

2020 Annual Commission Update

Division of Real Estate

Course Title Slide

Division of Real Estate

Agenda

1. Compliance
2. General Practice
3. Regulations, Contracts/Forms and Legislation
4. Resources
5. Exam

Timing: Approx. 1 min

Purpose of Slide: Course Agenda

Citation:

Rule 4.3 Annual Commission Update course standards. (a) Pursuant to §12-10-213(2), C.R.S. and Rule 4.2.A.1, the 4-hour “Annual Commission Update” course shall be developed and presented by the Division of Real Estate and furnished to approved providers. Said course shall be presented without additional development by the provider or instructor. (b) Any provider specified in commission Rule 4.6.A.2.a or 4.6.A.1 may request and offer the “Annual Commission Update” course. All other providers must apply annually for approval to offer the course using the commission-approved form and procedures in commission Rule 4.6.B, except that the course outline (4.6.B.1) and course exam (4.6.B.2) will be furnished by the Commission. (c) Each active licensed broker must complete the “Annual Commission Update” course by achieving a passing score of 70% on a written or on-line course examination developed by the Commission. The Commission shall provide multiple course examinations for successive use by licensed brokers failing the end-of-course examination.

Instructor Notes: Introduce the course agenda and inform students of classroom standards. Unless the provider is approved to offer the course online, 50 minutes of classroom instruction must be presented for each hour of CE granted. Participants will have three 10 minute breaks throughout the course. Including quiz time the course

should take roughly 200 minutes.



Compliance



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Title Slide for Slides 4-49
Timing for Section: 60 mins.

Compliance

- Statute Recodification
- New Rules
- Investigative Statistics
- Top License Law Violations
- Investigation Tips
- Continuing Education Issues

Timing: Read slide and continue.
Introductory Slide

Instructor notes:
These are the compliance issues to be presented in the course. Read slide and continue.

Compliance - Statute Recodification

Title 12 Recodification:

Title 12, Article 61 of the Colorado Revised Statutes has changed to Title 12, Article 10, effective October 1, 2019.

- Statute citations on Real Estate approved forms and contracts, the Division's website, and education outlines have been updated.

Timing: Approx. 1 min

Purpose of slide: To inform real estate brokers of statute changes relevant to real estate law and practice.

Instructor notes:

Encourage brokers to review any forms or contracts they utilize to ensure statute citations are current after October 1, 2019.

Example: 12-61-110 is now 12-10-212

- Recodification is the process of moving Article 61 (license law statutes) from one article to another. Mostly just a number change however some definitions were added to the statutes.
- In 2016, the General Assembly enacted S.B. 16-163, which directed the Office of Legislative Legal Services (OLLS) to conduct a study of an organizational recodification of Title 12 of the Colorado Revised Statutes governing the regulation of professions and occupations. Title 12 contained laws pertaining to professions or occupations regulated by the Department of Regulatory Agencies through either the Division of Real Estate (Division) or the Division of Professions and Occupations.

Compliance - New Rules

- The Division of Real Estate has completed a total review of all Real Estate Commission Rules.
- The rules have been re-organized, re-indexed, and re-formatted into nine (9) chapters, as well as being written in simplified language for easier use and understanding of the Real Estate Practice Act.
- The majority of the rules are substantively the same. The rule reference numbers have changed.
- The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Real Estate Commission adopted the rules that are effective beginning January 1, 2020.

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

The Division of Real Estate ("Division") initiated the rule review on behalf of the Commission to assess the continuing need for, appropriateness and cost effectiveness of the administrative rules. It also assessed whether the rules should be continued in their current form, amended or repealed.

The rule review process included stakeholder and public participation and input, including the use of a real estate industry task force to consider that input with regard to the existing regulations.

Compliance - New Rules Highlights - Definitions

Chapter 1: Definitions

Establishes a standard set of defined terms relating to the licensing and enforcement of Brokers.

Some Noteworthy Definitions:

1.6 Associate Broker: A Broker who holds an Associate Broker level license and works under the supervision of an Employing Broker. Associate Brokers may have an Independent Broker or Employing Broker level license even if they are still acting as an Associate Broker under the supervision of an Employing Broker.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules. These definitions are used to establish common definitions for practice purposes. Definitions have not been changed.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

The intent is not to discuss these definitions but to make brokers aware they exist.

Chapter 1 allows for the consolidation of common defined terms that relate to the licensing and enforcement of Brokers. Several statutory defined terms and Commission Position Statement 45 were codified into regulation; some previously codified terms were relocated to Chapter 1; and some new defined terms were also added. Chapter 1 strives to make the interpretation of the regulations easier and reduces any potential risks of ambiguity.

Review Important definitions:

- 1.6 - Associate Broker – go through the definition and explain the situation where an Associate Broker may still hold an Independent or Employing Broker level license.

Compliance - New Rules Highlights - Definitions

1.8 Brokerage Firm: Any sole proprietor, partnership, limited liability company, corporation, or any other authorized entity licensed by the Commission to employ or engage Brokers to perform Real Estate Brokerage Services. All Brokerage Firms that employ or engage Associate Brokers must have an Active Employing Broker.

1.13 Consumer: A member of the public that has sought or is seeking to engage Real Estate Brokerage Services provided by a Broker.
A Consumer is a buyer, seller, tenant, or landlord, as applicable.

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.
These definitions are used to establish common definitions for practice purposes. Definitions have not been changed.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

Review Important definitions:

- 1.8 – Brokerage Firm – states types of entities allowed. (Also Ref: §12-10-201(6)(a), C.R.S.) See also Rules 2.9 (Broker Qualifications for Sole Proprietors), and 2.10 (Broker Qualifications for Partnerships, Corporations, or Limited Liability Companies).
- 1.13 – Consumer – is a broad definition.

Compliance - New Rules Highlights - Definitions

1.23 Employing Broker: Has the same meaning pursuant to section 12-10-201(2), C.R.S. (Means a broker who is shown in real estate commission records as employing or engaging another broker.)

1.28 Independent Broker: A Broker either holding an Independent Broker level license or Employing Broker level license acting as their own Brokerage Firm or sole proprietor and not employing or supervising any Associate Brokers.

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

Review Important definitions:

- 1.23 – Employing Broker - defined in §12-10-201(2)
- 1.28 – Independent Broker – Key point: acting solely or as their own firm and not employing or supervising other brokers.

Compliance - New Rules Highlights - Definitions

1.35 New Associate Broker: An Associate Broker with less than two (2) years of accumulative Active experience.

1.38 Property Management: An on-going relationship between a Brokerage Firm and an owner of a property in which the Brokerage Firm is designated to provide Property Management Services.

1.39 Property Management Services: The activities performed in leasing and subsequent management of a property on behalf of an owner that are pursuant to section 12-10-201(6), C.R.S. and further described in the Management Agreement.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

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Review Important definitions:

- 1.35 - New Associate Broker - allows a broker to gain experience while working under another experienced broker.
- 1.38 - Property Management - defines the relationship.
- 1.39 - Property Management Services - Sec. 12-10-201(6): Refer to statute for a listing of specified activities.
- (Also see Chapter 5 rules (Separate Accounts and Accounting), that deal with internal accounting controls, trust or escrow accounts, security deposits, recordkeeping requirements, and maintenance and production of reports to beneficiaries.

Compliance - New Rules Highlights - Definitions

1.48 Supervisory Broker: A Broker, such as a managing broker, team lead, office manager, etc., who has been delegated in writing by an Employing Broker to assume some of the Employing Broker's duties and responsibilities as set forth in Rule 6.3.

1.49 Team: Two (2) or more Brokers within a Brokerage Firm that cooperate on an on-going basis to conduct a substantial portion of their Real Estate Brokerage Services together.

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

Review Important definitions:

- 1.48 – Supervisory Broker
 - Rule 6.3: Employing Broker's Responsibilities and Supervision.
 - A. Employing Broker Exercises Authority, Direction, and Supervision.
 - B. Employing Broker's Responsibilities.
 - C. "Reasonable-Level of Supervision" by Employing Broker.
 - D. "High-Level of Supervision" by Employing Brokers.
 - E. Supervision of Unlicensed On-Site Manager.
 - F. Delegation of Supervision.
 - G. Confidential Information Revealed to Employing Broker or Supervisory Broker.

- 1.49 – Team – defines team. See also Rule 6.6 (B), 6.7, 6.9, 6.10 regarding Brokerage Relationships and all Team members names disclosed in the Listing Contract, and Team Advertising.
 - See also CP-40 (Commission Position on Teams)

Compliance - New Rules Highlights

Chapter 2: Licensure Requirements

Describes licensure requirements for Brokers: pre-licensing education, examination and experience requirements for each level of licensure.

Chapter 3: Licensure, Renewal, License Status and Insurance

Requirements for licensure, renewal, license status and errors and omissions insurance for Brokers.

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

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Chapter 2, formerly known as the A Rules, describes the licensure requirements for Brokers. This chapter specifies the pre-licensing education, examination, and experience requirements for each level of licensure. Previously, only the experience requirements for Employing Brokers were codified in Rule A-27. This chapter also codifies the Colorado Broker License Application Grid, which is a substantial and informative modification to the rules. This chapter organizes the licensure requirements for each license level in a more user-friendly format for applicants seeking or upgrading a real estate license.

Chapter 3, which was codified from former parts of the A, C, and D Rules, sets forth the requirements for licensure, renewal, license status, and insurance requirements for Brokers. It arranges the requirements for licensure, renewal, license status and insurance to be quickly referenced.

Rule 3.4 - For applicants that have prior or pending criminal conduct, the rule was modified to clarify the required and supplemental documentation to support either a formal application or preliminary advisory opinion.

Rule 3.12.B - Was modified to clarify that it is the responsibility of both the Employing Broker and Associate Broker to immediately notify the Commission when the employment of the Associate Broker terminates. The party terminating the employment must notify the other party in person or in writing regarding the termination.

Compliance - New Rules Highlights

Chapter 4: Continuing Education Requirement

Specifies continuing education (CE) requirements for Brokers and standards for course providers seeking the Commission's approval for offering CE credits.

4.5 Continuing Education Credit Requirements

(H) The Commission will award two (2) hours of continuing education credit for Brokers who attend a Commission's public meeting in person under the following conditions:

1. The meeting must be open to the public and must be a minimum of two (2) hours in length;
2. The Broker must be present for at least a two (2) hour segment of the meeting to be eligible for elective credit; and
3. Elective credit will be awarded for a single Commission meeting per calendar year.



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Timing: Approx. 1 mins

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Instructor notes:

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Chapter 4 provides a road map for Brokers to satisfy the continuing education requirement.

- Specifies continuing education (CE) requirements for Brokers and standards for course providers seeking the Commission's approval for offering CE credits.
- Identifies eligible and ineligible topics for CE courses.
- Brokers may earn 2 hours of CE credit for attending a Colorado Real Estate Commission meeting in person, once per calendar year.

Compliance - New Rules Highlights

Chapter 5: Separate Accounts and Accounting

Establishes trust and escrow account requirements and accounting methods for Real Estate Brokerage Firms.

Some noteworthy highlights:

5.1 Establishment of Internal Accounting Controls.

Any Brokerage Firm or Broker who receives Money Belonging to Others must establish written accounting control policies and procedures, which must include adequate checks and balances over the financial activities of the Broker, Brokerage Firm, and unlicensed persons, as well as manage the risk of fraud or illegal acts.

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

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Chapter 5 was formerly known as the E Rules, and specifies the trust and escrow account requirements and accounting methods for Brokers.

This chapter takes former Rules E-1, E-2, E-3, E-5 and E-16, and re-organizes the accounting rules into 22 separate rules.

Chapter 5 rules (Separate Accounts and Accounting), deal with internal accounting controls, trust or escrow accounts, security deposits, recordkeeping requirements, and maintenance and production of reports to beneficiaries.

Highlights:

- **5.1. Establishment of Internal Accounting Controls.**
 - **Rule 5.1** is new and requires written accounting control policies and procedures be established for any Brokerage Firm or Broker who receives Money Belonging to Others.
 - Those policies and procedures must include adequate checks and

balances regarding the financial activities of the Broker, Brokerage Firm and any unlicensed persons, as well as managing any possible risk of fraud or illegal activity.

- The rule was added to clarify that the Employing Broker or Independent Broker is responsible for ensuring the Brokerage Firm's compliance with statutory and regulatory requirements.

**WHAT ARE SOME TRUST AND ESCROW ACCOUNT REQUIREMENTS
AND ACCOUNTING METHODS THAT CAN BE USED?**

Compliance - New Rules Highlights

5.2 Trust or Escrow Accounts.

All Money Belonging to Others accepted by a Brokerage Firm must be deposited in one or more accounts separate from other money belonging to the Broker or Brokerage Firm. The Brokerage Firm must identify the fiduciary nature of each separate account in deposit agreements with a Recognized Depository by the use of the word “trust” or “escrow” and a label identifying the purpose of such account, such as “sales escrow”, “rental escrow”, “security deposit escrow”, or other abbreviated form defined in the deposit agreement. The Brokerage Firm must retain a copy of each executed account deposit agreement for inspection by the Commission.



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Timing: Approx. 1 mins

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Highlights:

5.2 Trust or Escrow Accounts.

- “All Money Belonging to Others” must be deposited.
- Setting up a correct Trust or Escrow account with the bank.

See also:

CP-4 (Interest Bearing Trust Accounts)

CP-5 (Advance Rentals and Security Deposits)

CP-6 (Release of Earnest Money)

CP-27 (Commission of the Performance of Residential Leasing and Property Management Functions) that discusses Trust Accounts and Record Keeping, and Security Deposits.

Compliance - New Rules Highlights

5.3 Accounts in the Name of the Brokerage Firm or Broker.

- A. Brokerage Firms acting in the name of the Employing Broker or Independent Broker as a sole proprietor must maintain separate Trust or Escrow Accounts in the name of the Employing Broker or Independent Broker.
- B. Brokerage Firms licensed as a partnership, corporation, or limited liability company must maintain separate **Trust or Escrow Accounts in the name of the licensed partnership, corporation, or limited liability company.**
- C. The Employing Broker or Independent Broker are responsible for, must maintain and be able to withdraw money from each separate account, but may authorize other licensed or unlicensed cosigners. However, such authorization will not relieve the Employing Broker or Independent Broker of any responsibility under the Commission statutes and these Rules.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

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Highlights:

- **5.3. Accounts in the Name of the Brokerage Firm or Broker.**
 - This rule requires Brokerage Firms acting in the capacity of a sole-proprietorship to maintain separate Trust or Escrow accounts in the name of the responsible broker (Employing Broker or Independent Broker).
 - Brokerage Firms licensed as a partnership, corporation or an LLC must maintain separate trust or escrow accounts only in the name of the entity.
 - **This is a modification to the previous Rule E-1(a), which required separate trust or escrow accounts to be in the name of both the entity and Employing Broker.**
 - An employing or independent broker cannot escape responsibility for the accounts.

Compliance - New Rules Highlights

5.5 Trust or Escrow Accounts Required for Rental Receipts and Security Deposits.

A Brokerage Firm who engages in Property Management must deposit rental receipts and security deposits and disburse money collected for such purposes in separate Trust or Escrow Accounts, **a minimum of one for rental receipts and a minimum of one for security deposits.**

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

Highlights:

- **5.5. Trust or Escrow Accounts Required for Rental Receipts and Security Deposits.**
 - **This rule was modified to remove the “exemption” of 6 or less residential properties under management from using a single “sales trust or escrow” account for both rental receipts and security deposits.**
 - If the Brokerage Firm is engaged in property management, it must maintain separate Trust or Escrow accounts for rental receipts and security deposits no matter the number of properties that are under management.

Compliance - New Rules Highlights

5.8 Transfer of Security Deposits.

(B) New Property Management Company.

A Brokerage Firm which begins management of a property most recently managed by another Brokerage Firm **must disclose to the owner and the current tenant, in writing, and within thirty (30) days** after execution of a Management Agreement, the status of any security deposit held by the previous Brokerage Firm, including the amount of the security deposit and confirmation of receipt of the funds. The Brokerage Firm must verify that each security deposit transferred to them matches the amount listed in the current lease and disclose any discrepancy to the owner and current tenant. The Brokerage Firm must inform the tenant, in writing, if the owner is holding the security deposit.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

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Highlights:

- **5.8. Transfer of Security Deposits.**
 - Part B of this rule is new and requires a Brokerage Firm that is taking over the management of a property from another Brokerage Firm to disclose in writing to the owner and tenant within thirty (30) days after the execution of a management agreement, the status of any security deposit held by the previous Brokerage Firm, including the amount and confirmation of receipt of the funds.
 - The brokerage firm must verify and match-up security deposits to amount listed in the lease.
 - Tenant must be informed if an owner is holding the security deposit.

Compliance - New Rules Highlights

5.10 Commingling Prohibited.

A Broker's or Brokerage Firm's personal or business operating funds must not be commingled with Money Belonging to Others. One or more separate Trust or Escrow Accounts may be maintained by a Brokerage Firm pursuant to the following duties and limitations:

(A) **Money held in a Trust or Escrow Account which becomes due and payable to the Brokerage Firm must be withdrawn monthly.**

5.22 Responsibility of the Employing Broker or Independent Broker for Brokerage Firm's Compliance.

The Employing Broker or Independent Broker are held jointly responsible with the Brokerage Firm in complying with Chapter 5 of these Rules.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

Highlights:

- **5.10. Commingling Prohibited.**
 - Rule was modified to clarify that money held in a Trust or Escrow account which becomes due and payable to the Brokerage Firm must be withdrawn monthly.
- **5.22. Responsibility of the Employing Broker or Independent Broker for Brokerage Firm's Compliance.**
 - This is a new rule that was added to clarify that the Employing Broker or Independent Broker is responsible for ensuring the Brokerage Firm's compliance with statutory and regulatory requirements.

Trust and Escrow Accounts - Summary

- All trust and escrow accounts must be in the name of the Brokerage Firm or the name of the Broker when there are no Associate Brokers.
 - Trust and Escrow accounts in a team name is not allowed.
- These accounts are required to be “trust” or “escrow” and should be identified as such by the banking institution. Normally identified on a signature card or depository agreement. A business account with the name “property management escrow account” does not mean the account is properly set up.
- When opening trust or escrow accounts with a bank, ensure the accounts are set up as true and compliant trust/escrow accounts, with the correct protections. Verify!



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Timing: Approx. 1 mins

Purpose of slide:

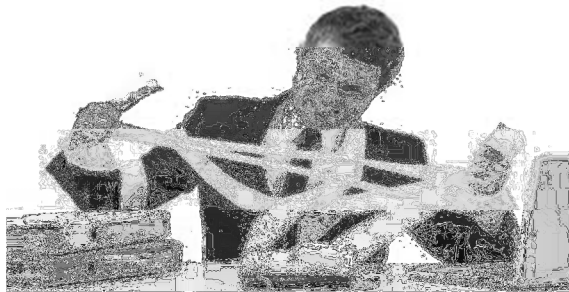
Clarify banking and escrow requirements for property managers

Instructor notes:

- What is the difference between standard and trust account? Discussion
- Definition of Trust Account: In a **trust account**, a trustee controls funds for the benefit of another party - an individual or a group. The **bank trust account** is a useful way to convey and control assets on behalf of a third-party owner.
- **Trust accounts** exist to protect everyone involved in the real estate transaction. A **trust account** is a legal arrangement through which funds or assets are held by a third party (the trustee) for the benefit of another party (the beneficiary).
- Verify with the bank that it is a true, acceptable and compliant trust account. When setting up the trust account, inquire of the bank about the requirements that you need to be compliant with the real estate commission.
- Simply because an account is labeled “trust account” does not mean a compliant trust account has been established. Brokers must work directly with the bank to ensure that proper trust and escrow accounts have been established.

Case Study - Property Management Funds

Case of the Missing Funds



Property Management - Facts

A consumer contacted the Division of Real Estate to file a complaint regarding a security deposit not being returned on a rental property.

The Division made an official inquiry and the property manager responded to the complaint by acknowledging the consumer should have received the returned security deposit, but due to an accounting error it was not returned.

Timing: Approx. 1 min

Purpose of slide: Present Fact of the case

Instructor notes: Read Slide and Continue

Property Management - Facts

The Division asked to review the broker's financial files and discovered that the broker did not have a trust account and was holding security deposits in a personal safe at the property manager's home. It was also discovered that:

1. Withdrawals were made from operating accounts to pay personal expenses.
2. Property manager routinely mixed operating funds, rents, security deposits and personal funds.



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Timing: Approx. 1 min

Purpose of slide: Present Fact of Case

Instructor notes: Read Slide and Continue

Property Management - Facts

It was also discovered that:

3. Property manager was not using three-way reconciliation accounting.
4. Account journals and account ledgers were not maintained or accurate.
5. Property manager did not have a Property Management Agreement on the subject property.

Timing: Approx. 1 min

Purpose of slide: Present Fact of Case

Instructor notes: Read Slide and Continue

Property Management - Facts

In response to the complaint, the property manager stated that they were no longer managing properties on anyone else's behalf and was no longer practicing.

The property manager retained an attorney who informed the Division that the property manager was still managing a property on behalf of a property owner, but that the property manager did not have signed disclosures, and reconciliation journals and ledgers did not exist on the subject properties.

Timing: Approx. 1 min

Purpose of slide: Present Fact of Case

Instructor notes: Read Slide and Continue

What did the Broker do wrong?

- Failed to account for or to remit, within a reasonable time, any monies coming into the licensee's possession that belong to others.
- Failed to keep records relative to said moneys.
- Converting, diverting, and commingling funds of others.
- Failed to disclose in writing to the party to be assisted that the broker is intending to establish a single agency relationship.
- Demonstrated unworthiness or incompetency to act as a real estate broker by conducting business in such a manner as to endanger the interest of the public.

Timing: Approx. 2 min

Purpose of slide: Present wrongdoing.

Instructor notes:

1. What did this property manager do wrong?
 1. C.R.S. §12-10-217(1)(h) - Failing to account for or to remit, within a reasonable time, any monies coming into the licensee's possession that belong to others, whether acting as real estate brokers or otherwise; and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules of the commission relative thereto and subject to audit by the commission.
 2. C.R.S. §12-10-217(1)(i) - 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 so keep records relative to the deposit which contain such information as may be prescribed by the rules and regulations of the commission relative thereto, which records shall be subject to audit by the commission.
 3. C.R.S. §12-10-408(2)(b) - Broker failed to disclose in writing to the party to be assisted that the broker is intending to establish a single agency

relationship.

4. Commission Rule 1.34 - Broker commingled funds with "money belonging to others".
 5. Commission Rule 5.9 - Broker diverted and or converted funds.
 6. C.R.S. §12-10-217(1)(q) - Broker demonstrated unworthiness or incompetency to act as a real estate broker by conducting business in such a manner as to endanger the interest of the public.
1. If another broker is contracted to act as a property manager for the subject property what actions should the broker take to correct this situation?
 1. This could be a great teaching moment and allow us to tell a subsequent broker how to get this situation in order.

Property Management - Outcome

Discipline

1. Broker Fined: \$17,500.00
2. License Revoked.
3. Referred to Attorney General for potential criminal prosecution.

Timing: Approx. 1 min

Instructor notes: Read results and take any questions.

Compliance - New Rules Highlights

Chapter 6: Practice Standards

6.3 Employing Broker's Responsibilities and Supervision

(C) "Reasonable-Level of Supervision" by Employing Broker.

Pursuant to section 12-10-217(1)(r), C.R.S., Employing Brokers are required to provide all Associate Brokers with a "Reasonable-Level of Supervision," which includes:

- (2) **Ensuring** all executed contracts are reviewed to maintain assurance of competent preparation. If the Employing Broker has concerns about the preparation of a contract, Employing Broker should contact the Associate Broker.
- (3) **Ensuring** all transaction files are reviewed for the required documents. If required documents are not present, the Employing Broker should contact the Associate Broker.



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Timing: Approx. 1 min

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.3. Employing Broker's Responsibilities and Supervision.**
 - This rule addresses many of the supervision requirements and responsibilities that need to be undertaken by the Employing Broker.

Compliance - New Rules Highlights

(D) “High-Level of Supervision” by Employing Brokers.

In addition to the requirements of subsection C. of this Rule and pursuant to section 12-10-203(5)(c)(I), C.R.S., an Employing Broker must provide a “High-Level of Supervision” for New Associate Brokers. “High-Level of Supervision” includes:

1. Providing specific training in office policies and procedures;
2. Being reasonably available for consultation;
3. Providing assistance in preparing contracts;
4. Monitoring transactions from contracting to closing;
5. Reviewing documents in preparation for closing; and
6. Ensuring that the Employing Broker or an experienced Associate Broker with more than two (2) years’ Active licensure attends closings with a New Associate Broker or is available for assistance.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.3 (D) “High-Level of Supervision” by Employing Brokers.**
 - Specific training.
 - Being available.
 - Provide assistance preparing contracts.
 - Monitor transactions.
 - Review of transactions documents.
 - Assist new associates regarding closings.
 - What is a “high” level of supervision? Examples?

Compliance - New Rules Highlights

6.6 Brokerage Relationships

(B) Listing Contract by Members of a Team: The individual team member(s) must all be the Designated Broker for a particular Consumer in a particular transaction as either Single Agents or Transaction-Brokers. **The names of all the members of the Team must be disclosed in the Listing Contract.**

6.7 Brokers or Teams working with Consumers on Both Sides of the Same Transaction.

Neither Brokers nor Teams may enter into a Brokerage Relationship with one Consumer as a Single Agent and the other Consumer as a Single Agent or Transaction-Broker in the same transaction. If properly disclosed, in writing (e.g. Listing Contracts), the Broker or Team that works with both Consumers in the same real estate transaction may do so as:

- A. A Transaction-Broker for both Consumers to the transaction;
- B. A Transaction-Broker for one Consumer in the transaction and treating the other Consumer as a Customer;** or
- C. A Single Agent for one Consumer and treating the other Consumer as a Customer.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.6.B Brokerage Relationships.**
 - This rule was modified to clarify that all team members are considered the Designated Broker on a transaction and requires all team members' names must be disclosed in the Listing Contracts (On the Broker line or in Additional Provisions)
- **6.7. Brokers or Teams working with Consumers on Both Sides of the Same Transaction.**
 - This rule sets forth the appropriate relationships when working with Consumers on both sides of the same transaction. The rule was modified to clarify that a Broker may work with one Consumer as a Transaction-Broker and treat the other Consumer as a Customer. The relationships are:
 - A Transaction-Broker for both Consumers to the transaction;
 - A Transaction-Broker for one Consumer in the transaction and treating the other Consumer as a Customer; or
 - A Single Agent for one Consumer and treating the other

Consumer as a Customer.

- Discuss these relationships – How and under what circumstances they occur.

Compliance - New Rules Highlights

6.8 Ministerial Tasks.

When a Broker is engaged as a Single Agent or a **Transaction-Broker** for one party and treating the other party as a Customer, the Broker may assist the Customer by performing ministerial tasks following proper disclosure.

Ministerial tasks include: showing a property, preparing as a scrivener, and conveying written offers and counteroffers, making known the different types of financing alternatives, and providing information related to professional, governmental, and community services which will contribute to completion of the transaction. Performing ministerial tasks will not of themselves violate the terms of any relationship between the Broker and the Consumer with which the Broker has a Brokerage Relationship and will not create an agency or **Transaction-Broker relationship** with the Customer being assisted.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

6.8. Ministerial Tasks.

- If Broker is engaged as a Single Agent or a **Transaction-Broker** (transaction-broker added) for one party and treating the other party as a Customer, Broker may assist the Customer by performing ministerial tasks following proper disclosure.
- Ministerial tasks include: showing a property, preparing as a scrivener, conveying written offers and counteroffers, making known the different types of financing alternatives, and providing information related to professional, governmental, and community services which will contribute to completion of the transaction.
- Performing ministerial tasks will not of themselves violate the terms of any relationship.

Brokerage Disclosure to Landlord

CHECK ONE BOX ONLY:

- ☐ **Customer.** Broker is the ☐ tenant's agent ☐ tenant's transaction-broker and Landlord is a customer. Broker, ~~as tenant's agent,~~ intends to perform the following list of tasks: ☐ Show a property ☐ Prepare and Convey written offers, counteroffers and agreements to amend or extend the lease. Broker is not the agent or transaction-broker of Landlord.
- ☐ **Transaction-Brokerage Only.** Broker is a transaction-broker assisting the Landlord in the transaction. Broker is not the agent of Landlord.

Landlord consents to Broker's disclosure of Landlord's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of Landlord, or use such information to the detriment of Landlord.

THIS IS NOT A CONTRACT. IT IS BROKER'S DISCLOSURE OF BROKER'S WORKING RELATIONSHIP.



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Timing: Approx. 1 min

Purpose of slide: Brokerage Disclosures

Instructor notes: Review Changes and Continue

Change is the same as Brokerage Disclosure to Seller.

Brokerage Disclosure to Buyer

CHECK ONE BOX ONLY:

☐ **Customer.** Broker is the ☐ seller's agent ☐ seller's transaction-broker and Buyer is a customer. Broker, ~~as seller's agent,~~ intends to perform the following list of tasks: ☐ Show a property ☐ Prepare and Convey written offers, counteroffers and agreements to amend or extend the contract. Broker is not the agent or transaction-broker of Buyer.

☐ **Customer for Broker's Listings – Transaction-Brokerage for Other Properties.** When Broker is the seller's agent or seller's transaction-broker, Buyer is a customer. When Broker is not the seller's agent or seller's transaction-broker, Broker is a transaction-broker assisting Buyer in the transaction. Broker is not the agent of Buyer.

☐ **Transaction-Brokerage Only.** Broker is a transaction-broker assisting the Buyer in the transaction. Broker is not the agent of Buyer.

Buyer consents to Broker's disclosure of Buyer's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee does ~~shall~~ not further disclose such information without consent of Buyer, or use such information to the detriment of Buyer.

DISCLOSURE OF SETTLEMENT SERVICE COSTS. Buyer acknowledges that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

THIS IS NOT A CONTRACT. IT IS BROKER'S DISCLOSURE OF BROKER'S WORKING RELATIONSHIP.



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Timing: Approx. 1 min

Purpose of slide: Brokerage Disclosures

Instructor notes: Review Changes and Continue

Allow Broker to treat consumer as customer even if relationship with their "client" is transaction-broker.

Change is the same for Brokerage Disclosure to Tenant.

Brokerage Relationship - Scenarios

1. Broker represents seller as agent. Unrepresented buyer wants to make offer. What should the broker's relationship be with the buyer? Seller?
2. Unrepresented buyer wants to see properties listed by another broker but does not want to sign anything. How should broker represent buyer? How does broker establish the relationship?



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Timing: Approx. 2 mins

Purpose of slide: Brokerage Relationship scenarios

Instructor notes: **Need more notes- Also work on set up scenario**

- 1) Buyer should be a customer. Relationship should be disclosed in Brokerage Disclosure to Buyer.
 - **Rule 6.5. Brokerage Relationships Disclosures in Writing.**
 - A. Written disclosures pursuant to section 12-10-408, C.R.S. must be made to a Consumer **prior to eliciting or discussing confidential information from a Consumer for Real Estate Brokerage Services.**
 - B. Such activities do not include preliminary conversations or “small talk” concerning price range, location and property styles, or responding to general factual questions from a potential Consumer concerning properties which have been Advertised for sale or lease.
- 2) Broker should treat buyer as transaction broker. Disclosure should already be made in the Brokerage Disclosure to Buyer.

Brokerage Relationship - Scenarios

3. Unrepresented buyer wants broker to be his agent. Can broker do that? How?
4. Buyer now decides to make offer on broker's listing? How should broker represent buyer? Seller?

Timing: Approx. 2 mins

Purpose of slide: Brokerage Relationship scenarios

Instructor notes:

- 3) Broker can change to be an agent if sign a Buyer Listing Contract.
- 4) Now broker must be transaction broker for both.

Additional Notes:

Rules 6.7, 6.8 and 6.9 are changes to the existing rules.

- 6.7 – allows broker to act as TB and treat the other side as customer if no relationship is established.
- 6.8 – allows broker to perform ministerial tasks for other side even if TB and treating the other side as a customer.
- 6.9 – requires a “Change of Status” form if converting from agent to TB. (Rule previously said checking the box in the contract was acceptable)

Brokerage Disclosure forms updated to show ability to be TB for one party while treating the other party as a customer.

Compliance - New Rules Highlights

6.9 Change of Status Disclosure in Writing.

A Broker or Team who changes their Brokerage Relationship from a Single Agent for one Consumer to assisting both Consumers in the same real estate transaction as a Transaction Broker **must provide the written Commission-Approved “Change of Status” Form to the Consumer** that has the changed relationship with the Broker, at the time the Broker begins to assist both Consumers as a Transaction-Broker, but not later than at the time the Consumer signs the purchase contract.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

6.9. Change of Status Disclosure in Writing.

- This rule was modified so that checking the box for “Transaction-Broker” and the box “This is a Change of Status” in the Commission-Approved form, Contract to Buy and Sell Real Estate, is no longer sufficient notification by itself.
- A Broker must provide the Commission-Approved “Changed of Status” form in order to satisfy the requirements of this rule.

Listing Contract - Sec. 4.3

69 **4.3. In-Company Transaction – One Broker.** If Seller and buyer are both working with the same ~~broker~~ Broker, Broker
70 must function as:

71 **4.3.1. Seller's Agent.** If the Seller Agency box at the top of page 1 is checked, the parties agree the following applies:

72 **4.3.1.1. Seller Agency Only.** Unless the box in § 4.3.1.2 (~~Seller Agency Unless Brokerage Relationship~~
73 ~~with Both~~) is checked, Broker represents Seller as Seller's Agent and must treat the buyer as a customer. A customer is a party to
74 a transaction with whom Broker has no brokerage relationship. Broker must disclose to such customer Broker's relationship with
75 Seller. However, if Broker delivers to Seller a written Change of Status that Broker has a brokerage relationship with the buyer then
76 Broker is working with both Seller and buyer as a Transaction Broker. If the box in § 4.3.1.2 (**Seller Agency Only**) is checked,
77 § 4.3.1.2 (**Seller Agency Only**) applies instead.

78 ☐ **4.3.1.2. Seller Agency Unless Brokerage Relationship with Both Only.** If this box is checked, Broker
79 represents Seller as Seller's Agent and must treat the buyer as a customer, unless Broker currently has or enters into an agency or
80 ~~Transaction Brokerage relationship with the buyer, in which case Broker must act as a Transaction Broker.~~

81 **4.3.2. Transaction Broker.** If the Transaction Brokerage box at the top of page 1 is checked, or in the event neither
82 box is checked, Broker must work with Seller as a Transaction Broker. A Transaction Broker must perform the duties described in
83 § 3 and facilitate sales transactions without being an advocate or agent for either party. If Seller and buyer are working with the same
84 ~~broker~~ Broker, Broker must continue to function as a Transaction Broker.



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Timing: Approx. 1 min

Purpose of slide: Brokerage Disclosures

Instructor notes: Review Changes and Continue.

Paragraph 4.3 of the Listing Contracts was changed to make conversion to TB if relationship with both the default.

Compliance - New Rules Highlights

6.10 Advertising.

(A) Names

(6) 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.

- a) A Brokerage Firm that uses a Trade Name or Trademark owned by a third party is required to use one (1) of the following statements, which must appear in a clear and conspicuous manner so as to attract the attention of the public:
 - i) "Each (insert general Trade Name) brokerage business is independently owned and operated." or **"Each office independently owned and operated."**
- b) Upon written request, the above statements may be modified with consent of the Commission.

Timing: Approx. 2 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.10.A (6) Advertising.**
 - This rule modified the default tagline statement that a Brokerage Firm may use when advertising a trademark or tradename owned by a third party.
 - A Brokerage Firm may now use either "Each (insert general Trade Name) brokerage business is independently owned and operated" OR "Each office independently owned and operated" as the default tagline statement.

Compliance - New Rules Highlights

6.10 Advertising.

(B) Teams

(2) **All Team Advertising** must clearly and conspicuously include and be in conjunction with the legal name or Trade Name of the Brokerage Firm.

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.10.B (2) Advertising.**
 - This rule was also modified to mandate that all team advertising must include the Brokerage Firm's name.

Compliance - New Rules Highlights

6.12 Notice Required on Competitive Market Analysis (CMA) or Broker's Price Opinion (BPO) for Purposes other Than Marketing.

When a Broker prepares a CMA or BPO for any reason other than the anticipated sale or purchase of the property, the Broker must include a notice stating: "This evaluation was prepared by a licensed real estate broker and is not an appraisal. This evaluation cannot be used for the purposes of obtaining financing." Pursuant to section 12-10-602(9)(b)(II), C.R.S, Brokers are prohibited from completing CMAs or BPOs that are used for the purpose of obtaining financing. Preparation of CMAs or BPOs for reasons other than anticipated sale, purchase, or lease is not considered Real Estate Brokerage Services. As such, any compensation received for such preparation is not required to be paid to the Broker's Brokerage Firm unless stated otherwise in Brokerage Firm's Office Policy Manual.



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Timing: Approx. 2 min

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.12. Notice Required on Competitive Market Analysis (CMA) or Broker's Price Opinion (BPO) for Purposes other Than Marketing.**
 - This rule clarifies that when a BPO or CMA are prepared for any reason **other than an anticipated sale**, purchase, or lease, they are not considered real estate brokerage services and any compensation received for such preparation need not be paid to the Brokerage Firm unless otherwise stated in the Office Policy Manual. In these instances, a notice must also be included stating: **"This evaluation was prepared by a licensed Broker and is not an appraisal. This evaluation cannot be used for the purposes of obtaining financing."**

Teaching Points:

- These types of evaluation cannot be used for the purposes of obtaining financing.
- Notice must be included in the document.
- Compensation received for the preparation of these types of evaluations

is not required to be paid to the Broker's Brokerage Firm, unless stated otherwise in Brokerage Firm's Office Policy Manual.

- **When, how and why are these evaluations used? Especially for brokers that have never been asked to or prepared them before.**

Compliance - New Rules Highlights

6.13 Offers must be Presented to Other Broker.

A Broker must present all offers to the other Consumer's Broker if such other Consumer has an unexpired Listing Contract. If the Broker has made reasonable, but unsuccessful, attempts to present an offer to the other Consumer's Broker, the Broker must present the offer to the other Consumer's Broker's Employing Broker. If no Employing Broker exists, or if reasonable attempts to present the offer to the Employing Broker have failed, the Broker may present the offer directly to the other Consumer.

6.14 Contracts.

(C) Listing must be in Writing.

Regardless of the Brokerage Relationship, all Listing Contracts for the sale, lease or exchange of real property **must be in writing** prior to performing any Real Estate Brokerage Services.

(G) Review of Deeds.

Brokers should not give advice based on their review of deeds for conveyance of real property unless such deeds are drafted by the Broker.

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.13. Offers must be Presented to Other Broker**
 - A Broker must present all offers to the other Consumer's Broker if such other Consumer has an unexpired Listing Contract. If the Broker has made reasonable, but unsuccessful, attempts to present an offer to the other Consumer's Broker, the Broker must present the offer to the other Consumer's Broker's Employing Broker. If no Employing Broker exists, or if reasonable attempts to present the offer to the Employing Broker have failed, the Broker may present the offer directly to the other Consumer.
- **6.14.C and G - Contracts.**
 - **C** - This rule was modified to clarify that all **Listing Contracts** for the sale, lease or exchange of real property must be in writing prior to performing any real estate brokerage services.
 - **G** - This rule was also modified to clarify that Brokers should not give advice based on their review of deeds for conveyance of real property,

unless such deeds are drafted by the Broker.

There are 4 Commission-approved Deed forms effective 1/1/20:

- Quit Claim Deed
- Bargain and Sale Deed
- Warranty Deed
- Special Warranty Deed

Brokers should not draft deeds, but rather seek the advice of legal counsel.

Compliance - New Rules Highlights

6.15 Sign Crossing.

(C) The burden of inquiry is on the Broker to determine the existence of the Listing Contract and to advise the Consumer to seek guidance from a licensed attorney.

6.16 Access Information for a Property.

A Broker who is not the owner's Broker is prohibited from sharing access information to a property with any third party, such as an assistant, home inspector, contractor, or a Consumer without prior authorization from the owner's Broker.

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.15.C - Sign Crossing.**
 - This rule was modified to codify part of Commission Position Statement 3 (Concerning former Rule E-13) and incorporates the provision that the “burden of inquiry is on the Broker to determine the existence of the Listing Contract and to advise the Consumer to seek guidance from a licensed attorney.”
 - Broker has no obligation to investigate if either is checked “Is Not” on the contract.
 - **“Seller represents that Seller Is Is Not currently a party to any listing agreement with any other broker to sell the Property.”**
 - **“Buyer represents that Buyer Is Is Not currently a party to any agreement with any other broker to represent or assist Buyer in the location or Purchase of Property.”**
- **6.16. Access Information for a Property.**

- This new rule clarifies that property access information must not be shared with any third party without prior approval from the owner's Broker.

Sellers Listing Contract - 9.2

178 9.2. Property Access. Access to
179 9.2.1. Broker may access the Property may be by:
180 ☐ Manual Lock Box ☐ Electronic Lock Box ☐ Manual
181 Lock Box
182 ☐
183 ☐
184 Other instructions: _____
185 9.2.2. Other than Broker, Seller further authorizes the following persons to access the Property using the method
186 described in § 9.2.1.
187 ☐ Actively Licensed Real Estate Brokers ☐ Licensed Appraisers
188 ☐ Unlicensed Broker Assistants ☐ Unlicensed Inspectors
189 ☐ Other: _____



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Timing: Approx. 2 mins Move up to rule, chapter 6

Purpose of slide: New contract provision changes.

Citation: Exclusive Right to Sell Listing Contract 9.2

Instructor notes: Describe purpose and use of sections.

- 9.2 – Property Access
 - Means of access.
 - Authorization to access.

9.2.2 – Who should you authorize or not authorize entry to?

Compliance - New Rules Highlights

6.20 Transaction File Requirements.

Both a Broker and a Brokerage Firm must retain transactions files for all transactions **for a period of four (4) years** beginning from the consummation date of the transaction or the expiration date of any Listing Contracts that do not consummate. Required documents in a transaction file are designated in the **Commission's Transaction File Checklist** and may be found on the Division's website. A Broker is not required to obtain and retain copies of existing public records, title commitments, loan applications, lender required disclosures, or related affirmations from independent third party closing entities after the closing date.

Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

ADD LINK FOR CHECKLIST TO SLIDE

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.20. Transaction File Requirements.**
 - This new rule clarifies that both a Broker and a Brokerage Firm must retain transaction files for a period of four (4) years, beginning from the transaction close date or the expiration date of any Listing Contracts that do not end up closing. A Commission Transaction File Checklist designating the required documents in a transaction file will be provided by the Division on its website.

Compliance - New Rules Highlights

6.26 Actions when License is Suspended, Revoked, Expired or Inactive.

Upon suspension, revocation, expiration, or transfer to Inactive Status of a License, the Broker or Brokerage Firm is responsible for immediate compliance with the following:

(C) If an Employing Broker:

(6) If a Brokerage Firm's License becomes Inactive, Expired or revoked, the Employing Broker will have seven (7) days to notify all Consumers impacted as to the effect of such license status change will have on the Associate Brokers and all pending transactions. The Employing Broker is responsible for accounting for all funds, returning all Trust and Escrow Account records and making all final disbursements to the rightful beneficiaries within thirty (30) days of the change in license status. The Employing Broker is also responsible for **providing the Commission with a full list of all impacted Consumers'** contact information within seven (7) days and for maintaining all records for four (4) years.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

- **6.26.C.6 - Actions when License is Suspended, Revoked, Expired or Inactive.**
 - This rule was modified to add the requirement that any Independent Broker or Brokerage Firm must provide a full list to the Commission of all impacted Consumer's contact information within seven (7) days of the change of license status.

Compliance - New Rules Highlights

Chapter 7: Use of Standard Forms

Requirements of using standard forms in real estate transactions for Brokers.

Chapter 8: Declaratory Orders

Procedures to petition the Commission for a declaratory order.

Chapter 9: Commission Review of Initial Decisions and Exceptions

Requirements for the review of the initial decision by the Commission and procedures for filing exceptions.



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Timing: Approx. 1 mins

Purpose of slide: To inform brokers of changes to the Real Estate Commission rules.

Instructor notes:

The Division has a link on its website that provides the adopted rules and substantive changes: [Adopted Rules and Substantive Changes](#)

Chapter 7: When performing real estate brokerage services, Brokers are authorized by statute to complete standard forms for use in a real estate transaction, including forms intended to convey personal property as part of the real estate transaction. Chapter 7, formerly known as the F Rules, specifies the requirements of using standard forms for Brokers.

There were no substantive modifications made to these rules except for the repeal of former Rule F-2(A) and Rule F-2(H) because they are no longer necessary.

Chapter 8, formerly known as the I Rules, specifies the procedures to petition the Commission for a Declaratory Order.

Chapter 8 was re-organized to follow the process in sequence from filing a petition to appealing the Commission's declaratory order.

A Declaratory Order is used to terminate a controversy or remove uncertainty to an issue.

Chapter 9, formerly known as the K Rules, sets forth the requirements for the review of initial decisions by the Commission and the procedures for filing exceptions. This chapter encourages electronic service between the parties and was re-organized to follow the exceptions process in sequential order. Chapter 9 was modified to aid pro-se litigants in understanding the exceptions process.

Compliance - Investigative Stats

July 1, 2018- June 30, 2019:

- 919 Complaints received against real estate brokers.
- 261 Investigative Dismissals.
- 224 Investigations Resulting in Discipline.
- Total 485 Investigations completed.



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Timing: Approx. 1 mins

Purpose of slide: To update brokers of top license law violations and investigative stats.

Citation: Division of Real Estate Investigation Unit

Instructor notes:

These statistics are for fiscal year 2018-2019 (July 1, 2018- June 30, 2019)

- Complaints received is the total number of complaints received by the Division of Real Estate. Cases that do not constitute license law violations are dismissed on intake.
- Investigative Dismissals are cases that went to investigation and were subsequently dismissed.
- Completed Investigations is in regard to cases that have been fully investigated and closed or investigated and discipline was administered.
- The remainder of the cases were dismissed upon intake or referred to another authority for investigation.

Compliance - Top 6 Violations

1. Incompetency/Unworthy Practice
2. Not Reporting Criminal Guilty Plea or Conviction
3. Advertising Violations
4. Failure to Disclose Material Facts
5. Property Management Contract and Accounting Issues
6. Dishonest Dealing

Timing: Approx. 2 mins

Purpose of slide: To update brokers of top license law violations and investigative stats.

Citation:

Division of Real Estate Investigation Unit, Rule 6.2 (competency), Rule 6.10 (advertising), Commission Position 46, Commission Position 27.

Instructor notes:

These statistics are for fiscal year 2018-2019 (July 1, 2018- June 30, 2019), Does not include Continuing Education Compliance Audits.

- Brokers are required by law to be competent in their area of practice. If a broker is not competent in a specific area of practice the broker should partner with an experienced broker or seek education/credentialing to make the broker competent. (Rule 6.2)
- If a broker is found guilty of certain crimes they are obligated to report that to the Division of Real Estate upon conviction. Failure to report may result in fines, license suspension, or license revocation. (Rule 6.23)
- Brokers must ensure that all advertising is in compliance with Division (Rule 6.10)
- Brokers must understand their obligations to disclose material facts. This course will cover disclosure issues later in more detail. (See CP-46)

- Brokers acting as property managers must be competent in their area of practice and must understand their accounting obligations under Division of Real Estate Rules. Property managers must also be competent in the preparation and management of contracts (Chapter 5 rules).
- Being dishonest in the representation of consumers is a major violation and will be pursued by the Division of Real Estate in order to ensure consumer protection.

Compliance - Investigation Tips

1. Respond to the complaint and provide all information requested.
1. Do not tamper with evidence! FELONY
1. Do not get unnecessarily stressed or nervous.
1. The Division investigates the complaint.
1. The Real Estate Commission imposes the discipline.



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Timing: Approx. 1 mins

Purpose of slide: Help brokers navigate the investigative process.

Citation: Division of Real Estate Investigation Unit

Instructor notes:

When the Division receives a complaint investigators are obligated to ensure that no license law violations have occurred and that brokers acted in a competent manner. The Division is not “picking” on brokers when we ask for files, but rather investigators are ensuring a thorough review of all information to ensure a judgement is made that is fully informed by the facts. The investigator’s job is to gather the facts, which they do through witness interviews and evidence collection.

We are not out to “get” brokers.

1. Brokers should comply with all document requests as soon as possible. Delaying document requests only delays the investigative process.
2. Tampering with evidence is potentially criminal and speaks to a broker’s character. Hiding or altering evidence may result in a revocation of license and criminal charges. DO NOT DO IT!
3. About 88% of the complaints that we receive end up as dismissals (either at intake or after investigation). While a complaint is a serious matter, the licensee should not stress unnecessarily about the complaint. Provide what was requested and answer all investigator questions promptly and honestly.
4. Division staff does not impose discipline, the Real Estate Commission is the

authority that administers all disciplinary actions against brokers. Further, Division staff do not write legislation or law. The Division's job is to implement and enforce statutes and laws that are created by the State of Colorado legislature.

Compliance - Audit Stats

Continuing Education Compliance Audits

- 1400 audits completed in 2019
- Average non-compliant: 24.5%

Timing: Approx. 1 mins

Purpose of slide: To update brokers of top license law violations and investigative stats.

Citation: Division of Real Estate Investigation Unit

Instructor notes:

These slide statistics are for 2019 education compliance audits.

- CE non-compliance statistics for the 12-month period of 4th Quarter 2018 through 3rd Quarter 2019:
- 4Q18: 48 non-compliant of 240 audited = 20%
- 1Q19: 60 non-compliant of 242 audited = 25%
- 2Q19: 55 non-compliant of 240 audited = 23%
- 3Q19: 150 non-compliant of 500 audited = 30%

Compliance - Continuing Education

Brokers Must:

- Ensure compliance with Chapter 4 Rules.
- Retain CE class certificates.
- Do NOT accept inaccurate certificates. Should you accept a certificate for 6 CE credits when the class was only 2 hours long?
- Report education provider violations.



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Timing: Approx. 1 mins

Purpose of slide: Inform brokers of issues seen when auditing continuing education.

Citation: Division of Real Estate Education, Communication, and Policy Unit

Instructor notes:

1. The Division of Real Estate Chapter 4 Rules clearly define continuing education requirements and continuing education provider requirements. Brokers should be familiar with the requirements of Chapter 4 and must ensure that a provider is properly accredited to offer continuing education credits. Brokers can check the approved course list to verify approval on the Division's website.
2. Brokers must maintain proof that they have completed continuing education in the form of a completion certificate. Brokers must help the Division hold education providers accountable. A broker should never accept a certificate for credits that are not earned.
3. 50 Minutes of education must be provided for each hour of CE granted. Brokers should not accept certificates listing hours of CE credit they have not earned.
Example: A broker takes a 2 hour course and receives a certificate for 4 hours.
 1. Providers must maintain sign-in sheets in order to prove broker attendance. If a provider does not have a sign-in sheet they may not be able to prove your attendance and your credits may not be honored.
4. The Division of Real Estate does not have the capacity to audit all continuing education course offerings, so we look to brokers to ensure that providers are providing professional education and adhering to the regulatory requirements.

If a provider is doing something wrong, let the Division know so we can address the issue.

Compliance - Continuing Ed. Issue

Certificates must contain:

1. Accurate Course Title
2. Course Completion Date
3. CE Credits Earned
4. Broker Name
5. Signature or Other Authentication by Instructor/Provider
6. Course Approval # (not required but helpful)



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Timing: Approx. 1 mins

Purpose of slide: Inform brokers of issues seen when auditing continuing education

Citation: Division of Real Estate Education, Communication, and Policy Unit

Instructor notes:

1. Brokers should make sure they have a valid continuing education certificate when completing an approved continuing education course. If a broker is unable to provide acceptable proof of education completion it may result in discipline and fines.

Compliance - Continuing Ed. Issue

What can happen if a broker is not compliant with CE Requirements?

1. Missing 1-10 credit hours = \$250.00 fine
2. Missing 11-24 credit hours = \$500.00 fine

Missing any of the required ACU courses:

1. 6 hours Contracts class, and
2. 6 Hours Current Legal Issues class

Discipline subject to change.

Timing: Approx. 1 min

Purpose of slide: Inform brokers of discipline administered for failure to comply with continuing education requirements

Citation: Division of Real Estate Education, Communication, and Policy Unit, Rule 6.25.A.

Instructor Notes: These are the fines administered for missing CE credits as well as what happens if a broker misses a required ACU.

REMINDER: These fines and course requirements are for brokers that have already renewed their license and did not meet the minimum education hour requirement. If a license is still active, a broker should review the Division website to find alternatives to Annual Commission Update courses in the event they missed an essential course.

Compliance - Continuing Ed. Issue

If any elective credits are missing the broker must take an equal number of hours to come back into compliance.

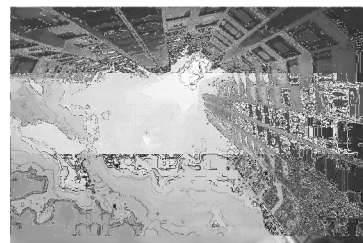
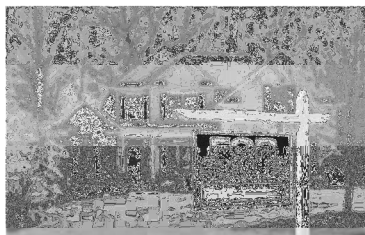
Timeframe to take Make-Up Coursework = 30 days.

Timing: Approx. 1 min

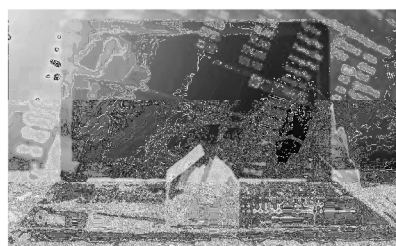
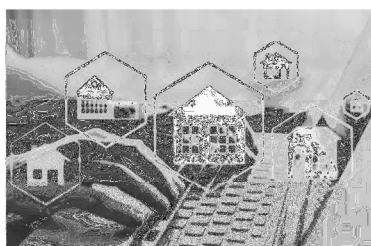
Purpose of slide: Inform brokers of discipline administered for failure to comply with continuing education requirements

Citation: Division of Real Estate Education, Communication, and Policy Unit

Instructor Notes: Brokers do not get away with missing education credits. Missing required education hours can cost brokers time and money.



General Practice Issues



Title Slide for Slides:
Timing for Section: 118 mins

General Practice Issues

- Disclosure - Adverse Material Facts
- Intellectual Property
- Technology and Privacy Issues
- Property Management

Introductory Title Slide

Instructor notes: These are the compliance issues to be presented in the course. Read slide and continue.

Disclosure - Adverse Material Facts

Information pertaining to the property that may have an “adverse” effect on one of the parties’ interest in the transaction.

- The Commission believes that disclosure of known adverse material facts is an important requirement that brokers must undertake in order to protect Colorado buyers and sellers. Accordingly, real estate brokers must disclose those facts they actually know, that a reasonable person would ascribe actual significance to and are contrary to the interests of a party in a real estate transaction. To the extent a broker is unclear about whether a known fact that affects the physical property is adverse or material, the broker should err on the side of disclosing the fact.
- (Reference: **CP-46**)
- Seller **MUST** also disclose to Buyer any adverse material facts **actually known**.



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Timing: Approx. 3 mins

Purpose of slide: Brokers must understand when disclosure is required.

Citation:

Citation: Blacks Law, §12-10-404(3)(a), **Commission Position Statement 46**.

Instructor notes: Read definition and continue

- Adverse Material Fact: Information pertaining to the property that may have an “adverse” effect on one of the parties interest in the transaction.
 - Examples of material facts include facts affecting title, facts affecting the physical condition of the property and environmental hazards affecting the property.
 - Real estate brokers must disclose those facts they actually know.
 - Seller must disclose to Buyer any adverse material facts actually known.
 - A licensee, “owes no duty to independently verify the accuracy or completeness of statements made...”

Disclosure - New Language 18.2.1 (Seller Listing Contract)

404 **18.2. Seller's Obligations.**
 405 **18.2.1. Seller's Property Disclosure Form.** ~~Disclosure of known material latent (not obvious) defects is required by~~
 406 ~~law. Seller ☐ Agrees ☐ Seller ☐ Agrees ☐ Does Not Agree~~ to provide a Seller's Property Disclosure form completed to
 407 Seller's current, actual knowledge. Colorado law requires Seller to disclose certain facts regardless of whether Seller is providing a
 408 Seller's Property Disclosure form. Typically, the contract requires disclosure of adverse material facts actually known by Seller.
 409 **18.2.2. Lead-Based Paint.** Unless exempt, if the improvements on the Property include one or more residential
 410 dwellings for which a building permit was issued prior to January 1, 1978, a completed Lead-Based Paint Disclosure (Sales) form
 411 must be signed by Seller and the real estate licensees, and given to any potential buyer in a timely manner.
 412 **18.2.3. Carbon Monoxide Alarms.** Note: If the improvements on the Property have a fuel-fired heater or appliance, a
 413 fireplace, or an attached garage and one or more rooms lawfully used for sleeping purposes (Bedroom), Seller understands that
 414 Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within fifteen feet of the
 415 entrance to each Bedroom or in a location as required by the applicable building code, prior to offering the Property for sale or lease.
 416 **18.2.4. Condition of Property.** The Property will be conveyed in the condition existing as of the date of the sales
 417 contract ~~for Sale or lease~~Lease of the Property, ordinary wear and tear excepted, unless Seller, at Seller's sole option, agrees in
 418 writing to any repairs or other work to be performed by Seller.
 419



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Timing: Approx. 1 mins

Purpose of slide: Inform brokers or new language in section 18.2.1 of the Seller
 Listing Contract

Citation: Listing Contract 18.2.1

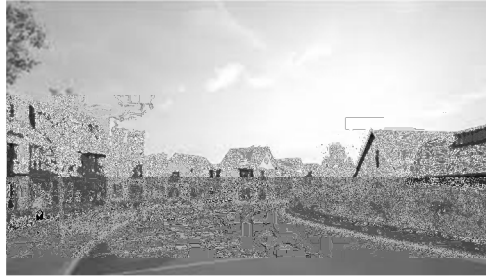
Instructor notes:

New Language:

1. 18.2.1 Seller's Property Disclosure Form- "Colorado law requires Seller to disclose certain facts regardless of whether Seller is providing a Seller's Property Disclosure form. Typically, the contract requires disclosure of adverse material facts actually known by seller."
2. 18.2.4 Condition of Property- Language changed from "lease" to "Lease of the Property", removed "sales" now reads "contract for Sale"

Case Study - Disclosure of Material Facts

Case of the Parking Nightmare



Intro slide to Case Study
Case Study Slides:

Disclosure - The Facts

A buyer purchased a single family home in a mountain community. When the buyer purchased the home they were told that there was a gravel parking space on the west side of the home and there was additional parking available. Soon after closing the buyer began having parking access issues due to neighbors claiming that the gravel area was actually attached to their property and started blocking access to come in and out of the gravel area.

The buyer contacted her Buyer's Agent and expressed their dismay.



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Timing: Approx. 1 min

Purpose of slide: Introduce facts of disclosure case study

Instructor notes: Read the slide information and continue to next slide.

Disclosure - The Facts

The buyer's broker offered little in the way of a solution but did state that, "There has been an issue for a few years with that neighbor and parking space. I think it has even gone before City Council."

Unsatisfied with the buyer broker's response the buyer filed a complaint with the Division of Real Estate for failure to disclose an adverse material fact.



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Timing: Approx. 1 min

Purpose of slide: Introduce facts of disclosure case study

Citation:

Instructor notes: Read the slide information and continue to next slide.

Disclosure - The Facts

Upon investigation it was determined that:

- The buyer's broker and seller's broker were both members of the same real estate team.
- The employing broker served as an agent for the seller and his associate broker served as an agent for the buyer.
- This was the associate broker's first transaction.
- The seller's broker had knowledge of the parking issue because they previously served as property manager for the subject property.



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Timing: Approx. 2 mins

Purpose of slide: Help brokers think through disclosure issues

Instructor notes: Read the slide.

Disclosure - The Facts

Upon investigation it was determined that:

- The listing stated that there were 6 parking spots available to the subject property.
- Buyer's broker was aware of the parking disputes prior to purchase offer being signed.
- The buyer broker executed both Seller's Closing Statement and the buyer's Closing Statement.
- Seller's Broker did not review the Seller's Closing Statement and buyer's broker signed the settlement statement on behalf of the seller's broker because the seller's broker was out of town for closing.



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Timing: Approx. 2 mins

Purpose of slide: Help brokers think through disclosure issues

Instructor notes: Read the slide, if time permits this is a good area for further discussion.

Disclosure - The Facts

Upon investigation it was determined that:

- The buyer's broker stated that though they had contracted to represent the client as an agent they believe they were actually acting as a transaction broker in this specific transaction.
- The seller's broker (employing broker) stated that the associate had access to all their emails and the contracts and forms related to this transaction and was unclear why this may present an issue in relation to proper client representation. Additionally, the buyer's broker had access to the electronic signature of the seller's broker.

Timing: Approx. 2 mins

Purpose of slide: Help brokers think through disclosure issues

Instructor notes: Read the slide.

Disclosure - Violations

Both brokers were cited for:

1. Failure to disclose known adverse material facts
2. Dishonest dealing
3. Unworthy, Incompetent Practice
4. Double-Ending a Transaction without Disclosure

Employing broker was cited for additional violations:

1. Employing Broker Responsibilities
2. High Level of Supervision under 2 Years



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Timing: Approx. 2 mins

Purpose of slide: Outline violations

Instructor notes: Read the slide and continue.

1. Both the seller's broker and the buyer's broker had knowledge about the parking issue and failed to disclose to the buyer.
 2. Brokers were really in a dual agency situation because both the employing broker (seller's broker) and the association broker (buyer's broker) were representing their respective clients as agents and were members of the same real estate team. Additionally, the associate broker had access to all documents on both sides of the transaction. The associate broker (buyer's broker) signed documents on behalf of the seller's broker (employing broker). This allowed confidential information to be shared.
 3. The brokers were at times acting as transaction brokers and at other times acting as agents. Due to this arrangement both brokers failed to provide required brokerage duties.
 4. Brokers were acting as dual agents.
-
1. The employing broker failed to provide supervision and guidance to the associate broker. Employing broker failed to provide a high level of supervision over the associate broker and encouraged the associate to violate license law.

Disclosure - Outcome Employing Broker

The Result:

1. License revoked
2. Fined \$17,500
3. Public Censure



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Timing: Approx. 1 mins

Purpose of slide: Inform brokers that disclosure is not clear-cut.

Instructor notes:

1. Reminder: Brokers have no duty to investigate, but do have an obligation to act competently. Brokers must ensure they are asking sellers the right questions to ensure material facts are properly disclosed.

Disclosure - Outcome Associate Broker

The Result:

1. License placed on probation
2. Fined \$7,500
3. Public Censure
4. Coursework
 1. Brokerage relationships
 2. Ethics
 3. Contracts



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Timing: Approx. 1 mins

Purpose of slide: Inform brokers that disclosure is not clear-cut.

Instructor notes:

Additionally broker must now recommend title exam and encourage clients to seek legal counsel in regard to title issues.

Disclosure - Best Practices

Have a robust conversation with your client and if in doubt, disclose known material facts.

There are more complaints and civil actions concerning someone's NOT disclosing than there are for OVER disclosing.

Disclosure must be made even if the disclosure may “harm” your client.



Timing: Approx. 1 min

Purpose of slide: Help Brokers understand what should be disclosed

Instructor notes: Brokers should have a conversation with sellers very early regarding proper disclosure in order to properly prepare them and avoid disclosure issues from arising during and after the transaction. Additionally, broker **MUST** disclose known facts, conflicts of interest, affiliated business arrangements, and any other information material to the transaction.

If a material fact is known by the broker it **MUST** be disclosed by law, regardless if it harms the party, the broker, or both.

Intellectual Property

Intellectual property rights impact real estate practice and may create liability issues for brokers. We will define and discuss intellectual property right definitions in the coming slides.



Timing: Approx. 1 min

Purpose of slide: Introduction the legal categories of intellectual property.

Instructor notes:

1. Patents- Protect functional or ornamental features.
2. Copyrights- Protect works of authorship
3. Trademarks- Protect Brands
4. Trade Secrets- Protect secret information
5. Right of Publicity- Protects right of individual to control the commercial use of his or her name, image, likeness, or other unequivocal aspects of one's identity.

Intellectual Property

5 Types of Intellectual Property Rights

1. Patents
2. Copyrights
3. Trademarks
4. Trade Secrets
5. Right of Publicity



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Timing: Approx. 1 min

Purpose of slide: Introduction the legal categories of intellectual property.

Instructor notes:

1. Patents- Protect functional or ornamental features.
2. Copyrights- Protect works of authorship
3. Trademarks- Protect Brands
4. Trade Secrets- Protect secret information
5. Right of Publicity- Protects right of individual to control the commercial use of his or her name, image, likeness, or other unequivocal aspects of one's identity.

Intellectual Property - Copyright

Creative works are protected by copyright.

Another person's photograph, painting, video, music or words may be items that cannot be used without permission, because doing so could result in liability for copyright infringement.

Copyright in these areas generally flow automatically to the creator, and can last over 100 years.

Timing: Approx. 1 min

Purpose of slide: Define copyright

Instructor notes: Brokers encounter copyright material in advertising, photos, building and floor plans, and Attorney Drafted Forms.

Intellectual Property - Trademarks

Trademarks include: Words, symbols, colors, sounds, or smells that someone is using in conjunction with a product or service.

Examples include the name Pepsi, the “Just Do It” tag line, the Apple logo, or the shape of a Coca Cola bottle.

Trademark law is designed to protect consumers from confusion and counterfeits.

Timing: Approx. 1 min

Purpose of slide: Define Trademarks

Instructor notes: Brokers encounter trademarks in advertising and marketing material.
Many brokerages have their name or tag line trademarked.

Intellectual Property - Infringements

Avoiding Copyright and Trademark Infringement:

1. Do not copy text from websites that do not belong to you. CITING THE SOURCE DOES NOT CREATE PERMISSION TO USE TEXT. Always create your own property and advertising verbiage, or buy it from a professional.
2. Know where the content that you are using comes from.



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Timing: Approx. 1 mins

Purpose of slide: Tips for brokers to avoid Trademark Infringement

Instructor notes:

The most common areas of violation for practitioners of Real Estate are Copyright and Trademark infringement.

These infringements happen when agents use **photos, descriptions, or marks** that they did not create, in print or publish them online.

Intellectual Property - Infringements

3. Do not use photos found on the internet unless you have permission of the owner of the image.
 - Take your own photos or buy/license photos from a professional or website such as istockphoto.com or Shutterstock. NEVER reuse photos from previous MLS listings.
4. Do not use builder floor plans or architectural images without the permission of the owner or creator.
 - Copyright in the plans for a building arises automatically and generally last for the life of the architect plus 70 years.



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Timing: Approx. 1 mins

Purpose of slide: Tips for brokers to avoid Trademark Infringement

Instructor notes:

- Brokers can be fined for the use of images without the permission of the image owner.
- Building floor plans are owned by the architect, builder, or developer and should never be used without express permission of the building plan owner(s).
- "Owner" above refers to the owner of the image or work.

Intellectual Property - Infringements

5. Never use another parties' branding, name, catch phrase, or logo in whole or in part in your advertising.
6. If you are creating a brand or naming an entity, research whether such items are already in use by another party.



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Timing: Approx. 1 min

Purpose of slide: Tips for brokers to avoid Trademark Infringement

Instructor notes:

Improper use of listing content can create legal problems for agents, and brokerages.

It's crucial that real estate professionals know their rights regarding listing photos and listing content, as well as risk management strategies that can be used to avoid copyright infringement.

Intellectual Property - Consent

221 **10.4. Ownership of Materials and Consent.** Seller represents that all materials (including all photographs, renderings,
222 images, videos or other creative items) supplied to Broker by or on behalf of Seller are owned by Seller, except as Seller has disclosed
223 in writing to Broker. Seller is authorized to and grants to Broker, Brokerage Firm and any MLS (that Broker submits the Property
224 to) a nonexclusive irrevocable, royalty-free license to use such material for marketing of the Property, reporting as required and the
225 publishing, display and reproduction of such material, compilation and data. This license survives the termination of this Seller
226 Listing Contract. Unless agreed to otherwise, all materials provided by Broker (photographs, renderings, images, videos, or other
227 creative items) may not be used by Seller for any reason.



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Timing: Approx. 1 mins- **Update Redline**

Purpose of slide: Inform brokers of Division approved contract language related to ownership of intellectual property.

Citation: 10.4 Exclusive Right to Sell Listing Contract

Instructor notes:

- Notice that the seller in the above paragraph is representing that he owns the material, and that he is authorized to grant license to its use.
- Many Intellectual Property Rights (IPR) details granted or received are determined by contract with vendors, and clients. A good example of this permission is in paragraph 10.4 of the Colorado Listing Contract.
- The listing agreement covers information regarding SELLER ownership of intellectual property in 10.4.
- Use of the material is for marketing of the property.
- As with other private property rights, the law generally requires the owner of IPRs to enforce them against infringers via a private civil action. The costs of civil actions in these areas can run into the tens or hundreds of thousands of dollars.

Intellectual Property

Intellectual Property Rights are a complicated subject.

In general:

**DON'T USE ITEMS THAT YOU DO NOT HAVE PERMISSION TO
USE, OR HAVE NOT CREATED YOURSELF.**

Timing: Approx. 1 min

Purpose of slide: Tips for brokers to avoid improper use of intellectual property.

Instructor notes: Get legal advice regarding Intellectual Property Rights.

Technology and Privacy Issues

Video & Audio Recording Devices in Listings

1. Are they legal?
1. Wiretapping
1. Fair Housing concerns



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Timing: Approx. 2 mins

Purpose of slide: Review use of audio and video recording devices.

Citation:

FAA. (2019). Unmanned Aircraft Systems. Retrieved from <https://www.faa.gov/uas/>,
HB 97-1268. Assembly. Reg. Sess. 1997., DORA. (2019).

Housing Discrimination. Retrieved from <https://www.colorado.gov/pacific/dora/civil-rights/housing-discrimination>

Instructor notes:

1. Video recordings are legal unless the camera is placed in areas where privacy is expected, like bathrooms.
 - Colorado is a one-way party state, which means an individual who is a party to a conversation is allowed to record audio without permission from the other party.
2. However, any audio recorded from a video camera placed in a home may be considered wiretapping, since the owner of the cameras is not considered a party to the conversation.
3. Viewing the recordings of showings may result in fair housing issues by allowing the sellers to view the interested parties, which may influence the seller to reject or approve a potential buyer based off of protected classes such as race, sexual orientation, disability, etc.

Case Study - Cameras in the Property

Case of the Maligned Video



Intro to Case Study
Case Study Slides

Cameras in Property Issues - Facts

A couple listed their vacation home for sale with a local broker. After a month a broker contacted the listing broker to request a preview. The listing broker agreed and gave the contacting broker the lock box code.

A few days later the listing broker was contacted by the sellers, as they were extremely upset about a video they had seen on social media showing their vacation home and a description of the home as “in foreclosure”, and detailed “damage to the home”.

Timing: Approx. 1 min

Purpose of slide: Introduce facts of case.

Instructor notes: Read facts of case and continue.

Cameras in Property Issues - Facts

The sellers did not authorize any video marketing on their property and wanted to know how the video landed on social media, who granted permission, and why the video was stating the property was in foreclosure when it was not.

The listing broker discovered that the broker that had contacted him for a preview had produced a video of the home and posted it to his brokerage firm website that is linked to Facebook and Twitter pages.



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Timing: Approx. 1 min

Purpose of slide: Introduce facts of case.

Instructor notes: Read facts of case and continue.

Cameras in Property Issues

The listing broker contacted the broker who posted the videos and demanded they be removed. Broker complied and removed all videos within minutes of the request, however, the video had already been viewed more than 1,800 times. Listing broker contacted the Division of Real Estate to file a complaint.

The video producing broker responded to the complaint by claiming that he was serving a prospective client that is located on the western slope and did not have ready access to the listed home which was in Summit County, however, the broker was unable to produce a signed brokerage disclosure form or a valid exclusive right to buy contract.



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Timing: Approx. 1 min

Purpose of slide: Introduce facts of case.

Instructor notes: Read facts of case and continue.

Cameras in Property- Dig Deeper

1. Did the broker that produced the video do anything wrong?
1. What if the broker had only shared the video with a prospective buyer and did not share the video on social media, would that change anything?
1. What could the broker have done differently?

Timing: Approx. 4 mins

Purpose of slide: Review the case with the class and determine what went wrong.

Instructor notes:

1. Did the broker that produced the video do anything wrong?
 - Yes. The broker did not have mandatory disclosure forms to prove he had an established relationship with any buyers. The broker also advertised a property without permission. The broker may also be liable for harming the sellers because the broker falsely claimed the property was in “foreclosure”, and he detailed “damage to the home”.
 - Violated Commission Rule 6.10.F, C.R.S. 12-10-408(2)(a) - Broker Relationships.
2. What if the broker had only shared the video with a prospective buyer and did not share the video on social media, would that change anything?
 - No. The broker did not have permission to film the inside of the home.
3. What could the broker have done differently?
 - If the broker had permission to film, shared it only with his clients, and expressed to his clients that the video should not be shared with anyone else he may have avoided many of these issues.

Cameras in Property- Outcome

Discipline:

1. Broker Fined: \$1,725.00
2. Additional Course Work:
 - 6 Hours Ethics
 - 6 Hours Brokerage Relationships

Timing: Approx. 1 mins

Purpose of slide: Penalty.

Instructor notes:

Resulted in fine and course work.

Technology and Privacy Issues

- Drones
- Case Study
- Data Privacy and Protection- Office Policies

Timing: Approx. 1 min

Purpose of slide: Introduction to next section covering privacy issues in relation to new technology in real estate practice.

Instructor notes: Following slides further expand on these topic areas and their impact on real estate practice.

1. Drones are being utilized more and more in real estate listings and as a tool in showings. Brokers must be aware of laws and regulations related to drones.
2. Video and audio technology being ever present in modern society can pose challenges to real estate brokers.
3. Technology may allow for illegal discrimination, brokers must navigate their use of technology around fair housing requirements.
4. Data theft is a major challenge for real estate practitioners. We will discuss legal requirements for data privacy and protection.
5. A case study covering use of drones is introduced to reinforce learning concepts.

Technology and Privacy Issues - Drones

Federal Regulations

1. Drones must be registered.
2. Any operator must fly the drone within eyesight.
3. Cannot be flown within controlled airspace.
4. Cannot be flown higher than 400 feet.
5. Drones used for commercial uses like photography must have a licensed pilot through the FAA.
6. Do not fly over groups of people in public or private space.

Timing: Approx. 1 mins

Purpose of slide: Define regulations related to drones.

Citations:

- FAA. (2019). Unmanned Aircraft Systems. Retrieved from <https://www.faa.gov/uas/>, CDOT. (2019). Fly UAS Responsibly. Retrieved from <https://www.codot.gov/programs/aeronautics/FlyUASResponsibly>.
- In order to fly your drone under the FAA's Small UAS Rule (Part 107), you must obtain a **Remote Pilot Certificate** from the FAA.
- Drone operators are also called a **Drone Pilot**.

Technology and Privacy Issues - Drones

Local Regulations

1. Local counties and municipalities have specific laws that may vary from each other.
2. Ski resorts restrict flying near ski slopes.
3. Restrictions over city property in some counties, such as golf courses, parks, and city buildings.

Timing: Approx. 1 mins

Purpose of slide: Define regulations related to drones.

Citations:

- FAA. (2019). Unmanned Aircraft Systems. Retrieved from <https://www.faa.gov/uas/>, CDOT. (2019).
- Fly UAS Responsibly. Retrieved from <https://www.codot.gov/programs/aeronautics/FlyUASResponsibly>.

Technology and Privacy Issues - Drones

Privacy concerns

1. Trespassing:

Might the use of an unmanned aerial vehicle (UAV) to observe, record, transmit, or capture images of another person when the other person has a reasonable expectation of privacy be considered criminal trespassing?

2. Harassment:

Might the use of an UAV to harass, annoy, or alarm another person, or to track a person's movements in or about a public place without the person's authorization be considered criminal harassment?

3. Civil Liability:

Might the unauthorized use of an UAV on someone's property open you up to civil liability and damages?



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Timing: Approx. 2 mins

Purpose of slide: Define regulations related to drones.

Citations:

- FAA. (2019). Unmanned Aircraft Systems. Retrieved from <https://www.faa.gov/uas/>, CDOT. (2019).
- Fly UAS Responsibly. Retrieved from <https://www.codot.gov/programs/aeronautics/FlyUASResponsibly>.

Privacy Concerns :

- Colorado Trespassing Statutes: §§ 18-4-502, 503, and 504, C.R.S.
- Colorado Harassment Statutes: §§ 18-9-111, C.R.S.
- Defending and paying for the expense of a civil lawsuit.

Technology and Privacy Issues - Drones

Practice Pointers:

1. All drones used for the intent of acquiring real estate photos should use a licensed pilot (Remote Pilot Certificate, Drone Pilot).
2. If residential photos from a drone will display a neighbor's house, the pilot will need to receive consent from those homeowners.
3. Drone footage of nearby parks may not be allowed by the local county, and you should verify those regulations.
4. Verify with the HOA to receive permission to film public areas of the community.
5. Verify with property management for commercial properties to receive permission to film public areas of the community and exterior buildings.



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Timing: Approx. 2 mins

Purpose of slide: Define regulations related to drones.

Citations:

- FAA. (2019). Unmanned Aircraft Systems. Retrieved from <https://www.faa.gov/uas/>, CDOT. (2019).
- Fly UAS Responsibly. Retrieved from <https://www.codot.gov/programs/aeronautics/FlyUASResponsibly>.

Case Study - Drones

Case of the Unauthorized Drone



Intro to Case Study
Case Study Slides:

Drone Drama - Facts

A couple listed their home with Seller Broker. Seller Broker entered the home into the MLS as an active listing and included numerous internal and external property photos. Seller Broker specifically noted in the MLS listing that per the Seller's request there would be no showings on Sundays.

A buyer was interested in the property and asked their Buyer Broker for a showing. The prospective buyer had seen the MLS photos but wanted to see more of the backyard area and its views and asked for a showing on a Sunday.

Timing: Approx. 1 min

Purpose of slide: Introduce facts of the case study.

Instructor notes: Read slide and continue

Drone Drama - Facts

The Buyer Broker informed the prospective buyer that per the Seller's request there were no Sunday showings of this particular property.

Pressed by the prospective buyer the Buyer Broker agreed to go out to the property with a camera drone and get more detailed footage of the backyard area.



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Timing: Approx. 1 min

Purpose of slide: Introduce facts of the case study.

Instructor notes: Read slide and continue

Drone Drama - Facts

When the Buyer Broker arrived at the subject property he did not knock on the door or otherwise try and inform the Sellers of his presence and his intent to film the backyard. The Buyer Broker launched his camera drone and flew it into the property's backyard.

The Sellers were in the hot tub when they noticed the drone flying overhead. One of the Sellers got out of the hot tub and followed the drone back to the street where he observed the Buyer Broker gathering up the drone and driving away. The Seller noticed the broker's agency and contact information on the vehicle the Buyer Broker was driving.

Timing: Approx. 1 min

Purpose of slide: Introduce facts of the case study.

Instructor notes: Read slide and continue

Drone Drama - Facts

Later that day the Buyer Broker uploaded the video to his company website. Prospective Buyers liked the video and shared it on Facebook with a number of friends.

The shared footage had shown the Sellers in the hot tub without their permission. Sellers and Seller Broker filed a complaint against Buyer Broker with the Division of Real Estate and called the police to file a criminal complaint.

Timing: Approx. 1 min

Purpose of slide: Introduce facts of the case study.

Instructor notes: Read slide and continue

Drone Drama - Dig Deeper

1. What did the Buyer Broker do wrong?
2. How would this scenario be different if the Buyer Broker captured children swimming in diapers or naked in the backyard?
3. How would the scenario change based on posting vs not posting the image?

Timing: Approx. 4 mins

Purpose of slide: Review case facts and determine what broker did wrong.

Instructor notes: FIX NUMBERS IN NOTES

All Brokers need to get permission, not just listing the broker!

1. The broker should not have operated a drone on the subject property without the express permission of the owners or their agent. The broker captured images that may be a criminal and/or civil violation of the Seller's privacy rights. Did not have an FAA Pilots License.
 1. By the Buyer Broker sharing the video on his website he opened it up to being shared with others. Once the video was on Facebook the broker no longer had control of who could access and share the video.
2. This is a realistic scenario that could have criminal implications for the broker with footage of underage persons. If that information was shared on the internet it could be construed as trafficking illegal material.
3. If the broker does not post the images on a website or social media site it may protect them from some liability. Once images are posted online it is impossible to fully remove them or control who shares the images.
 1. There could also be civil repercussions such as a lawsuit and possible damages.

Drone Drama - Dig Deeper

1. Does posting videos such as this present any Copyright issues?
1. What should the Buyer Broker have done instead?
1. Violating Municipal Ordinances and HOA rules?
1. E&O Issues?

Timing: Approx. 3 mins

Purpose of slide: Review case facts and determine what broker did wrong.

Instructor notes:

1. If the broker created the videos the broker would technically own that material, but if they do not have permission to film, that may present other user rights and privacy issues.
2. Wait until Monday for the showing or tell the prospective buyer that all that the currently available images on MLS are all that is available and a showing can be arranged for a later date.
3. Each municipality and Owners Association has different ordinances and rules regarding drone operation. Brokers must ensure they, or the professionals they hire, are acting within the law and owners association rules.
4. It is unclear how E&O insurance providers will handle issues created by drone use.

Note: While “HOAs” (Homeowners Associations) is most commonly used, there are also other Owner Associations, such as Commercial Owner Associations, Property Owner Associations, Irrigation Owner Associations, etc.

Technology and Privacy Issues

Best Practices

Data Privacy and Protection

- Brokers should have a policy for maintaining and destroying Personal Identifying Information (PII). Such PII would include:
 - Social Security number, Driver's License number or Identification Card number, Military, or Passport Identification number, Medical information, Health Insurance Identification number, Biometric data (ie. fingerprints).



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Timing: Approx. 1 min

Purpose of slide: Discuss data privacy and protection

Citation:

Consumer Data Privacy Bill HB18-1182 and relevant statute: C.R.S. §6-1-713

(Disposal of Personal Identifying Information – Policy – Definitions)

and 713.5 (Protection of Personal Identifying Information – Definition), and §6-1-716.

C.R.S., (Notification of Security Breach).

Instructor notes:

Safety Issues and concerns: Discussion of asking for information before showing an Open House – ie. Driver's License.

Technology and Privacy Issues

Best Practices

Data Privacy and Protection -

- Any broker who receives Personal Identifying Information (PII) needs to ensure they dispose of it correctly.
- All paper materials should be appropriately shredded or burned.
- All digital materials should be permanently deleted from email folders and digital devices.
- All offices should have the guidelines regarding PII included in their Office Policy Manuals.
- **Best Practice: Minimize Personal Identifying Information received by Broker.**



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Timing: Approx. 2 mins

Purpose of slide: Discuss data privacy and protection

Citations:

Consumer Data Privacy, C.R.S. §6-1-713 (Disposal of Personal Identifying Information – Policy – Definitions)

and 713.5 (Protection of Personal Identifying Information – Definition), and §6-1-716. C.R.S., (Notification of Security Breach).

Instructor notes: Go through these best practices.

Property Management/ Landlord - Topics

New Legislation:

- Rental Application Fees - HB19-1106
- Time Period to Cure Lease Violations - HB19-1118
- Residential Tenants Health & Safety Act - HB19-1170
- Bed Bugs - HB19-1328

Timing: Approx. 1 min

Purpose of slide: Introduce subject that will be covered related to Property Management

Instructor notes: Update leases and property management agreements.

These laws apply to brokers acting as landlords.

Rental Application Fairness Act

- Can only charge for actual cost of processing the application.
- Applies to all fees / Charges prior to tenancy.
- Must give accounting for the rental application cost.
- Must refund any unused portion of the rental application within 20 days.

Timing: Approx. 2 mins

Purpose of slide: Inform brokers of new requirements of Rental Application Fairness Act.

Citation: Rental Application Fairness Act, HB19-1106 Bill Summary.

Instructor notes:

The act states that a landlord may not charge a prospective tenant a rental application fee unless the landlord uses the entire amount of the fee to cover the landlord's costs in processing the rental application.

A landlord also may not charge a prospective tenant a rental application fee that is in a different amount than a rental application fee charged to another prospective tenant who applies to rent:

- The same dwelling unit; or
- If the landlord offers more than one dwelling unit for rent at the same time, any other dwelling unit offered by the landlord.

The act requires a landlord to provide to any prospective tenant who has paid a rental application fee either a disclosure of the landlord's anticipated expenses for which the fee will be used or an itemization of the landlord's actual expenses incurred. The landlord is required to make a good-faith effort to refund any unused portion of an application fee within 20 days.

Rental Application Fairness Act

Rental Application Fairness Act:

- Rental Qualifications must be fair and consistent.
- Cannot consider credit history beyond 7 years.
- Arrests cannot be a factor in determining eligibility.
- Criminal History beyond 5 years cannot be considered: except in criminal offenses involving meth, sex offenders, homicide and related offenses, and stalking.
- Denial letter required, electronic notification OK unless paper requested.

Triple damages if process not followed.



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Timing: Approx. 2 mins

Purpose of slide: Inform brokers of new requirements of Rental Application Fairness Act.

Citation: Rental Application Fairness Act, HB19-1106 Bill Summary (effective 8/2/19).

Instructor notes:

- If a landlord denies a rental application, the landlord shall provide the prospective tenant a written notice of the denial that states the reasons for the denial.
- A landlord who violates any of the requirements created in the act is liable to the person who is charged a rental application fee for triple the amount of the rental application fee, plus court costs. A landlord who corrects or cures a violation not more than 7 calendar days after receiving notice of the violation is immune from liability. A person who intentionally and in bad faith brings a meritless claim against a landlord is liable for the landlord's court costs and reasonable attorney fees in defending the claim.

Time Period to Cure Lease Violation

- Extends Time to Cure Lease Violation from 3 days to 10 Days.
- Exception for “substantial” violations.
- Notice to Quit for Repeat Violations also extended to 10 days.
- Exception for landlords owning 5 or fewer single family rental homes; only 5 days notice required.



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Timing: Approx. 3 mins

Purpose of slide: Inform brokers or requirements under Time Period to Cure Lease Violations.

Citations: Time Period To Cure Lease Violation Act, HB19-1118 Bill Summary, SB18-120 Bill Summary (effective 5/20/19).

Instructor notes: Clean up notes.

The act concerns the time frames in which certain landlords must give notice to tenants prior to commencing eviction proceedings for failure to pay rent or for a first or subsequent violation of any other condition or covenant other than a substantial violation. Under most residential agreements, a landlord is required to give 10 days notice. Under a nonresidential or an employer-provided housing agreement, a landlord is required to give 3 days notice. For an exempt residential

agreement, meaning for the lease of a single family home by a landlord who owns 5 or fewer single family rental homes, 5 days notice is required.

Current law requires a landlord to provide a tenant 3 days to cure a violation for unpaid rent before the landlord can initiate eviction proceedings based on that unpaid rent. The bill allows landlords to initiate an eviction proceeding after providing 3 days' notice but requires landlords to accept payment of all outstanding amounts due

before the date by which a tenant is required to appear in court in an eviction proceeding. For a second or subsequent violation of the same agreement within 6 months of a violation, a landlord may require payment within 3 days.

Property managers should contact an attorney to determine which process applies to their practice. "Substantial" is defined by statute.

Time Period to Cure Lease Violation

3 day notice still allowed for:

- Notice to Quit for “Substantial” Violation.
- Commercial Properties



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Timing: Approx. 1 min

Purpose of slide: Inform brokers or requirements under Time Period to Cure Lease Violations.

Citations: Time Period To Cure Lease Violation Act, HB19-1170 Bill Summary, SB18-120 Bill Summary.

Instructor notes: Read slide and continue.

Residential Tenants Health and Safety

Warranty of Habitability Act:

- Sets new required response and response times for potential violations.
- Within 24 hours of receiving notice under the Act landlord must respond in writing with their intent to remedy, timeline for the start of repairs and estimated completion of project.

Timing: Approx. 1 mins

Purpose of slide: Inform brokers of requirements under Warranty of Habitability laws.

Citation:

§38-12-501(1)(a), C.R.S., § 38-12-505, C.R.S., Residential Tenants Health and Safety Act, HB19-1170 Bill Summary (effective 8/2/19).

Instructor notes:

The residential premises is in a condition that is materially interferes with a Tenant's life, health, or safety, or otherwise unfit for human habitation.

Once a property manager receives a warranty of habitability notice from a tenant, they must:

- Respond within 24 hours after receiving the notice.
- The response must indicate the landlord's intent for remedying the condition.
- Provide an estimate for when remediation will commence.
- Provide an estimate for when remediation will be completed

Residential Tenants Health and Safety

Warranty of Habitability Act:

- 96 hour response time required for landlord to respond and requires specific action all “life/health/safety” concerns.
- With proper 10 day notice tenant is allowed to withhold rent.
- Tenant can order and pay for repairs, but cannot make repairs themselves.



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Timing: Approx. 1 mins

Purpose of slide: Inform brokers of requirements under Warranty of Habitability laws.

Citation:

§38-12-501(1)(a), C.R.S., § 38-12-505, C.R.S., Residential Tenants Health and Safety Act, HB19-1170 Bill Summary.

Instructor notes: Provide an example of a notice by tenant and applicable response by landlord.

Any condition that is on the 505 list is a violation OR any condition that makes the premises unfit for human habitation OR any condition that materially interferes with tenant's life, health or safety.

Changing AND to OR modifies the standard from “materially hazardous and dangerous” to “interferes with” tenant's life, health or safety.

Landlords get 24 to 96 hours from the time they receive electronic notice (or written notice) to “commence remedial action by employing reasonable efforts” depending on the nature of the alleged breach of warranty of habitability.

If the alleged breach is on the 505 list or is another issue that “otherwise makes the premises unfit for human habitation”, landlords get 96 hours to commence remedial action.

In order to avoid breaching, they must meet the standards above within the following time frames:

- 505 list items: 96 hours.
- Otherwise inhabitable issues: 96 hours.
- Materially interferes with life, health, or safety: 24 hours.
- Mold: Within 96 hours the property manager must mitigate immediate risk by installing a containment, stopping active source of water to the mold, and installing a high-efficiency particulate air filtration device to reduce tenant's exposure to mold.

If the issue is a life, health, or safety scenario, the tenant will most likely want to live somewhere else until the issue is remediated. In this case, the tenant has the legal right to demand that the landlord move the tenant to:

- A comparable unit as selected by the landlord (no cost to tenant)
- A hotel room as selected by the landlord (no cost to tenant)
- In both cases, the tenant is still expected to pay rent on the vacant property.

“505 List” - § 38-12-505, C.R.S.

The “505 List” has been expanded to include mold and appliances.

A Residential Premises is deemed uninhabitable if:

- There is **mold** that is associated with dampness, or there is any other condition causing the residential premises to be damp, which condition, if not remedied, would materially interfere with the health or safety of the tenant, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their proper functioning and intended use;

Or it substantially lacks any of the following characteristics:

- Functioning **appliances** that conformed to applicable law at the time of installation and that are maintained in good working order;



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Timing: Approx. 2 mins

Purpose of slide: Inform brokers of requirements under Warranty of Habitability laws
– 505 List.

Citation:

§38-12-501(1)(a), C.R.S., § 38-12-505, C.R.S., Residential Tenants Health and Safety Act, HB19-1170 Bill Summary.

Instructor notes:

New addition of mold and appliances.

“505 List” Recap- § 38-12-505, C.R.S.

- Waterproofing and weather protection of roof and exterior walls maintained in good working order, including unbroken windows and doors;
- Plumbing or gas facilities that conformed to applicable law in effect at the time of installation and that are maintained in good working order;
- Running water and reasonable amounts of hot water at all times furnished to appropriate fixtures and connected to a sewage disposal system approved under applicable law;
- Functioning heating facilities that conformed to applicable law at the time of installation and that are maintained in good working order;
- Electrical lighting, with wiring and electrical equipment that conformed to applicable law at the time of installation, maintained in good working order;



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Timing: Approx. 2 mins

Purpose of slide: Inform brokers of requirements under Warranty of Habitability laws
– 505 List.

Citation:

§38-12-501(1)(a), C.R.S., § 38-12-505, C.R.S., Residential Tenants Health and
Safety Act, HB19-1170 Bill Summary.

Instructor notes: Additional items on the 505 List.

“505 List” Recap- § 38-12-505, C.R.S.

- Common areas and areas under the control of the landlord that are kept reasonably clean, sanitary, and free from all accumulations of debris, filth, rubbish, and garbage and that have appropriate extermination in response to the infestation of rodents or vermin;
- Appropriate extermination in response to the infestation of rodents or vermin throughout a residential premises;
- An adequate number of appropriate exterior receptacles for garbage and rubbish, in good repair;
- Floors, stairways, and railings maintained in good repair;
- Locks on all exterior doors and locks or security devices on windows designed to be opened that are maintained in good working order; or
- Compliance with all applicable building, housing, and health codes, the violation of which would constitute a condition that materially interferes with the life, health, or



Timing: Approx. 2 mins

Purpose of slide: Inform brokers of requirements under Warranty of Habitability laws
– 505 List.

Citation:

§38-12-501(1)(a), C.R.S., § 38-12-505, C.R.S., Residential Tenants Health and Safety Act, HB19-1170 Bill Summary.

Instructor notes: Additional items on the 505 List.

Landlord and Tenant Duties - Bed Bugs

- Requires specific response time by landlord within 96 hours after receiving notice of bed bugs reported by tenant.
- Prohibited from renting unit if bed bugs are known or suspected.
- Must disclose if bed bugs infestation within last 8 months.
- If confirmed Bed Bugs infestation landlord must inspect all contiguous units that the landlord owns.



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Timing: Approx. 2 mins-

Purpose of slide: Inform brokers of new requirements regarding bed bugs in residential premises.

Citation: Landlord And Tenant Duties Regarding Bed Bugs Act, HB19-1328 Bill Summary (effective 1/1/20).

Instructor notes:

The act requires a tenant to promptly notify the tenant's landlord via written or electronic notice when the tenant knows or reasonably suspects that the tenant's dwelling unit contains bed bugs.

A tenant who gives the notice electronically shall send it only to the e-mail address, telephone number, or electronic portal specified by the landlord in the rental agreement for communications.

In the absence of such a provision in the rental agreement, the tenant shall communicate with the landlord in a manner that the landlord has previously used to communicate with the tenant.

The tenant shall retain sufficient proof of the delivery of the electronic notice.

Not more than 96 hours after receiving notice of the presence or possible presence of bed bugs, a landlord:

- Shall inspect or obtain an inspection by a qualified inspector of the dwelling unit; and

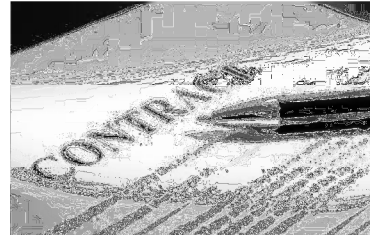
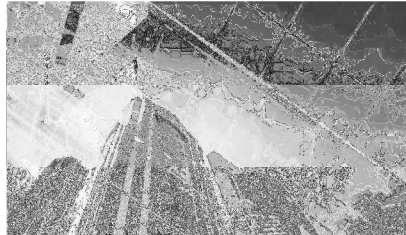
- May enter the dwelling unit or any contiguous unit for the purpose of conducting the inspection.

If the inspection of a dwelling unit confirms the presence of bed bugs, the landlord shall also cause to be performed an inspection of all contiguous dwelling units as promptly as is reasonably practical.

- The landlord is responsible for all costs associated with an inspection for, and treatment of, bed bugs, except as otherwise provided in the statute.
- The tenant shall comply with reasonable measures to permit the inspection and treatment of bed bugs and is responsible for the costs associated with preparing the unit for inspection and treatment.
- A tenant that knowingly and unreasonably fails to comply with the inspection and treatment requirements of the Bill is liable for the cost of any bed bug treatments of the dwelling and any contiguous units if the need for treatments arises from their noncompliance.



Regulation, Contracts/Form and Legislation



Title slide
Covers slides:

Regulation, Contracts/Forms and Legislation

- TD-1000 - Revised in 2019
- New Contract and Forms List
- Contract Changes Overview
- New Legislation



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Introductory Slide

New TD-1000

The Colorado Real Property Transfer Declaration (TD-1000) form has recently been revised and updated.

It provides essential information for the county assessor to help ensure that real property assessments for property tax purposes are fair and uniform.

Any conveyance documents, such as deeds, that are subject to the documentary fee submitted to the county recorder for recording must be accompanied by a TD-1000 form.



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Timing: Approx. 1 mins

Purpose of slide: Clarify requirements of the TD-1000

Instructor notes: Some of the new modifications to the form include:

- Date of contract. (As noted in the form instructions: "This allows the assessor to establish the exact date of the "meeting of the minds" concerning the date the sales price was agreed upon. Even though only "closed" sales are used to set values, this information may help the assessor to eliminate atypical sales conditions.")
- Contracted price (if different from final sales price) has been added to the form.
- Adding a notation in the form that states: "If no personal property is listed, the entire purchase price will be assumed to be for the real property."
- Type of Sale. Checkboxes to choose either: "Builder (new construction); Private (for sale by owner); Public (MLS or Broker Representation); or Other (describe the other type of sale)".
- Type of Financing. (Adding a checkbox for: "None" (all cash or cash equivalent)).
- A new question asking: "Was an independent appraisal obtained in conjunction with this transaction?"

It is well-advised to review this document prior to closing so that its completion can be done in a complete, thorough and accurate manner for submission to the county assessor's office.

New TD-1000 - What is it for?

- Every 2 years, county assessors must appraise all the real estate in the State of Colorado. The sales prices of sold properties, taken from the deeds, are used in that appraisal process.
- There may be circumstances surrounding a sale that provides a selling price that is not truly representative of a property's value.
 - For instance, this may occur in a transaction where the property sales price is discounted for a family member.



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Timing: Approx. 1 min

Purpose of slide: Clarify requirements of the TD-1000

Instructor notes: The TD-1000 declaration form is used to alert an assessor's office concerning sales that may not accurately reflect a property's value.

Appraisers will then typically need to adjust a sale price when these unique circumstances exist, or possibly disqualify these sales.

New TD-1000 - Who Signs?

This declaration form must be completed and signed by either the grantor (seller) or grantee (buyer).

Important to note that the TD-1000 form is not recorded, is kept confidential and not available for public inspection at the county assessor's office.

Timing: Approx. 1 min

Purpose of slide: Clarify requirements of the TD-1000

Instructor notes:

1. The TD-1000 declaration form is used to alert an assessor's office concerning sales that may not accurately reflect a property's value. Appraisers will then typically need to adjust a sale price when these unique circumstances exist, or possibly disqualify these sales.
2. Remember, if the TD-1000 form is not completed and submitted when the conveyance documents are presented for recording, the county assessor will send a compliance notice. Then, if a completed and signed form is not returned to the assessor within 30 days of notice, the assessor may impose a penalty of \$25.00 or 0.025% (0.00025) of the sale price, whichever is greater.
3. The TD-1000 form and instructions can be found under the "Forms" tab on the Colorado Division of Property Taxation.

New Contract and Forms List

THIS IS NOT A CONTRACTS CLASS !

- New Deed Statute
 - Created “statutory exceptions”
 - Deed preparation - title companies can now create deeds - no longer the broker’s scrivener.
 - Changes in the deed statute required changes to several forms.
- Section 13 CBS- Replaced Effective July 1, 2019 (Due to statutory changes)
 - Contract no longer requires a listing of all the Schedule B-2 Exceptions in the deed.

Timing: Approx. 4 mins

Purpose of slide: Introduce forms and contract changes already in effect.

The most notable changes due to the new Deeds Statute are as follows:

1. Created “statutory exceptions” – no more listing all the Schedule B-2 Exceptions in the deed.
2. Deed preparation – title companies can now create deeds – no longer the broker’s scrivener.
3. Changes in the deed statute required changes to several forms.

New Contract and Forms List

THIS IS NOT A CONTRACTS CLASS !

- Closing Instructions - See next slides
- Seller Listing Contract Sec. 14.3 - See next slides

Timing: Approx. 2 mins

Purpose of slide: Introduce forms and contract changes already in effect.

The most notable changes due to the new Deeds Statute are as follows:

1. Created “statutory exceptions” – no more listing all the Schedule B-2 Exceptions in the deed.
2. Deed preparation – title companies can now create deeds – no longer the broker’s scrivener.
3. Changes in the deed statute required changes to several forms.

Closing Instructions

New Form as of July 1, 2019.

- Revised to accommodate the Deed Statute (HB19-1098).
- Preparation of Documents: Now provides more specific authority to title companies to prepare documents for closing.
- Since a scrivener agreement is no longer required for deeds, Closing Instructions were updated.
- Forms Committee worked closely with the title industry's trade association (LTAC) to create a set of Closing Instructions that worked for everyone.

Broker should use the new CREC approved form. (See also CP-34)



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Timing: Approx. 2 mins

Purpose of slide: New Closing Instructions

Instructor Notes:

Deed legislation amends Sec 38-30-113, C.R.S.

Sec. 38-30-116.5, C.R.S., concerns the preparation of deeds in connection with the issuance of a policy of title insurance by a title company.

See Commission Position Statement 34 – Refers to when closing instructions must be completed by a real estate broker. If broker is completing the closing services, broker is responsible for completing the Commission-Approved Closing Instructions form.

Closing Instructions

- **Important Changes:**
 - Preparation of Documents
 - Wire and Other Frauds.
 - FIRPTA and Colorado Withholding.
 - Scrivener Agreement Removed



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Timing: Approx. 1 mins

Purpose of slide: New Closing Instructions

Instructor Notes: Read slide and continue

Closing Instructions - Best Practices

1. CREC Closing Instructions should be signed on or about the execution of the Contract.
2. There should only be one set of Closing Instructions signed by the parties.
3. The CREC Closing Instructions are only for closing the real estate. There may be another set for closing the buyer's loan.
4. If title company requires Closing Instructions different then the CREC form, brokers should be asking why? In many cases, a title company may be using a different set of closing instructions to add indemnifications, releases or other provisions that usually are detrimental to the broker's client.



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Timing: Approx. 5 mins

Purpose of slide: New Closing Instructions

- Instructor Notes:

Important points:

So what do you do if you are asked to another set of closing instructions, or a set different than the CREC form?

1. CREC Closing Instructions should be signed on or about the execution of the Contract.
2. There should only be one set of Closing Instructions signed by the parties.
3. The CREC Closing Instructions are only for closing the real estate. There may be another set for closing the buyer's loan.
4. If title company requires Closing Instructions different then the CREC form, brokers should be asking why? In most cases, the only reason the title company wants a different set of closing instructions is to add indemnifications, releases or other provisions that usually are detrimental to the broker's client.

Seller Listing Contract 14.3 Conveyance

370 14.3. Conveyance. In case of Sale, Seller agrees to convey the Property, by a good and sufficient: ☐ special warranty deed
371 ☐ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's deed ☐
372 ~~deed. If title will be conveyed using a special warranty deed or a general warranty deed,~~
373 ~~unless otherwise specified in §28 (Additional Provisions) below, title will be conveyed "subject to statutory exceptions" as defined~~
374 ~~in §38-30-113 C.R.S. Seller's conveyance of the Property to a buyer will convey only that title Seller has in the Property.~~



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120

Timing: Approx. 2 min

Purpose of slide:

Instructor notes: Listing Contract was updated to be consistent with deed statute and contract to include adding language about the statutory exceptions.

New Contract and Forms List

- Listing Contracts
 - Seller
 - Buyer
 - Landlord
 - Tenant
 - Amend Extend
- Brokerage Disclosure
 - To Seller
 - To Buyer
 - To Landlord
 - To Tenant
- Agreement to Revive Contract
- Bills of Sale



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121

Timing: Read slide and continue.

Purpose of slide: Introduce forms and contract changes which take effect on 1/1/2020.

Instructor notes: Read slide and continue

New Contracts and Forms

1. Exclusive Right to Sell Listing Contract
1. Exclusive Right to Buy Listing Contract



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122

Timing: Approx. 1 mins

Purpose of slide: Discuss Listing Contract changes.

Listing Contracts had not been updated for several years. As such there were several inconsistencies between the Listing Contract and the Contract as well as changes due to technology changes.

Listing Contract Updated Sections

- Seller Listing Contract Sections
 - 3.5
 - 9.3, and 9.4
 - 11.7 and 11.8
 - 13.11, 13.12, 13.13, 13.14, and 13.15
- Buyer Listing Contract Sections
 - 15 and 16



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123

Timing: Approx. 1 min

Purpose of slide: Introduce forms and contract changes which take effect on 1/1/2020.

Instructor notes: Read changes outline below and continue.

These are important changes that the Division wanted to outline, however this slide does not list all updated sections.

Affordable Housing Disclosure - 3.5

39 3.5 ☐ 3.5. Affordable Housing. If this box is checked, Seller represents, to the best of Seller's actual knowledge, the
40 Property IS part of an affordable housing program. If this box is NOT checked, Seller represents that Property is NOT part of an
41 affordable housing program.



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Timing: Approx. 3 min Purpose of slide: Affordable Housing Issues.

Citation: Exclusive Right to Sell Listing Contract 3.5

Instructor notes:

Sec. 3.5 of the Exclusive Right-to-Sell Listing Contract was added to address property within and subject to an Affordable Housing Program.

3.5 Affordable Housing. If this box is checked, Seller represents, to the best of Seller's actual knowledge, the Property IS part of an affordable housing program. If this box is NOT checked, Seller represents that Property is NOT part of an affordable housing program.

There have been a lot of problems with affordable housing restrictions and the disclosure of the same to Sellers and Buyers.

The above concerns should all be taken into consideration. Reviewing the Title Commitment and Declarations and Covenants may indicate restrictions.

Example: City and County of Denver Affordable Housing Program.

What questions should you ask? What information can one find out?

Sellers Listing Contract - 9.3

190 9.3. Broker Marketing.

191 9.3.1. The following specific marketing tasks will be performed by Broker:

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194 —

195

196

197

198

199 9.3.2. Seller authorizes videos and pictures of both the interior and exterior of the Property except:

200



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125

Timing: Approx. 2 mins-

Purpose of slide: New contract provision changes.

Citation: Exclusive Right to Sell Listing Contract 9.3

Instructor notes: Describe purpose and use of sections.

- 9.3 – Broker Marketing
 - Specific marketing tasks.
 - Authorization of videos and pictures.
 - What are examples of some marketing tasks?

Sellers Listing Contract

206 9.4. Marketing Termination. Broker and Brokerage Firm may discontinue using any marketing materials if, in Brokerage
207 Firm's sole discretion, Broker or Brokerage Firm receives a credible threat of litigation or a complaint regarding the use of such
208 marketing material. Upon expiration of the Listing Period and request from Seller, Broker will use reasonable efforts to remove
209 information submitted to the MLS and/or information exchanges. Seller understands that information submitted to either the MLS
210 or information exchanges may be difficult, if not impossible, to remove from syndicators and the Internet and releases Broker from
211 any liability for Broker's inability to remove the information.



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Timing: Approx. 2 mins

Purpose of slide: New contract provision changes.

Citation: Exclusive Right to Sell Listing Contract 9.4

Instructor notes: Describe purpose and use of sections.

- 9.4 – Marketing Termination
- What are “reasonable” efforts to seek removal of information?

Seller Listing Contract-11.7 and 11.8

247 11.7. Advisory: FIRPTA. Pursuant to the Foreign Investment in Real Property Tax Withholding Act (FIRPTA), the
248 Internal Revenue Service and the Colorado Department of Revenue (IRS) may require closing company to withhold a substantial
249 portion of the Seller's proceeds of this Sale be withheld after Closing when Seller either (1) is a foreign person or (2). If the box in
250 this Section is checked, Seller represents that Seller ☐ IS a foreign person for purposes of U.S. income taxation and authorizes
251 Broker to disclose such status. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for
252 purposes of U.S. income taxation.
253 11.8. Colorado Withholding. The Colorado Department of Revenue may require a portion of the Seller's proceeds be withheld
254 after Closing when Seller will not be a Colorado resident after closing. Seller should inquire of Seller's tax advisor to
255 determine Closing, if withholding applies or if an exemption exists, not otherwise exempt.



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Timing: Approx. 2 min

Purpose of slide: Outline NEW FIRPTA language in Contacts and Forms.

Citation: Exclusive Right to Sell Listing Contract 11.7, 11.8

Instructor notes: Review Changes and Continue

- 11.7- FIRTPA
- What should you ask?
- What are the ramifications for not complying?

Seller Listing Contract- 13.1

13. INCLUSIONS AND EXCLUSIONS.

13.1. Inclusions. The Purchase Price includes the following items (Inclusions):

13.1.1. Fixtures. The following items are included if _____ Inclusions

- Attached. If attached to the Property on the date of this Seller Listing Contract, the following items are included unless excluded
under §13.2 (Exclusions-(§ 13.2): lighting, heating, plumbing, ventilating- and air conditioning fixturesunits, TV antennas, inside
telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-
in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including
remote controls) and garage door openers (including _____ remote controls). If checked, the following are owned by the Seller
and included (leased items should be listed under §13.1.5 (Leased Items): ☐ None ☐ Solar Panels ☐ Water Softeners ☐ Security
Systems ☐ Satellite Systems (including satellite dishes). If any additional items are attached to the Property after the date of this
Seller Listing Contract, such additional items are also included.

Other Fixtures:

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273

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If any fixtures are attached to the Property after the date of this Seller Listing Contract, such additional fixtures are also included in
the Purchase Price.



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Timing: Approx. 2 mins

Purpose of slide: New contract provision changes.

Citation: Exclusive Right to Sell Listing Contract 13.1

Instructor notes: Review Changes and Continue.

- 13.1-Inclusions and Exclusions

Seller Listing Contract- 13.1.2

275 ~~13.1.2. Personal Property. The following items are included if Inclusions – Not Attached. If on the Property,~~
276 ~~whether attached or not, on the date of this Seller Listing Contract, the following items are included unless excluded under §13.2~~
277 ~~(Exclusions (§ 13.2): storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and~~
278 ~~treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys.~~
279 ~~If checked, the following are included: ☐ Water Softeners ☐ Smoke/Fire Detectors~~
280 ~~☐ Carbon Monoxide Alarms ☐ Security Systems ☐ Satellite Systems (including satellite dishes); and carbon monoxide~~
281 ~~alarms, smoke/fire detectors and all keys.~~

Timing: Approx. 1 mins

Purpose of slide: Outline changes made to the personal property section of the contract.

Citation: Exclusive Right to Sell Listing Contract 13.1.2

Instructor notes: Review Changes and Continue.

- 13.1.2- Inclusions Not Attached

Seller Listing Contract- 13.1.3, 13.1.4

284 —The 13.1.3. Personal Property ~~to be conveyed at closing~~ Conveyance. Any personal property must be
285 conveyed by Seller free and clear of all taxes (except personal property taxes for the year of ~~closing~~ Closing), liens and encumbrances,
286 except — . Conveyance of all personal property will be by bill of sale or other
287 applicable legal instrument.
288 13.1.4. Other Inclusions. The following items, whether fixtures or personal property, are also included in the Purchase
289 Price:

Timing: Approx. 1 mins

Purpose of slide: Outline changes made to the personal property section of the contract.

Citation: Exclusive Right to Sell Listing Contract 13.1.3, 13.1.4

Instructor notes: Review Changes and Continue.

- 13.1.3- Personal Property Conveyance

Seller Listing Contract- 13.1.5, 13.2

296 13.1.5 Leased Items.

297 13.1.5.1 The following leased items are part of the transaction:

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299

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303 13.1.5.2 Lease Documents. Seller agrees to supply to buyer, as will be set forth in the final contract
304 between Seller and buyer, the documents between Seller and Seller's lessor regarding the lease, leased item, cost and other terms
305 including requirements imposed upon a buyer if buyer is assuming the leases.

306 13.2. Exclusions. The following are excluded (Exclusions):

307

308

309

310 Conveyance will be by bill of sale or other applicable legal instrument.

...



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Timing: Approx. 2 mins

Purpose of slide: Outline changes made to the leased items section of the contract.

Citation: Exclusive Right to Sell Listing Contract 13.1.5, 13.2

Instructor notes: Review Changes and Continue

- 13.1.5- Leased Items
- 13.1.5- Lease Documents
- 13.2- Exclusions
- Examples of leased items?

Buyer Listing Contract- 15 and 16

212 **15. WIRE AND OTHER FRAUDS.** Wire and other frauds occur in real estate transactions. Any time Buyer is supplying
213 confidential information such as social security numbers or bank account numbers, Buyer should provide the information in person
214 or in another secure manner.

215 **16. REMOVAL OF MARKETING MATERIAL.** Buyer acknowledges that marketing material used by the seller and the seller's
216 broker (e.g.: videos, photos, etc.) may be difficult, if not impossible, to remove from syndicators and the Internet and releases Broker
217 from any liability for Broker's inability to remove the information.



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Timing: Approx. 1 mins

Purpose of slide: New contract provision changes.

Instructor notes: Buyer Listing Contract was updated to add a warning about wire fraud.

Also updated to warn buyers that the broker isn't responsible for marketing material that remains on the internet after closing.

Describe purpose and use of sections.

- Section 15- Wire and Other Frauds
- Section 16- Removal of Marketing Material

Agreement to Revive Contract

- New Form
- Gives Brokers the right to revive the contract.
- Why? Because lenders have issues with getting a new contract.
- When should you use the form?
- Cannot use the form if Earnest Money is distributed.



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133

Timing: Approx. 2 mins

Purpose of slide: New form

Instructor notes: Review form.

- A limited purpose form used when a contract terminates due to its own provisions, and where the parties want the transaction to go forward.
- Also, if a long period of time goes by after termination of the original contract, it would not be recommended to use the form.

Bills of Sale

- Bill of Sale (Contract to Buy and Sell Real Estate)
- Bill of Sale (Personal Property Agreement)



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Timing: Approx. 1 mins

Purpose of slide: New Bills of Sale documents.

Instructor notes:

Two (2) Bills of Sale forms were created to aid brokers when conveying personal property as part of a real estate transaction.

These provisions line up with the Contract.

Bill of Sale (Contract to Buy and Sell Real Estate)

1. **Inclusions – Attached.** If the box is checked, the following personal property: ☐ Solar Panels ☐ Water Softeners ☐ Security Systems ☐ Satellite Systems (including satellite dishes).

2. **Inclusions – Not Attached.** Whether attached or not on _____ (the date of the Contract to Buy and Sell Real Estate between the Buyer and Seller) for the Property: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors, _____ garage door remote controls and all keys.

3. **Other Inclusions.** The following personal property is also conveyed by Seller to Buyer:

4. **Exclusions.** If listed below, the following items are EXCLUDED from this Bill of Sale and are NOT being conveyed to Buyer, even if stated in Sections #1 or 2 above:

5. **Conveyance.** The above personal property is being conveyed by Seller to Buyer free and clear of all taxes (except personal property taxes for the current year), liens and encumbrances, except _____. The personal property is in an “As Is” condition, “Where Is” and “With All Faults” without any representations or warranties of any kind except:



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Timing: Approx. 1 mins

Purpose of slide: Bill of Sale provisions for Contract to Buy and Sell Real Estate.

Instructor notes:

Bill of Sale (Contract to Buy and Sell Real Estate): - Notice that the provisions

line up with the contract.

Inclusions – Attached.

Inclusions – Not Attached.

Other Inclusions.

Exclusions.

Conveyance.

Bill of Sale (Personal Property Agreement)

1. **Personal Property.** The following personal property is also conveyed by Seller to Buyer:

2. **Title.** The above personal property is being conveyed by Seller to Buyer free and clear of all taxes (except personal property taxes for the current year), liens and encumbrances, except _____
_____. The personal property is in an "As Is" condition, "Where Is" and "With All Faults" without any representations or warranties of any kind except:



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Timing: Approx. 1 min

Purpose of slide: Bill of Sale provisions for Personal Property Agreement.

Instructor notes:

Bill of Sale (Personal Property Agreement): - Notice that the provisions line up with the Personal Property Agreement. Personal Property Bill of Sale should only be used if the Personal Property Agreement is being used.

Personal Property.

Title.

Important Case Law on Brokerage Relationships

Colorado Real Estate Commission v. Vizzi

- Real estate brokers cannot “contract away” their statutory “minimum duties”.
 - Must perform all the duties of a transaction broker - not just entry only.
 - A transaction broker assists one or more parties throughout a contemplated real estate transaction, assisting in the entire transaction and undertaking each of the duties set forth in the license law.



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Timing: Approx. 1 mins

Purpose of slide: Important case law.

Instructor notes: Vizzi case (2019 COA 33), (March 7, 2019). On October 7, 2019, the Colorado Supreme Court denied the Respondent's Petition for Writ of Certiorari.

- The Court of Appeals considered whether a licensed real estate broker can contract away his statutorily required obligations as a transaction broker.
- The court ruled that a transaction-broker's statutory duties are mandatory and cannot be contracted away. Statutory duties under Sec. 12-10-407(2), C.R.S. (formerly Sec. 12-61-807(2), C.R.S.).
- Case Facts: Vizzi provided unbundled real estate brokerage services in exchange for a flat fee to clients. In one case he contracted to only list the client's property on the MLS; and in the other instances he contracted to only provide a yard sign, a lock box, centralized showing services, and listings on the MLS. Vizzi was disciplined by the Commission pursuant to Sec. 12-10-217(1)(m), C.R.S. (formerly Sec. 12-61-113(1)(k), C.R.S.), requiring 12 hours of CE, and a fine of \$2,000 plus statutory surcharge. He entered into contracts that essentially disclaimed any responsibility to provide statutorily required services. Entering into the contracts in issue, he acted as a transaction-broker. As a

transaction-broker, he was obligated to perform statutorily specific mandatory duties.

Home Inspectors Sunrise Review (2019)

The Sunrise Report by the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) recommended that home inspectors should not be regulated by the State.

It found that even though a home inspector plays a large role in the price negotiations of a property and the peace of mind of a purchaser, based upon the few number of complaints in relation to the large number of real estate transactions that take place, the possibility for a consumer to be harmed is remote.



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Timing: Approx. 1 min

Purpose of slide: Update on recommendations of HOA Information and Resource Center.

Instructor notes:

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR) reviews proposed regulatory programs to determine if they are needed, and it also reviews existing programs and functions of government to ensure they are necessary, fair, effective and efficient.

COPRRR released its Report on Home Inspectors on October 15, 2019.

The full report can be found on the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) website.

Legislation

• Community Association Manager Program (CAM)

- On May 31, 2019, the Governor vetoed the bill to recreate the Community Association Manager Licensing Program.
- The Division has no jurisdiction over CAMs and they are not licensed.
- The Governor requested input from consumers and stakeholders to get input on effective and efficient regulation of CAMs and HOAs.
- The Legislature will consider the consumer and stakeholder input.



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Timing: Approx. 1 mins

Purpose of slide: To provide an update to the CAM program.

Instructor notes:

- Vetoed Bill: HB19-1212 (Recreate Homeowners' Association Community Manager Licensing Bill).
- The Governor's Veto Letter can be viewed here.
- The Governor's related Executive Order D-2019-006 (Directing a Stakeholder Process to Examine Community and Homeowner Associations) can be viewed here.
- Specifically, the Governor requested information and recommendations on the following:
 - The licensure of CAMs, considering recommendations from the 2017 DORA sunset report, and whether licensure is needed to protect consumer safety and is cost-effective;
 - Approaches that improve transparency among HOAs;
 - Methods to reduce costs and improve the transparency of HOA fees and fee schedules; and
 - Strategies to promote homeowner rights and consumer protections through an evaluation of the Colorado Common Interest Ownership Act and other related acts or rules.
 - 4 community and homeowner association stakeholder meetings were

held.

Legislation

• HOA Information and Resource Center

- The HOA Information and Resource Center sunsets on September 1, 2020, unless continued by the General Assembly.
- The Sunset Report by the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) made the following recommendations:
 - Continue the HOA Information and Resource Center for five years, until 2025.
 - Direct the Center to implement a dispute resolution process for HOA complaints.



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Timing: Approx. 1 min

Purpose of slide: Update on recommendations of HOA Information and Resource Center.

Instructor notes:

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR) reviews proposed regulatory programs to determine if they are needed, and it also reviews existing programs and functions of government to ensure they are necessary, fair, effective and efficient.

The full report can be found on the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) website.

HOA Legislation in 2019

- Colorado HB19-1050, encouraging the use of xeriscape in common interest communities was signed and enacted into law on March 7, 2019.
- Expands §38-33.3-106.5 of the Colorado Common Interest Ownership Act (CCIOA), which allows unit owners to use xeriscape or drought-tolerant vegetative landscapes to **property for which a unit owner is responsible, including a limited common element or property owned by the unit owner.**
- Associations may adopt and enforce design, aesthetic guidelines or rules on drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings that may be installed on the unit owner's property or on a limited common element or other

Timing: Approx. 1 mins

Purpose of slide: Update on recommendations of HOA Information and Resource Center.

Instructor notes:

Now includes limited common elements of a unit. What are some limited common elements? Something you have exclusive use to but is not owned by the owner such as backyards, common areas, etc.

HOA Document provision in CBS Sec - 7.2

Seller's Obligation to Provide HOA documents..

257 **7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association Documents (defined below),
258 at Seller's expense, on or before **Association Documents Deadline**. Seller authorizes the Association to provide the Association
259 Documents to Buyer, at Seller's expense. ~~Seller's obligation to provide the Association Documents is fulfilled upon Buyer's receipt~~
260 ~~of the Association Documents, regardless of who provides such documents.~~

261 **7.3. Association Documents.** Association documents (Association Documents) consist of the following:

262 **7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of organization, operating agreements,
263 rules and regulations, party wall agreements and the Association's responsible governance policies adopted under § 38-33.3-209.5,
264 C.R.S.;

265 **7.3.2.** Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or managers' meetings;
266 such minutes include those provided under the most current annual disclosure required under § 38-33.3-209.4, C.R.S. (Annual
267 Disclosure) and minutes of meetings, if any, subsequent to the minutes disclosed in the Annual Disclosure. If none of the preceding
268 minutes exist, then the most recent minutes, if any (§§ 7.3.1 and 7.3.2, collectively, Governing Documents); and

269 **7.3.3.** List of all Association insurance policies as provided in the Association's last Annual Disclosure, including,
270 but not limited to, property, general liability, association director and officer professional liability and fidelity policies. The list must
271 include the company names, policy limits, policy deductibles, additional named insureds and expiration dates of the policies listed
272 (Association Insurance Documents);

Timing: Approx. 2 mins-

Purpose of slide: Responsibility of Seller to provide HOA documents.

Instructor notes:

- **38-35.7-102. Disclosure - common interest community - obligation to pay assessments - requirement for architectural approval**
- **(1)** On and after January 1, 2007, every contract for the purchase and sale of residential real property in a common interest community shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form: THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE

ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

- **(2) (a)** The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for actual damages directly and proximately caused by such failure plus court costs. It shall be an affirmative defense to any claim for damages brought under this section that the purchaser had actual or constructive knowledge of the facts and information required to be disclosed. **(b) Upon request, the seller shall either provide to the buyer or authorize the unit owners' association to provide to the buyer, upon payment of the association's usual fee pursuant to section 38-33.3-317 (4), all of the common interest community's governing documents and financial documents, as listed in the most recent available version of the contract to buy and sell real estate promulgated by the real estate commission as of the date of the contract.**
- **(3)** This section shall not apply to the sale of a unit that is a time share unit, as defined in section 38-33-110 (7).
- Best Practices: At time of listing ask Seller to start getting the Association Documents.

Mortgage Loan Originator (MLO) Legislation in 2019

Temporary Authority and Colorado Temporary License

- Federal Law was created to grant temporary authority to allow for the employment transition of loan originators, and the Colorado Board of Mortgage Loan Originators adopted rule changes to reflect these requirements and be in accordance with the Nationwide Multistate Licensing System and Registry (NMLS).
- The rules allow for the issuance of a Colorado temporary license to originate loans for:
 - **Loan originators moving from a depository institution to a non-depository institution; and**
 - **State-licensed loan originators moving interstate.**



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Timing: Approx. 2 mins

Purpose of slide: MLO legislation

Citations:

- “S.A.F.E Mortgage Licensing Act of 2008” (12 U.S.C. 5101, *et. seq.*) - Section 1518, “Eliminating Barriers to Jobs for Loan Originators” to allow for the Employment Transition of Loan Originators;
- §12-10-701, *et seq.*, §§ 12-10-707, 12-10-711(11), and 12-10-717, C.R.S., and MLO Rules 2.4, 2.5, 2.6, 2.7, 2.9, and 2.10).

Instructor notes:

MLO Rules 2.4, 2.5, 2.6, 2.7, 2.9, and 2.10): Temporary Authority and Colorado Temporary License.

Temporary Licensure must meet certain conditions, including:

being employed and sponsored by a Colorado NMLS registered mortgage company;
having a responsible MLO, not having past license violations;
being registered in the NMLS or having been licensed in another jurisdiction; having
a background check; surety bond; and E& O insurance.

2020 Colorado Real Estate Manual

- For 2020, the Colorado Real Estate Manual will consist of the Division's licensing programs, their applicable statutes, rules and position statements, and landmark case law.
- The substantive topical sections that were in previous versions of the manual will be reviewed and updated for inclusion in 2021.
- The manual is a beneficial resource for new licensees and existing real estate brokers, mortgage loan originators, appraisers, and other real estate professionals.
- It also comes with an eBook download benefit to search the manual digitally.
- It can be purchased from Lexis/Nexis at:
<https://store.lexisnexis.com/products/colorado-real-estate-manual-skuusSku-us-bundle-28247-epub>



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Timing: Approx. 1 min

Purpose of slide: Real Manual Changes and benefits.

Resources for Licensees

Division of Real Estate Website:

- E-License: License Upgrades and Renewals
- Abridged Real Estate Manual with Division Rules and Position Statements
- Contracts and Forms
- Record Retention Checklist
- Digital Quarterly Newsletter
- Press Releases
- Education Pages
- Filing a Complaint
- Public Discipline Actions
- Colorado Open Records Requests (CORA)
- HOA Information and Resource Center



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Timing: Approx. 1 min

Purpose of slide: Division website resources.

Resources for Licensees

Additional course resources:

Once the ACU course has been completed, a broker may gain access to the web resources by sending an email to:

dora_realestatebrokereducation@state.co.us



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Timing: Approx. 1 min

Purpose of slide: Access to additional resources.

2020 Feedback Requested

Your Feedback is very important to the Division of Real Estate and is taken into consideration when creating the Annual Commission Update course.

The feedback will help the education task force develop future courses and provide instructors with input on their teaching of the course.

Please use the survey below link to send us your feedback:

<https://www.surveymonkey.com/r/2020ACU>



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Timing: Approx. 1 min

Purpose of slide: To get feedback on this course and input for future courses. Also, to let the Division know how instructors are teaching the course.

Instructor notes:

227 Minutes have elapsed

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.



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Timing: Approx. 10 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 the first exam, the second exam should be administered. If a participant is unable to pass both versions of the exam, the instructor must review the areas the participant is not understanding. Once the instructor feels comfortable that the participant has understood the information, a course completion certificate may be granted.