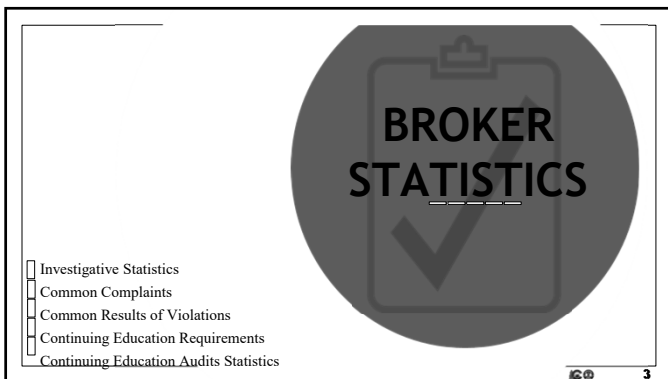


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STATISTICS

INVESTIGATIVE STATISTICS

Let's compare July 1, 2021-June 30, 2022 with July 1, 2022-June 30, 2023!

	<u>2021-2022</u>	<u>2022-2023</u>
New Complaints	1046	1061
Intake Dismissals	590	635
Investigations	345	402
Investigative Dismissals	263	317
Delegated Disciplinary Matters	20	13
Commission Disciplinary Matters	62	72

4

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STATISTICS

INVESTIGATIVE STATISTICS

Between 2022-2023, complaints regarding the following were most frequently reported:

1. Unworthy, incompetent practice. §12-10-217(1)(q), C.R.S.
2. Disclosure of a material fact. §12-61-404(3)(a), C.R.S.
3. Misrepresentation. §12-10-217(1)(a) C.R.S.
4. Conflicts of Interest: Rule 6.17
5. Violation of any Commission rule. §12-10-217(1)(m), C.R.S.

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INCOMPETENT PRACTICE

COMMON COMPLAINTS

Unworthy, Incompetent Practice Scenario


Practical Scenario

Broker resides in Baca county in south-east Colorado. The majority of their current business is vacant and agricultural properties. The broker's good friend is moving to Colorado Springs (approximately 3.5 hours from Baca County) and wants to buy a triplex, with one unit to live in and the two remaining units will serve as rentals which Broker's friend has asked him to manage on the owner's behalf.

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INCOMPETENT TITLE




COMMON COMPLAINTS

Questions

? To determine if the Broker has competency, what are some of the components to consider?


? How can the Broker get competency?



7

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INCOMPETENT TITLE



COMMON COMPLAINTS

To determine if the Broker has competency, what are some of the components to consider?

LET'S DISCUSS!


Am I familiar and do I understand:

- Type of transaction
- Applicable contracts and disclosures
- Property's particular geographic location
- Title issues and requirements
- Market dynamics
- Financing and financial documents
- When to involve other experts

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INCOMPETENT TITLE



COMMON COMPLAINTS

How can the Broker get competency? (How To Get It If You Do Not Have It)


LET'S DISCUSS!

- ! *Training:* You can take CE, attend Colorado Real Estate Commission Meetings, and obtain certifications and designations.
- ! *Shadowing:* Working with another Broker through several deals until you have complete understanding of the type of transaction.
- ! *Consultation:* Discuss the type of transaction you are interested in with your Employing Broker, Supervisory Broker, other Broker with experience, or CO Attorney.
- ! *Partnership:* Co-list with a broker with experience in a particular type of transaction.

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INCOMPETENT PRACTICE



COMMON COMPLAINTS


LET'S DISCUSS!

- ❗ CREC Rule 6.2: A broker must possess the necessary experience, training, and knowledge.
- ❗ §12-10-217(1)(q), C.R.S.: A broker must not demonstrate unworthiness or incompetency.
- ❗ **If I just take a CE class on point, is that enough?**
It might be, but not necessarily. Competent practice is more than just taking a class in some cases. All Brokers must carefully assess the complexity of a transaction.

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INCOMPETENT PRACTICE



COMMON COMPLAINTS

LET'S DISCUSS!


What if the Broker is not competent, and does not want to get competent?

❗ Referral of business is always a good solution when a Broker is faced with a transaction for which they lack competency.

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INCOMPETENT PRACTICE



COMMON COMPLAINTS

Unworthy, Incompetent Practice References

- 📌 CREC Rule 6.2
- 📌 § 12-10-217(1)(q), C.R.S.
- 📌 Your Employing Broker-discuss to find out what is necessary to be competent for any particular transaction.



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ADVERSE MATERIAL FACTS

COMMON COMPLAINTS

Disclosure of Adverse Material Fact Scenario

Broker Andy is touring his listing with the Seller and notices a large poster on the wall. Andy notices a draft coming from behind the poster. He looks closer and sees a crack in the foundation concealed by the poster. While discussing the crack, the Seller mentioned he used the crack to bury a beloved pet hamster in the foundation more than 5 years ago, and jokes that he wanted the animal to haunt the house.

Practical Scenario

Andy is unsure about whether he needs to disclose: (a) that there is a crack in the foundation and (b) that the hamster may haunt the property.

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ADVERSE MATERIAL FACTS

COMMON COMPLAINTS

Questions

- ? Does Andy have to disclose the foundation crack?
- ? Does Andy have an obligation to conduct an independent inspection of the property?
- ? Does Andy have to disclose the fact that the Seller believes the house is haunted?
- ? What principles should guide Andy's next steps?

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ADVERSE MATERIAL FACTS

COMMON COMPLAINTS


LET'S DISCUSS!

- Does Andy have to disclose the foundation crack?**
! Yes. Andy had actual knowledge of a foundation crack.
- Does Andy have an obligation to conduct an independent inspection of the property?**
! No. There is no duty to conduct an independent inspection.
- Does Andy have to disclose the fact that the Seller believes the house is haunted?**
! No. A haunted house is a psychological impact which might stigmatize the property. Andy has an affirmative duty to NOT disclose psychological impacts.
- What principles should guide Andy's next steps?**
! Disclose the foundation crack. Brokers must disclose those facts they actually know, that a reasonable person would ascribe actual significance to, and that are contrary to the interests of a party in a real estate transaction.
! Disclosure of a psychological fact requires the permission of the Seller.

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ADVERSE REAL ESTATE COMPLAINTS



COMMON COMPLAINTS


LET'S DISCUSS!

- ! §12-10-404(3)(a), C.R.S.: In all real estate transactions, Brokers are obligated to disclose **known** adverse material facts to **all** parties involved in the transaction.
- ! The Contract to Buy and Sell Real Estate § 10.2 obligates Sellers to disclose to Buyers in writing those adverse material facts known at time of contracting and any discovered during the under-contract period. This is true even if the contract does not call for the Seller to deliver an SPD.

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ADVERSE REAL ESTATE COMPLAINTS



COMMON COMPLAINTS

LET'S DISCUSS!

What is a Material Fact?


- A material fact is when "a reasonable person would have ascribed actual significance to the adverse information."
- Attributes that may constitute a material fact include, but are not limited to facts affecting:

Title	Physical Condition
Environmental Hazards	Structural Integrity
Health Risks	Building or Zoning Violations
Water Damage	Infestation
Expansive Soils	Financial Ability to Perform
Intent to Occupy	

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ADVERSE REAL ESTATE COMPLAINTS



COMMON COMPLAINTS

LET'S DISCUSS!

New Law In 2024

- ! If a property was used to illegally manufacture illegal drugs or has elevated levels of methamphetamines, it must be reported on a public database for five years which is maintained by the Colorado Department of Public Health and the Environment. For more information, see SB23-148.
- Brokers still have an obligation to disclose if property was not remediated in accordance with legal standards.
- Professional Test is required, not just an at home test
- How to Find Out If a Property Is Contaminated: <https://cdphe.colorado.gov/hm/if-site-contaminated>

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ADVERSE MATERIAL FACT REFERENCES

COMMON COMPLAINTS

Disclosure of Adverse Material Fact References

- § 12-10-404(3)(a), C.R.S.
- § 38-35.5-101(1), C.R.S.
- §§ 12-10-404(2)(e), -405(2)(e), -407(3)(e)
- Commission Position Statement 27

REFERENCES

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MISREPRESENTATION

COMMON COMPLAINTS

Misrepresentation Scenario

Practical Scenario

Broker has recently listed a property located in a Common Interest Community which has a rental prohibition in the Association's Declaration of Covenants, Conditions, and Restrictions. In the listing, Broker mentions the potential for significant rental income. Although Seller forgot to mention it in the Seller's Property Disclosure, Broker knows about the rental prohibition because of previous transactions in the community. The investor Buyer has just signed a contract with Seller.

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MISREPRESENTATION

COMMON COMPLAINTS


Questions

- By marketing the potential for significant rental income, has the Broker made any misrepresentations?
- What is puffery/puffing in real estate?

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MISREPRESENTATION



COMMON COMPLAINTS

By marketing the potential for significant rental income, has the Broker made any misrepresentations?

Yes. In this case, Broker knows that the property is located in a Common Interest Community which contains rental prohibitions. Broker knows that rental income is not possible at this time due to the covenants set forth in the Declaration.

What is puffery/puffing in real estate?


Puffing can be understood as the *exaggeration of facts*. Here a distinction can be drawn between a clear misrepresentation, the buyer's ability to earn rental income on a property that prohibits rentals, and puffing, which is an embellishment like the "one of the prettiest lawns on the block." One statement is made with the intention to deceive since the Broker knows the property currently has a prohibition against rentals, while the other is the Broker placing the property in its best light.

LET'S DISCUSS!

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MISREPRESENTATION



COMMON COMPLAINTS

Misrepresentation References


- §12-10-217(1)(a) C.R.S.-Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising.
- Seibel v. Colorado Real Estate Commission, 530 P.2d 1290 (Colo. App. 1974)



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Conflicts of Interest



COMMON COMPLAINTS

Conflicts of Interest Scenario

Sharon Business, a licensed real estate Broker, owns several properties in Durango through a company owned solely by herself. She leases the properties on a long-term basis. Sharon's spouse is the property caretaker and maintenance person for the properties and makes repairs as needed, including repairs and maintenance which are the responsibility of the **tenant**.


Practical Scenario



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Conflicts of Interest



COMMON COMPLAINTS

Questions


- ? Does Sharon have to disclose to the tenants that she owns the properties she is marketing for lease?
- ? Does Sharon have to disclose that the primary maintenance person for her rentals is her spouse?
- ? Is Sharon permitted to mark up the cost of the maintenance and repair services conducted by her spouse?
- ? Can Sharon require that her tenants use her spouse for repairs?



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Conflicts of Interest



COMMON COMPLAINTS

LET'S DISCUSS!

Does Sharon have to disclose to the tenants that she owns the properties she is marketing for lease?
 1 Yes. CREC Rule 6.17.B.

Does Sharon have to disclose that the primary maintenance person for her rentals is her spouse?
 1 If Tenant is required to pay for maintenance, yes. § 12-10-217(1)(t), C.R.S. and CREC Rule 6.17.C requires disclosure because undisclosed compensation is prohibited and it creates a potential conflict of interest.


Is Sharon permitted to mark up the cost of the maintenance and repair services conducted by her spouse?
 1 Yes, but markups for tenants are limited to EITHER 2% of the amount the landlord is billed or \$10.00, but not both. See HB23-1095.

Can Sharon require that her tenants use her spouse for repairs?
 1 No.

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Conflicts of Interest



COMMON COMPLAINTS

Conflicts of Interest References



- 1 CREC Rule 5.17-Mark-Ups
- 1 CREC Rule 6.17-Duty to Disclose Conflict of Interest and License Status
- 1 § 12-10-217(1)(t), C.R.S.
- 1 § 12-10-401, C.R.S.
- 1 Commission Position Statement 14-Broker Buying Property
- 1 Commission Position Statement 22-Conflicts of Interest
- 1 Seibel v. Colorado Real Estate Commission Rules



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ANY VIOLATION

COMMON COMPLAINTS


Violation of Any Commission Rule

In addition to the previous scenarios, it is important for all licensees to understand that license law includes a catch-all, which can enhance other violations of Commission rules.



References



§ 12-10-217(1)(m), C.R.S.



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VIOLATION RESULTS


Common Results For Violations

- ❗ Fines: \$2,500 max fine per violation for real estate Brokers (and Brokerage Firms)
- ❗ Coursework: Contracts, etc.
- ❗ Public Censure
- ❗ License Suspension/Revocation/Downgrade
- ❗ License Practice Restrictions
- ❗ In addition, licensee may be subject to civil suits from affected consumers.
- ❗ *Licensees may be subject to referrals for criminal or CFPB, FHA, VA, HUD.*


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AUDIT STATISTICS



CONTINUING EDUCATION



Continuing Education Requirements


For Each Licensing Cycle:
12 credit hours of this course, the ACU

+

12 additional credit hours of electives

=

Totaling 24 credit hours



30

30

AUDIT STATISTICS

CONTINUING EDUCATION

Audit Statistics

2020-2021	→	28.9% noncompliance
2021-2022	→	34.9% noncompliance
2022-2023	→	39.5% noncompliance

For purposes of this slide, the Division's fiscal year goes from July 1 to June 30.

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AUDIT STATISTICS

CONTINUING EDUCATION

Audit Statistics

What are the most common reasons for noncompliance with continuing education requirements?

- ❗ Confusion about their licensing cycle (transition cycle). All cycles begin on January 1 and end on December 31.
- ❗ Public Health Emergencies (Pandemic, stay at home orders).
- ❗ Waiting until the end of the licensing cycle.
- ❗ Many licensees take more electives than necessary, but not the ACU.

Why is Continuing Education Important?

- ❗ Assists licensees with excelling and advancing in the practice of real estate.
- ❗ It is required. Failure to do so can result in fines and additional CE course work.

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AUDIT STATISTICS

CONTINUING EDUCATION

Audit Statistics

Division Recommendations To Avoid Noncompliance:

- ❗ Take the ACU early each year.
- ❗ Verify your licensing cycle to ensure compliance.
- ❗ Review Division resources to find out more information about CE requirements:
 - Review the CREC Rules, Chapter 4.
 - Visit the Broker Continuing Education Audit Page: <https://dre.colorado.gov/division-programs/real-estate-broker/education/broker-continuing-education-audit>
 - Keep course completion certificates. Required by CREC Rule 4.5.J.
- When renewing, if you have not completed your CE requirements for a license cycle, please self-report to the Division in writing to DORA_RealEstateBrokerEducation@state.co.us. See CREC Rule 4.5.K.

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STATISTICS

INVESTIGATIVE STATISTICS


Investigative Statistic References

- 📖 See CREC Rules, Chapter 4 for continuing education requirements.
- 📖 Broker Continuing Education Audit Page- <https://dre.colorado.gov/division-programs/real-estate-broker/education/broker-continuing-education-audit>



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COMPLIANCE

- Broker Back To Basics
- Property Management & Leasing
- Artificial Intelligence In Your Practice

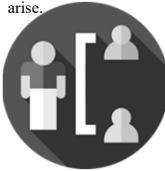
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COMPLIANCE

BACK TO BASICS

When preparing the Contract to Buy and Sell ("CBS"), licensees should be sure to understand the standard sections of the CBS, but also should be prepared to advise their consumers on less typical occurrences that may arise.




In this section, we will discuss the following topics:

- ⚠️ Uniform Duties of Brokers
- ⚠️ Contingencies
- ⚠️ Conflicts of Interest/Joint Ventures/AfBAs

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COMPLIANCE



BACK TO BASICS
Uniform Duties

Uniform Duties Of A Broker


In Colorado, a Broker who has signed a listing agreement must be either an agent or a transaction-broker. In either case, there are uniform duties that the broker is responsible to perform. Since all of these duties are the same for agency and transaction-brokerage, they are called "uniform duties."

LET'S DISCUSS!

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COMPLIANCE



BACK TO BASICS
Uniform Duties

Question


Where can you find the uniform duties?



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COMPLIANCE



BACK TO BASICS
Uniform Duties

Where can you find the uniform duties?

The Uniform Duties are part of the following agreements:

- Exclusive Right to Buy Listing Contract-Paragraph 5
- Exclusive Tenant Listing Contract-Paragraph 5
- Exclusive Right to Sell Listing Contract-Paragraph 5
- Exclusive Right to Lease Listing Contract-Paragraph 5

Practice Pointer: The Uniform Duties apply to a broker providing services to consumers even if the broker does not have a listing contract with the consumer (e.g., a properly disclosed non-exclusive transaction broker)"

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COMPLIANCE

Uniform Duties of Brokers
Paragraph 5-Affirmative Duties

BACK TO BASICS

UNIFORM DUTIES OF BROKERS

BROKERAGE DUTIES. Broker, on behalf of Brokerage Firm as either a Transaction-Broker or a Seller's Agent, must perform the following "Uniform Duties" when working with Seller:

Broker must exercise reasonable skill and care for Seller, including, but not limited to the following:

- Performing the terms of any written or oral agreement with Seller;
- Presenting all offers to and from Seller in a timely manner regardless of whether the Property is subject to a contract for Sale;
- Disclosing to Seller adverse material facts actually known by Broker;
- Advising Seller regarding the transaction and advising Seller to obtain expert advice as to material matters about which Broker knows but the specifics of which are beyond the expertise of Broker;
- Accounting in a timely manner for all money and property received; and
- Keeping Seller fully informed regarding the transaction.

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COMPLIANCE

Uniform Duties of Brokers
Paragraph 5-Negative Duties

BACK TO BASICS

Uniform Duties

Brokers have a duty to NOT DISCLOSE:

- That a Seller is willing to accept less than the asking price
- What the Seller's motivations are for consummating the transaction
- That Seller would be willing to accept financing terms other than those offered.
- Information about the Seller or transaction OTHER THAN disclosure that is required by law
- Information, facts, or suspicions that could psychologically impact or stigmatize the property.

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COMPLIANCE

Uniform Duties of Brokers
Paragraph 5

BACK TO BASICS

Uniform Duties

5.6 states that Broker has NO DUTY to independently inspect a property, Buyer's financial condition, or verify the statements made by the parties.

5.8 provides an option either to disclose or not disclose to prospective buyers and cooperating brokers the existence of offers on the Property.


5.6. Broker has no duty to conduct an independent inspection of the property for the benefit of a buyer and has no duty to verify the accuracy or completeness of any statement made by a buyer.

5.8. When asked, Broker shall disclose to prospective buyers and cooperating brokers the existence of offers on the Property and whether the Seller wishes to disclose the terms of the offers.

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COMPLIANCE



BACK TO BASICS
Uniform Duties

Additional Duties if Broker is an Agent


If the broker is an agent, then the broker agrees to perform the three “additional duties” found in Paragraph 6 of the Exclusive Right contracts. *A separate written agreement is required to establish an agency relationship.*

1. **Promote** the interests of principal with the utmost good faith, loyalty and fidelity.
2. **Seek** a price or lease rates and terms that are acceptable to principal.
3. **Counsel** the principal as to any material benefits or risks of a transaction that are actually known by broker.

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COMPLIANCE



BACK TO BASICS
Uniform Duties

Uniform Duties Scenario




Buyer approaches the Seller with an asking price, cash offer with no contingencies and a closing in 10 days. If one party approaches the Broker to help with the contract...

Practical Scenario

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COMPLIANCE



BACK TO BASICS
Uniform Duties

Questions

1. Who does the Broker represent and how do they represent them in this transaction?
2. How should the Broker advise their consumer about the contract?

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COMPLIANCE

BACK TO BASICS
Uniform Duties

Who does the Broker represent and how do they represent them in this transaction?

- When the Broker determines who they will represent in the transaction, the Broker must execute an agreement with their consumer.
- Transaction Broker, Seller, Buyer?* If representing as TB, Broker cannot counsel either party. If representing Seller or Buyer as an agent, Broker must advise consumer of the inherent risks when waiving contingencies and the advantages and disadvantages to waiving all contingencies. Before entering into a contract that waives contingencies, Broker should carefully inform their consumer of the possible ramifications.

How should the Broker advise their consumer about the contract?

- Advise regarding the requirements of the contract, including all deadlines.

LET'S DISCUSS!


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COMPLIANCE

BACK TO BASICS
Uniform Duties

Uniform Duties Scenario

 Seller approaches Broker because they have a buyer on their For Sale By Owner ("FSBO"). The agreed upon price is \$450,000. Seller is only asking Broker to draft the documents using Commission approved forms.

Practical Scenario

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COMPLIANCE

BACK TO BASICS
Uniform Duties

Questions


- Can you **ONLY** draft the forms as the Seller has requested?
- What is required for you to help this Seller?



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COMPLIANCE



BACK TO BASICS
Uniform Duties

Can you ONLY draft the forms as the Seller has requested?

- ❗ No, real estate agents are not scrivener. In order to draft documents for a transaction, a brokerage relationship must be established.
- ❗ Unauthorized Practice of Law.

What is required for you to help this Seller?


- ❗ Execute an Exclusive Right to Sell Listing Contract .
- ❗ In this scenario, not all the negotiations are done. Price is only one negotiation point. You can negotiate the remaining issues.

LET'S DISCUSS!

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COMPLIANCE



BACK TO BASICS
Uniform Duties

Uniform Duties References


- 📖 Listing Contract (Buyer, Seller, Landlord, Tenant)
- 📖 Conway-Bogue
- 📖 § 12-10-407, C.R.S.
- 📖 Brakhage v. Georgetown Ass'n, 33 Colo. App. 385 (Colo. App. 1974)
- 📖 Seibel v. Colorado Real Estate Commission, 530 P.2d 1290 (Colo. App. 1974)



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COMPLIANCE



BACK TO BASICS
Contingencies

Contractual Contingencies

Regardless of market conditions, the contractual contingencies found in the Contract to Buy and Sell Real Estate are valuable protections for both the buyer and the seller, and also for the licensees involved in the transaction. Knowing the contingencies found in the CBS, understanding the responsibilities of each party, and how to avoid default are important for every licensee.

LET'S DISCUSS!

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COMPLIANCE

BACK TO BASICS
Contingencies

Questions

- What are some of the standard contingencies found in the Contract to Buy and Sell?
- Where can they be found?



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COMPLIANCE

BACK TO BASICS
Contingencies

**Standard contingencies:
Located At:**

LET'S DISCUSS!	Financing	CBS paragraph 5
	Appraisal	CBS paragraph 6
	Association Documents	CBS paragraph 7
	Title	CBS paragraph 8
	Survey	CBS paragraph 9
	Disclosure/Inspection/Due Diligence Objection	CBS paragraph 10
	Conditional Sale	CBS paragraph 10


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COMPLIANCE

BACK TO BASICS
Contingencies

Contingencies Scenario



Buyer and Seller are about to execute a Contract to Buy and Sell Real Estate on a large parcel of land that spans across county lines. Buyer wants to waive all contingencies except for the association documents contingency.

Practical Scenario

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COMPLIANCE

BACK TO BASICS
Contingencies

Questions

- What about other contingencies? Should the Broker discuss anything with the Buyer?
- How does the broker show that they advised the client regarding the contingencies and the ramifications of the contingencies?



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COMPLIANCE

BACK TO BASICS
Contingencies

LET'S DISCUSS!

What about other contingencies? Should the Broker discuss anything with the Buyer?

- There is inherent risk in waiving contingencies.
- For example, Broker should carefully review Paragraph 9 of the CBS with the client. This section addresses Improvement Location Certificates ("ILC") and Surveys. Broker should instruct the Buyer of the differences between an ILC and a Survey, and then confirm this conversation in an email (or Brokerage-approved form, if available).

How does the broker show that they advised the client regarding the contingencies and the ramifications of the contingencies?


- Memorialize the tough conversations and provide a written advisement.
- Get an acknowledgement from client (signed preferably).

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COMPLIANCE

BACK TO BASICS
Contingencies



Recently, practitioners have noticed that contingencies are not being waived as much as they were in prior years (2022, 2021, or earlier). Back then, the industry was seeing the majority of contracts with waivers and in many cases, buyers believed they **needed** to waive contingencies to be competitive.


- Contingencies are negotiation points. By reserving them, Broker reserves the right to negotiate important details of the contract.
- Brokers need to keep their consumers fully informed.
- By helping your client understand, you can satisfy your obligations.

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COMPLIANCE

BACK TO BASICS
Contingencies



Contingencies Scenario

Seller and Buyer enter into an "As Is" purchase and sale.
What is next?

Practical Scenario

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COMPLIANCE

BACK TO BASICS
Contingencies

Questions

- ? What does an "As Is" purchase and sale mean?
- ? Can a Buyer include Contingencies in contract?
- ? Does Seller have to disclose any material facts?
- ? Can Buyer object on the standard contingencies?



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COMPLIANCE

BACK TO BASICS
Contingencies

LET'S DISCUSS!

What does an "As Is" purchase and sale mean?
! Seller is selling, and the buyer is buying an item in whatever condition it presently exists.

Can a Buyer include Contingencies in contract?
! Yes.

Does Seller have to disclose any material facts?
! Yes. Disclosure of material facts is still required by Paragraph 10.2 of the CBS. Seller's failure to perform are reserved and survive Closing pursuant to Paragraph 20.2.2.


509 10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition. Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "As Is" condition, "Where Is" and "With All Faults."

Can Buyer object on the standard contingencies?
! Yes, as long as they were not waived in the CBS.

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COMPLIANCE



BACK TO BASICS
Contingencies

Contingencies References


- ☒ CBS (Residential) Paragraph 10.2
- ☒ CBS (CO Foreclosure Protection Act) Paragraph 10.2
- ☒ CBS (Income Residential) Paragraph 10.2
- ☒ CBS (Commercial) Paragraph 10.2
- ☒ CBS (Land) Paragraph 10.2
- ☒ Manufactured Home CBS Paragraph 8.2




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COMPLIANCE



BACK TO BASICS
Conflicts/JVs/AfBAs



Conflicts of Interest/Joint Ventures/Affiliated Business Disclosures

CREC Rule 6.17 provides that brokerage firms and brokers have a duty to disclose, in writing, any known conflict of interest that may arise in the course of any real estate transaction.


Each year, the ACU focuses on state laws and regulations... what about the federal laws and their intersection with conflicts of interest issues?

Consumer Financial Protection Bureau says that "people should be able to rely on the entity to [refer consumers] in a manner that is free of manipulation" and those "that engage in certain forms of steering or self-dealing may be taking unreasonable advantage of the consumers' reasonable reliance."


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COMPLIANCE



BACK TO BASICS
Conflicts/JVs/AfBAs



Conflicts of Interest/JVs/AfBA Scenario

Associate Broker owns 25% interest in a Title Company. Associate Broker has timely filed their affiliated business disclosure with the Division (as required), Associate Broker has timely provided Buyer and Seller with the affiliated business disclosure.

Practical Scenario

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COMPLIANCE

BACK TO BASICS
Conflicts/JVs/AfBAs

Questions

- ❓ Is this sufficient for license law?
- ❓ Is this sufficient for CFPB?



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COMPLIANCE

BACK TO BASICS
Conflicts/JVs/AfBAs

LET'S DISCUSS!

Is this sufficient for license law?
 ⚠️ Yes. Provided that the Associate Broker's Brokerage Firm approved it. State law requires disclosure to all parties while Federal law requires disclosure to the referred party at the time of the referral.

Is this sufficient for CFPB?
 ⚠️ *Maybe not.* The CFPB is focused on potential abusive conduct and possible steering. Brokers should consider providing consumers multiple referrals.
 ⚠️ "Real-estate agents who participate in joint ventures subject themselves to the authority of the Consumer Financial Protection Bureau, state attorneys general, and other state regulators, all of which may enforce the CFPB's prohibition on abusive conduct."

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COMPLIANCE

BACK TO BASICS
Conflicts/JVs/AfBAs

Practice Pointers: Students should know that they need be mindful of this topic and continue to watch this space for additional guidance. Discuss with your Employing Broker and ask questions.
 ⚠️ *Federal litigation can be wildly expensive.*

For Associate Brokers: Provide your RESPA-compliant Affiliated Business Disclosure to the consumers and disclose your arrangement to CREC at the time it is entered into.
 ⚠️ Refer your consumers to multiple providers.

For Brokerage Firms: On an annual basis, Employing Brokers must disclose Arrangements-Written disclosure must include the physical location of the affiliated businesses.

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COMPLIANCE

BACK TO BASICS
Conflicts/JVs/AfBAs

Conflicts of Interest/JVs/AfBAs References

- RESPA
CREC Rule 6.18.A
<https://dre.colorado.gov/broker-affiliated-business-arrangements-disclosure-requirements>
- CFPB, Policy Statement on Abusive Acts or Practices, (April 3, 2023),
<https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/>

REFERENCES

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COMPLIANCE

PROPERTY MANAGEMENT & LEASING

Property Management & Leasing

Colorado law offers various protections to both landlords and to tenants. It is important for the LICENSEE AND ALL LANDLORDS to understand recent changes to Colorado law that may affect property management and lease agreements. This sub-section pertains to licensees, property managers, property management companies, and Brokers leasing their own properties or properties for clients.

If you practice or intend to practice in property management and/or leasing, there are Continuing Education courses available for licensees. This is a highly specific type of real estate. Competency is important. You can take a deeper dive into these statutes and the ramifications of these new laws with Continuing Education courses.

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COMPLIANCE


PROPERTY MANAGEMENT & LEASING


Warranty of Habitability Expansion: HB23-1254

- ! “Environmental Public Health Event” is when a condition materially interferes with a tenant’s life, health, or safety.
- ! Time frame for remediation and disclosure requirements:
 - Within 24 hours (or 72 if the property is inaccessible) of notice by the tenant, Landlord must respond to tenant.
 - Remediation must take place within a reasonable time.
- ! Tenant may terminate lease if uninhabitable and it is not remediated and safe within 60 days.
- ! Eviction defense for the tenant.


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COMPLIANCE 

PROPERTY MANAGEMENT & LEASING 


Eviction Protection: HB23-1120




- ❗ Eviction Mediation is required for tenants who receive certain types of government assistance:
 1. supplemental security income
 2. social security disability insurance
 3. cash assistance through the Colorado Works program
- ❗ “Source of Income” disclosure is required for leases and eviction process.
- ❗ “Source of Income” may extend the Writ of Restitution by 30 days.
- ❗ Federal CARES Act is still in effect requiring 30-day eviction notice for any property with federally backed loan per the Colorado Supreme Court.


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COMPLIANCE 


PROPERTY MANAGEMENT & LEASING 

Tenant Rental Qualifications: SB-184





Income Requirements for Tenant:

- ❗ Cannot exceed 200% or 2 times the rental amount. Landlords cannot be allowed to use information about income, except to verify that the tenant makes over 200% of annual rent.
- ❗ Applicants with housing assistance only need to verify 2 times their portion of the rent.
- ❗ Tenant IS seeking housing assistance: Landlord CANNOT use a credit score, lack of credit score, or any adverse credit events like late payments unless federally required. If the landlord is statutorily required to use a credit score, landlords cannot consider information that is more than 7 years old.
- ❗ Tenant is NOT seeking housing assistance: Landlord can use a credit score. Landlord can require positive rental reference.
- ❗ Security Deposit: Cannot exceed 200% or 2 times the monthly rent amount.


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COMPLIANCE 

PROPERTY MANAGEMENT & LEASING 


“Source of Income” is a new fair housing-protected class (like race, gender, religion, etc.) SB23-184




- ❗ Tenant Defenses: Source of Income is now part of the Colorado Fair Housing Act and is a defense to an eviction that Landlord violated the fair housing law.


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COMPLIANCE 

PROPERTY MANAGEMENT & LEASING 


“Source of Income” Damages: SB23-184




- Tenant Damages:** Any landlord that violates these new application requirements will have to pay \$50 to the prospective tenant and, if landlord does not fix the issue, is subject to an additional penalty of \$2,500, paid to the prospective tenant.
- Legal Alert:** In just the last few months of 2023, multiple class action lawsuits have been filed against property management companies for charging and collecting application fees. Property management companies and landlords should use caution to comply with all applicable laws and regulations.


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COMPLIANCE 

PROPERTY MANAGEMENT & LEASING 


“Portable Tenant Screening Report”: HB23-1099




- Definition:** A consumer report prepared at the request of a prospective tenant that includes information provided by a consumer reporting agency.
- Must satisfy certain meet requirements:**
 1. Be Current (less than 30 days old)
 2. Include Tenant Name
 3. Include Contact Information
 4. Verify Employment and Income of Tenant
 5. Include Last-Known Address


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COMPLIANCE 

PROPERTY MANAGEMENT & LEASING 


“Portable Tenant Screening Report”: HB23-1099




- When advertising an available unit, disclosure is required in 12-point BOLD-faced font disclosure that:**
- The Tenant has the right to provide to the Landlord a Portable Tenant Screening Report AND**
- If the Tenant provides a Portable Tenant Screening Report, the Landlord is prohibited from charging a rental application fee, or charging a fee for access or use of the Portable Tenant Screening Report.**


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COMPLIANCE 

PROPERTY MANAGEMENT & LEASING 


Prohibited Clauses In Leases (Pt. 1): HB23-1095




- A rental agreement that requires fees, damages, or a penalty if a tenant fails to provide notice of nonrenewal before the end of the lease.
- An agreement that characterizes any fees that are not base monthly rent as "rent" that can be collected using certain remedies like eviction ("rent" can only be rent).
- Any provision that requires tenants to pay fees or markups for a third-party service above EITHER (a) 2% of the actual cost what a landlord paid or (b) \$10.00, BUT NOT BOTH.


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COMPLIANCE 


PROPERTY MANAGEMENT & LEASING 


Prohibited Clauses In Leases (Pt. 2): HB23-1095




Some Additional Clauses Which Are Prohibited:


- A provision that waives certain rights including a jury trial
- A provision may not award attorneys fees and costs unless awarded by a Court
- A provision allowing the landlord to evict a tenant for nonpayment of utilities

 **Exception:** These prohibited clauses DO NOT apply to certain rental agreements, including ones in mobile homes or mobile home parks.


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COMPLIANCE 


PROPERTY MANAGEMENT & LEASING 

Pet Expenses: HB23-1068



-  Pet rent is capped at \$35.00 or 1.5% of monthly rent, whichever is greater.
-  Pet security deposit is capped at \$300.00 (must be refundable).
-  Pet "fees" are not allowed.

 **Practice Pointer:** These fees are not applicable and should not be charged to tenants with assistance animals (emotional support or service animals).

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COMPLIANCE

PROPERTY MANAGEMENT & LEASING

Environmental Hazards: SB23-206

- Radon Disclosure is a common thread throughout many of the updates to law and the new CREC-approved contracts and forms.
- Tenants must be given (1) a Radon Disclosure, (2) pamphlet similar to the Lead-based paint disclosure, and (3) any information that the Landlord has about the presence of Radon.
- If not properly disclosed, tenants may terminate their lease.

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COMPLIANCE

PROPERTY MANAGEMENT & LEASING

Important Radon Resources For Brokers

Colorado Radon Professional Licensee Look-Up:
<https://apps2.colorado.gov/dora/licensing/lookup/licenselookup.aspx>

Radon and Real Estate Transactions In Colorado Pamphlet/Brochure:
<https://cdphe.colorado.gov/hm/radon-and-real-estate>

Tenant Radon Disclosure Form (provided by the Colorado Bar Association):
https://cle.cobar.org/Books/Product-Info/productcd/TRFOR_FORMATS

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COMPLIANCE

PROPERTY MANAGEMENT & LEASING


Environmental Hazards: Docket No. EPA-HQ-OECA-2021-0763

- EPA rule change requires Property Management Companies to be certified to conduct lead-based paint remediation, even if they contract out all lead-based paint work. If Landlord completes remediation, Landlord would need to be certified too.



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COMPLIANCE 


PROPERTY MANAGEMENT & LEASING 


Important Lead-Based Paint Resources For Brokers

-  Colorado Department of Public Health and the Environment:
<https://cdphe.colorado.gov/for-abatement-professionals/lead-based-paint>
-  EPA: How To Get Certified:
<https://www.epa.gov/lead/renovation-repair-and-painting-program-contractors>
-  EPA Press Release: Safety Requirements When Performing Renovations
<https://www.epa.gov/newsreleases/epa-affirms-building-managers-responsible-lead-based-paint-safety-requirements-when>



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COMPLIANCE 


PROPERTY MANAGEMENT & LEASING 


What is Next for Licensees and Landlords?

-  Licensees should be aware that landlord and property rights legislation appears to be on the rise, in part, to address the housing stock in Colorado. An example is a Denver Ordinance which requires real estate licensees to list their license number on all “For Lease” advertisements.
-  It is expected that the 2024 legislative session will bring bills regarding rent control, no-cause eviction penalties for landlords, and potentially others.







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COMPLIANCE 

PROPERTY MANAGEMENT & LEASING 

Property Management & Leasing References

-  Summary of the Warranty of Habitability:
<https://www.coloradolegalservices.org/node/342/warranty-habitability>
-  HB23-1068-Concerning Pet Animal Ownership In Housing
-  HB23-1095-Concerning Prohibiting the Inclusion of Certain Provisions In Written Rental Agreements
-  HB23-1099-Concerning Tenant Screening For Residential Leases
-  HB23-1120-Concerning Eviction Protections For Residential Tenants
-  SB23-184-Protections for Residential Tenants



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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

Artificial Intelligence In Your Practice

! The use of artificial intelligence, which is the practice of mass collection of data combined with predictive analysis, is becoming more and more prevalent in the real estate industry. Privacy, security, and various legal implications are impacting consumers, the real estate industry, and licensee's job in servicing consumers in an effective, efficient, and legally compliant manner.

Emerging Technologies:

- ! Pros-Use of these emerging technologies can bring down barriers, can increase efficiencies, can assist you in your practice.
- ! Cons-Use of these emerging technologies can violate laws (fair housing, anti-discrimination, antitrust, copyright, local regulations, most recent/up-to-date legislative changes) and mislead the public.

LET'S DISCUSS!


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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

Artificial Intelligence In Your Practice Scenario



Broker, Anne Droid, is a property manager. She manages a large apartment complex with (a) efficiencies, (b) 1 bedroom, (c) 2 bedroom, and (d) penthouse 4 bedroom units. For property descriptions, Anne used Chat GPT.

Practical Scenario


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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

AI Created Property Descriptions



Here is Anne's efficiency apartment property description which was created with ChatGPT:

This charming efficiency apartment is located in the heart of the city and offers a comfortable and convenient lifestyle for the up-and-comer with access to young adult nightlife. The apartment features an open-plan living area for one that includes a cozy sleeping nook, a fully equipped kitchenette with modern appliances, and a dining area. The bathroom is separate and comes with a shower stall, toilet, and small vanity. The apartment also has large windows that let in plenty of natural light and offer stunning views of the surrounding area. The building amenities include laundry facilities, bike storage, and on-site maintenance services. This is the perfect home for those who want to enjoy city living without breaking the bank.


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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

Artificial Intelligence In Your Practice Scenario



Colorado sees many consumers from out of state-buying/leasing property sight unseen. Broker Anne Droid uses AI for (a) virtual staging software and (b) for digital photography. She has been known to digitally insert furnishings and landscaping during Colorado's long winters to show what the listing could look like for a prospective buyer in the summer.

Practical Scenario

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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

Questions

- Do you see anything like this in your practice?
- Might there be any concerns about using virtual staging?



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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

Do you see anything like this in your practice?

LET'S DISCUSS!

Might there be any concerns about using virtual staging?

- It can easily be misused.
- Avoid pitfalls like misrepresentation.

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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

LET'S DISCUSS!

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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

Questions

- ? Any concerns about virtual landscaping?
- ? Do you consider the use of virtual staging or virtual landscaping AI tools?

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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

LET'S DISCUSS!

- ! **Any concerns about virtual landscaping?**
With virtual landscaping, Brokers should use even more caution than virtual staging. Brokers may not misrepresent the conditions of the property.
- ! **Do you consider the use of virtual staging or virtual landscaping AI tools?**
Both tools are AI, but what matters the most is how the Broker used these technologies.

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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

What are some acceptable practical uses for Artificial Intelligence in real estate?

Broker should always use caution when using Artificial Intelligence, but the following are some acceptable uses:

- Preparing property descriptions
- Video enhancements
- Voice over explanations for property descriptions
- Altering/photoshopping photographs
- Virtual staging

Practice Recommendation: If you use AI in your practice (marketing or otherwise), consider the use of disclosure language which makes clear that AI (i.e. virtual staging/landscaping) has been used.

LET'S DISCUSS!

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COMPLIANCE

ARTIFICIAL INTELLIGENCE IN YOUR PRACTICE

Artificial Intelligence In Your Practice References

- § 12-10-408(2)(c)(I)(C), C.R.S.
- § 12-10-217(1)(a), C.R.S.

REFERENCES

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GENERAL PRACTICE ISSUES

- Holding Money For Others
- Fees From A Transaction Paid to Broker
- Vendor Referrals
- Purchasing Properties Subject To Financing
- Encumbrances On Title

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HOLDING MONEY FOR OTHERS

Holding Money For Others Scenario

Broker, Holden Funds, has a successful property management business. Among other things, Holden collects money from tenants, manages maintenance and repairs, processes payments, and disburses payments to numerous landlords, *but does not hold funds in fiduciary accounts*. Last week, Holden was found liable by a judge for a car crash unrelated to Holden's property management business and is responsible for paying damages to the other person involved in the car crash.

Practical Scenario


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HOLDING MONEY FOR OTHERS

Questions

- ❓ What steps should Holden have taken to ensure compliance with license law?
- ❓ What is a Fiduciary Account?
- ❓ If Holden does not pay judgment, can the judgment creditor attach Holden's accounts?
- ❓ How do Fiduciary Accounts protect Holden's consumer's interests?
- ❓ Does FDIC Insurance play a role in protecting Holden's consumer's interests?



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HOLDING MONEY FOR OTHERS

LET'S DISCUSS!

- ❗ **What steps should Holden have taken to ensure compliance with license law?**
Comply with CREC Rule 5.2. All money belonging to others must be held in a fiduciary account for their benefit.
- ❗ **What is a Fiduciary Account?**
Account (1) is held separate, (2) is custodial, (3) funds are available on demand, and (4) is at a recognized depository.
- ❗ **If Holden does not pay judgement, can the judgment creditor attach Holden's accounts?**
Yes, Holden's personal and business accounts are subject to attachment to satisfy the judgment. If client's funds are not in a Fiduciary Account, those funds may be attached.
- ❗ **How do Fiduciary Accounts protect Holden's consumer's interests?**
When set up properly, beneficiaries will be protected against Holden's liabilities.
- ❗ **Does FDIC Insurance play a role in protecting Holden's consumer's interests?**
Yes. FDIC offers up to \$250,000 in the event of financial institution failure per depositor.

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HOLDING MONEY FOR OTHERS

Fiduciary Accounts Must Be Properly Set Up

Before Going To The Bank Visit: <https://dre.colorado.gov/separate-accounts-and-accounting>

Banks Having Confirmed They Offer Trust/Escrow Accounts: <https://docs.google.com/document/d/1oucE8ZHrx147jD3UkMoE-yv8d5-RT7nQUenkKKtO6-w/edit>

Collaboration with Bank To Set Up Correctly: <https://drive.google.com/file/d/1KOldr85b0LxV9hHwO-34NeQGzFXFiB7p/view>

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HOLDING MONEY FOR OTHERS

Licensees Are Subject To Audit By The Commission

The Commission has the authority to conduct audits of financial institution accounts and can find violation of license law pursuant to §12-10-217(1)(i), C.R.S.

For more information, visit the Division's Website: <https://dre.colorado.gov/division-programs/real-estate-broker/broker-practice-guidance/broker-financial-audit-process>

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HOLDING MONEY FOR OTHERS

Holding Money For Others References

- 🔖 <https://dre.colorado.gov/separate-accounts-and-accounting>
- 🔖 CREC Rule 1.56
- 🔖 CREC Rule 5.2
- 🔖 CREC Rule 5.8
- 🔖 § 12-10-217(1)(i), C.R.S.
- 🔖 Commission Position Statement 29

REFERENCES

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GENERIC PRACTICE

FEE FROM A TRANSACTION PAID TO BROKER

Payment of Success Fee (Commission) From A Closed Transaction Directly to Broker Scenario

Buyer's broker is a member of a team that has an upcoming closing. Broker reaches out to the listing Brokerage Firm to request payment of brokerage fees from a closed transaction directly to the Broker rather than to the Broker's Brokerage Firm.

Practical Scenario

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GENERIC PRACTICE

FEE FROM A TRANSACTION PAID TO BROKER

Questions

- Has the Broker done anything wrong?
- Are there any concerns for the Team members in this situation?

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GENERIC PRACTICE

FEE FROM A TRANSACTION PAID TO BROKER

Questions

LET'S DISCUSS!

Has the Broker done anything wrong?

- Yes, commissions should be paid through the Brokerage Firm. CREC Rule 6.20 states that the settlement statement accurately discloses the Brokerage Firm as the recipient of all commissions and a properly executed commission disbursement instrument is retained in the transaction file.
- Brokers should check with their Brokerage Firm to determine if they can be paid at the table through a properly executed commission disbursement authorization form.

Are there any concerns for the Team member in this situation?

- Yes, team members also must be paid through the Brokerage Firm.

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GENERIC PRACTICE

FEE FROM A TRANSACTION PAID TO BROKER

Payment of Success Fee (Commission) From A Closed Transaction Directly to Broker References

- CREC Rule 6.20
- Brokerage Firm Commission Disbursement Authorization forms

REFERENCES

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Purchasing Properties With Alternative Financing

Market conditions are changing. Some Buyers, even Brokers, might be interested in alternatives to traditional loans. Before we get into some examples, let's understand a few definitions:

"Subject To": The Buyer takes ownership of the property "subject to" the Seller's existing loan(s). Buyer is not liable for the loan and Seller remains responsible.

Wraparound (Wrap): The Buyer gets a mortgage from the Seller who wraps it into the Seller's existing loan. Commonly, the result will be two loans, (1) the original loan and (2) an additional loan that includes the original loan plus the Seller's remaining equity. The Buyer becomes the owner and makes payments to the Seller who, in turn, makes payments on the existing loan.

LET'S DISCUSS!

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Purchasing Properties With Alternative Financing

Installment Land Contract: An agreement in which a Buyer makes regular payments to the Seller but the deed does not transfer at the outset; instead, the Seller retains full ownership of the property until the final payment. See Position Statement 23.

Assumable Loan: When allowed by the loan documents, a Buyer takes over the property and responsibility of the loan from the Seller.

Seller Financing: The Buyer gets a loan from the Seller rather than acquiring traditional loan from a financial institution.

Due On Sale Clause: Most real estate deeds of trust include language that allows the lender to accelerate the note if the seller conveys the property without lender's permission.

LET'S DISCUSS!

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

“Subject To” Financing

LET'S DISCUSS!

- Buyer is not liable for the loan
- Seller remains responsible.
- Commonly abbreviated “SUBTO”
- Both buyers and sellers should seek separate legal representation to advise them and draft the contracts.
- Has been the subject of investigations by the Commission. License **revocation** has been found to be appropriate discipline.

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Wraparound Financing

LET'S DISCUSS!

- Another form of financing, a Wrap involves Seller financing by leaving the existing loan in place. Traditionally, the Buyer signs a note to the Seller which is secured by a deed of trust, behind the existing loan (2nd in priority).
- The Buyer becomes the owner and makes payments to the Seller who, in turn, makes payments on the existing loan.
- Both buyers and sellers should seek separate legal representation to advise them and draft the contracts.

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Installment Land Contract

LET'S DISCUSS!

- These transactions afford Buyers the opportunity to take possession of the real property and make installment payments to the Seller.
- The deed does not transfer at the outset and Seller retains full ownership of the property until the final payment.
- Both buyers and sellers should seek separate legal representation to advise them and draft the contracts.

Practice Pointer: Commission strongly cautions Brokers to utilize the services of a Colorado licensed attorney when performing Real Estate Brokerage Services in such transactions. See Position Statement 23.

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Assumable Loans

LET'S DISCUSS!

- ! One party take over the obligations of another.
- ! Oftentimes, assumption of the loan relieves the Seller from any ongoing obligations.
- ! Commonly, loan assumption takes place with the permission of the lender. When lender consent is obtained, the due on sale clause is not triggered.

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Seller Financing

LET'S DISCUSS!

- ! Seller financing can take the form of any of the last few slides. Commonly, traditional mortgages from a bank, credit union or other financial institution are not primarily relied upon by the Buyer.
- ! If Seller has no other financial obligations on the property, title can be transferred to Buyer.
- ! Both buyers and sellers should seek separate legal representation to advise them and draft the contracts.

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Purchasing Properties With Alternative Financing Scenario

Practical Scenario

Broker has a transaction where she represents a Buyer. Seller is offering the property as a For Sale By Owner ("FSBO") subject to Seller's existing VA loan.

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Questions

- ❓ Can Broker use CREC-approved forms for this transaction?
- ❓ Outside of Colorado license law, what possible ramifications might there be for Broker?
- ❓ Does the Brokerage firm have any potential liability for participating in this transaction?



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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

LET'S DISCUSS!

- ❗ **Can the Broker use CREC-approved forms for this transaction?**
The Broker can use the Contract to Buy and Sell, but the Seller should obtain legal counsel to assist with the transaction.
- ❗ **Outside of Colorado license law, what possible ramifications might there be for Broker?**
HUD has determined that any broker or title company that allows for the transfer of title other than by using the credit qualifying process is an unacceptable circumvention of the law.
Suspension/Debarment: At a minimum, HUD has determined that those parties involved will be suspended for at least one year from participation in FHA/VA programs.
- ❗ **Does the Brokerage Firm have any potential liability for participating in this transaction?**
If the underlying loan is FHA/VA, the Brokerage Firm can have liability for the actions of the Broker.
Debarment can exclude an entire Brokerage Firm from conducting VA or FHA transactions.


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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Purchasing Properties Subject To Financing Scenario



Practical Scenario

Broker is building a portfolio of rental properties for her own account (as a principal). Over the last few years, she has been able to obtain satisfactory financing although, since the end of the pandemic, both inflation and higher interest rates have made her traditional financing methods less lucrative. She has recently begun making offers on properties which are "subject to the existing financing."

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Questions

- ? Should Broker close on transactions subject to existing financing?
- ? What, if anything, should the Seller's Broker inform their Seller of when entering into these transactions?



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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

LET'S DISCUSS!

What is the Broker's risk of personally closing on a transaction subject to existing financing?

- ! Broker may be subject to discipline for dishonest dealing and incompetent practice.

What, if anything, should the Seller's Broker inform their Seller of when entering into these transactions?

- ! Brokers must be careful to not misrepresent anything about the Seller's continued liability.

Practice Pointer: Brokers purchasing for their own account, or for a Buyer should be aware of the Due On Sale Clause and should consult an attorney.

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GENERIC PRACTICE

PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

LET'S DISCUSS!

Additional Important Considerations: In this scenario, the Broker is buying property for her own account as a principal. What steps does the Broker need to take when buying a property for their own account?

- Brokers must exercise care when engaging in the personal purchase or sale of property.
- Broker also has to disclose their license status in the contract or current writing.
- A Broker can no more be allowed to violate the license law and Commission Rules when purchasing/selling property on their own account than when they perform Real Estate Brokerage Services for a client.
- The Commission has the authority to investigate and discipline a Broker if a Broker is acting in the capacity of a principal in a real estate transaction and violations of the license law occur.

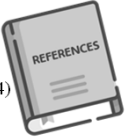
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PURCHASING PROPERTIES WITH ALTERNATIVE FINANCING

Purchasing Properties With Alternative Financing References

- HUD Circular Letter 7-90
- Commission Position Statement 16
- Commission Position Statement 22
- Commission Position Statement 23
- CREC Rule 6.5
- CREC Rule 6.17
- §§ 12-10-17(1)(q) & (w)
- Seibel v. Colorado Real Estate Commission (Colo. App. 1974)




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ENCUMBRANCES ON TITLE

Encumbrances On Title Scenario



Practical Scenario

Broker is looking for some ways to increase his business in the future. He begins a door-to-door campaign to generate future listings by entering into an agreement to pay prospective sellers for a "Broker Engagement Contract." Broker is offering a cash payment now, for the future promise to use Broker, or Broker's assignee to list their property whenever they decide to sell it. Once the agreement is executed, Broker records the agreement with the Clerk and Recorder's Office as a covenant against the property.


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ENCUMBRANCES ON TITLE

Questions

- 1 Is this type of "Broker Engagement Contract" permissible?
- 2 Does it create a possible conflict of interest between the Broker and Seller?



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ENCUMBRANCES ON TITLE

LET'S DISCUSS!

Is this type of "Broker Engagement Contract" permissible?
 No. If entered into **after** August 7, 2023, the Broker will have committed an unfair or deceptive trade practice.

Does it create a possible conflict of interest between the Broker and Seller?
 Yes. Broker is using the "Broker Engagement Contract" to obtain an interest in the land, a conflict of interest arises.

Practice Pointer:

- SB23-077 was not effective retroactively.
- These contracts can still be enforced if entered into before August 7, 2023.
- To protect your buyers, direct them to have an Ownership & Encumbrance Report (O&E) conducted on the property to determine if any existing Broker Engagement Contracts were recorded against the property before the effective date of SB23-077.

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ENCUMBRANCES ON TITLE

LET'S DISCUSS!

Practice Pointer:

- As discussed, SB23-077 was not effective before August 7, 2023.
- The Commission **DOES** have authority to investigate these types of contracts, even if they were entered into before August 7, 2023.
- If a Broker discovers that a "Broker Engagement Contract" was entered into, Broker should report it to the Commission.

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ENCUMBRANCES ON TITLE

Encumbrances On Title References

- 📖 SB23-077-Concerning Prohibiting The Inclusion of Certain Terms In A Broker Contract
- 📖 CREC Rule 6.17
- 📖 CREC Rule 7.1

REFERENCES

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Special/Metropolitan Districts
New Documents in 2024
Manufactured Home Documents
Changes to Other Forms

CONTRACTS & FORMS

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CONTRACTS & FORMS

Contracts & Forms For Educational Purposes

The Division provides redline and clean versions of the changed forms each year. These are provided for Brokers to review BEFORE and DURING the time that forms are effective. These documents remain available until about October each year.

CREC-Approved Contracts & Forms Webpage:
<https://dre.colorado.gov/real-estate-broker-contracts-and-forms>

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CONTRACTS & FORMS

Metropolitan Districts/Special Taxing Districts

403 8.4. Special Taxing and Metropolitan Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO
404 GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES
405 ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE
406 PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT
407 WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH
408 INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE
409 SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY
410 TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY OBTAINING
411 FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND
412 RECORDER, OR THE COUNTY ASSESSOR. The official website for the Metropolitan District, if any, is _____.

414 8.5. Tax Certificate. A tax certificate paid for by Seller Buyer, for the Property listing any special taxing or
415 metropolitan districts that affect the Property (Tax Certificate) must be delivered to Buyer on or before Record Title Deadline. If
416 the content of the Tax Certificate is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may terminate, on or before
417 Record Title Objection Deadline. Should Buyer receive the Tax Certificate after Record Title Deadline, Buyer, at Buyer's option,
418 has the Right to Terminate under § 24-1, by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's
419 receipt of the Tax Certificate. If Buyer does not receive the Tax Certificate, or if Buyer's Notice to Terminate would otherwise be
420 required to be received by Seller after Closing Date, Buyer's Notice to Terminate must be received by Seller on or before Closing.
421 If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the content of the Tax Certificate as
422 satisfactory and Buyer waives any Right to Terminate under this provision. If Buyer's loan specified in §4.5.3, (Loan Limitations)
423 prohibits Buyer from paying for the Tax Certificate, the Tax Certificate will be paid for by Seller.

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CONTRACTS & FORMS

CONTRACTS & FORMS

Special District Resource

Important website for Brokers to know about:

Department of Local Affairs Special Taxing District/Metropolitan District Look-Up:



<https://dola.colorado.gov/lgis/>

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CONTRACTS & FORMS

CONTRACTS & FORMS

Seller's Property Disclosure Supplement (Additional Structure) (NEW)

For Residential, Land, or Commercial transactions, the Commission has created a new document to provide supplemental disclosures for any additional structure(s).

Energy Benchmarking Disclosure (NEW)

To comply with Colorado law, owners need to provide benchmark energy data for "Covered Buildings." Failure to comply could result in a \$2,000 fine per violation.

A "Covered Building" is a commercial or multi-family building with a gross floor area of fifty thousand (50,000) square feet or more.

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CONTRACTS & FORMS

CONTRACTS & FORMS

Manufactured Home Contract to Buy and Sell

Manufactured Home Addendum to Contract to Buy and Sell Real Estate

Manufactured Home Counterproposal

Manufactured Home Amend/Extend

Practice Pointer: Manufactured homes practice is a very specialized industry. Brokers must have competency to complete a transaction. Classes are available if you are interested in expanding your practice.

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CONTRACTS & FORMS

CONTRACTS & FORMS

Other Changes

- Exclusive Right to Lease Listing Contract & Exclusive Right-To-Sell Listing Contract
- Brokerage Duties Addendum to Property Management Agreement
- Contract to Buy and Sell Real Estate (Residential) (Colorado Foreclosure Protection Act)
- Contract to Buy and Sell Real Estate (Income-Residential)
- Contract to Buy and Sell Real Estate (Residential)
- Residential Addendum To Contract to Buy and Sell Real Estate
- Contract to Buy and Sell Real Estate (Land)
- Seller's Property Disclosure (Residential)
- Contract to Buy and Sell Real Estate (Commercial)
- Seller's Property Disclosure (Commercial)
- Seller's Property Disclosure (Land)
- Earnest Money Receipt
- Notice to Terminate

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LEGISLATION

MDs and CIC Laws
Property Management Laws
Other Laws Affecting Real Estate

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LEGISLATION


NEW LEGISLATION
RELATED TO OR AFFECTING THE
REAL ESTATE INDUSTRY

Metropolitan Districts
&
Common Interest Communities






- HB23-1105: Concerning the Creation of Task Forces To Examine Issues Affecting Certain Homeowners' Rights
- HB23-1233: Concerning Energy Efficiency and Adopting Rules Facilitation Electric Vehicle Charging At Multifamily Buildings
- SB23-016: Concerning Measures to Promote Reductions In Greenhouse Gas Emissions In Colorado
- SB23-110: Concerning Transparency For Metropolitan Districts
- SB23-178: Concerning Removing Barriers To Water-Wise Landscaping In Common Interest Communities

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LEGISLATION  **NEW LEGISLATION**
 RELATED TO OR AFFECTING THE
REAL ESTATE INDUSTRY







Property Management
01 of 02

-  HB23-1068: Concerning Pet Animal Ownership in Housing *(previously discussed)*
-  HB23-1095: Concerning Prohibiting The Inclusion of Certain Provisions In Written Rental Agreements *(previously discussed)*
-  HB23-1099: Concerning Portable Background Checks and Screening Reports *(previously discussed)*
-  HB23-1120: Concerning Eviction Protections For Residential Tenants Who Receive Public Assistance *(previously discussed)*
-  HB23-1186: Concerning Remote Participation In a Residential Eviction Filing in County Court *(previously discussed)*


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LEGISLATION  **NEW LEGISLATION**
 RELATED TO OR AFFECTING THE
REAL ESTATE INDUSTRY



Property Management
02 of 02

-  HB23-1254: Concerning the Conditions Covered Under the Warranty of Habitability and Requirements to Remediate a Residential Premises Damaged Due to an Environmental Public Health Event *(previously discussed)*
-  SB23-148: Concerning Property Used To Illegally Manufacture Drugs *(previously discussed)*
-  SB23-184: Concerning Protections for Residential Tenants *(previously discussed)*
-  SB23-206: Concerning Information About Radon In Residential Real Property Transactions *(previously discussed)*
-  Colorado PUC 4 CCR 723-5 5000.1(f)/5111 *(previously discussed)*
-  EPA Changes Lead-Based Paint Rule *(previously discussed)*

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LEGISLATION  **NEW LEGISLATION**
 RELATED TO OR AFFECTING THE
REAL ESTATE INDUSTRY

Other Laws Affecting Real Estate

-  HB23-1125: Concerning the Modernization of the Process to Change Groundwater Well Owner Contact Information
-  SB23-077: Concerning Prohibiting The Inclusion of Certain Terms In A Broker Contract *(previously discussed)*

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**Commission
News &
Resources**

- New Licensing System
- 2024 CREM
- Division Website Updates
- Resources For Licensees & Consumers
- Feedback Survey
- Examination

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COMMISSION NEWS

New Licensing System

Implementation ETA Q2, 2024

HIGHLIGHTS

- ☆ Single Sign On (SSO): Licensees can sign in using Google, Facebook, Apple ID, etc.
- ☆ CE tracking and access to centralized CE records & improved lookup for approved CE providers and courses. *Licensees are still required to maintain CE records for a period of four years pursuant to CREC Rule 4.5(I) & (J).*
- ☆ Better notifications and communication out of the system and better view into application processing (allow for someone to see the progress of their application within the online portal)
- ☆ Better application workflow around changes in either license level or role (ER to EA to EI, etc.)

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RESOURCES

2024 Colorado Real Estate Manual

The 2024 Colorado Real Estate Manual consists of information pertaining to the Division's licensing programs, applicable statutes, rules, position statements, landmark case law, and important real estate subject areas.

The manual is a beneficial resource for new licensees and seasoned real estate Brokers, mortgage loan originators, appraisers, and other real estate professionals and comes with an eBook download benefit to search the manual digitally.

The 2024 CREC Manual may be purchased from Lexis/Nexis at:
<https://store.lexisnexis.com/>

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RESOURCES

DIVISION OF REAL ESTATE WEBSITE

- Updated Contracts and Forms
- Licensee Advisories
- Consumer Advisories
- E-License: License Upgrades and Renewals
- Licensee & Public Disciplinary Action Look-Up
- Licensee and Common Interest Community Online Complaint Filing
- Education Pages
- Bi-Monthly Notifications and Quarterly Newsletters
- Abridged 2024 Real Estate Manual/Division Rules/Position Statements
- Colorado Open Records Act (CORA) Requests
- HOA Information & Resource Center program page and Frequently Asked Questions
- Link to Division's YouTube Channel With Even More Information

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RESOURCES

Colorado Foreclosure Hotline
1-877-601-HOPE

Colorado Housing Connects
1-844-926-6632

HUD Housing Counseling and Referral Line
1-800-569-4287


Active Military for Foreclosures – Servicemembers Civil Relief Act
877-827-3702

Colorado Foreclosure Protection Act Guidance:
<https://dre.colorado.gov/division-notifications/understanding-the-colorado-foreclosure-protection-act>

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FEEDBACK

We Value Your Feedback!



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

The feedback will help: (1) the Education Task Force develop future courses and (2) provide instructors with input on their teaching of the course. Help your fellow licensees and help your practice at the same time.

Feedback may be sent by using the survey link below:

https://www.surveymonkey.com/r/2024_ACU

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EXAMINATION

TIME TO TEST YOUR KNOWLEDGE

There are two versions of the exam.

Estimated time for an exam is 10 minutes.

At least one exam version must be passed to earn a course completion certificate.

To obtain a passing score, at least 70% of the questions must be answered correctly.

