

2019 Annual Commission Update Course

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2019 Annual Commission Update Course



Welcome

Agenda:

- Compliance
- General Practice
- New Regulations, New Forms and Contracts
- Resources
- Exam



Welcome Section: Approx. timing: 2 mins (includes slides 2, 3, and 4)

Instructor notes: The welcome section is used to introduce participants to the course and what general areas will be covered.

Annual Commission Update

“The real estate commission shall develop twelve hours of credit designed to assure reasonable currency of real estate knowledge by licensees, which credits shall include an update of the current statutes and the rules promulgated by the commission that affect the practice of real estate.”



Welcome Section: Approx. timing: 2 mins (includes slides 2, 3, and 4)

Citation: 12-61-110.5(2), C.R.S.

Instructor notes: Make clear to course participants that this is NOT a contracts and forms course. The Division of Real Estate is tasked with keeping licensees informed of license law, legislative and statute changes related to practicing real estate in the State of Colorado. This slide is an intro to the next slide which encourages brokers to take a contracts and forms changes course as soon as possible due to the sheer number of changes for 2019 Division of Real Estate standard contracts and forms.

What is NOT in this year's class – contract update!

ALERT

- There have been numerous changes made to the Division of Real Estate standard forms and contracts.
- **Brokers are encouraged to take a comprehensive contract review course in early 2019, and review the redline versions of the new contracts.**
- Brokers are required to be competent on all forms and contracts they are utilizing. Be sure you are accurately informed of all changes and their impact on your practice.
- **This course will only provide a high level overview of contract and form changes.**



Welcome Section: Approx. timing: 2 mins (includes slides 2, 3, and 4)

Instructor Notes:

This course will only provide a high level overview of contract and form changes. Brokers should take a contract review course ASAP to ensure they are competent in the use of all forms utilized during their practice. The Annual Commission Update is not a contracts course and by statute must address new statutes and rules affecting real estate.

it is incumbent on the broker to be informed about the contract changes

Compliance

- Division Investigation Statistics
- Current Fair Housing Issues
- Teams
- Unlicensed Assistants



Timing: Compliance Section Approx. 45 mins.

Title Slide introducing the compliance section and its subject areas.

Investigation Stats- 2017-2018

Number of Complaints Filed:

- Real Estate Appraiser: 163
- Community Association Manager: 279
- Real Estate Broker: 1113
- Mortgage Loan Originator: 298



Timing: Approx. 2 min

Purpose of slide: To inform licensees about the number of complaints filed and investigations completed.

Instructor notes: Despite having over 46,000 real estate broker licensees there were only 1113 complaints filed and 531 were dismissed on intake for not being a violation of license law or complaint was outside of the Division's jurisdiction. The difference in Complaints Filed and Investigations Completed is due to some investigations still pending or having been referred to another authority/jurisdiction for investigation such as the District Attorneys office, local police or sheriffs, etc.

Total Licensees by program 2018:

Appraiser: 2733, complaints represent 5.9% of all appraiser licensees.

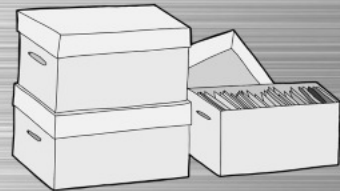
Community Association manager: 2345, complaints represent 11% of all CAM licensees.

Real Estate Broker: 46,602, complaints represent 2.4% of all broker licensees.

Mortgage Broker: 15,723, complaints represent 1.9% of all licensees.

Division Investigative Stats- Top Violations

1. Failure to Maintain or Produce Records
2. Converting and Diverting Funds



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Timing- Approx. 1 min

Citation: Division of Real Estate Investigative Unit

Instructor notes: Introductory slide to Investigative Issues. These areas are the two top violations seen by the Division of Real Estate.

Failure To Maintain or Produce Records

- Brokers and Brokerage Firms are required to maintain complete transaction files for a period of four years. This includes records and documents for transactions that may not have resulted in a closed sale.
- Consideration should be given to potential issues of electronic file maintenance and storage.
- Records must be maintained even if switching brokerages, or inactivating a broker's license for a period of time.



Timing- Approx. 3 mins

Citation: 12-61-113(1)(i), C.R.S.

Talk about CTM contracts and proper archiving!!!

Instructor Notes:

- It appears that some licensees may not be fully aware of the requirement to maintain complete transaction files for four years, including ones for transactions that do not close. In addition, under 12-61-113(1)(i), C.R.S. a licensee is required to produce such documents or records at the request of Division/Commission. Electronic files must be accessible to the Division for review. If Broker cannot produce it may result in a license law violation. E-contract platforms may not maintain files, and are not responsible for doing so. Broker must maintain proper files whether using paper or e-contracts. 12-61-113(1)(i), C.R.S. also provides for potential disciplinary action for failure to produce records or documents at the request of CREC/DRE.
- Obligation is for the brokerage firm and the broker. The expectation is that both the brokerage and the broker maintain files.
- Best Practice: Broker must turn over documents to the brokerage. Brokerage firm should have an office policy on when documents must be turned over within a reasonable amount of time.

The Funds of Others (a.k.a. Not Your Money)

Improper accounting constitutes a significant number of complaints to the Commission.

- Brokers who accept monies belonging to others should make themselves familiar with:
§12-61-113(1)(g.5), C.R.S; Rule E-1 on Trust Accounts; Commission Position Statement 27 on Escrow Records; and Chapter 20 - Escrow Records in the Real Estate Manual.



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Timing- Approx. 2 mins

Citation: §12-61-113(1)(g.5) C.R.S.; *Commission Rule E-1 on Trust Accounts - Requirements and Purposes; Commission Position Statement 27 – Trust Accounts and Record Keeping; and Chapter 20 Escrow Records in the Real Estate Manual.*

- C.R.S §12-61-113(1)(g.5)-Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the broker's own funds, or failing to keep such funds of others in an escrow or a trustee account with some bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to keep records.

Instructor Notes: Brokers should understand when and how to use “rental trust” accounts, “security deposit trust” accounts, etc. and should be accurately completing three-way reconciliations.

The Funds of Others (a.k.a. Not Your Money)

§12-61-113(1)(g.5) C.R.S

- Converting: Changing other's money to your money (even if you're planning to pay it back).
- Diverting: Taking other's money and putting it where it doesn't belong (even for just a little while).
- Co-Mingling: Mixing other's money with your money (even if it's only for convenience).



Timing- Approx. 1 mins

Citation: §12-61-113(1)(g.5) C.R.S

Instructor Notes: Brokers must be aware of proper practice procedures when handling funds of others. Converting, Diverting and Co-mingling of funds is a major license law violation which is easily avoidable. Read the definitions of each and proceed to Case Study 1.

Case Study 1: Trust Account Slush Fund

- Broker receives \$200,000 in cash funds from a friend and deposits money in his Brokerage Firm's earnest money escrow account, which the Broker was a signatory on.
- The Broker claims money was for his friend to purchase a home at an unspecified later date.



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Timing- Approx. 10 mins for Case Study 1 (Slides 11-24)

Instructor Notes:

Read slide, ask the class if there is any issue with this scenario so far.

Answer: So far no issues. It is ok to hold funds for a future real estate transaction in firm escrow account.

Case Study 1: Trust Account Slush Fund

- Unfortunately Broker's friend dies unexpectedly. Friend's wife learns of the \$200,000 given to Broker and files a complaint with the Division of Real Estate. Wife alleges that Broker used funds to benefit and enrich himself.



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Timing- Approx. 10 mins for entire case study

Instructor Notes: Read the slide. Any issues now? Additional facts coming on next 3 slides.

Case Study 1: Trust Account Slush Fund

Upon Investigation it was determined:

1. Broker had no written buyer agreement with his deceased friend and did not have a signed brokerage disclosure specifying type of representation. Broker also has no written receipts, leases, or rental agreements.



Timing- Approx. 10 mins for entire case study

Instructor notes: Read slide - next three slides establish what was found during the investigation. On slide 16 facilitate class discussion about what the broker did wrong and possible license law violations.

Case Study 1: Trust Account Slush Fund

2. Money was regularly withdrawn from the trust account and disbursed from the broker to his friend for private plane use, to pay marina fees on a private boat, and a personal residence.



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Timing- Approx. 10 mins for entire case study

Instructor notes: Read slide and continue.

Case Study 1: Trust Account Slush Fund

3. Prior to the complaint by friend's wife, all funds in broker's possession had been returned to the Broker's friend or utilized for friend's personal expenses.
4. The Broker was using the brokerage firm escrow account as a bank account for his friend to make deposits and withdrawals with no relation to real estate transactions.



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Timing- Approx. 10 mins for entire case study

Instructor notes: Important note for the class: All \$200,000 had been returned to or spent prior to friends passing and prior to complaint being filed with the Division. Read slide and continue.

Case Study 1: Trust Account Slush Fund

What are the potential issues/license law violations?



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Timing- Approx. 10 mins for entire case study

Instructor notes: Class discussion before revealing what the broker did wrong so far.
Potential issues: No receipts, no written brokerage disclosure, possible violation of Real Estate Law for how he was handling others money.

Case Study 1: Trust Account Slush Fund

What did the broker do wrong?

Money deposited into escrow accounts **MUST** be used for real estate transactions and is not a bank account to be used by friends and family.



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Timing- Approx. 10 mins for entire case study

Instructor notes: Slides 17-19 establish what the broker did wrong based on the available evidence. Read slide and continue.

Case Study 1: Trust Account Slush Fund

What did the broker do wrong?

Broker **MUST** maintain accurate receipt of all funds received and a clear accounting of what funds are to be used for. If not related to real estate transactions, funds should never be commingled with brokerage accounts.



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Timing- Approx. 10 mins for entire case study

Instructor notes: Read slide and continue

Case Study 1: Trust Account Slush Fund

What did the broker do wrong?

By law, brokers must provide a written brokerage disclosure on all real estate transactions.



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Timing- Approx. 10 mins for entire case study

Instructor notes: Read slide and continue.

Case Study 1: Trust Account Slush Fund

Upon Investigation it was determined:

- It was later brought to light that the broker was renting a brokerage firm owned property to his friend with no signed lease and no receipts for rents, deposits, etc.
- Broker withdrew money from the escrow account and deposited it into the Broker's operating account to pay rent on the property the broker's friend was occupying without his friends written approval



Your text here

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Timing- Approx. 10 mins for entire case study

Instructor notes: Wait there is more! Read slide to class and ask: "How is permission/approval of actions proven?" Answer: If it is not written brokers cannot prove it.

- Important questions for class: Did the broker act illegally if he paid the rent without the friends permission/approval? Potentially. In this case it was unclear if the friend had granted permission verbally, but broker must be able to prove that they are authorized to withdrawal the funds and apply them to a real estate transaction.
- Verbal contracts valid but unenforceable

Case Study 1: Trust Account Slush Fund

What else did the broker do wrong?

Broker should have had a signed lease and receipts for rents and deposits.



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Timing- Approx. 10 mins for entire case study

Instructor notes: Read slide and continue.

Case Study 1: Trust Account Slush Fund

What else did the broker do wrong?

Withdrawing money from the brokerage firm escrow account constitutes commingled funds if the broker cannot show the friend gave him approval.

Escrow Accounts ARE NOT personal bank accounts.



Timing- Approx. 10 mins for entire case study

Instructor notes: Read slide and continue.

Case Study 1: Trust Account Slush Fund

Outcome (see notes for rule violations):

1. Broker paid a fine of: \$8,625.00
2. Broker assigned an additional 12 hours of education in trust accounts and brokerage relationships.
3. Public censure.
4. License downgrade from employing broker to associate broker.



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Timing- Approx. 10 mins for entire case study

Instructor notes:

Read rule violations for class:

C.R.S. Sections:

- 12-61-113(1)(g)., Broker failed to account for or remit, within a reasonable time, any monies coming into his/her possession that belong to others, whether acting as a broker or not.
- 12-61-113(1)(g.5)., Broker converted and/or diverted funds of others, without proper authorization, or commingling funds of others with his/her own funds, or failed to keep funds of others in an escrow or trust account.
- 12-61-113(1)(l)., Broker failed to maintain possession, for future use or inspection by an authorized representative of the Director, for a period of four years, documents prescribed by the rules and regulations of the Commission or to produce such documents or records upon reasonable request of the Commission or authorized representative of the Commission.
- 12-61-113(1)(n)., Broker has demonstrated unworthiness or incompetence to act as a real estate broker by conducting business in such a manner as to endanger the interest of the public.,
- 12-61-113(1)(k)., Broker disregarded or violated any provision of the Real Estate Broker License Law or Commission rule or regulation.
- Commission Rule E-1(e) Broker commingled personal funds with money belonging to others.

Violation of Any Commission Rule

§12-61-113(1)(k) C.R.S

- Colorado Revised Statutes provide for the Division of Real Estate to investigate the violation of any of rules promulgated by the Real Estate Commission.
- Rule violations can result in administrative fines not to exceed \$2,500 per violation in addition to other possible discipline, including education, public censure, license suspension or revocation.



Timing- Approx. 2 mins

Citation: §12-61-113(1)(k) C.R.S

Instructor Notes: Brokers should understand that in addition to the licensing statutes they are responsible for understanding and abiding by the Commission Rules. Any violation of commission rules can lead the being charged with 12-61-113(1)(k) meaning a broker can be disciplined for both the charge and this additional violation.

One set of facts is not the violation – it is per violation!!

Compliance

- Division Investigation Statistics
- **Current Fair Housing Issues**
- Teams
- Unlicensed Assistants



Title Slide introducing the compliance section and its subject areas.

Fair Housing Protected Classes

1. Race
2. Religion
3. Color
4. Disability
5. Sex
6. Familial Status
7. National Origin



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Timing- Approx. 1 min

Citation: Fair Housing Act, Title VIII of the Civil Rights Act of 1968

Instructor Notes: Read the slide material and proceed to the next slide to introduce a fair housing exercise.

Brokers should also be aware when advertising online that the use of certain filters may violate fair housing or other federal laws related to protect classes. See below for examples...

- **If using a filter a broker should not be using any of the following identifiers:**

-

- Race
- Religion
- Color
- Disability
- Sex
- Familial Status
- Nation of Origin

Colorado Fair Housing Act

The State of Colorado as well as local municipalities may have expanded Fair Housing Protections:

- Sexual Orientation
 - Including Transgender Status
- Marital Status
- Creed
- Ancestry



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Timing: Approx. 1 min

Citation: Colorado Fair Housing Act

Instructor notes: Brokers must be aware of Fair Housing protections in all of the municipalities in which they practice real estate.

- Brokers must also be aware of utilizing screening information on online platforms that may violate fair housing protections. When advertising online BE SURE that your filters are not in violation of fair housing and anti-discrimination laws. Violations will result in license law violations and discipline.

Municipal Fair Housing

Brokers should be aware of municipal level protected classes in the areas they are practicing. Examples of municipal protected classes:

1. Pregnancy
2. Parenthood
3. Political Affiliation

*beware of filters in social media distribution



Timing: Approx. 1 min

Citation: Colorado Civil Rights Division

Instructor notes: Brokers must be aware of Fair Housing protections in all of the municipalities in which they practice real estate.

Chris note: What about military?

Buyer “Love Letters” and Fair Housing



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Timing- Approx. 4 mins for Exercise 1: “Buyer Love Letter 1” (Slides 29-32)

Instructor Notes:

Use this section to introduce the “Buyer Love Letter” exercise.

- What is a buyer love letter? These are letters buyers send as a part of their offer as an emotional appeal.
- Are letters bad? Letters in themselves are not bad, however the contents of the letters can be a disaster for Listing Broker and Sellers to deal with.
- “Buyer Love Letter” can create the danger of license law and fair housing violations. Brokers must be aware of the dangers presented and must make an informed decision about using this tool.

Buyer “Love Letters” and Fair Housing

- Buyer “Love Letters” can reveal information which identifies a person as a member of a protected class and can put sellers and the seller’s broker in danger of legal and regulatory action.
- We will review two “Buyer Love Letters” as a class. Please help identify the potential fair housing issues in the following two letters.



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Timing- Approx. 4 mins for Exercise 1: “Buyer Love Letter 1” (Slides 29-32)

Instructor Notes:

Use this section to introduce the “Buyer Love Letter” exercise.

- What is a buyer love letter? These are letters buyers send as a part of their offer as an emotional appeal.
- Are letters bad? Letters in themselves are not bad, however the contents of the letters can be a disaster for Listing Broker and Sellers to deal with.
- “Buyer Love Letter” can create the danger of license law and fair housing violations. Brokers must be aware of the dangers presented and must make an informed decision about using this tool.

Exercise 1: Buyer Love Letter 1

Dear Sellers,

Our names are Diana and Tom Swan. We've been married five years now and have one son, Richard, who is 3 ½ years old. We also have another baby who will join our family in December. We realize our offer may not be as high as other offers, however our first son has some social and behavioral issues so we are hoping to buy your home so we are close to a specialized facility. We hope that you will select us as the next homeowners to raise a family in your home.

Thank you,

Diana and Tom Swan



Timing- Approx. 4 mins for Exercise 1: "Buyer Love Letter 1" (Slides 29-32)

Instructor Notes:

- Instructions: Please read the practice exercise and ask the class identify the potential fair housing or other violations that can arise from this "buyer love letter". Answers on following slides.

Exercise 1: Possible Violations

1. Familial Status-

The letter identifies the familial status of the Swans. They speak of having a child with another child on the way.

2. Marital Status-

The letter identifies the Swans as a married couple and how long they have been married. Marital status CANNOT be a consideration when selecting highest/best offer.



Timing- Approx. 4 mins for Exercise 1: “Buyer Love Letter 1” (Slides 29-32)

Instructor Notes: Read the slide and continue.

Exercise 1: Possible Violations

3. Disability/Handicap -

Letter identifies a medical issue for Richard, the couple's 3 ½ year old child.

4. Highest and best -

The letter states that, "We realize our offer may not be as high as other offers...". This letter urges seller's to select buyers not based on highest/best offer, but based on other considerations that may violate fair housing.



Timing- Approx. 4 mins for Exercise 1: "Buyer Love Letter 1" (Slides 29-32)

Instructor Notes: Read the slide and continue to Exercise 2.

Exercise 2: Buyer Love Letter 2

Dear Seller,

We are Joseph Eller and Sam Watkins. We recently moved to the States from France to pursue treatment for our adopted 10 year old child Maria, who has been diagnosed with HIV. The proximity of your home to the medical center and our church is so important to our family.

We hope you choose us to move into your home.

Attached is a picture of our family.

Bless you!

The Eller-Watkins Family



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Timing- Approx. 5 mins for Exercise 2: "Buyer Love Letter 2" (Slides 33-36)

Instructor Notes:

- Instructions: Please read the practice exercise and ask the class identify the potential fair housing or other violations that can arise from this "buyer love letter". Answers on following slides.

Exercise 2: Potential Violations

Familial Status -

The letter identifies children under 18.

National Origin -

The letter identifies the family as
from France.



Timing- Approx. 5 mins for Exercise 2: “Buyer Love Letter 2” (Slides 33-36)

Instructor Notes: Read the slide and continue.

Exercise 2: Potential Violations

Disability -

HIV status is protected by Fair Housing laws. This also opens the family up to stigma and a broker should encourage their clients to never disclose someone's medical status.

Religion, Creed -

Letter mentions "our church".



Timing- Approx. 5 mins for Exercise 2: "Buyer Love Letter 2" (Slides 33-36)

Instructor Notes: Under no circumstances are brokers to disclose the HIV status of sellers, buyers, renters, prospective clients, etc. HIV is also protected by the American with Disabilities Act. Read the slide and continue.

Exercise 2: Potential Violations

Race, Color -

The photo that was enclosed.



Timing- Approx. 5 mins for Exercise 2: “Buyer Love Letter 2” (Slides 33-36)

Instructor Notes: Remind brokers that although this picture seems innocent it has the potential to open the door to charges of bias, whether the offer is accepted or not accepted. Read the slide and continue.

Buyer Letter Breakdown

- Who does a “Buyer Love Letter” present risk for?
 - Listing Brokers and Sellers
- Why, do these letters create problems?
 - By potentially identifying protected class status of prospective buyers, it creates a shade of doubt whether that offer is chosen or not chosen based on protected class status, a violation of law.



Timing- Approx. 5 mins for Exercise 2: “Buyer Love Letter 2” (Slides 33-37)

Instructor notes:

- Buyer letter mainly create issues/risk for Listing Brokers and Sellers. The Buyer Broker has little risk presenting these letters, but should be aware of the risks presented to Listing Brokers.
- These letters create doubt about why a buyer was chosen outside of highest and best offer. Risk if presented if offers are accepted or rejected. Here perception can be everything!

Buyer Love Letter Tips

Tip:

- Listing Brokers should consider not presenting “Love Letters” to sellers. By presenting these letters brokers increase legal exposure for themselves and their clients.
- Listing Broker should get permission to NOT present “Love Letters”.
- Buyer Brokers should be aware of the risks these letters present to Listing Brokers. Broker should receive permission from client(s) if letters will not be presented.



Timing: Approx. 2 mins.

Could create legal exposure....

Instructor notes:

- It does not benefit the Listing Broker nor the Seller to present these letters. If an offer is accepted because of a letter it can lead to charges of bias and if an offer is not chosen it can lead to the same charges. A lose-lose situation for the Listing Broker and his Seller.
- Buyer Brokers should not encourage activities that can lead to charges of bias against Listing Brokers and Sellers. Consider calling the Listing Broker if your Buyer wants to provide a love letter and let the Listing Broker know a letter exists and that you are going to do the courtesy of not sending it over. The Buyer Broker has no obligation to provide these letters.
- This is also true for Transaction Brokers.

I just want to let you know my buyer wanted to send you a love letter – but told them not to.

Buyer Love Letter Tips

Tip:

Avoid unnecessary liability risks for the Broker and their clients by focusing on a solid offer instead of an emotional appeal.



Timing: Approx. 1 min

Instructor Notes:

- Buyer “Love Letters” are not illegal or a violation of license law, however based on how they are written they may pose some legal jeopardy for the parties involved in the real estate transaction especially if the letters are not carefully crafted to avoid potential identifying information that could violate fair housing laws.
- Outside of protected class issues letter’s may also reveal information about funding, finances and other information that may actually weaken a buyers position.
- Be aware that as a buyer agent – your role as advocate is to also advise buyers of the inherent risks of love letters.

Compliance

- Division Investigation Statistics
- Current Fair Housing Issues
- Teams
- Unlicensed Assistants



Title Slide introducing the compliance section and its subject areas.

Advertising

Rule E-8

- All brokers must advertise under the name that the broker is licensed.
- All broker and team advertising must include the name of the brokerage firm.
- Brokers and teams may not mislead the public concerning the identity of their brokerage firm.



APPLIES TO EVERYONE – NOT JUST TEAMS!

Timing- Approx. 1 min

Citation: E-8(a), 12-61-103(10):

- E-8(a)(1): Pursuant to C.R.S. §12-61-103(10), no broker shall be licensed to conduct real estate brokerage services under more than one brokerage firm, and no broker or brokerage firm shall conduct or promote a real estate brokerage business except in the name under which that broker or brokerage firm is licensed. However, a brokerage firm may use a trade name in addition to or instead of the brokerage firm's legal name with the permission of the owner of such trade name. The trade name must be filed with the Commission.
- E-8(a)(2): No broker shall advertise so as to mislead the public concerning the identity of the broker or the broker's brokerage firm.

Instructor Notes: This slide is an introduction to E-8 advertising rules related to teams.

Advertising

- A brokerage firm may use trademarks or trade names of a third party with permission and must contain the disclaimer (franchises).
- NO team may license its name for use outside the team's brokerage firm.



Timing- Approx. 1 min

Citation: E-8

- E-8(a): No Broker or Brokerage Firm shall conduct or promote a real estate brokerage business except in the name under which that broker or brokerage firm is licensed.

Instructor Notes: This slide continues review of E-8 advertising rules related to teams.

Domain Names and Email Addresses don't count – according to Damian Cox as long as where you arrive clearly states the brokerage firm for whom the licensee is affiliated...

Advertising- Teams

- All advertising must be done clearly and conspicuously in the name of the Broker's brokerage firm and must include the legal name or trade name of the brokerage firm.
- A brokerage firm may use trademarks or trade names of a third party with permission and must contain the disclaimer.



Timing – Approx. 2 mins

Citation: E-8

- E-8(a)(3-5): All advertising must be done clearly and conspicuously in the name of the broker's brokerage firm. A broker who advertises property owned by the broker which is not listed for sale or lease with the broker's brokerage firm, is exempt from advertising the broker's property in the broker's brokerage firm's name. 4. A brokerage firm may use a trademark in conjunction with the brokerage firm's legal name or trade name with permission of the owner of such trademark. 5. A brokerage firm that uses a trade name or trademark owned by a third party is required to use the following legend, which must appear in a clear and conspicuous manner so as to attract the attention of the public: "Each (insert general trade name) brokerage business is independently owned and operated." Upon written request, this legend may be modified with consent of the Commission.

Instructor Notes: Continued review of E-8 advertising rules related to teams

Definition- **Conspicuous:** standing out so as to be clearly visible.

The following disclaimer must be provided:: "Each (trade name) brokerage business is independently owned and operated."

Advertising- Teams

- A team shall not advertise in a manner that misleads the public as to the identity of the team's brokerage firm.
- All team advertising must include the legal name or trade name of the brokerage firm.



Timing: Approx. 1 mins

Citation: E-8(b)(1-2)

Instructor Notes: Continued review of E-8 advertising rules related to teams.

Mini Case Study- Team Advertising

- Jim, a real estate broker, received a flyer in the mail from “Peggy and Buck Smythe - Smythe Team Realty.” He has received a flyer from them twice in the last month.
- Jim did not pay much attention to the first flyer but when he received the 2nd flier he was upset at the solicitation since he has been farming the neighborhood for years.



Timing: Approx. 4 mins for Mini Case Study- Team Advertising (Slides 45-50)

Instructor notes: Read slide and continue.

Mini Case Study- Team Advertising

- Jim looks at the Division of Real Estate website to see if the Smythes have any disciplinary matters.
- Jim can't find Peggy Smythe, Buck Smythe or Smythe Team Realty listed as being licensed in the state of Colorado.
- Jim files a complaint against the Smythes claiming that they are unlicensed and putting the public at risk.



Timing: Approx. 4 mins for Mini Case Study- Team Advertising (Slides 45-50)

Instructor notes: Is this a scenario related to complaints that really happens? Yes. Brokers often file complaints against other brokers. Read slide and continue.

Mini Case Study- Team Advertising

Upon Investigation it was determined:

- Peggy is actually licensed under the name Margaret Smythe.
- Buck is licensed under the name William Smythe.
- Margaret and William sell as a team, however their licenses are with the brokerage firm Proud Properties.



Timing: Approx. 4 mins for Mini Case Study- Team Advertising (Slides 45-50)

Instructor notes: Read the investigative finding to the class, continue to next slide where you will discuss what the Smythe family did wrong.

Mini Case Study- Team Advertising

What did the Smythes do wrong?



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Timing: Approx. 4 mins for Mini Case Study- Team Advertising (Slides 45-50)

Instructor notes: Ask the class if they can identify the license law violations. Answers are on the next slide.

Mini Case Study- Team Advertising

Violations:

1. Use of "Realty" in advertisement of a team name.
2. "Peggy" is a common name substitute of Margaret, therefore Margaret can be licensed as Margaret "Peggy" Smythe and advertise as Peggy or Margaret Smythe without violation.
3. Buck needs to be Licensed as William "Buck" Smythe, in order to use his middle or nickname in advertisements because "Buck" is not a common substitute of William.
4. Proud Properties must be disclosed on all advertising.



Timing: Approx. 4 mins for Mini Case Study- Team Advertising (Slides 45-50)

Citation: **12-61-113(1)(k), 12-61-103(10),
Commission Rule E-8**

Instructor notes: Read the violations to the class:

1. Use of "Realty" in advertisement of a team name.
2. Use of common nicknames such as Bill for William, Barb for Barbara, Peggy for Margaret, Ted for Theodore, and Rich for Richard, etc., is acceptable for advertising without registering the middle or "nickname" with the Division. If a nickname is not a common substitute for the proper name of a familiar person, a broker may be licensed identifying any such middle or nickname and then would be able to advertise as such.
 - a. Peggy is a common nickname for Margaret, so in this case Margaret did not violate license law related to advertising.
 - b. Buck needs to be licensed as William "Buck" Smythe in order to use this middle or nickname in advertisements. If he is licensed as William "Buck" Smythe he is allowed to also advertise as Buck Smythe.
3. Proud Properties must be disclosed on all advertising

NOTE – Buck and Peggy may not show in the online system, but if it is on their application they are still compliant.

Tip – Use of William “Buck” Smythe or Margaret “Peggy” Smythe would disclose the licensed name.

Mini Case Study- Team Advertising

Outcome:

1. William “Buck” Smythe and Proud Properties fined \$2000.00 per offense.
2. Buck was also assigned 4 hours of additional education in advertising and teams.



Timing: Approx. 4 mins for Mini Case Study- Team Advertising (Slides 45-50)

Instructor notes: Read slide and continue.

Advertising- Electronic

Rule E-8

- Every website page must include the brokerage firm name.
- Emails, chat, instant messages, newsgroups, blogs, etc., must include the broker's/team's brokerage firm name.
- If space is limited in electronic advertising such as Twitter, Facebook, YouTube, banner ads, etc., brokerage firm must be disclosed within 1 click of such ad.



Timing: Approx. 2 min

Citation: Commission Rule E-8

Instructor Notes:

- Continued review of E-8 advertising rules related to teams.
- Brokers must also beware of using advertising filters on platforms such as Facebook. Certain advertising filters may be a violation of the Fair Housing Act.
 - Fair Housing Reminder: If using a filter a broker should not be using any of the following identifiers:
 - Race
 - Religion
 - Color
 - Disability
 - Sex
 - Familial Status
 - Nation of Origin

Teams- Signing of Documents

- Any broker on the team may sign a document which will bind the entire team to its terms.
- Unlicensed persons may not sign real estate transaction documents on behalf of the team.



Timing: Approx. 1 mins

Citations: Commission Position-40: Teams, Commission Position-45: Defined Terms, Commission Rule E-38: Office Policy Contains Designation of Brokerage Relationship

Instructor Notes: It is important to emphasize that ANY broker on the team may sign a document which BINDS the entire team. Teams must work in close collaboration to ensure all members are clear on obligations or potential conflicts each broker has as a member of the team.

Teams- Working Relationships

- Different members of the same team may not serve as both seller's agent and buyer's agent for the same transaction.
 - In this situation the agency agreement must be converted to a transaction-brokerage relationship.



Timing: Approx. 2 mins

Citation: CRS 12-61-802(1.5), Commission Rule E-38

- Commission Rule E-38- Office Policy Contains Designation of Brokerage Relationship
 - For purposes of this rule, seller shall include landlord and buyer shall include tenant. Pursuant to CRS 12-61-802(1.5), an employing broker or employed broker must be designated in writing by the employing broker to serve as a single agent or transaction-broker for the seller or buyer.

Instructor Notes: Office Policy manuals must accurately reflect the brokerage firms expectations and requirements regarding brokerage relationships and teams.

Teams- Working Relationships

- Close communication between the Unlicensed Assistants will be required to avoid an unintended dual agency situation.
- If Unlicensed Assistants work for multiple teams under one brokerage, brokers must ensure that information is not shared in a way what could be a violation of working relationships.



Timing: Approx. 1 mins

Citation: CRS 12-61-802(1.5), Commission Rule E-30(g)

- Commission Rule E-30(g): Provide for adequate supervision of all offices operated by the broker, whether managed by licensed or unlicensed persons.

Teams- Signing of Documents

Best Practices

- Identify all Broker team members and all unlicensed assistants who are part of the team on all Seller Listing Contracts and Buyer Listing Contracts.
- Because all broker members are bound by contracts signed by any member, a clear policy regarding who signs documents should be established.
- Employing Broker must approve the formation of a team within a brokerage firm.



Timing: Approx. 2 mins

Citations: Commission Position-40: Teams, Commission Position-45: Defined Terms, E-8(b)(3)

Instructor Notes: Use office policy manuals to maintain guidance regarding team policy around signing of documents. Office policy manual should accurately reflect what is and is not allowed by individual brokers as member of a team.

TIP: :Large teams may have a prepared addendum with all team members listed making it less onerous to get teams listed on each contract.

Teams- Team Agreements

Best Practices

- Brokers who are members of the team should all sign the team agreement.
- The team agreement should be amended every time there is a change in one or more team members.
- Employing Broker will provide the names of the brokers that belong to any team advertising as being licensed with the brokerage firm.



Timing: Approx. 2 mins

Citations: Commission Position-40: Teams, Commission Position-45: Defined Terms, E-38: Office Policy Contains Designation of Brokerage Relationship

Instructor Notes: The team agreement should represent a reference document for all parties to understand the roles and responsibilities of each party associated with the team. This document must be updated with every personnel change.

Agreement isn't for when things are going well – they're for when things get rough or for proper dissolution.

Compliance

- Division Investigation Statistics
- Current Fair Housing Issues
- Teams
- **Unlicensed Assistants**



Title Slide introducing the compliance section and its subject areas.

Unlicensed Assistants- Commission

Prohibited

“Paying a commission or other valuable consideration for performing any of the functions of a real estate broker to any person not licensed.”



Timing: Approx. 1 min

Citation: 12-61-113(1)(j)

Instructor notes: Brokers continue to have issues with the use of unlicensed assistants and unauthorized practice. Unlicensed assistants cannot earn commissions on real estate transactions.

Unlicensed Assistants-Agreements

- Unlicensed assistants providing services to a team need to be addressed in an agreement.
- To ensure which services the unlicensed assistant may perform and which services the unlicensed assistant may not perform.
- Review Commission Position 20.



Timing: Approx. 2 Mins

Citation: 12-61-102 C.R.S., Commission Position-20

Instructor notes:

- Team agreements represent the basis upon which the team will be operating.
- Employing brokers, in addition to the team members, are responsible for the unlicensed assistants performing functions within the team.
- Unlicensed assistants may answer the phone, assemble documents for closing, host open houses, kiosks, home show booths or fairs, or such functions, compute commission checks for the brokers on the team, place and remove signs on property, schedule appointments, act as a courier services to deliver documents or pick up keys.
- Instructors should review and have access to Commission Position-20 for class.
- The license law prohibits unlicensed persons, including unlicensed assistants, from practicing real estate brokerage, which includes negotiating the sale, exchange or lease of real property on behalf of another person. An unlicensed assistant should promptly disclose to brokers, other industry professionals (i.e. loan originators, lenders, appraisers, property inspectors, etc.) and consumers that he or she is not a broker, and disclose the name of the broker for whom the assistant works. An unlicensed assistant may complete the following tasks:
 - 1. Complete forms prepared for, and as directed by a broker. Unlicensed assistants cannot independently draft legal documents such as listing or sales contracts, and they cannot offer opinions, advice or interpretations of these documents.
 - 2. Distribute preprinted, objective information prepared by the broker about a property listed for sale.

- 3. Perform clerical duties, including gathering information for a listing.
- 4. If authorized by the seller, provide access to property, conduct showings or open houses.
- 5. Deliver paperwork to other brokers, buyers or sellers.
- 6. Deliver paperwork that requires signatures in regard to financing documents that are prepared by lending institutions.
- 7. Prepare market analyses on behalf of the broker, if the analyses are approved and submitted by the broker to the client with a disclosure that the market analyses were prepared by the unlicensed assistant. The broker must ensure that market analyses comply with Commission Rule E-42.
- 8. Collect and receipt for earnest money deposits, security deposits or rents.
- 9. Schedule property repairs on behalf of the broker, if there is an existing agreement that authorizes the broker to make repairs to the property.
- The broker should inquire as to whether any of the unlicensed assistant's activities are covered by the broker's errors and omissions insurance policy. Furthermore, licensed assistants may need their own separate errors and omissions insurance policy to cover the acts they perform on behalf of the broker.

Unlicensed Assistants-Agreements

- Agreement should address dissemination of confidential information.
- Employing brokers must approve the hiring of an unlicensed assistant.



Timing: Approx. 2 Mins

Citation: 12-61-102 and 12-61-118, C.R.S., Commission Position 20.

Instructor notes:

- Encourage brokers to review Commission Position-20.
 - §12-61-118, C.R.S. mandates that a broker can be held liable for any unlawful act or violations of the license law committed by an employee of a broker, if the broker had actual knowledge of the unlawful act or violation or had been negligent in the supervision of such employees. Commission Rule E-29 clarifies that employees include “but are not limited to, secretaries, bookkeepers and personal assistants...” Employing brokers that employ assistants, or allow their employed brokers to employ assistants, need to include procedures on the use of licensed and/or unlicensed assistants in the office policy manual.
 - The license law prohibits unlicensed persons, including unlicensed assistants, from practicing real estate brokerage, which includes negotiating the sale, exchange or lease of real property on behalf of another person.

Unlicensed Assistants- Office Policy

- Unlicensed persons acting within a team may not engage in practices that require a real estate broker's license.
- Unlicensed persons may not be compensated in the form of a commission. However, unlicensed persons are not required to be paid solely by the employing broker, and may be compensated by the team in the form of a salary or hourly wage.



Timing: Approx. 2 Mins

Citation: Commission Position-40: Teams, Commission Rule E-8

Instructor notes:

- Employing brokers should establish policy guidelines relative to the formation of a team as well as the use of unlicensed persons.
- Policy should clearly establish whether teams will be allowed in the brokerage.
- It is the employing brokers responsibility to have procedures for monitoring the activities of Unlicensed Assistants.
- Who sends the 1099? That becomes the determiner of who is actually paying the assistant.

Agenda

- Compliance
- **General Practice**
- New Regulations, New Forms and Contracts
- Resources
- Exam



General Practice

- **Varying Commission Models**

- E-47: Competency
- Good Faith
- Consumer Data Privacy
- Property Management
- Sign Crossing Issues



2019 Annual Commission Update

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Timing: General Practice Approx. 40 mins

Title Slide introducing the compliance section and its subject areas.

Varying Commission Models

- Varying commission models offer different cooperative brokerage fee amounts and are listed in the MLS.
- A varying commission firm model may not limit their services. There is no standard commission model. Commission is negotiable between client and broker.
- Anytime a broker is advertising the property of another, the broker must have a working relationship and provide all of the Uniform Duties.



Timing: Approx. 3 mins

Citation: Commission Rule F-4: Prohibited Provisions

Instructor Notes:

- Though there is no standard commission model there are “traditional” commission structures in certain markets. Models based on flat fee or lower than “traditional” commission is referred to as “Discount Brokerage Models” in this presentation. Use of the term “Discount Brokerage” does not imply that the Division of Real Estate recognizes one commission model over another.
- To properly ask for more compensation in a transaction, Broker...
 - Step 1. Must have the Exclusive Right To Buy executed with section 7.3.1. checked.
 - This contract then would obligate the Buyer to compensate the Broker for the difference.
 - Step 2. In the Contract To Buy and Sell in additional provisions, the Buyer can instruct the Seller to compensate the Buyer Broker at a higher level than what is indicated in the MLS.
- The Broker needs to be educated on how to deal with these lower cooperative fees and request additional compensation from the Seller if that is their model.

Varying Commission Models

- A listing by a "discount" brokerage firm that may offer a lower co-op commission should not be treated any differently than one represented by any other broker or brokerage firm.
- If a buyer is represented by a brokerage firm that uses a varying commission model and submits an offer, the offer should not be treated or presented any differently by the listing broker because of the buyer's chosen broker.



Timing: Approx. 2 mins

Citation: 7.3.1 Contract to Buy and Sell

Instructor notes: Brokers should be aware that it is not appropriate to treat listings of properties, or buyers represented by "discount brokerage" firms any differently than ones represented by 'traditional' compensation model brokerage firms or brokers. In many cases it may constitute a license law violation as the brokers that do so are acting on their own interests (higher commission split) as opposed to their clients'.

Varying Commission Models

- Brokers acting as buyer's agents should at all times be cognizant of their fiduciary duties to their clients, regardless of their personal or professional opinions regarding "discount brokerage" firm and flat fee business models.
- Broker must ensure they are acting for the benefit of the client, not themselves.



Timing: Approx. 1 mins

Citation: 7.3.1 Contract to Buy and Sell

Instructor notes: Read slide and continue.

Varying Commission Models

Commission Language in the CBS.

Language regarding the Buyer's Brokers commission may ONLY be added to the CBS offer if:

- The box in the Exclusive Right to Buy Section 7.3.1 is checked and authorized by the buyer.

As the buyer would be liable to pay any difference between what is allowed and the co-op offer, Seller's agreement to pay that difference would benefit the buyer.



Timing Approx. 2 min

Citation: Commission Rule F-4

- F-4. Prohibited Provisions
 - No contract provision, including modifications OR ADDITIONAL PROVISIONS permitted by Rules F-2 and F-3, will relieve a broker from compliance with the real estate license law, section 12-61-101, C.R.S., et. seq., or the Rules of the Commission.
 - A broker who is not a principal party to the contract may not have personal provisions, personal disclaimers or exculpatory language in favor of the broker inserted into a standard form. A broker may, at the direction of a principal party, include language regarding payment of the broker's or brokerage's commission if this is a term of negotiation between the principal parties of the contract to buy and sell.

Instructor Notes: Read slide and discuss that the broker should be acting for the benefit of the buyer and not the benefit of themselves.

Varying Commission Models

The Exclusive Right to Buy Listing Contract includes Section 7.3- Who Will Pay Brokerage Firm's Fee. Within 7.3 are three choices:

- 7.3.1. Buyer IS obligated to pay any difference between amount in 7.1 and that offered by the Seller's brokerage Firm;
- 7.3.2. Only Buyer can pay (Broker cannot accept co-op commissions);
- 7.3.3. Buyer will NOT pay, broker is authorized to accept co-op commissions but Buyer will not pay any difference.



Timing Approx. 2 minutes

Instructor notes: Read each choice to the class and continue.

Varying Commission Models

- Unless 7.3.1. is checked, there is no benefit to the buyer by asking the Seller/Sellers Broker to pay any more than the co-op commission offered.
- This is also applicable when working with an unrepresented Seller- For Sale By Owner.



Timing: Approx. 2 mins

Citation: Contract to Buy and Sell, Section 7.3

Instructor notes: Read slide and continue. If brokers have questions about how and when to properly select these provisions they need to speak to their employing broker, compliance officer or attorney.

What do Brokers do if?

Showing a “Discount Brokerage” property if buyer has already agreed to commission amount?

- What options does buyer broker have?
- What must broker tell buyer?
- Can a broker refuse to show "discount brokerage" listing?



Timing: Approx.

Citation: Contract to Buy and Sell, Section 7.3

Instructor notes: Walk the class through these scenarios...

1. The broker must explain to their client that they are willing to show the property, however the broker should inform the client that the client has already agreed to a commission structure and that if the client wants this particular property the client will have to make up the difference between the “discount brokerage” commission and what has been agreed to with his/her client.
- Buyer broker is contractually obligated to represent the client, if the client has been informed and still wishes to proceed then the broker should have no issue showing the property.
 - “Hello____, I wanted to talk to you about property _____. I am willing to show you the property, I just wanted to inform you first that on this particular property the seller has listed their property with a brokerage firm that works with a lower commission model than my brokerage. If you would like to proceed I wanted to let you know that you may be obligated to make up the difference between the commission we have already agreed upon and what the seller is offering.”
 - The broker cannot refuse to show the property based on commission model used in the listing.

General Practice

- Varying Commission Models
- **E-47: Competency**
- Good Faith
- Consumer Data Privacy
- Property Management
- Sign Crossing Issues



2019 Annual Commission Update

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Timing: General Practice Approx. 40 mins

Title Slide introducing the compliance section and its subject areas.

E-47: Competency

Competency on every occasion of engaging in the practice of real estate brokerage:

- A broker must determine whether he or she possesses the necessary experience, training, and knowledge to provide brokerage services and maintain compliance with the applicable federal, state and local laws, rules, regulations and ordinances.



Timing: Approx. 2 mins

Citation: Commission Rule E-47: Competency

Instructor notes: Introduce Brokers to the definition of competency.

Broker must be competent or seek advice of competent professionals in order to properly represent their clients interests. Broker acting incompetently are not acting in the best interest of their client or the public.

- How do brokers get competent? Take courses, partner with experienced brokers, get certifications, etc.

This is determined by a consumer – not another broker! The CREC determines whether competency is valid or not...

E-47: Competency

Competency on every occasion of engaging in the practice of real estate brokerage:

- If the broker does not have the necessary experience, training, and knowledge, the broker must: decline to provide brokerage services; or obtain the necessary experience, training and knowledge; or obtain the assistance of their supervising broker or legal counsel; or co-list with another licensed broker who does have the necessary experience, training, and knowledge.



Timing: Approx. 2 mins

Citation: Commission Rule E-47: Competency

Instructor notes: Introduce Brokers to the definition of competency. Understanding the Contract is an essential function of all brokers. If brokers lack competence in the contracts, forms or certain types of transactions they can partner with qualified brokers, take courses, etc. to obtain competence.

E-47: Competency

The Competency Rule E-47 applies to:

- property type competency.
- geographic competency.
- contract competency.
- brokerage firm competency.



Timing: Approx. 1 min

Citation: Commission Rule E-47

Instructor notes: Brokers **MUST** be competent in the above areas. If they are not competent in any of these areas they may be putting themselves and their clients at risk.

Contract Issues

- Contract competence continues to be an issue for brokers.
- Brokers **MUST** be competent in the forms and contracts they are utilizing.
- Brokers must be aware of all contract sections/provisions and be able to competently complete these sections and competently explain the contracts and forms to clients/consumers.



Timing: Approx. 1 min

Citation: Commission Rule: E-47 Competency

Instructor notes: This slide is an introduction to the next section. The next section highlights areas of the contract that are routinely filled out incorrectly or misunderstood by brokers.

- If the broker does not have the necessary experience, training, and knowledge, the broker must: decline to provide brokerage services; or obtain the necessary experience, training and knowledge; or obtain the assistance of their supervising broker or legal counsel; or co-list with another licensed broker who does have the necessary experience, training, and knowledge.

Brokers can't believe they have all the info on contracts they need – must take a different class!!

10.2 Sold “as is”, disclosure, obligation

Does the phrase “as is” need to be in the MLS?

- If the seller chooses not to remedy the requested items in the inspection objection would this be operating in bad faith?
- Must the seller fix all items that are “health and safety” issues?



Timing: Approx. 3 mins

Citation: Contract to Buy and Sell Real Estate

Instructor notes:

Answers:

- No- Contract already states “as is”, however inspection issues are negotiable between the parties.
- No- Seller is under no obligation to negotiate ANY inspection objections.
- No- See above

What if using FHA funding? Are repairs required? No, the contract would terminate if the property does not meet FHA standards.

- The seller is still required to disclose all adverse material facts of the property.

10.2 Sold “as is”, disclosure, obligation

Does the phrase “as is” need to be in the MLS?

- What if the broker labels the house “as is,” does the seller still have to fill out a Sellers Property Disclosure?
- What if broker labels the house “as is”, does the seller still have to disclose adverse material facts?



Timing: Approx. 2 mins

Citation: Contract to Buy and Sell Real Estate

Instructor notes:

Answers:

- Yes- If the contract says the seller will provide a property disclosure.
- Yes- Colorado law requires a seller to disclose adverse material facts.

12.3 Hour and Place

Cannot agree to agree, such as;

The contract states that the hour and place of closing shall be designated by “*Mutual Agreement*”.



Timing: Approx. 2 mins

Citation: Contract to buy and sell real estate

Instructor Notes: Ask the class if this is a good practice? Ask if they routinely agree to agree in contracts. Then proceed to next slide.

12.3 Hour and Place

What if they don't agree? Who's in default? Who is not complying with the contract?

- It needs to be specified who is in charge.
- Custom is to agree but legally we can't agree to agree because there is no way to enforce who's not agreeing.



Timing: Approx. 3 mins

Citation: Contract to buy and sell real estate

Instructor notes: The hour and place of closing needs to be designated by one party as contracts cannot agree to agree. Someone needs to be the one in charge. Custom says we will agree but technically, someone needs to be the final say

- What are the ramifications of not agreeing? If the contract calls for agreeing to agree and they sign it, nobody can be held responsible for anything.
- Who is in default if they don't agree? Raises more questions than answers: Who did not agree? With whom?
- What are the remedies if they don't agree? Possible lawsuit.
- What happens if there are damages as a result of not agreeing? Contract may be unenforceable.

Water Rights

- Water rights are real property that may be bought, sold or transferred.
- In some instances, water rights may be conveyed separate from the land on which they are used.
- Title policies do not insure water rights; separate due diligence may be required.



Timing: Approx. 1 min

Citation: C.R.S. §38-30-102 (2014), Contract to Buy and Sell Section 2.7

Instructor notes: Brokers must be competent in provisions of the contract to buy and sell especially when the transaction involves water rights, wells, mineral rights, stock certificates. Brokers should also recognize when it is appropriate to contact a competent profession when they are unsure how to handle these sections of the contract to buy and sell.

CBS-2.7.2 Other Rights Related to Water

- Augmentation Plans (a type of plan sometimes required by the CO Division of Water Resources to protect water owners from injury caused by other's water use).
- Water carriage or transfer agreements, well sharing agreements, or any other agreements affecting the use of water on the property being purchased/sold.



Timing: Approx. 1 min

Citation: C.R.S. §38-30-102 (2014), Contract to Buy and Sell Section 2.7

Instructor notes: Brokers must be competent in provisions of the contract to buy and sell especially when the transaction involves water rights, wells, mineral rights, stock certificates. Brokers should also recognize when it is appropriate to contact a competent profession when they are unsure how to handle these sections of the contract to buy and sell.

CBS - 2.7.3 Well Rights

Common types of permitted residential wells, regulated by the CO Division of Water Resources, also known as the State Engineer's Office, are generally small capacity wells (less than 15 gallons per minute):

- Household use.
- Domestic and livestock wells (allows outside and livestock watering).
- Buyer must, prior to closing, complete a Change of Ownership form (GWS-11). Should be submitted to the State within 60 days of Closing.



Timing: Approx. 1 min

Citation: C.R.S. § 37-90-143, Contract to Buy and Sell Section 2.7

Instructor notes: Brokers need to understand the basic water rights terminology in the Contract, and be able to fill in the Contract to Buy/Sell appropriately.

General Practice

- Varying Commission Models
- E-47: Competency
- **Good Faith**
- Consumer Data Privacy
- Property Management
- Sign Crossing Issues



Title Slide introducing the compliance section and its subject areas.

Good Faith

Good Faith. Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in provisions of the contract.

- It is an expectation that both the Buyer and the Seller act honestly and keep their respective promises without taking unfair advantage of the other party or holding the other party to an impossible standard.
- Bad faith is most common in inspection deadlines, loan conditions, and disclosure.



Timing: Approx. 2 min

Instructor notes: Brokers must understand purpose behind Good Faith. Good Faith is implied in most contracts (including listing agreements) but it is an *express* provision in the Contract to Buy & Sell. If a Broker advises clients to get out of a contract not in Good Faith, the broker may face disciplinary action with the division.

Black's Law Dictionary has defined good faith as "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage".

Exercise 4: Good Faith

1. On Friday, Buyer Broker did an inspection.
2. On Saturday, the Buyer Broker submitted an offer on another house.
3. On Sunday, the Seller of the 2nd home accepted the offer.
4. On Monday, the Buyer Broker submitted a Notice to Terminate to the 1st Seller indicating Property or Inclusions Inspection as the Unsatisfactory Condition.



Timing: Approx. 3 mins

Instructor notes:

An example of apparent bad faith. However, sometimes appearance no matter how compelling can be difficult to prove. See contract law about covenant of good faith.

- Does this appear to be a clear case of bad faith? – Yes
- Can it be proven? – Possibly, if the buyer and/or the buyer's broker had knowledge the buyer was operating in bad faith and would testify to such.
- Did the buyer broker violate commission rules – Possibly, if the Broker had knowledge of buyer bad faith and worse coached the buyer to do so.
- For Discussion: What if there was no bad faith? - What if the Buyer had genuine reservations regarding items submitted on the Inspection Objection that upon reflection became unacceptable on Saturday?

Good Faith-Best Practice

In order to protect your clients: Always terminate the 1st offer on the original property first, and then make an offer on the 2nd property.



Timing: Approx. 1 minute

Instructor notes: If the broker allows a client to have two active offers, the broker is putting his client at risk of being contractually obligated to two real estate transactions at the same time.

General Practice

- Varying Commission Models
- E-47: Competency
- Good Faith
- **Consumer Data Privacy**
- Property Management
- Sign Crossing Issues



Title Slide introducing the Consumer data privacy

Consumer Data Privacy

As of September 2018, covered entities (including property managers, brokerage firms and brokers) have new strict liability for security breaches dealing with personal identifying information.

- Personal identifying information such as social security numbers, drivers license numbers, passwords and financial accounts.
- Must ensure 3rd party service providers like on-line or cloud based accounting & management software have policies in place as well.



Timing: Approx. 2 min

Citation: HB 18-1128; and Sections 6-1-713; 6-1-713.5; and 6-1-716, C.R.S.

Instructor notes: Brokers must have policies in place to protect client's personal information.

- Covered Entity- means a person or entity that collect certain personal information or that maintains, owns, or licenses personal identifying information in the course of the person's business, vocation or occupation. "covered entity"
- Personal identifying information: Social Security number; personal identification number, a pass word or code, state license or ID Card, pass port, Military ID number...
- Large portion of bill address health care but Property Managers collect and use the above data on a daily bases.
- Stress Property Managers should check out the law in detail, seek counsel and create / address this procedure in their policy and procedure manuals.

Consumer Data Privacy

Brokerage Firms and Brokers must have a written policy to be compliant.

- Policy must include protection of information, destruction of information, notification process if breach occurs, and vendor compliance (on-line property management software).
- Bill creates strict liability for failure to protect information.
- CP-21 Office Policy Manuals (revised 12/4/2018).



Timing: Approx. 2 min

Citation: HB 18-1128, Commission Position-21 (Revised 12/4/2018)

Instructor notes:

- Personal identifying information: Social Security number; personal identification number, a pass word or code, state license or ID Card, pass port, Military ID number...
- Large portion of bill address health care but Property Managers collect and use the above data on a daily bases.
- **Stress Property Managers should check out the law in detail, seek counsel and create / address this procedure in their policy and procedure manuals.**
- There are timeline for the destruction of personal information (7 years) but best practice is to dispose of and secure as soon as possible to protect past clients.
- Notification of breaches have a number of items that must be included in notice including date or estimated date of breach, description of personal information taken, who to contact for more information and contact information for all consumer reporting agencies.
- Best practices:
 - Make all data protected by encryption.
 - Consult with your attorney to ensure you are protected and have policies in place.
 - Have 3rd party vendors such as software providers provide written notification that they are compliant with the state statute.

General Practice

- Varying Commission Models
- E-47: Competency
- Good Faith
- Consumer Data Privacy
- **Property Management**
- Sign Crossing Issues



Title Slide introducing the next section

Property Management- Personal Info

Senate Bill 18-010: Receipts and Copies

- Landlord is required to provide a receipt when cash or money order payment is received in person, or a receipt when requested on any type of payment.
- Landlord is required to provide a copy of the fully executed lease to the tenant.
- Electronic receipts and copies are acceptable.



Timing: Approx. 2 min

Citation: SB 18-010

Instructor notes: Let property manager know that receipts are required. Electronic receipts and copies of leases are acceptable as long as that is an accepted means of communication with the tenant.

Property Management- Transfer of Services

Information to be transferred to the owner or new property manager:

- Copy of Lease
- Copy of check-in condition report
- Keys and outstanding tenant balances
- Security Deposit
- Owner Funds



Timing: Approx. 2 min

Citation: Commission Rule E-16, 38-12-103(4), 12-61-113(1)(n), Commission Position 27

Instructor notes:

- Property managers are not transferring full /complete files and taking money out of tenants security deposits on the premise they are owed money by the Owner.
- These files are to be provided in a reasonable amount of time. “ Reasonable amount of time”, depends on each company’s monthly invoice and owner payout dates. Should not need to carry over into another month unless invoices have not been received from vendor. Typically less than 30 days unless extenuating circumstances.

Property Management- Squatters Eviction

Senate Bill 18-015: “Protecting Homeowners and Deployed Military Personnel Act”

To protect homeowners and military personal from having unauthorized individuals move into their vacant property. The law makes it easier and more expedient to remove such persons.



Timing: Approx. 3 min

Instructor notes:

Problem: Some individuals look for a vacant house, whether by foreclosure or military deployment and move in. If law enforcement is called and inquires as to the individuals right to be there, they say they are tenants and/or have the owner's approval. The officer leaves the premises and concludes it is a "civil matter" requiring no further law enforcement activity. The property owner's only recourse is a lengthy and expensive eviction proceeding in the courts.

Property Management- Squatters Eviction

Senate Bill 18-015: “Protecting Homeowners and Deployed Military Personnel Act”

This bill has a specific outline for dealing with:

- Removal of Unauthorized Persons
- Investigations by Authorities
- Court and County Actions
- Temporary Mandatory Injunction



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Timing: Approx. 3 min

Instructor notes:

- Law states UNAUTHORIZED PERSON" MEANS A PERSON WHO OCCUPIES AN UNINHABITED OR VACANT RESIDENTIAL PREMISES WITHOUT ANY CURRENT OR PRIOR AGREEMENT OR CONSENT OF THE OWNER OR AN AUTHORIZED AGENT OF THE OWNER, WHETHER WRITTEN OR ORAL, CONCERNING THE USE OF THE RESIDENTIAL PREMISES.
- Unauthorized does not include a relative or a tenant you have accepted money from.
- Statute states with proper affidavit you can have court date within 1 day. (this is may not take place in many jurisdictions)
- Information for “affidavit” can be found within the bill itself.
- Statute allows for a 24 hour injunction, Court date where potential “unauthorized” person can attend and challenge the eviction.
- If injunction is put in place Sheriff is to remove within 24 hours... again this may be challenging.
- If landlord falsifies information they will be held liable under the statute.
- If unauthorized person damaged the property they can be charged with criminal mischief.

Best Practice: Hire an attorney.

Property Management- ESA Requirements

Emotional Support Animals:

Assistance animals are in a different legal classification than pets who are not assistance animals, which is why pet restrictions and fees are waived for them.

They are animals that work, assist and/or perform tasks and services for the benefit of a person with a disability or provide emotional support that improves the symptoms of a disability.



Timing: Approx. 2 min

Citation: Fair Housing Act

Instructor notes: Property managers must be informed about their obligations under the Fair Housing Act in relation to service and support animals. ESA: Emotional Support Animal.

- Under the FHA, a disability is defined as a physical or mental impairment which significantly limits a person's major life activities. Even if a lease says "no pets" or restricts pets, landlords are required to make what is called a "reasonable accommodation" to allow pets who serve as assistance animals, which includes animals who provide emotional support.
- There is no official certification or training for assistance animals, and they can assist in a wide variety of ways. Breed and weight restrictions do not apply to assistance or service animals.

Property Management- ESA Requirements

Fair Housing- Service Animal

Animals trained to do a specific task for their owner.

Service animals are allowed in public accommodations because of the owner's need for the animal at all times.

Example: Guide Dog, Miniature Horse

*see notes on HOA documentation requirements



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Timing: Approx. 2 mins

Citation: Fair Housing Act

Instructor notes: Define Service Animal.

Disputes have arisen from property managers placing tenants in HOA/CAM communities thinking it was ok since they met "their" ESA/Service animal documentation requirements only to find out that the HOA has more stringent documentation requirements causing huge headaches for tenants, Property managers and the HOA management.

- Example of Service Animal: Guide Dog, Miniature Horse.
- Best Practice: Review and have prospective tenants get HOA/CAM approval before placing the tenant.

Property Management- ESA Requirements

Fair Housing- Assistance Animal

Can be a cat, dog or other type of companion animal, and does not need to be trained to perform a service.

The emotional and/or physical benefits from the animal living in the home are what qualify the animal as an assistance animal.



Timing: Approx. 2 mins

Citation: Fair Housing Act

Instructor notes: Define Assistance Animal

- Example of Assistance Animal:
 - A cat who can detect and alerts their companion of oncoming seizures .
 - A dog who alleviates a person's depression or anxiety.
 - A cat who reduces a person's stress-induced pain.
 - A bird who alerts their hard-of-hearing companion when someone has come to the door.
- Best Practice: Review and have prospective tenants get HOA/CAM approval before placing the tenant.

General Practice

- Varying Commission Models
- E-47: Competency
- Good Faith
- Consumer Data Privacy
- Property Management
- **Sign Crossing Issues**



Title Slide introducing the next section

Sign Crossing: Rule E-13

- A Licensee shall not negotiate a sale, exchange, lease or listing agreement with knowledge of an unexpired contract with another broker.
- OK to negotiate future sale, exchange, lease or listing agreement if initial contact with broker is initiated by client.
- **The burden of inquiry of status of listing is on the licensee.**



Timing: Approx. 1 min

Citation: Commission Rule E-13

Instructor notes: Read slide and continue.

Sign Crossing: Best Practice

Suggested Approach:

1. Always clarify whether or not the buyer/seller already has a Listing Contract with another broker.
2. If buyer/seller is under contract, **WALK AWAY!**
3. Do not solicit business from a buyer/seller that is already under contract with another broker.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Case Study 1: Sign Crossing-Buyer Side

- A Buyer went to an open house and signed the registry with her real name and real email address. (What?!)
- The Broker (Broker 1) emailed her the next day and asked how she liked the house.
- The Buyer told him that she liked the house, was working with Broker 2 who was scheduling a showing so she could see it again.
- Broker 1 asked if she had signed anything with Broker 2. The Buyer said she had.



Timing: Approx. 5 mins for Case Study 1 (Slides 101-104)

Citation: Commission Rule E-13

Instructor notes: Ask class: Can Broker #1 do that?

Answer: If the broker is speaking about a future agreement and not trying to lure The Buyer away from an active Exclusive Right to Buy then they have not violated license law.

Case Study 1: Sign Crossing-Buyer Side

- Broker 1 sent her a follow up email saying that he offered \$1,000 cash back at closing to new clients.
- Broker 2 learned of the solicitation and filed a complaint with the Division of Real Estate claiming Broker 1 sign crossed.

1. Did Broker 1 do anything wrong?
2. What should Broker 1 have done?



Timing: Approx. 5 mins for Case Study 1 (Slides 101-104)

Citation: Commission Rule E-13

Instructor notes:

1. Broker violated rule E-13.
 1. From Rule E-13: “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 to take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.”
 2. When the broker learned that the Buyer was still a party to an unexpired Exclusive Right to Buy Contract he should have let the Buyer know that he could not represent them currently due to their obligation to Broker 2, but he could represent them in the future once the Exclusive Right to Buy expires or the Buyer terminates the contract.
2. If this was a mistake the broker should explain he sent the solicitation by accident. If the solicitation was sent intentionally the broker likely violated Division rules and should review Rule E-13.

Case Study 1: Sign Crossing-Buyer Side

Upon Investigation it was determined:

- Broker 2 had contacted Broker 1 to ask if he was aware she had an unexpired Exclusive Right to Buy with the Buyer.
- Broker 1 responded, “That is between you and the buyer. This is your problem and you’ll need to work it out with the Buyer as I have no obligation to you.”



Timing: Approx. 5 mins for Case Study 1 (Slides 101-104)

Citation: Commission Rule E-13

Instructor notes: Read slide and continue.

Case Study 1: Sign Crossing-Buyer Side

Outcome:

1. Broker 1 paid a fine of: \$2,500.00
2. Broker 1 assigned an additional 8 hours of education in Contracts and E-Rules.
3. Public censure.



Timing: Approx. 5 mins for Case Study 1 (Slides 101-104)

Citation: Commission Rule E-13

Instructor notes: Read slide and continue.

Sign Crossing



Now lets look at the
Seller side.



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Instructor notes: Introduction slide.

Case Study 2: Sign Crossing- Listing Side

- A Listing Broker for a high-end property in a mountain community had a one-year Exclusive Right to Sell Listing contract.
- It had been 8 months so far with no offers.
- The feedback from showing brokers led the Listing Broker to think the price might be too high.
- Listing Broker shared feedback with the sellers and recommended a price reduction of \$50,000.



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Citation: Commission Rule E-13

Instructor notes: Read slide and continue.

Case Study 2: Sign Crossing- Listing Side

- The Sellers knew that the *right* buyer would be more than willing to pay the current list price and wanted to hold firm.
- The Sellers thought that perhaps they should take it off the market for the holidays and refresh the listing in the spring.
- Listing Broker and the sellers executed an Amend/Extend with Broker and terminated the listing.



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)
Citation: Commission Rule E-13

Instructor notes: Read slide and continue.

Case Study 2: Sign Crossing- Listing Side

- Two weeks later the property came back on the market, priced \$50,000 lower with a new broker, Broker 2.
- Broker 2 had shown the property twice during Listing Broker's unexpired Exclusive Right to Sell listing agreement.



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Citation: Commission Rule E-13

Instructor notes: Read slide and continue.

Case Study 2: Sign Crossing- Listing Side

Upon Investigation it was determined:

- Listing Broker called the Sellers to ask what had happened. They said they had run into Broker 2 as he was leaving the house after one of his showings. They had asked him what he thought of the house and the listing. They had liked him and had spoken with him at that time about listing the house in the future.



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Citation: Commission Rule E-13

Instructor notes: Read slide and continue.

Case Study 2: Sign Crossing- Listing Side

Upon Investigation it was determined:

- Listing Broker thought Broker 2 was sign crossing by talking with “her” sellers at the showing.
- Broker 2 thought Listing Broker was sign crossing by talking with “his” sellers now.



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Citation: Commission Rule E-13

Instructor notes: Read slide and continue.

Case Study 2: Sign Crossing- Listing Side

Did Broker 2 “Cross Signs”?

The seller told Listing Broker that they approached Broker 2.

***“When a licensee is contacted by an owner...
and the licensee has not initiated the discussion, the
licensee may negotiate the terms upon which to take a
future listing, or, alternatively may take a listing to become
effective upon expiration of any existing exclusive listing.”***



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Citation: Commission Rule E-13

Instructor notes: This slide can be used to facilitate conversation to determine if a violation occurred.

Case Study 2: Sign Crossing- Listing Side

Did Broker 2 “Cross Signs”?

However, if Broker 2 had run into the sellers as he was leaving a showing and had initiated a conversation about a future listing, Broker 2 would be in violation of licensing law.



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Citation: Commission Rule E-13

Instructor notes: This slide can be used to facilitate conversation to determine if a violation occurred.

Case Study 2: Sign Crossing- Listing Side

Did Listing Broker “Sign Cross”?

In Listing Broker’s call to the sellers she was asking for feedback about her performance as their broker in an attempt to improve her skills.

That was not a violation of license law.



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Citation: Commission Rule E-13

Instructor notes: This slide can be used to facilitate conversation to determine if a violation occurred.

Case Study 2: Sign Crossing- Listing Side

Did Listing Broker “Sign Cross”?

If Listing Broker had said “you said you would re-list with me, you owe it to me to cancel with Broker 2 and list with me” she would be in violation because...

“...a real estate licensee shall not negotiate a sale,... or listing contract of real property directly with an owner...if such licensee knows that such owner has a written, unexpired contract...which grants to another licensee an exclusive right to sell...”



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Citation: Commission Rule E-13

Instructor notes: This slide can be used to facilitate conversation to determine if a violation occurred.

Case Study 2: Sign Crossing- Listing Side

Outcome:

Neither broker was found to be in violation of Rule E-13.



Timing: Approx. 6 mins for Case Study 2 (Slides 105-115)

Citation: Commission Rule E-13

Instructor notes: In this case there was no violation of E-13: Sign Crossing. Read slide and continue.

Agenda

- Compliance
- General Practice
- **New Regulations, New Forms and Contracts**
- Resources
- Exam



New Regulations

- Contract and Forms Changes
- Division of Real Estate Program Changes/Recent Legislation

Red Line



Timing: Contract and Forms changes Approx. 50 mins

ALERT

- There have been numerous changes made to the Division of Real Estate standard forms and contracts.
- ALL brokers are encouraged to take a comprehensive contract review course in early 2019.
- Brokers should review the redline versions of the new contracts.
- Brokers are required to be competent on all forms and contracts they are utilizing. Be sure you are accurately informed of all changes and their impact on your practice.



Timing: 30 sec.

Citation: 12-61-110.5(2)

“The real estate commission shall develop twelve hours of credit designed to assure reasonable currency of real estate knowledge by licensees, which credits shall include an update of the current statutes and the rules promulgated by the commission that affect the practice of real estate.”

Instructor Notes:

This Alert has been deliberately added twice to emphasize the importance of brokers becoming competent in the many contract and forms changes that occurred in 2018 that take effect 1/1/2019. The Annual Commission Update is NOT a contracts class.

This course will provide a high level overview of contract and form changes. Brokers should take a contract review course ASAP to ensure they are competent in the use of all forms utilized during their practice. The Annual Commission Update is not a contracts course and by statute must address new statutes and rules affecting real estate.

Forms/Contract Changes NOT Covered

These Forms and Contract changes will not be covered in this course and all brokers should take a contract focused course in early 2019.

1. **CBS Sec. 14** - Payments of Liens and Encumbrances
2. **CBS Sec. 15.3** - Status Letter and Record Change Fee
3. **CBS Sec. 16.3** - Association Assessments
4. **CBS Sec. 19.5** - Home Warranty
5. **CBS Sec. 31** - Other Documents



Timing: Approx. 2 mins

Instructor notes:

1. While most of this language was previously in the Contract, it was under Section 13 and really didn't belong.
2. The requirement for the seller to request a Status Letter was moved to #15.3 since this paragraph is about assessments; not status letters.
 1. Paragraph 7.3.5 now defines Status Letter and Record Change Fee. Remind the students about the provision and that the fees for record change and the status letter now must be disclosed to the buyer early in the process.
3. The provisions regarding disclosure of the association assessments was removed for several reasons:
 1. The provision did not account for multiple associations
 2. Sellers sometimes had no idea
 3. Most importantly, the fee is now disclosed as part of the Annual Disclosure the buyer receives under paragraph #7.3
4. Home Warranty was moved out of 19.2 and a new paragraph was created for it. Why?
 1. It really didn't belong in 19.2
 2. It needed its own paragraph in order to make the new Residential Addendum work for the commercial and land contracts.
5. Other documents was updated to remove "attached." Why?
 1. In the age of electronic documents, documents are rarely actually "attached" to the contract. This clarifies if documents are "part" of the contract or not.

Forms/Contract Changes NOT Covered

These Forms and Contract changes will not be covered in this course and all brokers should take a contract focused course in early 2019.

6. Residential Addendum
7. Notice to Terminate
8. Estoppel Statement
9. Amend-Extend
10. Counterproposal
11. Square Footage Disclosure



Timing Approx. 2 mins

Instructor notes: (Notes a continuation from previous slide).

6. The Residential Addendum was missed in the 2018 update so the Update this time was very substantial. Form now references provision numbers that are consistent with the paragraph #s in the contract. This was important so that the added deadlines work with the Counterproposal and Amend Extend. Instructors should review briefly the Residential Addendum.

Forms/Contracts Briefly Covered

- Personal Property Agreement
- 3.1 Dates and Deadlines
- 7.3 Association Documents
- 8.4 Special Taxing Districts
- 10.3 Inspection
- 10.10 Lead Based Paint

- 11 Estoppel Statements
- 13 Transfer of Title
- 15.8 FIRPTA
- 32 Counter Offer
- 33 Broker's Acknowledgements and Compensation Disclosure



Timing: Approx. 1 minute

Personal Property Agreement

- New Form.
- Reasons for this Agreement.
- Relationship to CBS.

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(PPA22-6-18) (Mandatory 1-19)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR
OTHER COUNSEL BEFORE SIGNING.

PERSONAL PROPERTY AGREEMENT (RESIDENTIAL ONLY)



2019 Annual Commission Update 124

Timing: Approx. 1 min

Citation: Personal Property Agreement (Residential)

Instructor notes: this is an introductory slide for the changes made to the personal property Agreement.

The PPA is separate from and not a part of the CBS; and it is conditional on the closing of the CBS.

New PPA: Why?: Problem in mountains fully furnished unit, lender wanted personal prop removed because they cannot finance personal prop. Bill of sale? If contract fails, who owns property?

Issue: Lender wants removed, buyer wants to make sure they get it. "Left for convenience of seller". If PP is assigned no value loan fraud?

If a lender prohibits any inclusion of personal property in the contract, the PPA can be used to detail the personal property to be transferred at closing to the buyer.

CBS now has a checkbox alerting lender of personal property; CBS Sec. 2.5.4

Other Inclusions: Gives the lender notice that there is other personal property involved in the transaction.

"Left at the convenience of the Seller and personal property has no value"

PPA should be used only when the Lender says "remove personal property" and the buyer wants assurance the PP is left behind."

Personal Property Agreement

Broker practice related issues using the Personal Property Agreement:

1. Price is the biggest landmine for brokers. The buyer will want to put \$0 in as the price for personal property.
2. Payment of the personal property is at closing in addition to purchasing the real estate.



Timing: Approx. 2 mins

Citation: Personal Property Agreement (Residential)

Instructor notes:

1. Ask the students why? Obviously it is so the loan covers the cost of the personal property, however, this also means the buyer (and the broker) are now potentially committing loan fraud. The question to be asking the buyer is: How important is the personal property? If the buyer wants to ensure the personal property stays, then the buyer has to assign a real, fair market value, to the personal property and pay it at closing. If the buyer is not concerned about the personal property, then the buyer could leave it completely out of the contract, however, the seller may end up taking it with them. The buyer can't have it both ways.

What is UCC?

- The Uniform Commercial Code (UCC): One of a number of uniform acts that have been put into law with the goal of harmonizing the law of sales and other commercial transactions across the United States of America (U.S.).

UCC Search:

- A **UCC-1** financing statement is a legal form that a creditor files to give notice that it has or may have an interest in the personal property of a debtor (a person who owes a debt to the creditor as typically specified in the agreement creating the debt).
- Colorado Secretary of State UCC Search:
<http://www.sos.state.co.us/pubs/UCC/uccHome.html>



Timing: Approx. 3 mins

Instructor notes:

What is it? The Uniform Commercial Code (UCC), is a uniform act adopted by Colorado that has been put into law with the goal of harmonizing the law of sales and other commercial transactions.

The issue: Many times a loan is made on personal property and the lender needs that personal property as collateral for the loan. In a real estate sale, some personal property may have such encumbrances. A UCC search will show filed encumbrances of the personal property. Most clients will not undertake a UCC search, however, brokers should be inform a client that a UCC search option is available to ensure that no encumbrances exist on personal property that is a part of the real estate transaction.

Deadline: Ensure the PPA terminates at the expiration of the contract acceptance deadline, counter proposal acceptance deadline in order to protect against PPA inadvertently expiring prior to a contract being signed. Likewise, the acceptance deadline for the personal property agreement is tied to acceptance of the real estate contract. Examples: Hot Tub, Tractor, Solar Panels, High End Appliances.

Personal Property Agreement

- **Termination**

- Termination of the real estate contract also terminates this agreement.

- **Deadline**



Timing: Approx. 2 mins

Citation: Personal Property Agreement (Residential)

Instructor notes: In other words, the buyer cannot just buy the personal property.

Termination: Personal property transferred is contingent on the real estate transaction. If the contract terminates so does the Personal Property Agreement.

Deadline: Ensure the PPA terminates at the expiration of the contract acceptance deadline, counter proposal acceptance deadline in order to protect against PPA inadvertently expiring prior to a contract being signed.

Likewise, the acceptance deadline for the personal property agreement is tied to acceptance of the real estate contract.

Examples: Hot Tub, Tractor, Solar Panels, High End Appliances

Personal Property Agreement

Personal Property Agreement CANNOT be used for
manufactured/mobile homes.

Personal Property Agreement CANNOT be used for
Commercial or Business sales.



Timing: 1 min

Citation: Colorado Secretary of State, Division of Local Affairs

Instructor notes:

Mobile homes are not transferable using the personal property agreement. Sale of mobile homes have tax and title implications that are typically outside of a brokers competence. Seek expert advise for the sale of manufactured/mobile homes.

3.1 Dates and Deadlines

Several of the Deadlines were changed from “Objection” to “Termination.” Why?

- Association Documents Termination Deadline
- New Loan Termination Deadline
- Existing Loan Termination Deadline



Timing: Approx. 3 mins

Instructor notes: These changes cover: When can clients object or terminate.

Ask the students why?

The reason was to make the contract deadlines more intuitive. Now, if there is an “Objection” Deadline, it means there is also a resolution deadline. If there is a “Termination” deadline, it means the buyer’s only option is to terminate the contract.

There are other deadlines that are not mentioned here, but they will be covered when we get to those provisions.

3.1 Dates and Deadlines

Additional changed Deadlines:

- Property Insurance Termination Deadline
- ADA Evaluation Termination Deadline
- Estoppel Statement Termination Deadline



Timing: Approx. 3 mins

Instructor notes: These changes cover: When can clients object or terminate.

Several of the Deadlines were changed from “Objection” to “Termination.” Ask the students why?

The reason was to make the contract deadlines more intuitive. Now, if there is an “Objection” Deadline, it means there is also a resolution deadline. If there is a “Termination” deadline, it means the buyer’s only option is to terminate the contract.

There are other deadlines that are not mentioned here, but they will be covered when we get to those provisions.

7.3 Association Documents

The forms committee completely revamped this provision in an attempt to make it more user friendly for the buyer, seller, title company, community association manager, and the lender.

The documents are already required under statutes and rules that require Owner's Association disclosures to the seller.



Timing: Approx. 1 min

•Instructor notes: For any property that is located within a “Common Interest Community” (a/k/a an “Association”) the Colorado Real Estate Commission’s Contract to Buy and Sell Real Estate in section 7.3, specifically requires sellers to give buyers notice of any written notice that the Seller has received within the last six months of a construction defect action. Read slide and continue.

10.3 Inspection

10.3 Added a new deadline:

There is now an Inspection Objection Deadline,
Inspection Termination Deadline and Inspection
Resolution Deadline.

Why?



Timing: Approx. 2 mins

Instructor Notes: *In the seller's market we experienced for the past several years, many buyers were waiving the right to object based on inspection, but still had a right to terminate. However, the way brokers would draft the contract is they would have an Inspection Objection Deadline, but would put "N/A" in the resolution deadline. This did not work as the contract then said nothing about what the buyers rights were after an objection. Therefore the forms committee decided to add the deadline to accommodate the practice.*

Best Practice: Match dates

10.10 Lead Based Paint

1. Added a new provision for Lead Based Paint.
2. Seller must deliver Lead-Based Paint disclosure on Lead-Based Paint Disclosure Deadline.
3. Buyer can then conduct a risk assessment and terminate the contract on or before the Lead-Based Paint Termination Deadline.



Timing: Approx 5 mins

Instructor notes: Does everyone remember the days when you had to sign the lead-based paint disclosure before the contract was fully executed? Or the days when the buyer would sign the Counterproposal and then sign the Lead-Based Paint Disclosure only to have a VOID contract? Those days are over.

10.10 Lead Based Paint

4. Both Brokers Must Sign the Agreement.
5. Lead Based Paint Disclosure no longer signed before the contract is fully signed by the parties.



Timing: Approx 2 mins

Instructor notes: Does everyone remember the days when you had to sign the lead-based paint disclosure before the contract was fully executed? Or the days when the buyer would sign the Counterproposal and then sign the Lead-Based Paint Disclosure only to have a VOID contract? Those days are over.

HB19-1098 (Deeds to Convey Real Property)

Effective as of March 7, 2019, this Bill:

- Addresses the authority of title companies to draft deeds conveying real property in a real estate transaction.
- Authorizes a title company to prepare a deed using the statutory deed.
- Clarifies and reorganizes the four statutory deed forms.
- Creates a “statutory exception” to the warranties of title.



Timing - Approx. 2 mins
Instructor notes:

The Bill:

- Clarifies the different deed types by defining the warranties under the different deeds and establishing requirements for title insurance entities that prepare deeds.
- Provides forms for all four (4) types of deeds.
- Creates a “statutory exception” to the warranties of title, which includes real estate taxes for the calendar year in which the conveyance occurred; matters that are disclosed or would have been disclosed on an Improvement Survey Plat; and all matters recorded in the real estate records of the relevant county.
 - Any property conveyed by special or general warranty deed subject to the “statutory exception”, will automatically include those aforementioned exceptions to the warranties of title, without being specifically identified in the deed itself.
 - If statutory exceptions are included, the title company can prepare the deed.

Section 13 of the CBS

- Transfer of Title section simplified and replaced.
- Mandatory usage for all the new CBS forms effective July 1, 2019.
- Incorporates language that if title is conveyed by a warranty deed, it will be conveyed “subject to statutory exceptions”.



Timing - Approx. 2 mins

Instructor notes:

On May 10, 2019 the CREC adopted this change.

Use of General Warranty Deed v. Special Warranty Deed continues to be a hot topic. Once again the real estate attorneys and the Commission want to encourage brokers to use special warranty deeds. Therefore the new contract now has Special Warranty Deed as the default.

In the past, title companies were putting in language that the buyer was taking the property subject to “those exceptions accepted by buyer under Record Title.” The problem with this language is that sellers were now giving more warranties to downstream buyers than they were giving to their own buyer. Under a General Warranty Deed, a seller gives warranties for previous owners and because documents were not specifically listed, downstream buyers could sue the seller for exceptions their buyer agreed to. This was a major problem of the real estate attorneys. Therefore, the real estate attorneys requested the Commission require book and page numbers for all exceptions in the deeds.

Can use the current or new forms prior to July 1, 2019, however, only the newly adopted mandatory CBS forms can be used starting July 1, 2019.

NOTE: This contract change actually reduced the contract length for the 1st time !

New Closing Instructions Form

Which governs - Closing Instructions signed at time of contract or at closing?

Best Practices:

Sign at time of contract.

Use only 1 form.

Use Commission approved form.

Required at closing.



Timing - Approx. 2 min

Instructor notes:

NOTE: The transaction should only have one set of closing instructions.

On May 10, 2019 the CREC adopted this change. Can use the current or new Closing Instructions form prior to July 1, 2019, however, only the newly adopted mandatory form can be used starting July 1, 2019. The new form contains updated sections including "Preparation of Documents" by the closing company regarding the Deed, Bill of Sale, and Closing Statement; "Wire and Other Frauds"; and "FIRPTA and Colorado Withholding".

New Closing Instructions Form

- No more scrivener agreement.
- LTAC and the CREC Forms Committee worked diligently together to create Closing Instructions that would be workable and acceptable to both the real estate and title insurance industries.



Timing - Approx. 2 min

Instructor notes:

NOTE: The transaction should only have one set of closing instructions.

NOTE: LTAC and the CREC Forms Committee worked exceptionally hard and cooperatively to create a mutually workable form.

Other Changes

- 8.4 - Special Taxing Districts - Tax Certificate
- FIRPTA and Colorado Withholding - Title company can withhold
- Estoppel Statements- Seller may sign if the tenant refuses
- Counter/Rejection- Deleted
- Broker's Acknowledgements and Compensation Disclosure- Customer



Timing: Approx. 3 mins

Instructor notes:

- 8.4. – Special Taxing Districts was moved from Section 8.5 to 8.4. (see the green text) This is the statutorily required disclosure that must be in the contract (That is why it is in Bold Caps). It was moved because of the additional language starting at line 390 and the inclusion of special taxing districts into the Record Title Review.

Read the language at line 390. **Note that it now gives the buyer a right to object to special taxing districts on or before the Record Title Deadline (previous contract gave the buyer a right to terminate under Off-Record Title).**

The provision also adds a requirement for the buyer to get a tax certificate that was not previously required under the contract. Most title companies already provide this with the Title Commitment, but now it is required and the buyer has a right to review it.

- Due to the increased number of transactions subject to FIRPTA, the Commission added provisions to address it.
- 11. – Estoppel Statements. Only in CBS 2, CBS 3 and CBS 4 Paragraph was updated so the Seller is required to “Request” an Estoppel Statement from the Tenant. That way if the Seller does not get one, the Seller is not in default.

However, if the Seller does not get the Statement from the Tenant, the Seller must

complete one for the Buyer.

- Combines with 33 Disclosure update to clarify how broker is working with each party
 1. When working with Buyer
 1. Requirement of broker to cooperate with mediation was moved to its own paragraph so it was clear that the obligation was not dependent on whether the “Does” box was checked. Seller’s Agent was removed because it was confusing. It was replaced with a checkbox that says the buyer is a Customer. Brokerage Firm and Broker license #s were added to help lenders as they are required to have that information under TRID.
 2. When working with Seller
 1. Requirement of broker to cooperate with mediation was moved to its own paragraph so it was clear that the obligation was not dependent on whether the “Does” box was checked. Seller’s Agent was removed because it was confusing. It was replaced with a checkbox that says the buyer is a Customer. Brokerage Firm and Broker license #s were added to help lenders as they are required to have that information under TRID.

Affordable Housing Programs

“Affordable Housing” is a term used to describe a variety of government subsidized housing programs for low income families, seniors and people with disabilities. Examples:

- Section 8
- Government (Public Housing)
- Affordable Housing Build by Private Developers
- Low Income Housing Tax Credits



Timing: Approx 2 mins.

Instructor notes: Each government agency has their own criteria for what qualifies someone or a family as “low income” and disabled. Some state/local programs extend to other vulnerable communities. Brokers must be aware of affordable housing programs and their effects on real estate transactions.

Affordable Housing Programs

Brokers should be aware and competent in Affordable Housing Programs and their effects on real estate transactions. Affordable housing programs exist at the:

- Federal Level
- State Level
- Municipality Level

Affordable housing programs exist all over the State; in high-end resort communities, rural communities, as well as in the Denver Metro area.



Timing: Approx 1 min.

Instructor notes: Brokers must be competent in how Affordable Housing Programs impact real estate and how to guide clients that may be in an Affordable housing program.

Affordable Housing Programs

Some Affordable Housing Programs have specific provisions that MAY directly impact Real Estate Transactions, such as:

- Length of required tenancy for homes purchased using affordable housing programs.
- Income limits on purchasers.
- Caps on resale price or value.
- Restrictive covenants or deed restrictions limiting an owners property rights.



Timing: Approx. 1 min

Instructor notes: Brokers should educate themselves on affordable housing programs in the geographic areas in which they practice real estate in order to better serve their clients and protect themselves and the consumer.

Affordable Housing Programs

For more information brokers may contact:

- Colorado Housing and Finance Authority
- Colorado Division of Local Affairs
- City/County Housing Offices
- Title Company
- Legal Counsel



Timing Approx. 1 minute

Instructor notes: Let brokers know about their recourses.

New Regulations

LEGISLATION



- Contract and Forms Changes
- Division of Real Estate Program Changes/Recent Legislation



2019 Annual Commission Update

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Timing: Division of Real Estate Program Changes/Recent Legislation Approx. 25 mins

License and CE Changes

Continuing Education Requirements:

Initial license vs 3 year license



2019 Annual Commission Update

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Timing: Approx. 2 mins

Citation: Commission Rule B-Rules

Instructor notes: Effective January 1, 2018, any license issued will expire on December 31 of the year of issue. There is no mandatory continuing education requirement(s) during this initial license period. Thereafter, a licensee will renew a license on a calendar year cycle commencing on January 1 of year one (1) and expiring on December 31 of year three (3).

Broker License Expiration Date- Transition

As a result of SB17-215 (Concerning the Continuation Under the Sunset Law of the Division of Real Estate), a real estate broker license will now be renewed on or before December 31 of every third (3rd) year after issuance.

- All licensees will eventually be on a calendar year cycle for their license renewal. In order to accommodate this transition to a calendar year cycle, the Division of Real Estate has established a transition period for license renewals and reinstatements.



Timing: Approx 1 min.

Citation: 12-61-110, C.R.S., SB17-218, HB18-1227

Instructor notes: The Division of Real Estate information concerning the broker license transition can be found at this link on their website:

<https://www.colorado.gov/pacific/dora/broker-license-expiration-date-transition-0>

Broker License Expiration Date- Transition

- For an Initial License: Effective January 1, 2018, any license issued will expire on December 31 of the year of issue. There is no mandatory continuing education requirement(s) during this initial license period. Thereafter, a licensee will renew a license on a calendar year cycle commencing on January 1 of year one (1) and expiring on December 31 of year three (3).



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Unless license commences within 45 days of the end of the year...

Broker License Expiration Date- Transition

Transition Period For License Renewals:

A license expiring on one's anniversary date in the years of 2018, 2019, or 2020, will be renewed for a period of time equal to two (2) years plus the remaining days in the third (3rd) year to reach December 31. (The length of the transition period is dependent on the anniversary date and could be as long as three years or as short as two years and one day.)



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Broker License Expiration Date- Transition

Transition Period For License Renewals (cont.):

- Licensees are required to complete the mandatory continuing education requirements during the transition licensing period.
- Thereafter, a licensee will renew a license on a calendar year cycle commencing on January 1 of year one (1) and expiring on December 31 of year three (3). There will be a proration of renewal fees based upon the time of expiration.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Transitional License Cycle- CE Requirements

- To accommodate licensees during the transition period, licensees may complete two (2) different versions of the Annual Commission Update Course to satisfy the eight (8) hours of mandated education.
- Licensees who choose this option must also complete an additional sixteen (16) hours of elective credit hours to meet the 24-hour total continuing education requirement during the transition period.



Timing: Approx. 1 min

Instructor notes: Because of the broker license transition from an anniversary date to a calendar year 3-year license, some brokers would not be able to take the required three (3) mandatory Annual Commission Update (ACU) courses within the shortened license transition period. Legislation and rule-making was passed to allow a relaxation of that requirement, and now during this license transition period, brokers will only have to take two (2) mandatory ACU classes until they get on their new full three (3) calendar year license cycle.

- Brokers will however, have to fulfill the full twenty-four (24) hours of continuing education within the shortened transition period (8 mandatory ACU's plus 16 electives).
- This new legislation eliminated the previously proposed "Broker Transition Course" to fulfill the mandatory three (3) ACU course requirement.
- Pursuant to Section 12-61-110.5 (1) (d), C.R.S., and new CREC Continuing Education Rule B-2 (a.1).

Employing Broker Qualifications: Rule A-27

- Effective January 1, 2019, there are new requirements to become an Employing Broker.
- If you have been issued a broker level license on or before December 31, 1996, you are compliant with the new requirements.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Employing Broker Qualifications: Rule A-27

- If you did not hold a broker level license on or before December 31, 1996, you must:
 - Have been an active broker for at least 2 years; and
 - Taken the 24-hour Brokerage Administration course.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Effective January 1, 2019:

In addition to the requirements prescribed in sections 12-61-103(6)(c)(I) and (II), C.R.S., (an active broker for at least 2 years and 24 hours of brokerage administration education), a broker that did not hold a current and valid broker's license on December 31, 1996, must not act as an employing broker without first demonstrating certain experience and knowledge (section 12-61-103(6)(c)(III), C.R.S.).

In addition to being an active broker for at least 2 years and taking the 24 hour brokerage administration course, a broker that did not hold a current and valid broker's license on December 31,

1996, must not act as an employing broker without first demonstrating certain experience and knowledge requirements.

Employing Broker Qualifications: Rule A-27

- If you were issued an Employing Broker level license after December 31, 1996, but prior to January 1, 2018, you:
 - Must have held an active Employing Broker level license for at least 2 years within the 5-year period immediately preceding January 1, 2019; or
 - Successfully complete the Employing Broker Refresher Course; or
 - Meet the experience requirements set forth in the Rule.



Timing: Approx. 1 min

Instructor notes: Read slide and continue. The Employing Broker Refresher course is 6 hours.

Employing Broker Qualifications: Rule A-27

If applying for an Employing Broker level license on or after January 1, 2018, applicant must submit evidence that:

- Has practiced as an active licensed broker, as appropriate to the broker's area of supervision, for at least 2 years within the 5-year period immediately preceding the date of application; and
- Experience as a licensed broker, as appropriate to the broker's area of supervision, qualifies for a total of at least 50 pts having accumulated within the 5-year period immediately preceding the date of application, based on the rule's point system.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Rule A-27- Point System

1. Each full year that the applicant has practiced as an employing broker = 10 pts.
2. Each full year that the applicant was delegated supervisory authority from an employing broker that included responsibility for ensuring compliance with the Commission statutes and rules, and that ensured responsibility for the brokerage (excluding any mentorship) = 5 pts. (A copy of the detailed executed delegation of authority must be included.)



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Rule A-27- Point System

3. An hour of a continuing education approved and designated educational course in the broker's area of expertise completed after January 1, 2018 = 1 pt.
(This educational point category cannot exceed 20 pts.)
4. A completed or closed Residential Sales Transaction = 3 pts.
5. A completed or closed Commercial Sales Transaction = 6 pts.
6. A completed or Closed Vacant Land Sales Transaction = 6 pts.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Rule A-27- Point System

7. An administered commercial property management transaction = 4 pts.
8. An administered residential property management transaction = 2 pts.
9. A completed or closed commercial lease transaction is = 2 pts.
10. A completed or closed residential lease transaction is = 1 pt.
11. A completed or closed time share sales transaction is = 2 pts.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

Rule A-27- Knowledge Worksheet

- Applicant must complete the experience and knowledge worksheet and submit it with any supporting documents together with the application for an Employing Broker level license.
- An application is deemed complete at the time all required supporting documents and fees are received by the Division.
- Applicant must attest that their experience and knowledge reflected on the worksheet meets all the standards of the required broker duties.



Timing: Approx. 1 min

If you do not wish to complete any of the options previously set forth, you can submit a request to downgrade your license to an independent level. Downgrading your license still allows you to be licensed independently, however, you cannot employ other licensees. This would not prohibit you in any way from requesting an upgrade of your license to an Employing Broker level at a later date, with the submission of the Employing Broker Experience and Knowledge worksheet.

Community Association Manager (CAM)

- The CAM program has sunset and will no longer be in effect as of July 1, 2019.
- The program stays in existence until then, and during this wind-up period, one will still need to be licensed in order to perform CAM duties.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

On April 10, 2018, the Colorado Legislature voted to postpone indefinitely HB18-1175 (the Bill Concerning the Continuation of the Community Association Manager Program under the Sunset law).

The effect of this vote means that the legislature will **not** continue the Community Association Manager (CAM) Program and will allow it to sunset.

Since this program was not extended by the legislature, it then goes through a “wind-up” procedure. This means that the program continues in existence until the date that is one (1) year after the specified repeal date (July 1, 2018) for the purpose of winding up affairs for the program. That ending date of the program will be **July 1, 2019**. On that date, the Division will then cease all activities with regard to the CAM program.

Community Association Manager (CAM)

- During this period, a CAM licensee is still obligated to adhere to all of the statutes, rules and regulations of the program.
- The legislature could pass a bill in 2019 to reestablish the program.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

The CAM program continues to be in place at the Division of Real Estate with all of its statutes, requirements, rules, and regulations until the sunset date of July 1, 2019. This means that a CAM licensee still needs to hold a license, renew one's license, maintain one's continuing education, maintain E&O and Fidelity insurance, and comply with all Division requests, complaints and investigations while the CAM program continues in operation until July 1, 2019.

The Colorado legislature could pass a Bill to reestablish the CAM program with substantially the same powers, duties and functions before its sunset date of July 1, 2019.

Appraiser Program

- The Colorado Board of Real Estate Appraisers, within the Division of Real Estate, adopted new rule changes to the Real Estate Appraiser Program, effective May 1, 2018.
- These rule changes softened the education and experience qualifications for appraisers.



Timing: Approx. 1 min

Citation: See Appraiser Program Rules 2.2, 2.3, and 2.4

Instructor notes: Read slide and continue.

Owner's Associations (HOAs)

- The Legislature passed one bill in the 2018 session related to HOAs.
- HB18-1342 requires that Pre-CCIOA communities, (communities formed prior to July 1, 1992), comply with the budget veto process found in the CCIOA.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

- House Bill 18-1342 (Allow Pre-Colorado Common Interest Ownership Act Homeowners' Association Members to Veto Homeowners' Association Budget), went into effect on July 1, 2018.
- Requires that Pre-CCIOA communities, (communities formed prior to July 1, 1992), comply with the budget veto process found in the CCIOA.
- CCIOA - Section 38-33.3-117 (1.8); and Section 38-33.3-303 (4) (a) (II) (B), C.R.S.

The Colorado Common Interest Ownership Act ("CCIOA") Section 303(4) (a), C.R.S., currently contains a budget veto process which requires that the board adopt a budget, provide a copy of this budget to the owners and set a meeting with the owners to provide an opportunity to veto the budget. If the veto fails then the budget passes. However, if the budget is vetoed the last budget that passed will remain in effect.

There is one exception to the CCIOA budget process for pre-CCIOA communities. If the association's declaration sets a maximum assessment amount or limits the increase in an annual budget to a specific amount and the budget proposed by the board does not exceed such maximum or limit, then no veto power will exist with respect to this specific HOA. However, the board will still be required to send notice of the budget and set a meeting in compliance with CCIOA.

Owner's Associations (HOAs)

- Exception - If HOA's declaration sets a maximum assessment amount or limits the increase in an annual budget to a specific amount and the budget proposed by the board does not exceed such maximum or limit, then no veto power will exist with respect to this specific HOA.
- HOA board would still however, be required to send notice of the budget and set a meeting in compliance with CCIOA.



Timing: Approx. 1 min

Instructor notes: Read slide and continue.

- House Bill 18-1342 (Allow Pre-Colorado Common Interest Ownership Act Homeowners' Association Members to Veto Homeowners' Association Budget), went into effect on July 1, 2018.
- Requires that Pre-CCIOA communities, (communities formed prior to July 1, 1992), comply with the budget veto process found in the CCIOA.
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Conservation Easement

- The Colorado Conservation Easement Program is no longer housed within the Division of Real Estate.
- The Division of Conservation is now a separate Division within the Department of Regulatory Agencies (DORA).



Timing: Approx. 1 min

Instructor notes: The Conservation Easement Program is no longer housed under the Division of Real Estate. It is now a separate Division under the Department of Regulatory Agencies (DORA).

Agenda

- Compliance
- General Practice
- New Regulations, New Forms and Contracts
- Resources
- Exam



Resources

- Web Resources
- CAR Legal Hotline
- Redlines available online for a year



PROVIDERS: This information will be integrated at a later date but will be similar to resources offered for the 2018 Annual Commission Update course.

CAR Legal Hotline Top Issues List

2019 Feedback

Your Feedback is very important to the Division of Real Estate and is taken into consideration when creating the Annual Commission Update course. Please use the below link to send us your feedback:

https://www.surveymonkey.com/r/2019_ACU



Instructors: Please encourage course participants to fill out the survey and let the Division know about the course.

Agenda

- Compliance
- General Practice
- New Regulations, New Forms and Contracts
- Resources
- Exam



EXAM

- There are two versions of the exam. Students need to complete and pass one version to earn a course completion certificate.
- Exams should take 15 minutes.
- In order to pass the exam participants must answer at least 70% of the questions correctly.



Timing: Approx. 15 mins

Instructor notes: Exam should take roughly 10 minutes to administer and 5 minutes to go through as a class. If a participant is unable to pass both portions of the exam the instructor must review the areas the participant not understanding. Once the instructor feels comfortable that the participant has understood the information a course completion certificate may be granted.