notice to verify that the broker has maintained records for 4 years, that they have not commingled funds and that they have provided all purchasers and sellers with proper closing statements.

Dual Contracting - Loan Fraud

Dual contracting is a form of loan fraud in which a fraudulent loan application is supported by a false purchase contract, usually for a sales price higher than the price actually agreed between the buyer and seller. If the property appraises for the higher price, this application can result in a loan for a higher amount than the lender's normal loan-to-value ratio. Dual contracting is criminal and can result in legal action, license discipline and disbarment from "federally-related" loan programs.

The Commission has NO authority and will not investigate ethics violations; or disputes between brokers. Criminal violations 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.
Trade Names

Trade names must be registered with the state and all brokers must do business using only their registered trade name. The brokerage's name, as registered with the Commission, must appear on all advertising. A broker associate's name, phone number, etc. are NOT required but are permitted.

Brokerage Administration

The licensee is subject to the employing broker's supervision. Reasonable supervision includes making sure licensees receive, read and sign the written office policy. All contracts must be reviewed by the employing broker. The employing broker is required to give licensees with less than two years of experience a HIGHER level of supervision which would include attending or being available to answer questions for all closings. The employing broker must have a written company policy, including a method for designating brokers. An employing broker leaving town or otherwise not able to personally supervise may delegate supervisory authority to another qualified broker - not an unlicensed individual, such as an office manager.

Employee status or independent contractor status

A broker supervised by an employing broker may be an independent contractor for federal income tax purposes. No income taxes or payroll taxes are withheld. A broker supervised by an employing broker may be an employee for federal income tax purposes. The employing broker must withhold federal income tax and payroll taxes, such as social security, from paychecks of an employee licensee.
Commission rebates and referral fees

The licensee may NOT pay a fee to an unlicensed person for performing any brokerage functions but may pay for a name if the referrer is supplying only a name and has performed no activities requiring a license. They may rebate commission to a buyer or seller as part of the broker’s service; this is considered to be a commission negotiation or renegotiation. Payment to buyers should be disclosed to the seller and should comply with RESPA and any HUD requirements. A broker receiving a fee from a lender or other service provider may do so only with prior written consent of the party that hired the broker (seller or buyer). Referral fees to out-of-state brokers must be only to active licensees with business offices.

PERSONAL ASSISTANTS

Unlicensed assistants may not be put in the position to act like a licensee. They may not negotiate; independently draft or fill-in legal documents or proved contracts, offer opinions, advice or interpretations, distribute information on listed properties other than those prepared by the employing broker or broker associate or perform any activities that require a real estate license.

Unlicensed assistants may perform clerical duties, including the gathering of information for a listing; provide access to a property and hand out preprinted, objective information; hold an open house and distribute preprinted, objective information; distribute information on listed properties when such information is prepared by the broker or broker associate; deliver paperwork and prepare market analyses, but disclosure of the name of the preparer must be given, and it must be submitted by the broker. Unlicensed assistance may also measure square footage of a property (method of measurement must be disclosed); sign checks on a trust account if authorized by the responsible broker - just as any unlicensed person, such as an office manager can and may drive a buyer to a property.
APPRAISER LICENSING

There are four levels of appraiser licensing in Colorado (a license is required to appraise real property). Appraisers are typically employed by lender. A broker MUST state they are not an appraiser when doing broker price opinions, not part of a listing or buyer representation agreement (Rule E-42).

RULE E-13 - SIGN CROSSING (CP-3)

A licensee shall not negotiate a sale, exchange, lease or listing contract with an owner who has an active listing contract with another licensee. An exception would be made if the owner approaches the licensee (licensee did not initiate contact). A broker may negotiate and sign a listing agreement that begins upon termination of the existing listing.

CP-30 - SELLER-ASSISTED DOWN PAYMENTS

Real estate licensees should note all seller paid costs in all relevant documents and utilize MLS fields to record all terms after closing. They should also advise buyers and sellers to consult legal and tax counsel for advice on tax consequences and cooperate with appraisers and lenders. Title companies and the Real Estate Commission do NOT require this information. This situation is most typical in residential properties.