

REDLINE

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
REAL ESTATE COMMISSION
4 CCR 725-1

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
August 5, 2019

RULE F. USE OF FORMS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S., as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Real Estate Commission (the "Commission") to promulgate rules, or to amend, repeal, or repeal and re-enact the present rules of the Commission.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Part 1 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive pursuant to section 24-4-103.3., C.R.S. (SB14-063) and to promulgate necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

SPECIFIC PURPOSE OF RULEMAKING

The specific purpose of this rulemaking is to repeal existing rules with respect to the use of standard forms for real estate brokers. The Division of Real Estate conducted a review of all of its rules relating to the real estate practice act to assess the continuing need for and the appropriateness and cost-effectiveness of its rules to determine if they should be continued in their current form, modified, or repealed. After consultation with stakeholders, the proposed rules have been re-organized, re-indexed, and correctly categorized. As a result, the current rules are being repealed and re-established in a chapter format.

PROPOSED NEW, AMENDED AND REPEALED RULES

Deleted material shown ~~struck through~~; new material is indicated by underline. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Commission at www.dora.colorado.gov/dre.

~~F. Use of Forms~~

~~F-1. Standard forms~~

~~Pursuant to section 12-61-803(4), C.R.S., a broker is authorized to complete standard forms for use in a real estate transaction, including standard forms intended to convey personal property, as part of the real estate transaction, when a broker is performing the activities for which a real estate broker's license is required and the broker is acting as a single agent or transaction broker. The broker's use of standard forms must be appropriate for the transaction and the circumstances in which they are used. The broker must advise the parties that the standard forms have important legal consequences and that the parties should consult legal counsel before signing such forms. A standard form is:~~

~~A) Commission-Approved Forms. A form promulgated by the Real Estate Commission for current use by real estate brokers, i.e. a "Commission-Approved Form". A broker must~~

~~use a Commission-Approved Form when such a form exists and is appropriate for the transaction. The broker may also advise the parties as to the effects thereof. To obtain the forms promulgated by the Real Estate Commission, visit the Division of Real Estate's website or the Division of Real Estate's offices at 1560 Broadway, Denver, Colorado 80202;~~

- ~~B) Attorney Forms. A form drafted by a licensed Colorado attorney representing the broker, the employing broker, or the brokerage firm, provided a Commission-Approved Form does not exist or is not appropriate for the transaction. The form must contain the language "This form has not been approved by the Colorado Real Estate Commission" as well as the name of the attorney or law firm and the name of the broker, employing broker, or the brokerage firm for whom the form is prepared and may not be altered other than by completing any blank spaces in the form. The broker may also advise the parties as to the effects thereof;~~
- ~~C) Client Forms. A form provided by a party to the transaction if the broker is acting in the transaction as either a transaction broker or single agent for the party providing the form. The broker must retain written confirmation that the form was provided by said party to the transaction. A broker's use of such form is limited to inserting transaction-specific information within the form;~~
- ~~D) Government and Lender Forms. A form prescribed by a governmental agency, a quasi-government agency, or a lender regulated by state or federal law, if use of the form is mandated by such agency or lender. A broker's use of such form is limited to inserting transaction-specific information within the form;~~
- ~~E) Colorado Bar Association Forms. A form used with the written approval of the Colorado Bar Association or its successor organization and specifically designated for use by brokers in Colorado, provided a Commission-Approved Form does not exist or is not appropriate for the transaction. A broker must use the form within any guidelines or conditions specified by the Colorado Bar Association or its successor organization and may not be altered other than by completing any blank spaces in the form. A broker may not use any forms published or distributed by the Colorado Bar Association unless such form contains the following: "This form has been approved by the Colorado Bar Association for use by real estate brokers in Colorado in accordance with the guidelines provided with this form". The broker may also advise the parties as to the effects thereof;~~
- ~~F) Disclosure Forms. A form used for disclosure purposes only, if the disclosure does not claim to waive or create any legal rights or obligations affecting any party to the transaction. The form must contain the language "This form has not been approved by the Colorado Real Estate Commission". The broker may also advise the parties as to the effects thereof. The disclosure form may only provide information concerning:
 - ~~1) The real estate involved in the transaction specifically; or~~
 - ~~2) The geographic area in which the real estate is located generally.~~~~
- ~~G) Title Company Forms. A form prescribed and completed by a title company that is providing closing services in a transaction. The broker may also advise the parties as to the effects thereof;~~
- ~~H) Letters of Intent. A letter of intent created or prepared by a broker, employing broker, or brokerage firm so long as the letter of intent states on its face that it is nonbinding and creates no legal rights or obligations. The form must contain the language that "This form has not been approved by the Colorado Real Estate Commission". The broker may also advise the parties as to the effects thereof.~~

~~F-2. Commission-Approved Forms – permitted and prohibited modifications; form reproduction.~~

- ~~(A) For purposes of Rules F-2 through F-4, the term “Broker” also includes brokerage firm.~~
- ~~(B) A broker may add its firm name, trade name, address, telephone, e-mail, trademark or other identifying information on a Commission-Approved Form.~~
- ~~(C) A broker may add initial lines at the bottom of a page of any Commission-Approved Form.~~
- ~~(D) Any deletion or modification to the printed body of a Commission-Approved Form must result from negotiations or the instruction(s) of a party to the transaction. Any deletion must be made directly on the printed body of the form by striking through the deleted portion in a legible manner that does not obscure the deletion that has been made.~~
- ~~(E) Blank spaces on a Commission-Approved Form may be lengthened or shortened to accommodate the applicable data or information.~~
- ~~(F) Provisions that are inserted into blank spaces must be printed in a style or type that clearly differentiates such insertions from the style or type used for the Commission-Approved Form language.~~
- ~~(G) A broker may delete part or all of the following provisions of a Commission-approved “Contract to Buy and Sell Real Estate” (even if the provision is identified by a different section number), or corresponding provisions in other Commission-Approved Forms, if such provisions do not apply to the transaction. In the event any provision is deleted, the provision’s caption or heading must remain unaltered on the form followed by the words “omitted-not applicable”.~~
- ~~1. Section 2.5 Inclusions in its entirety or any of its subsections~~
 - ~~2. Section 2.6 Exclusions~~
 - ~~3. Section 2.7 Water Rights, Well Rights, Water and Sewer Taps~~
 - ~~4. Section 4.2 Seller Concessions~~
 - ~~5. Section 4.5 New loan in its entirety or any of its subsections~~
 - ~~6. Section 4.6 Assumption~~
 - ~~7. Section 4.7 Seller or Private Financing~~
 - ~~8. Section 5 Financing Conditions and Obligations in its entirety or any of its sections~~
 - ~~9. Section 6 Appraisal Provisions in its entirety or any of its subsections~~
 - ~~10. Section 7 Owners’ Association in its entirety or any of its subsections~~
 - ~~11. Section 8.6 Right of First Refusal or Contract Approval~~
 - ~~12. Section 9 New ILC, New Survey~~
 - ~~13. Section 10.6 Due Diligence in its entirety or any of its subsections~~
 - ~~14. Section 10.8 Source of Potable Water (CBS1, CBS2, CBS4, CBSF1)~~
 - ~~15. Section 10.8 Existing Leases; Modification of Existing Leases; New Leases (CBS3)~~

16. ~~Section 10.9 Existing Leases; Modification of Existing Leases; New Leases (CBS4)~~
 17. ~~Section 10.12 Existing Leases; Modification of Existing Leases; New Leases (CBS2)~~
 18. ~~Section 11 Tenant Estoppel Statements in its entirety or any of its subsections (CBS2, CBS3, CBS4)~~
 19. ~~Section 15.3 Status Letter and Record Change Fees~~
 20. ~~Section 15.4 Local Transfer Tax~~
 21. ~~Section 15.5 Private Transfer Fee~~
 22. ~~Section 15.7 Sales and Use Tax~~
 23. ~~Section 16.2 Rents~~
 24. ~~Section 16.3 Association Assessments~~
- (H) ~~A broker may add one or more additional pages to the “Contract to Buy and Sell Real Estate”, “Counterproposal” and the “Agreement to Amend/Extend Contract”, following such document, that contains the dates and deadlines information set forth in § 3, arranged in chronological date sequence.~~
- (I) ~~A broker may delete part or all of the following provisions of the “Counterproposal” and the “Agreement to Amend/Extend Contract” if such provisions do not apply to the transaction. In the event any provision is deleted, the provision’s caption or heading must remain unaltered on the form followed by the words “omitted-not applicable”.~~
1. ~~Section 3 Dates and Deadlines Table~~
 2. ~~Section 4 Purchase Price and Terms [in the Counterproposal only]~~
- (J) ~~A broker may add signature lines and identifying labels for the parties signatures on a Commission-Approved Form.~~
- (K) ~~A broker may modify, strike or delete such language on a Commission-Approved Form as the Commission may from time to time authorize the language to be modified, stricken or deleted.~~
- (L) ~~A broker must explain all permitted modifications, deletions, omissions, insertions, additional provisions and addenda to the principal party and must recommend that the parties obtain expert advice as to the material matters that are beyond the expertise of the broker.~~
- (M) ~~Commission-Approved Forms used by a broker, including permitted modification made by a broker, must be legible.~~
- (N) ~~Brokers generating Commission-Approved Forms in an electronic format must ensure that the forms are protected so as to prevent inadvertent changes or prohibited modifications of Commission-Approved Forms by the broker or recipient.~~

F-3. ~~Additional Provisions~~

- (A) ~~Any “Additional Provision” which by its terms serves to delete or modify portions of a standard form, must result from negotiations or the instruction(s) of a party to the transaction.~~

~~(B) — A broker who uses a transaction-specific clause or clauses drafted by the broker's licensed Colorado attorney must ensure that the broker understands the clause, and the clause is used and completed appropriately. The broker must retain the clause(s) prepared by the broker's licensed Colorado attorney for four (4) years from the date that the clause was last used by the broker. The broker must provide those clause(s) and the name of the licensed Colorado attorney or law firm that prepared the clause(s) upon request by the Commission.~~

~~F-4. — Prohibited Provisions~~

~~(A) — No contract provision, including modifications OR ADDITIONAL PROVISIONS permitted by Rules F-2 and F-3, will relieve a broker from compliance with the real estate license law, section 12-61-101, C.R.S., et. seq., or the Rules of the Commission.~~

~~(B) — A broker who is not a principal party to the contract may not have personal provisions, personal disclaimers or exculpatory language in favor of the broker inserted into a standard form. A broker may, at the direction of a principal party, include language regarding payment of the broker's or brokerage's commission if this is a term of negotiation between the principal parties of the contract to buy and sell.~~

~~F-5. — Repealed (effective November 30, 2017).~~

~~F-6. — Repealed (effective November 30, 2017).~~

~~F-7. — Repealed (effective November 30, 2017).~~

~~(Repealed and re-established in 4 CCR 725-1, Chapters 1-9 effective January 01, 2020)~~

A hearing on the above subject matter will be held on Monday, August 5, 2019 at the Colorado Division of Real Estate, 1560 Broadway, Suite 110-D, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.