

## **F. Use of Commission Approved Forms**

### **F-1 Permitted and Prohibited Form Modifications**

- (a) No modifications shall be made to a Commission-approved form by a broker except as provided in rules promulgated by the Commission and as set forth in this Rule F-1 through F-7. For purposes of Rule F-1 through F-7, the term "Commission-approved form" means any form promulgated by the Commission; the term "broker" shall also include brokerage firm.
- (b) A broker may add its firm 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 to the printed body of a Commission-approved form, or any "Additional Provision" or "Addenda" which by its terms serves to amend or delete portions of the approved language, must result from negotiations or the instruction(s) of a party to the transaction and must be made directly on the printed body of the form by striking through the amended or 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 of type that clearly differentiates such insertions from the style of type used for the Commission-approved form language.
- (g) A broker may omit part or all of the following provisions of the "Contract to Buy and Sell Real Estate", or corresponding provisions in other Commission-approved forms, if such provisions do not apply to the transaction. In the event any provision is omitted, the provision's caption or heading must remain unaltered on the form followed by the word "OMITTED".
  - 1. Section 3.1 Inclusions in its entirety or any of its subsections
  - 2. Section 4.4 Seller Concessions
  - 3. Section 4.5 New Loan in its entirety or any of its subsections
  - 4. Section 4.6 Assumption
  - 5. Section 4.7 Seller or Private Financing
  - 6. Section 5 Financing Conditions and Obligations in its entirety or any of its sections
  - 7. Section 6 Appraisal Provisions in its entirety or any of its subsections
  - 8. Section 7.4 Common Interest Community Governing Documents
  - 9. Section 8.4 Special Taxing Districts
  - 10. Section 8.6 Right of First Refusal or Contract Approval

11. Section 9 Lead-Based Paint
12. Section 10.7 Source of Potable Water
13. Section 10.8 Carbon Monoxide Alarms
14. Section 11 Methamphetamine Disclosure
15. Section 15.5 Status and Transfer Letter Fees
16. Section 15.6 Local Transfer Tax
17. Section 15.7 Sales and Use Tax
18. Section 16.2 Rents
19. Section 16.3 Association Assessments

- (h) A broker may add an additional page 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 §2.3, arranged in chronological date sequence.
- (i) A broker may omit 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 omitted, the provision's caption or heading must remain unaltered on the form followed by the words "OMITTED" .
1. Section 2.3 Dates and Deadlines table
  2. Section 4 Purchase Price and Terms [in the Counterproposal only]
- (j) A broker may substitute the term "Landlord" for the term "Seller" and the term "Tenant" for the term "Buyer" in the Brokerage Disclosure to Buyer form, in the Brokerage Disclosure to Seller and Definitions of Working Relationships form when making disclosures in a lease transaction.

## **F-2. Additional Provisions**

- (a) The "Additional Provisions" section of a Commission-approved form must contain only those transaction-specific terms or acknowledgments that result from negotiations or the instruction(s) of the party(ies) to the transaction.
- (b) A broker who is not a principal party to the contract may not insert personal provisions, personal disclaimers or exculpatory language in favor of the broker in the "Additional Provisions" section of a Commission-approved form.

## **F-3 Addenda**

- (a) If a broker originates or initiates the use of a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form which does not result from the negotiations of the parties, such addendum must be prepared by:
- (1) an attorney representing the broker or brokerage firm; or

- (2) a principal party to the transaction; or
  - (3) an attorney representing a principal party.
- (b) An addendum permitted by this Rule F- 3 (a), shall not be included within the body of, or in the "Additional Provisions" section of, a Commission-approved form.
  - (c) A broker who is not a principal party to the contract may not insert personal provisions, personal disclaimers or exculpatory language in favor of the broker in an addendum.
  - (d) If an addendum is prepared by a broker's attorney, the following disclosure must appear on each page of the addendum in the same sized type as the size of type used in the addendum: "This addendum has not been approved by the Colorado Real Estate Commission. It was prepared by (insert licensed name of broker or brokerage firm's) legal counsel."
  - (e) If an addendum to a listing, tenant or right to buy contract, is prepared by a broker or brokerage firm, the following disclosure must appear on each page of the addendum in the same sized type as the size of type used in the addendum:  
  
"This addendum has not been approved by the Colorado Real Estate Commission. It was prepared by (insert licensed name of broker or brokerage firm)."

#### **F-4 Prohibited Provisions**

No contract provision, including modifications permitted by Rules F-1 through F-3, shall relieve a broker from compliance with the real estate license law, section 12-61-101, et. seq., or the Rules of the Commission.

Pursuant to Rule E-12, when a written agreement contains a provision entitling the broker to a commission on a sale or purchase made after the expiration of the agreement, such provision must refer only to those persons or properties with whom or on which the broker negotiated during the term of the agreement, and whose names or addresses, were submitted in writing to the seller or buyer during the term of the agreement, including any extension thereof.

#### **F-5 Explanation of Permitted Modifications**

The broker shall 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.

#### **F-6 Commission-Approved Form Reproduction:**

- (a) Commission-approved forms used by a broker, including permitted modification made by a broker, shall be legible.
- (b) Brokers generating Commission-approved forms through the use of a computer shall ensure that a security software program is utilized that prevents inadvertent change or prohibited modification of Commission-approved forms by the broker or other computer user.

#### **F-7 Commission Approved Forms [Eff. 07/31/2009]**

Real estate brokers are required to use Commission-approved forms as appropriate to a transaction or circumstance to which a relevant form is applicable. Commission-approved forms are posted on the Division of Real Estate's website. Effective June 2009, the Commission will no longer post forms in the

Code of Colorado Regulations. The Commission hereby withdraws all forms from the Code of Colorado Regulations. In instances when the Commission has not developed an approved form within the purview of this rule, and other forms are used, they are not governed by Rule F. Other forms used by a broker shall not be prepared by a broker, unless otherwise permitted by law.

The following are the forms promulgated by the real estate commission and are within the purview of Rule F:

*Listing Contracts*

Exclusive Right-to-Sell Listing Contract

Exclusive Right-to-Buy Contract

Exclusive Right-to-Lease Listing Contract

Exclusive Tenant Contract

*Sales Contracts*

Contract to Buy and Sell Real Estate (All Properties)

*Addenda to Contracts*

Licensee Buy-Out Addendum to Contract to Buy and Sell Real Estate (see footnote # 2)

Source of Water Addendum to Contract to Buy and Sell Real Estate

Exchange Addendum to Contract to Buy and Sell Real Estate

Lead-Based Paint Disclosures (Sales)

Lead-Based Paint Disclosures (Rentals)

Brokerage Duties Addendum to Property Management Agreement

Short Sale Addendum

Exclusive Brokerage Listing Addendum to Exclusive Right-to-Sell Listing Contract

Open Listing Addendum to Exclusive Right-to-Sell Listing Contract

*Disclosure Documents*

Brokerage Disclosure to Buyer-Tenant (see footnote # 3)

Brokerage Disclosure To Tenant (see footnote # 3)

Brokerage Disclosure to Seller (REO and Non-CREC Approved Listings)

Broker Disclosure to Seller (Sale by Owner) (see footnote # 3)

Definitions of Working Relationships (see footnote # 3)

Seller's Property Disclosure (All Types of Properties)

Seller's Property Disclosure (Residential)

Change of Status

Square Footage Disclosure

Dual Status Disclosure

*Notice Documents*

Inspection Notice

Notice to Terminate

Seller Authorization

*Counterproposal*

Counterproposal

*Agreement to Amend/Extend Contract*

Agreement to Amend / Extend Contract

Agreement to Amend / Extend Contract with Broker

*Closings*

Closing Instructions

Earnest Money Receipt

Closing Statement (see footnote # 1)

*Deeds of Trust*

Deed of Trust (Due on Transfer-Strict)

Deed of Trust (Due on Transfer-Credit worthy)

Deed of Trust (Assumable-Not Due-on Transfer)

*Promissory Notes*

Earnest Money Promissory Note

Promissory Note for Deed of Trust (UCCC-No Default Rate)

Promissory Note for Deed of Trust

**Optional Forms** (Not Mandatory)

Worksheet for Real Estate Settlement

Real Property Transfer Declaration

Earnest Money Release

Common Interest Community Checklist for Brokerage Firm

Listing Firm's Well Checklist

Colorado Statutory Power of Attorney for Property Form

Lead Based Paint Obligations of Seller

Lead Based Paint Obligations of Landlord

**Footnotes:**

(1) In lieu of using this form, Brokers may, use a closing statement or statement of settlement that is in full compliance with Rule E-5.

(2) This form is to be used when a broker enters into a contract to purchase a property either: (a) concurrent with the listing of such property; or (b) as an inducement or to facilitate the property owner's purchase of another property; or (c) continues to market that property on behalf of the owner under an existing listing contract.

(3) It shall be permissible to use the language in a format approved by the Commission, or in a format applicable to the broker's written office policy. The broker may, in addition to the required brokerage disclosure form, use the document, Definitions of Working Relationships.

**DEPARTMENT OF REGULATORY AGENCIES**

**Division of Real Estate**

**RULES REGARDING REAL ESTATE BROKERS**

**4 CCR 725-1**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

**A. License Qualifications, Applications and Examinations**

A-1. Repealed (1-6-00)

A-2. Effective January 1, 2006 educational requirements for an initial license imposed by 12-61-103(4) and (6)(c)(II) C.R.S., must be completed and proof of completion filed in a method or manner as prescribed by the Commission prior to taking the examination and applying for a license. Effective October 1, 2005, educational providers authorized pursuant to 12-61-103(4) C.R.S. must file with the Commission's exam provider electronically, or in such other method or manner as prescribed by the Commission, a certification of completion, evidencing that an applicant has successfully completed the respective course requirements.

A-3. Examinations will be given only to duly qualified applicants for a real estate broker license, licensees upgrading a license, or licensees meeting the continuing education requirement; however, one instructor from each real estate school offering real estate courses required of applicants under section 12-61-103(4) C.R.S. may write the examination one time during any 12-month period.

A-4. Repealed.

A-5. The real estate license examination is made up of two parts, the general part, and the local (state) part. Applicants for licensure who must receive passing scores on both the general part and the state part of the examination need not receive them on the same administration date. If one part is failed, the applicant may retake it at a subsequent time. In no event will a passing score on either part be accepted beyond one year.

A-6. Repealed

A-7.

The Real Estate Commission will not certify to any person, state or agency any information concerning the results of any examination as it pertains to any person who has written the examination unless such person is or has been licensed as a Colorado real estate broker or pursuant to such examination; except, that the Commission may authorize a special examination for existing licensees for certification purposes.

A-8. Subject to 12-61-103 (6), a person who has successfully passed the written exam must, in compliance with Rule A-5, within one year of the date of passing the entire examination, apply in complete detail for licensure accompanied by the statutory application fee and the appropriate supporting documentation showing the person has completed the required educational and/or experience requirements pursuant to applicable statutes and rules. Such complete application for licensure must be received within the one-year period as set forth in Rule A-5, or all rights to a passing score will be terminated and any incomplete application will be canceled. All examination records pertaining to a canceled application will be destroyed.

A-9. Provided the applicant has submitted a complete and satisfactory application in compliance with 12-61-102 C.R.S., the Commission will issue a license within 10 business days after receipt by the Commission of satisfactory results from the fingerprint-based criminal history record check. If the application or record check is not complete or satisfactory, the applicant will be mailed a notice of deferred status. The license of a broker whose application has been approved by the Commission subject to the receipt of certain compliance items shall be issued on an inactive status if such compliance items are not submitted within 20 days after written notification by the Commission.

A-10. The Commission may deny or defer an original license application pursuant to 12-61-103(3). Under no circumstances will an examination be recognized by the Commission as complying with 12-61-103(6) after 18 months from the date an applicant took the examination which resulted in a passing score.

A-11. An applicant for a Colorado real estate broker license, who has been licensed as a real estate broker or salesperson in any other state must file with the application for a Colorado license a "certification of licensing history" issued by each state where licensed or has been licensed as a real estate broker or salesperson. If currently licensed, such certificate must bear a date of not more than 90 days prior to submission date of the application. If no longer licensed, such certificate must bear a date subsequent to expiration date.

A-12. (a) Pursuant to 12-61-103 C.R.S., an applicant who has been convicted or pleaded nolo contendere to a misdemeanor or a felony, or any like municipal code violation, or has such charges pending or has agreed to a deferred prosecution, a deferred judgment, or a deferred sentence (violations) (excluding misdemeanor traffic violations) within the last ten years must file prior to or with his or her application for licensing the following information and documentation:

1. A written and signed personal explanation and detailed account of the facts and circumstances surrounding each violation, which shall include the statement, "I have been charged with no other criminal violations either past or pending, other than those I have stated on the application."
2. The completed Commission form number REC-BAA, including results of court hearing(s), in the form of copies of charges, disposition, pre-sentencing report and most recent probation or parole report.
3. If the applicant is to be employed by another licensee, the employing broker must

submit a letter stating that he/she is aware of the specific charge(s) or convictions(s).

(b) (1) At any time prior to submission of a formal application for licensure a person may request that the Commission issue a preliminary advisory opinion regarding the potential effect that previous conduct, criminal conviction(s) or violation(s) of the real estate license law may have on a future formal application for licensure. Such opinion may be issued by the Commission, in its discretion, in order to provide preliminary advisory guidance. Any such opinion shall not be binding on the Commission or limit the Commission's authority to investigate a future formal application for licensure. However, if the Commission issues a favorable advisory opinion, the Commission may elect to adopt such advisory opinion as the final decision of the Commission without further investigation or hearing.

(2) An individual seeking a preliminary advisory opinion under this rule is not an applicant for licensure and the issuance of an unfavorable opinion shall not prevent such individual from making application for licensure pursuant to the real estate licensing law and the rules and regulations of the Commission.

A-13. Repealed August 2, 2005 (effective 10-2-05)

A-14. Repealed [effective October 30, 2008]

A-15. Brokers initially licensed prior to July 1, 2004, who hold a license that was renewed or reinstated on inactive status during the years 2005, 2006 or 2007 must submit fingerprints to the Colorado Bureau of Investigation to be used to complete a one-time only criminal history record check prior to a change to active status. Renewed licenses will remain on inactive status until the Commission has received the results of a criminal record check. Fingerprints may be submitted for processing prior to renewal either electronically or on Card No. FD-258 in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of Investigation. The Commission may acquire a name-based criminal history record check for a renewing licensee who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. *[Eff. 03/02/2009]*

A-16. Effective August 9, 2005, applicants for an initial license must submit a set of fingerprints to the Colorado Bureau of Investigation and Federal Bureau of Investigation for the purpose of conducting a state and national criminal history record check prior to submitting an application for a license. Applications submitted to the Commission for which the results of a criminal history record check have not been received by the Commission will automatically be voided as incomplete, and the application fee paid will be non-refundable. Fingerprints must be submitted to the Colorado Bureau of Investigation for processing either electronically or on Card No. FD-258 in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of Investigation.

A-17. The seventy two hours of instruction or equivalent distance learning hours required in 12-61-103(4)(a)(III) C.R.S. must be satisfied by successful completion of courses of study approved by the Commission as follows:

(a) A minimum of 24 hours in Real Estate Closings; and

(b) A minimum of 8 hours in Trust Accounts and Record Keeping; and



(c) A minimum of 8 hours in Current Legal issues; and

(d) A minimum of 32 hours in Practical Applications.

A-18. Repealed (effective 1-1-96)

A-19. Repealed (effective 3-4-99)

A-20. If the applicant for licensure is denied by the Commission for any reason, the applicant will be informed of the denial and the reason therefore.

A-21. Repealed (effective 1-1-97)

A-22. Repealed.

A-23. Completion of the courses of study approved by the Commission as required in 12-61-103(4)(a)(I), (II), (III), & 6(c) (II) C.R.S., whether through classroom or distance learning, must be based upon educational principles acceptable to the Real Estate Commission.

A23.5 Repeal 5/3/05

A-24. The Commission may audit courses and may request from each school offering a Commission approved course of study under 12-61-103(4)(a) and (b), C.R.S., all instructional material related thereto and student attendance records as may be necessary for an investigation in the enforcement of Section 103 of the License Law and Commission Rules and Regulations. The purpose of the audit shall be to ensure that schools adhere to the approved course of study, offer course material and instruction consistent with acceptable education standards and instruct in such a manner that the desired learning objectives are met. Failure to comply with the provisions of this rule may result in the withdrawal of Commission course approval.

A-25. If the fees accompanying any application or registration made to the Commission (including fees for the recovery fund, renewals, transfers, etc.) are paid for by check and the check is not immediately paid upon presentment to the bank upon which the check was drawn, the application shall be canceled; the application may be reinstated only at the discretion of the Commission and upon full payment of any fees together with payment of the fee required by state fiscal rules for the clerical services necessary for reinstatement.

A-26. Pursuant to 12-61-103(7)(c) C.R.S., a temporary broker's license maybe issued to a corporation, partnership or limited liability company to prevent hardship. No application for a temporary broker's license will be approved unless the designated individual is a Colorado real estate broker with two years of active license experience as indicated by the records of the Real Estate Commission. No more than two temporary licenses may be issued to any corporation, partnership or limited liability company, whether consecutive or not, during any 18 month period, except by the Commission.

A-26. Pursuant to 12-61-103(7)(c) C.R.S., a temporary broker's license may be issued to a corporation, partnership or limited liability company to prevent hardship. No application for a temporary broker's license will be approved unless the designated individual is a Colorado real estate licensee. No more than two temporary licenses may be issued to any corporation, partnership or limited liability company, whether consecutive or not, during any 18 month period, except by the Commission.

## **B. Continuing Education**

B-1. The Commission has determined that the license renewal process can be made more efficient by

apportioning license renewals throughout the entire calendar year.

- (a) Calendar year renewal period. Historically, licenses have been renewed for three-year periods commencing on January 1 of year one and expiring on December 31 of year three (e.g. January 1, 2003 through December 31, 2005). This is the "calendar year renewal period" .
- (B) Transition renewal period and partial year. The Commission shall renew a license expiring on December 31, 2005 or 2006 or 2007, for a period of time equal to two years plus the number of days until the broker's initial date of issuance anniversary date (or another date assigned by the Commission), the "anniversary date" . For example, if a license expires on December 31, 2005, and the broker's initial date of issuance anniversary date is July 15, then the Commission shall issue a license for the period of January 1, 2006 through July 15, 2008. The less than three-year renewal period (e.g. January 1, 2006 through July 15, 2008) is called the "transition renewal period" . The less than one-year period from January 1 until the initial date of issue anniversary date (e.g. January 1, 2008 through July 15, 2008) is called a "partial year" .
- (c) Anniversary date renewal period. After the transition renewal period, all subsequent license renewals shall be for a full three-year period called the "anniversary date renewal period" . This period shall commence on the broker's initial date of issuance anniversary date (e.g. July 15, 2008) and expire three years later on the broker's initial date of issuance anniversary date (e.g. July 15, 2011).
- (d) Anniversary year. During the anniversary date renewal period, the one-year period of time between the broker's initial date of issuance anniversary date and the next anniversary date is an "anniversary year" . There are three anniversary years in each anniversary date renewal period.

## B-2.

Licensed brokers must satisfy the continuing education requirement before applying to renew an active license, to activate an inactive license or to reinstate an expired license to active status. Licensed brokers may satisfy the entire continuing education requirement through one of the following options:

- (a) Completing the twelve hours required by C.R.S. 12-61-110.5 (1) (c) and (2) required by this rule in annual 4-hour increments developed by the Commission and called the "Annual Commission Update" course. Licensees choosing this option must complete an additional 12 hours of elective credit hours to meet the 24-hour total continuing education requirement during the license period in subject areas listed in C.R.S. 12-61-110.5(3).
- (b) A licensee may not take the same version of the Annual Update Course more than once during each license period. If a licensed broker takes more than 12 hours of the Annual Commission Update course during a license period, the licensee will receive elective credit hours for any additional hours.
- (c) Completing the Commission-approved 24-hour "Broker Transition" course. (This option is permitted once to each licensee in lieu of the requirements of rule B-2 (a)).
- (d) Completing the Commission-approved 24-hour "Brokerage Administration" course. (This option is permitted once to each licensee in lieu of the requirements of rule B-2 (a)).
- (e) Passing the Colorado state portion of the licensing exam.
- (f) Completing 72 total hours of pre-licensure education concerning the understanding and

preparation of Colorado real estate contracts (48 hours) and real estate closings (24 hours) during the license period. The courses and course providers are required to comply with the requirements as described at § 12-61-103(4)(a), C.R.S.

B-3.

- (a) Pursuant to 12-61-110.5 (2), C.R.S. and Rule B-2 (a), the 4-hour "Annual Commission Update" course shall be developed and presented by the Division of Real Estate and furnished without charge to approved providers. Said course shall be presented without additional development by the provider or instructor.
- (b) Any provider specified in commission rule B-6 (a) 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 B-12, except that the course outline (B-12 (a)) and course exam (B-12 (b)) 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.

B-4. All continuing education courses may be offered and completed by distance learning (i.e. courses outside the traditional classroom setting in which the instructor and learner are separated by distance and/or time).

B-5. The following types of courses will not qualify for continuing education credit:

- (a) Sales or marketing meetings conducted in the general course of a real estate brokerage practice.
- (b) Orientation, personal growth, self-improvement, self-promotion or marketing sessions.
- (c) Motivational meetings or seminars.
- (d) Examination preparation or exam technique courses.

B-6. The following courses, subject to all other provisions of Rule B, if within the topic areas listed in 12-61-110.5 (3) C.R.S., will be accepted for elective continuing education credit without Commission pre-approval.

- (a) Courses offered by accredited colleges, universities, community or junior colleges, public or parochial schools, government agencies or proprietary real estate schools approved by the Colorado Division of Private Occupational Schools.
- (b) Courses developed and offered by quasi-governmental agencies or national, state and local Realtor® associations.
- (c) Courses approved by and taken in satisfaction of another occupational licensing authority's education requirements.
- (d) Courses in real property law by a provider approved by the Colorado Board of Continuing Legal and Judicial Education.
- (e) Courses approved by the Association of Real Estate License Law Officials (ARELLO).

(f) Courses approved by the International Distant Education Certification Center (IDECC).

B-7. The following continuing education courses must receive Commission approval prior to offering:  
[Eff. 05/01/2008]

(a) Courses offered by regional, state or local professional trade organizations, affiliates or chapters that are not offered pursuant to Rule B-6(b).

(b) Currently approved courses that are affected by any substantive changes.

(c) Courses offered by any provider proposing to offer course(s) on subjects not listed in C.R.S. 12-61-110.5(3)

(d) Courses offered by proprietary real estate schools approved as out of state providers by the Colorado Department of Private Occupational Schools, and are not approved pursuant to Rule B-6(e) or Rule B-6(f).

(e) Courses offered by employing brokers to their employed brokers.

(f) Courses offered by providers exempt under the provisions of 12-59-104, C.R.S.

B-8. The following course format and administrative requirements apply to all Colorado continuing real estate education for licensed brokers:

(a) Courses must be at least 1 hour in length, containing at least 50 instructional minutes.

(b) A maximum of 8 hours of credit may be earned per day.

(c) No course may be repeated for credit in the same calendar year.

(d) Instructors may receive credit for classroom teaching hours once per course taught per year.

(e) Hours in excess of 24 may not be carried forward to satisfy a subsequent renewal requirement.

(f) No school/provider may waive, excuse completion of, or award partial credit for the full number of course hours.

(g) No challenge exam or equivalency may substitute for the full course outline.

(h) No credit may be earned for remedial education stipulated to between a licensed broker and the Commission as part of a disciplinary action or alternative to disciplinary action.

(i) No course offering by a provider will be accepted unless the provider has either been granted a certificate of approval by the Colorado Department of Higher Education, Division of Private Occupational Schools, or is exempt from such requirement pursuant to C.R.S. 12-59-104.

B-9. Course approval certification shall be for a period of three years, except that an annual or one-time seminar or conference offering may be approved for a specific date or dates. [Eff. 05/01/2008]

B-10. Each Colorado licensed broker is responsible for securing from the provider evidence of course completion in the form of an affidavit, certificate or official transcript of the course. Said documentation must be in sufficient detail to show the name of the licensee, course subject, content, duration, date(s) and contain the authentication of the provider. Licensees must retain

proof of continuing education completion for 4 years, and provide said proof to the Commission upon request.

- B-11. Each provider approved under rule B-3 must retain copies of course outlines or syllabi and complete records of attendance for a period of four (4) years.
- B-12. Continuing education providers required to have Commission course approval must, in accordance with all of the provisions of this Rule B, submit an application form prescribed by the Commission, along with the following information at least 30 days prior to the proposed class dates:
- (a) Detailed course outline or syllabus, including the intended learning outcomes, the course objectives and the approximate time allocated for each topic.
  - (b) A copy of the course exam(s) and instructor answer sheet if applicable. In the absence of an exam, the criteria used in evaluating a person's successful completion of the course objectives.
  - (c) Copy of instructor teaching credential; if none, a resume showing education and experience which evidence mastery of the material to be presented.
  - (d) A copy of advertising or promotional material used to announce the offering.
  - (e) Upon Commission request, a copy of textbook, manual, audio or videotapes, or other instructional material.
  - (f) Effective January 1, 2001, providers of continuing education offered through distance learning must submit evidence in a form prescribed by the real estate commission that the method of delivery and course structure is consistent with acceptable education standards assuring that the desired learning objectives are met. The Commission will approve methods of delivery certified by the Association of Real Estate License Law Officials (ARELLO), or by a substantially equivalent authority and method.
- B-13. By offering real estate continuing education in Colorado, each provider agrees to comply with relevant statutes and Commission rules and to permit Commission audit of said courses at any time and at no cost.
- B-14. The act of submitting an application for renewal, activation or reinstatement of a real estate license shall mean that the licensee attests to compliance with the continuing education requirements of C.R.S. 12-61-110.5

### **C. Licensing - Office**

- C-1. A broker licensed as an individual or as an individual doing business under a trade name shall be the sole owner of the brokerage business or such brokerage business will be considered as a partnership and the partnership shall apply for a broker's license under 12-61-103(7) C.R.S.

#### **C-2. Resident broker required to have office; exceptions**

Every resident Colorado real estate broker shall maintain and supervise a brokerage practice available to the public, except those brokers registered in the Commission office as in the employ of another broker or those brokers registered as inactive.

#### **C-3. Responsible broker availability**

Any broker licensed as an individual proprietorship or the acting broker for a corporation,

partnership or limited liability company must be reasonably available to manage and supervise such brokerage practice during regular business hours.

C-4. Repealed effective 1-1-97

C-5. Repealed effective 1-1-97

C-6. Repealed effective 1-1-97

C-7. Repealed effective 1-1-97

C-8. Repealed effective 1-1-97

C-9. Repealed.

C-10. Repealed.

C-11. Repealed.

C-12. Repealed.

C-13. (a) Repealed

(b) Repealed

C-14. Employed licensees licensed under a broker doing business under a trade name shall be licensed under the individual broker's name and not under the trade name.

C-15. Repealed

C-16. No agreement shall be entered into by any licensee whereby an individual licensee lends their name or license for the benefit of another person, partnership, limited liability company or corporation, whereby the provisions of the Colorado Real Estate Broker License Law and Commission Rules relating to licensing are circumvented.

C-17. The Commission may refuse to issue a license to a partnership, limited liability company or corporation if the name of said corporation, partnership or limited liability company is the same as that of any person or entity whose license has been suspended or revoked or is so similar as to be easily confused with that of the suspended or revoked person or entity by members of the general public.

C-18. A broker may adopt a trade name according to Colorado law and such trade name will appear on the face of the broker's license, however, pursuant to 12-61-103(10) C.R.S. such broker must conduct brokerage business only under such trade name or conduct brokerage business under the entire name appearing on the face of the license.

C-19. (a) The purpose of this rule is to provide interpretation for Section 12-61-103(10), C.R.S. 1973, as amended.

(b) For the purposes of this rule, the following definitions shall apply:

(i) The term "broker" shall mean any sole proprietor, partnership, limited liability company, or corporation licensed by the Real Estate Commission.

(ii) The term "trade name" shall include trademark, service mark, trade identification, or,

any portion thereof which is recognizable as a trade name, trademark, service mark, or trade identification.

- (c) Pursuant to 12-61-103(10) C.R.S., no person shall be licensed under more than one name, and no person shall conduct or promote a real estate brokerage business except under the name under which such person or brokerage business is licensed; however, the use of a trade name with the permission of the owner of such trade name may be used concurrently with the licensed name of the broker in the promotion or conduct of the licensed broker's business.

- (d) Repealed.

- (e) No broker shall advertise or promote its business in such a manner as to mislead the public as to the identity of the licensed broker: nor shall a portion of the licensed name of any broker be advertised or promoted in a manner which would mislead the public as to the identity of the licensed broker.

- (f) Any broker using a trade name, the use of which requires obtaining permission from another who has an existing and continuing right in that trade name by virtue of any state or federal law, in advertising other than of specific properties for sale and in advertising of specific properties for sale jointly with other brokers under a trade name shall cause the following legend to appear in a conspicuous and reasonable manner calculated to attract the attention of the public:

"Each (Actual Trade Name) brokerage business is independently owned and operated."

(This legend may be re-phrased if the consent of the Commission is secured.)

- (g) Any broker using a trade name owned by another on "for sale" or "for lease" signs on specific property or in advertising specific property for sale in any media shall clearly and unmistakably include said broker's name, as registered with the Commission, in a conspicuous and reasonable manner calculated to attract the attention of the public. The broker's name shall appear where specific property is advertised for sale so that the public may unmistakably identify the broker responsible for the handling of the listing of the specific property.

- (h) Any broker using a trade name owned by another on business cards, letterheads, contracts, or other documents relating to real estate transactions, shall clearly and unmistakably include said broker's name as registered with the Commission in a conspicuous and reasonable manner calculated to attract the attention of the public and shall also include the following legend:

"Each (Actual Trade Name) brokerage business is independently owned and operated."

(This legend may be re-phrased if the consent of the Commission is secured.)

- (i) Any broker using a trade name owned by another on signs displayed at a place of business shall clearly and unmistakably include said broker's name as registered with the Commission on such signs in a conspicuous and reasonable manner calculated to attract the attention of the public and shall also include the following legend:

"Each (Actual Trade Name) brokerage business is independently owned and operated."

(This legend may be re-phrased if the consent of the Commission is secured.)

C-20. No broker's license will be issued to a broker under a trade name, corporate name, partnership name or limited liability company name which is identical to another licensed broker's trade name, corporate, partnership or limited liability company name.

C-21. A broker licensed as an individual proprietorship shall not adopt a trade name which includes the following words: Corporation, Partnership, Limited Liability Company, Limited, Incorporated, or the abbreviations thereof.

**C-22. Employing broker qualifications for business entities**

When a broker applicant submits an application to qualify:

(a) A corporation as a real estate brokerage company, the broker applicant must certify that:

1. The corporation has been properly incorporated with the Colorado Secretary of State or is authorized to do business in Colorado, and is in good standing, proof of which shall be included with the application;
2. If an assumed or trade name is to be used, it has been properly filed with and accepted by the Colorado Secretary of State, proof of which shall be included with the application;
3. The broker applicant has been appointed by the board of directors to act as broker for the corporation;

(b) A partnership as a real estate brokerage company, the broker applicant must certify that:

1. The partnership has been properly registered with the Colorado Department of Revenue or properly filed with the Colorado Secretary of State and is in good standing, proof of which shall be included with the application;
2. If an assumed or trade name is to be used, it has been properly filed with Colorado Department of Revenue or filed and accepted by the Colorado Secretary of State, proof of which shall be included with the application;
3. The broker applicant has been appointed the real estate broker for the partnership by all general partners or managers/officers;

(c) A limited liability company as a real estate brokerage company, the broker applicant must certify that:

1. The limited liability company has been properly registered with the Colorado Secretary of State and is in good standing, proof of which shall be included with the application;
2. If an assumed or trade name is to be used, it has been properly filed with the Colorado Secretary of State, proof of which shall be included with the application;
3. The broker applicant has been appointed the real estate broker for the limited liability company by all managers, or if management has been reserved to the members in the articles of organization, by all members;

C-23.

Pursuant to 12-61-101(2) and (3) C.R.S., offering to rent or lease real estate or renting or leasing real



estate requires a Colorado real estate broker's license. If a brokerage firm employs an unlicensed on-site manager who prepares leases or rental agreements, the employing broker must:

- (1) Actively and diligently supervise all activities of the on-site manager or delegate the supervisory responsibility to a qualified employed broker;
- (2) Require the on-site manager to account to and report directly to either the employing broker or the delegated employed broker.
- (3) Engage the on-site manager, either as a regularly salaried employee or as an independent contractor, and pay the on-site manager through the real estate brokerage firm. Salary may include rent value or other non-commission income.
- (4) Instruct the on-site manager to not negotiate any of the material terms of a lease or rental agreement with a tenant or prospective tenant.

The unlicensed on-site manager may fill in blanks in lease forms provided by the brokerage firm, show prospective tenants available units, and collect security deposits and rents.

#### C-24.

Pursuant to 12-61-101(4)(l) and (m) C.R.S., the regularly salaried employee of: (a) an owner of an apartment building or complex, or (b) an owner of condominium units, or (c) a homeowner's association, when acting as an on-site manager and performing the customary duties of an on-site manager is exempt from the requirements of 12-61-101(2) and (3). For the purposes of this Rule C-24, the term "owner" includes an entity formed by the owner to manage the apartment building or complex. The customary duties of an on-site manager include maintenance, collecting rents and security deposits for the owner, or owner's licensed broker, showing units to a prospective tenant, and quoting a rental price previously established by the owner or the owner's licensed broker.

To preserve the above-cited exemptions:

- (1) The unlicensed on-site manager must account and report directly to the respective owner or homeowner's association or to an entity licensed as an independent real estate broker; and
- (2) The unlicensed on-site manager must be regularly salaried (salary may include rent value) by the owner of the apartment building or complex, the homeowner's association or the entity formed by the owner to manage the property; and
- (3) The unlicensed on-site manager may not negotiate any of the material terms of a lease or rental agreement with a tenant or prospective tenant or conduct any other real estate activity that requires a real estate license.

The term "owner" includes either a person (or persons) or an entity recognized under Colorado law. If a person (or persons), the owner must have a controlling interest in the entity formed by the owner to manage the apartment building or complex. If the owner is an entity, the ownership entity and the entity formed by the owner to manage the apartment building or complex must be under the control of the same person or persons.

To maintain the license exemption, if the owner's management entity manages other apartment buildings or complexes, it may only manage those apartment buildings or complexes in which either the owner or the constituents of the owner, if the owner is an entity, has both a controlling interest and an ownership interest.

#### C-25. **Notice of termination; employing broker**

The employing broker of a licensed corporation, partnership or limited liability company must immediately notify the Commission, in a manner acceptable to the Commission, of the employing broker's termination of employment with such licensed corporation, partnership or limited liability company, or upon the employing broker's failure to continue to comply with 12-61-103 C.R.S. and applicable rules. Upon such notification, the employing broker and all employed licensees shall be placed on inactive status.

C-26. A broker license may be issued on an inactive status.

#### **D. Renewal, Transfer, Inactive License, Errors and Omissions Insurance**

D-1. Repealed

D-2. A real estate licensee may request that the Commission records show their license inactive until proper request for reactivation has been made.

D-3. A real estate licensee whose license is on inactive status must apply for renewal of such inactive license and pay the regular renewal fees.

D-4. Renewal of all licenses can be effected by use of the renewal application form provided by the Commission or by other methods acceptable to the Real Estate Commission.

##### **D-5. Inactive renewal notice to last home address**

Renewal notice and application for an inactive license will be mailed to the last known residence address of the inactive licensee.

##### **D-6. Active renewal notice to employing broker**

The renewal notice and application of employed licensees will be mailed only to the employing broker at the broker's recorded business address.

D-7. When a real estate license is on an inactive status or has been transferred to a subsequent employing broker, a licensee may be compensated directly by a previous employing broker for commissions earned during that term of employment.

D-8. Repealed.

##### **D-9. Form and fees required to change license**

No changes in license status will be made except in a manner acceptable to the Commission to effect such change and upon payment of the statutory fees for such changes.

D-10. Repealed.

D-11. Effective October 1, 2005, an initial license will be issued for a three-year period commencing on the issuance date and expiring three years from the date of issuance.

D-12. All fees paid for the renewal of a license shall be non-refundable.

D-13. The Commission, upon receipt of a complete and satisfactory application, shall renew a license expiring on December 31, 2005 or 2006 or 2007, for a period of time equal to two years plus the number of days until the licensee's initial date of issuance anniversary date. Thereafter, the license renewal periods shall begin on the date of issuance anniversary date and continue for three full years. An expired license may be reinstated as follows:

- (a) If proper application is made within thirty-one days after the date of expiration, by payment of the regular renewal fee;
- (b) If proper application is made more than thirty-one days but within one year after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to one-half the regular renewal fee;
- (c) If proper application is made more than one year but within three years after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to the regular renewal fee.

#### D-14. Errors and omissions (E&O) insurance

Every active real estate licensee, including licensed real estate companies, shall have in effect a policy of errors and omissions insurance to cover all acts requiring a license.

- (a) The Commission shall enter into a contract with a qualified insurance carrier to make available to all licensees and license applicants a group policy of insurance under the following terms and conditions:
  - (1) The insurance carrier is licensed and authorized by the Colorado division of insurance to write policies of errors and omissions insurance in this state.
  - (2) The insurance carrier maintains an A.M. Best rating of "B" or better.
  - (3) The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the commission on a timely basis and at no expense to the state.
  - (4) The insurance carrier has been selected through a competitive bidding process.
  - (5) The contract and policy are in conformance with this rule and all relevant Colorado statutory requirements.
- (b) The group policy shall provide, at a minimum, the following terms of coverage:
  - (1) Coverage for all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
  - (2) Deleted 10/01/03
  - (3) That the coverage cannot be canceled by the insurance carrier except for non-payment of the premium or in the event a licensee becomes inactive or is revoked or an applicant is denied a license.
  - (4) Pro-ration of premiums for coverage which is purchased during the course of a calendar year but with no provision for refunds of unused premiums.
  - (5) Not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of licensees or entities to which a settlement or claim may apply.
  - (6) An annual aggregate limit of not less than \$300,000 per licensed individual or entity.
  - (7) A deductible amount for each occurrence of not more than \$1,000 for claims and no

deductible for legal expenses and defense.

- (8) The obligation of the insurance carrier to defend all covered claims and the ability of the insured licensee to select counsel of choice subject to the written permission of the carrier, which shall not be unreasonably withheld.
  - (9) Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
  - (10) The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverages from the group carrier as maybe determined by the carrier.
  - (11) that coverage is individual and license specific and will cover the licensee regardless of changes in employing broker.
  - (12) The ability of a licensee, upon payment of an additional premium, to obtain an extended reporting period of not less than 365 days.
  - (13) A conformity endorsement allowing a colorado resident licensee to meet the errors and omissions insurance requirement for an active license in another group mandated state without the need to purchase separate coverage in that state.
- (c) Licensees or applicants may obtain errors and omissions coverage independent of the group plan from any insurance carrier subject to the following terms and conditions:
- (1) The insurance carrier is licensed and authorized by the Colorado division of insurance to write policies of errors and omissions insurance in this state and is in conformance with all Colorado statutes.
  - (2) The insurance provider maintains an A.M. Best rating of "B" or better
  - (3) The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in an affidavit issued to the insured licensee or applicant in a form specified by the Commission and agrees to immediately notify the Commission of any cancellation or lapse in coverage. Independent coverage must provide, at a minimum, the following:
    - (i) The contract and policy are in conformance with all relevant Colorado statutory requirements.
    - (ii) Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
    - (iii) Coverage cannot be canceled by the insurance provider, except pursuant to and in conformance with 10-4-109.7 CRS
    - (iv) Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim, regardless of the number of licensees or entities to which a settlement or claim may apply, with an annual aggregate limit of not less than \$300,000 per licensed individual and entity.
    - (v) Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.

- (vi) The ability of a licensee, upon payment of an additional premium, to obtain an extended reporting period of not less than 365 days.
  - (vii) That the provider of the independent policy has executed an affidavit in a form or manner specified by the commission attesting that the independent policy is in force and, at a minimum, complies with all relevant conditions set forth herein and that the provider will immediately notify the commission in writing of any cancellation or lapse in coverage of any independent policy.
  - (viii) Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
- (d) Applicants for licensure, activation, renewal and reinstatement shall certify compliance with this rule and 12-61-103.6 C.R.S. on forms or in a manner prescribed by the Commission. Any active licensee who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either through the group carrier or directly to the Commission, shall be placed on inactive status:
- (1) immediately, if certification of current insurance coverage is not provided to the Commission; or,
  - (2) immediately upon the expiration of any current insurance when certification of continued coverage is not provided.
15. Each broker and salesman applicant who qualifies for original licensure will be issued a license expiring December 31st of the same year of issuance and the renewal thereof will be in accordance with Rule D-14.
16. All fees paid for the renewal of a broker or salesman license shall be non-refundable.

## **E. Separate Accounts - Records - Accountings - Investigations**

### **E-1. Trust accounts; requirements and purposes**

All "money belonging to others" accepted by a resident or non-resident broker doing business in this state shall be deposited in one or more accounts separate from other money belonging to the broker or brokerage entity. The broker shall identify the fiduciary nature of each separate account in the deposit agreement with the recognized bank or institution by the use of the word "trust" or "escrow" and a label identifying the purpose/type of such account, i.e., "sales escrow", "rental escrow", "security deposit escrow", "owners association escrow", or other abbreviated form defined in the deposit agreement. Unless otherwise permitted by other subsections of this rule, all money belonging to others shall be deposited according to the purpose of the transaction in separate types of escrow accounts. The broker shall retain a copy of each account deposit agreement executed for inspection by an authorized representative of the Commission.

- (a) Such separate trust accounts must be maintained in the name of the licensed broker or if the licensed broker is a partnership, corporation or limited liability company, such account shall be maintained in the name of the broker acting for such partnership, corporation or limited liability company and in the name of the licensed partnership, limited liability company or corporation. The licensed broker must be able to withdraw money from such separate account, but may authorize other licensed or unlicensed co-signers. However, such authorization shall not relieve the broker of any responsibility under the licensing act.

- (b) Credit Union escrow or trust accounts do not meet the escrow requirements of 12-61-113 (1) (g.5) C.R.S., and are therefore not suitable depositories for money belonging to others.
- (c) When a broker is registered in the office of the Real Estate Commission as in the employ of another broker the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.
- (d) Money belonging to others shall not be invested in any type of account or security or certificate of deposit which has a fixed term for maturity or imposes any fee or penalty for withdrawal prior to maturity unless the written consent of all parties to the transaction has been secured.
- (e) Repealed (effective 1-1-96)
- (f) A broker's personal funds shall not be commingled with money belonging to others except that an arrangement may be made with a depository to deposit a sufficient amount of the broker's funds to maintain such account. One or more separate escrow or trust bank accounts may be maintained by a broker pursuant to the following duties and limitations:
  - (1) Money held in an escrow or trust account which is due and payable to the broker shall be withdrawn promptly.
  - (2) An escrow or trust account shall not be used as a depository for money belonging to licensees employed by a broker except pursuant to an executory sales contract, nor shall it be used for money the broker owes their licensees, or for bonuses or investment plans for the benefit of their licensees.
  - (3) Collections for insurance premiums and/or IRS employee's withholding funds shall not be deposited in a separate trust account established pursuant to 12-61-113(g) and (g.5) C.R.S.
  - (4) Money advanced by a broker for the benefit of an other may be placed in the trust account and identified as an advance but may be withdrawn by the broker only on behalf of such person. Any amount advanced to an escrow or trust account must be identified and recorded in the escrow journal, the beneficiary's ledger and disclosed in periodic accounting to the beneficiary.
  - (5) Funds of others received by a broker relating to real estate partnerships, joint ventures and syndications in which the broker has an ownership interest and also receives compensation for selling or leasing the property shall be maintained in a trust account separate from any other trust account maintained by such broker.
  - (6) In the absence of a specific written agreement to the contrary, commissions, fees and other charges collected by a broker for performing any service on behalf of another are considered "earned" and available for use by the broker only after all contracted services have been performed, and there is no remaining right of recall for such money. The broker shall identify and record all commissions, fees, or other charges withdrawn from a trust or escrow account on the account journal and individual ledgers of those against whom the fees or commissions are charged. If a single disbursement of fees or commissions includes more than one transaction, rental period or occupancy or includes withdrawals from the account of more than one trust or escrow account beneficiary, the broker, upon request, shall produce for inspection by an authorized representative of the real estate commission a schedule which details (1) the individual components of all amounts included in the sum of such disbursement and (2) specifically identifies

the affected beneficiary or property ledgers. Ledger entries must detail such disbursements in accordance with rule E-1 (p)(2), including the date or time period for each individual transaction, rental or occupancy.

- (g) Money belonging to others which is received by the broker includes but is not limited to money received in connection with: property management contracts; partnerships; limited liability companies; syndications; rent or lease contracts; advance fee contracts; guest deposits for short term rentals; escrow contracts; collection contracts; earnest money contracts; or, money belonging to others received by the broker for future investment or other purpose.
- (h) If a broker who is also acting as a builder receives deposit money under an executory sales contract which provides for the construction of a house, the deposit money must be placed in the trust account and not used for construction purposes unless the written consent of the purchaser is secured.
- (i) A broker who manages less than seven (7) single family residential units may deposit rental receipts and security deposits and disburse money collected for such purposes in the "sales escrow" account.
- (j) Repealed (effective 1-1-96)
- (k) If a conveyance is made by an installment contract for a deed and if such contract contains a provision whereby the broker signs the installment contract as the receipting broker, the broker must escrow the receipted money pursuant to Rule E-1 until the owner signs acceptance of the contract and a copy of the fully executed contract is delivered to the purchaser.
- (l) When a sales contract or an installment contract for the sale of an interest in real estate is signed by the parties to the transaction and the purchaser also executes a promissory note and/or a mortgage or trust deed encumbering such property before the seller delivers the deed, then all payments received by the broker pursuant to such contract shall be deposited in a trust account in a recognized depository until delivery of such deed to the purchaser unless the broker receives specific written consent from all parties concerning disposition of such funds. This rule shall apply whether or not the broker and seller are one and the same.
- (m) Checks received as earnest money under an earnest money contract must be identified as a check in the contract and may be withheld from presentment for payment only if so disclosed in the contract or pursuant to the written instructions of the seller. If a note is received as earnest money under an earnest money contract, the seller must be informed by identifying the note in the contract and by informing the seller of the date such note becomes due by stating the due date in the contract or attaching a copy of the note to the contract. The broker must present the note or check for payment in a timely manner and if payment is not made, the broker shall promptly notify the seller.
- (n) Except as provided in Rule E-1(o), all money belonging to others which is received by a broker as a property manager shall be deposited in such broker's escrow or trust account not later than five business days following receipt. All other money belonging to others which is received by a broker shall be deposited in such broker's escrow or trust account not later than the third business day following receipt.
- (o) Listing broker holds escrow funds; delivery to third party Except as otherwise agreed to in writing, in any real estate transaction in which one broker holds a listing contract on a property and where the selling broker receipts for earnest money under a contract, the

selling broker shall deliver the contract and the earnest money to the listing broker who shall deposit the earnest money in the broker's escrow or trustee account in a recognized depository not later than the third business day following the day on which the broker receives notice of acceptance of such contract. If such selling broker receipts for a promissory note, or thing of value, such note or thing of value shall be delivered with the contract to the listing broker to be held by the listing broker. Any check or note shall be payable to, or assigned to, the listing broker.

- (1) The broker receipting for the earnest money deposit, if instructed in writing by the parties to the contract, shall deliver the earnest money to a third party or entity so identified in writing. If the broker is instructed in writing by the parties to the contract to deliver an earnest money deposit to such third party or entity, the broker shall retain in the office transaction file a copy of the earnest money check, note or other thing of value, including any endorsement, and obtain a dated and signed receipt from the person or entity to whom the broker has been instructed to deliver the deposit.
- (p) A broker shall supervise and maintain, at the broker's licensed place of business, a record keeping system, subject to subsection (7) of this rule, consisting of at least the following elements for each required escrow or trust account:
- (1) A record called an "escrow or trust account journal" or an equivalent accounting system which records in chronological sequence all money belonging to others which is received or disbursed by the broker. For funds received, the records maintained in the system must include the date of receipt and deposit, the name of the person who is giving the money, the name of the person and property for which the money was received, the purpose of the receipt, the amount, and a resulting cash balance for the account. For funds disbursed, the records maintained in the system must include the date of payment, the check number, the name of the payee, a reference to vendor documentation or other physical records verifying purpose for payment, the amount paid, and a resulting cash balance for the account.
  - (2) A record collectively called a "ledger" or an equivalent component of an accounting system which records in chronological sequence all money which is received or disbursed by the broker on behalf of each particular beneficiary of a trust account. This record must show the monetary transactions affecting each individual beneficiary and must segregate such transactions from those pertaining to other beneficiaries of the trust account. The ledger record for each beneficiary must contain the same transactional information as is prescribed in subsection (1). No ledger may ever be allowed to have a negative cash balance and the sum of all ledger balances must at all times agree with the corresponding cash balance in the journal after each transaction has been posted.
  - (3) A written monthly record called the "bank reconciliation worksheet" which proves agreement, on the date of reconciliation, between (1) the cash balance shown in the account journal; (2) the sum of the cash balances for all ledgers; and (3) the corresponding bank account balance. This worksheet must be maintained in hard copy form for later inspection and list each beneficiary's ledger balance on the date of reconciliation. The broker is not required to reconcile any trust account when no money belonging to others has been received or no banking activity has occurred.
  - (4) When managing property, if summary totals are reported to others, the broker must maintain supporting records which accurately detail all cash received and disbursed under the terms of the management and rental agreements. Such



summary totals must be reconcilable to detailed supporting records. Any accounting report furnished to others must be prepared and delivered according to the terms of the management agreement or, in the absence of a provision in the written management agreement to the contrary, within thirty (30) days after the end of the month in which funds were either received or disbursed.

- (5) If a broker has on deposit personal funds sufficient to maintain the trust account pursuant to Rule E-1(f), an entry showing such money shall be made in the journal and on a "broker's ledger record" per subsections (1) and (2). Such money shall be included in the bank reconciliation worksheet.
- (6) All deposits of funds into an escrow or trust account must be documented (i.e. bank deposits) including confirmation of electronic and telephonic transfers or on detailed schedules attached to the deposit slips or confirmations. The documentation must identify each person tendering funds to the broker for deposit, the amount of funds tendered, types of funds received from each person, and the property address, affected. All disbursements of funds from an escrow or trust account must be supported by source documents such as bids, invoices, contracts, etc. that identify the payees, property addresses affected and amount of funds transferred for each property. Real estate licensees shall produce for inspection by an authorized representative of the real estate commission any cancelled checks (or front and back copies) or hardcopy confirmations of electronic or telephonic transfers as may be reasonably necessary to complete audits or investigations.

All disbursements of funds from an escrow or trust account must be supported by a record of the basis for such disbursement such as bids, invoices, contracts, etc., together with cancelled checks (or front and back copies) or hardcopy confirmations of electronic or telephonic transfers that identifies the payees, property addresses affected and amount of funds transferred for each property.

- (7) In the absence of a written agreement to the contrary, the "cash basis" of accounting shall be used for maintaining all required escrow or trust accounts and records. If the "accrual basis" of accounting is requested by the beneficiary of funds entrusted to a broker, such request must be in writing and the broker shall maintain separate accrual basis accounts and sets of records for each person or entity affected; such accounts and records shall be separate from other accounts and records maintained on the cash basis.
- (8) Pursuant to C.R.S. 12-61-113(1)(c.5),(q) and 6-1-105, the broker must obtain prior written consent to assess and receive mark-ups and/or other compensation for services performed by any third party or affiliated business entity. The broker must retain accurate on-going office records which verify disclosure and consent, and which fully account for the amounts or percentage of compensation assessed or received.
- (q) Money belonging to one beneficiary of a separate trust or escrow account shall not be used for the benefit of another beneficiary of a trust or escrow account.
- (r) Any instrument or equity or thing of value taken in lieu of cash shall be held by the broker except as otherwise agreed.
- (s) In the event a branch office maintains a trust account, separate from the trust account(s) maintained by the main office, a separate record keeping system must be maintained in the branch office.

(t) Repealed (effective 1-1-96)

(u) A broker is not limited as to the number of separate accounts which may be maintained for money belonging to others and if the broker is not in possession of money belonging to others, there is no obligation to maintain a separate account.

E-2. When money is collected by a broker for the performance of specific services or for the expenses of performing such services, or for any other expense including but not limited to advertising expenses in regard to the sale or management of real property, or a business opportunity, and such money is collected before the advertising or other services have been performed, the broker shall deposit such money in an escrow or trust account pursuant to 12-61-113(1)(g.5) C.R.S. No money may be withdrawn from such person's funds, except for actual authorized expenses paid to perform the service, or on behalf of that person, until the broker has fully performed the services agreed upon. A full and itemized accounting must be furnished the person within 30 days of any withdrawal of funds from the escrow or trust account. Nothing in this section shall prohibit a licensee from taking a non-refundable retainer which need not be deposited into an escrow or trust account provided this is specifically agreed to in writing between the licensee and the person paying the retainer.

E-3. A real estate licensee shall produce for inspection by an authorized representative of the Real Estate Commission any document or record as may be reasonably necessary for investigation or audit in the enforcement of Title 12 Article 61 and in enforcement of the rules and regulations of the Real Estate Commission. Failure to submit such documents or records within the time set by the Commission in its notification shall be grounds for disciplinary action unless the Commission has granted an extension of time for such production. However, a broker who is also acting as a manager for an owners association shall turn all association management records and supporting documentation over to the association at the end of the broker's term of management. Such records are the property of the owners association and if the broker wishes to maintain copies for the broker's own files these must be made at the broker's expense.

E-4 Document Preparation and Duplicates *[Eff. 04/30/2009]*

Contracting instruments for all real estate or business opportunity transactions in which a real estate broker participates, including agency and sales contracts, shall accurately reflect the financial terms of the transaction by itemizing things of value paid or received and identifying the party or parties conveying, receiving and/or ultimately benefitting from such things of value. All such terms made subsequent to the original contracting document shall be disclosed in an amending instrument. For the purpose of this rule, the term "things of value" shall include monetary considerations as well as the exchange of tangible, non-monetary assets. *[Eff. 04/30/2009]*

A real estate broker shall immediately deliver a duplicate of the original of any instrument (except deeds, notes and trust deeds or mortgages, prepared by and for the benefit of third party lenders) to all parties executing the same when such instrument has been prepared by the broker or the broker's employed licensee or closing entity and relates to the employment or engagement of the broker or pertains to the consummation of the leasing, purchase, sale or exchange of real property in which the broker may participate as a broker. For purposes of this rule, duplicate shall mean legible photocopy, carbon copy, facsimile, or electronic copies which contain a digital or electronic signature as defined in 24-71-101(1) C.R.S. Such broker shall retain a copy of the duplicate instruments for future use or inspection by an authorized representative of the Real Estate Commission. If a broker or the broker's agent prepares a mortgage or trust deed for the benefit of a buyer or seller, an unsigned duplicate of such security instrument, together with a copy of the note, unsigned or prominently marked "copy," shall be furnished to the purchaser; copies shall also be retained in such broker's office for further use or inspection by an authorized representative of the Real Estate Commission. Cooperating brokers, including brokers acting as agents for buyers in a specific real estate transaction, shall have the same requirements for

retention of copies as stated above, except that a cooperating broker who is not a party to the listing contract need not retain a copy of the listing contract or the seller's settlement statement. Pursuant to Rule E-3, 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 settlement date. *[Eff. 04/30/2009]*

E-5. Pursuant to 12-61-113 (1)(h), at time of closing, the individual licensee who has established a brokerage relationship with the buyer or seller or who works with the buyer or seller as a customer, either personally or on behalf of an employing broker, shall be responsible for the proper closing of the transaction and shall provide, sign and be responsible for an accurate, complete and detailed closing statement as it applies to the party with whom the brokerage relationship has been established. If signed by an employed licensee, closing statements shall be delivered to the employing broker immediately following closing. Nothing in this rule shall relieve an employing broker of the responsibility for fulfilling supervisory responsibilities pursuant to 12-61-103 (6)(c), 12-61-113(1)(o), 12-61-118 C.R.S and Rules E-31 and E-32.

(a) Subject to Rule E-4, an employing or independent broker with whom a brokerage relationship has been established, either personally or through an employed licensee, shall retain a copy of all closing statements approved by the respective buyers or sellers for future use or for inspection by an authorized representative of the Real Estate Commission.

(b) The closing statement or statements of all real estate or business opportunity transactions in which a real estate broker participates shall show the date of closing, the total purchase price of the property, itemization of all adjustments, money, or things of value received or paid showing to whom each item is credited and/or to whom each item is debited, the dates of the adjustments shall be shown if not the same as the date of the closing, also shown shall be the balances due from the respective parties to the transaction, and the names of the payees, makers and assignees, of all notes paid or made or assumed; the statements furnished to each party to the transaction shall contain an itemization of such credits and such debits as pertain to each respective party. THE CREDITS AND DEBITS CONCERNING THE SALE OF A PREOWNED HOME WARRANTY SERVICE CONTRACT SHALL BE DISCLOSED ON THE CLOSING STATEMENTS.

(c) Closing statements shall be provided to the respective parties at the time of the delivery and acceptance of the title whether such delivery and acceptance be effected by bill of sale, deed or by an installment contract to give a deed at a future date.

(d) If closing documents and statements are prepared by, and the closing is conducted by, an employing broker's company such broker is primarily responsible for the accuracy and completeness of the settlement statements and documents.

(e) If a licensee with whom a brokerage relationship has been established is unable to attend a closing or review closing documents, another licensee may agree or be designated by an employing broker to review and sign a closing statement and will assume joint responsibility with the absent licensee for its accuracy, completeness and delivery.

(f) A broker may transfer funds pertinent to a real estate transaction from a trust or escrow account to a lawyer or a closing entity acting on behalf of the broker at or before closing or final settlement. The broker will not be relieved of responsibilities in regard thereto. The broker delivering the earnest money deposit to a lawyer or a closing entity providing settlement services shall obtain a dated and signed receipt from the person or entity providing settlement services and retain a copy of the receipt in the office transaction file. The settlement statements prepared by the lawyer or closing entity shall bear the names of the licensee who signs the statement and the employing broker if applicable.

#### E-6. Electronic Records

Records as required under Title 12, Article 61, Parts 1-8 C.R.S. and rules promulgated by the Commission, may be maintained in electronic format. An electronic record as defined in 24-71.7-103 C.R.S. means a record generated, communicated, received, or stored by electronic means. Such electronic records shall be produced upon request by the Commission and must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the Commission, or by any principal party to a transaction, printed records shall be produced.

E-7. Repealed (Effective February 1, 2001)

E-8. A real estate licensee who performs any act requiring a license, including advertising services or advertising property belonging to another, shall do so in the name of the employing broker; except that a licensed employee may advertise property owned by such employee without complying with this rule if the property is not listed for sale with the employing broker. General advertising which recaps sales activity over a period of time in a given subdivision or geographical area shall cite the source of the data and include a disclaimer that all reported sales were not necessarily listed or sold by the licensee and are intended only to show trends in the area or shall separately identify the licensee's own sales activity.

E-9. Repealed effective 1-1-97

E-10. A broker license is non transferable. No licensee shall, and no broker shall permit, employed licensees to present or to hold themselves out to the public as an employing or independent real estate broker.

E-11. When a licensee secures a written agreement to perform activities requiring a license, a definite date for termination shall be included therein.

E-12. When a written agreement contains a provision entitling the broker to a commission on a sale or purchase made after the expiration of the agreement, such provision must refer only to those persons or properties with whom or on which the broker negotiated during the term of the agreement, and whose names or addresses were submitted in writing to the seller or buyer during the term of the agreement, including any extension thereof.

E-13. A real estate licensee shall not negotiate a sale, exchange, lease or listing contract of real property directly with an owner for compensation from such owner if such licensee knows that such owner has a written unexpired contract in connection with such property which grants to another licensee an exclusive right to sell or lease or which grants an exclusive agency right to sell or lease.

However, when a licensee is contacted by an owner regarding the sale, exchange, lease or listing of property that is exclusively listed with another broker, and the licensee has not initiated the discussion, the licensee may negotiate the terms upon which to take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.

Additionally, a real estate licensee shall not negotiate a purchase, exchange, lease or exclusive right to buy contract with a buyer if such licensee knows that such buyer has a written, unexpired contract which grants to another licensee an exclusive right to buy.

However, when a licensee is contacted by a buyer regarding the purchase, exchange or lease of property, and the licensee has not initiated the discussion, the licensee may enter into or negotiate the terms upon which to enter into a future exclusive right to buy contract to become effective upon expiration of any existing exclusive right to buy contract.

E-14. A real estate licensee shall recommend, before the closing of a real estate transaction, the

examination of title and shall advise the use of legal counsel.

- E-15. When for any reason the owner fails, refuses, neglects or is unable to consummate the transaction as provided for in the contract, and through no fault or neglect of the purchaser the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned, and such deposit should be returned to the purchaser at once and the broker should look to the owner for compensation.
- E-16. A broker receipting for security deposits shall not deliver such deposits to an owner without the tenant's written authorization in a lease or unless written notice has been given to the tenant by first class mail. Such notice must be given in a manner so that the tenant will know who is holding the security deposit and the specific requirements for the procedure in which the tenant may request return of the deposit. If a security deposit is delivered to an owner, the management agreement must place financial responsibility on the owner for its return, and in the event of a dispute over ownership of the deposit, must authorize disclosure by the broker to the tenant of the owner's true name and current mailing address. The broker shall not contract with the tenant to use the security deposit for the broker's own benefit.
- E-17. Repealed (Effective June 30, 2004)
- E-18. A licensee shall not accept, directly or indirectly, a placement fee, commission or other valuable consideration for placing a loan with a mortgage lender or its representative in any real estate transaction in which the licensee, directly or indirectly, received, or is entitled to receive a commission as a result of the sale of property in such transaction unless the licensee fully informs any party with whom they have established a brokerage relationship, or worked with as a customer, and obtains prior written consent of such party.
- All licensees should comply with the RESPA statute and regulations regarding receipt of referral fees. To the extent Rule E-18 on referral fees differs from that of RESPA and HUD, licensees should comply with RESPA and HUD to avoid jeopardizing their standing with respect to federally related loan programs and are advised to contact HUD for further clarification.
- E-19. A licensee shall not accept a commission, fee, or other valuable consideration from an abstract or title insurance company or its representative in any real estate transaction in which the licensee, directly or indirectly, receives, or is entitled to receive, a real estate commission as a result of the sale of property in such transaction. (Statement of Basis and Purpose as adopted by the Real Estate Commission on October 5, 1988.)
- E-20. The licensee shall not submit or advertise property without authority, and, in any offering, the price quoted should not be other than that agreed upon with the owners as the offering price.
- E-21. When a licensee has received written notification from the Commission that a complaint has been filed against the licensee, the licensee has been selected for an audit, or that an audit has identified record keeping or trust account deficiencies, such licensee shall submit a written answer to the Commission. Failure to submit a written answer within the time set by the Commission in its notification shall be grounds for disciplinary action unless the Commission has granted an extension of time for the answer in writing and regardless of the question of whether the underlying complaint warrants further investigation or subsequent action by the Commission. The licensee's written answer shall contain the following:
- (a.) A complete and specific answer to the factual recitations, allegations or averments made in the complaint filed against the licensee, whether made by a member of the public, on the Commission's own motion or by an authorized representative of the Commission.

- (b.) A complete and specific response to any additional questions, allegations or averments presented in the notification letter.
- (c.) Any documents or records requested in the notification letter.
- (d.) Any further information relative to the complaint that the licensee believes to be relevant or material to the matters addressed in the notification letter.

E-22 - Inducements from settlement producers prohibited.

- A. In addition to the provisions of section 12-61-113.2, C.R.S., and the federal Real Estate Settlement Procedures Act, 12 U.S.C. sec. 2601 et seq., no licensed real estate broker, whether or not engaged in a prohibited affiliated business arrangement, shall pay, furnish, impose, or agree to pay or furnish or impose, or accept, agree to accept or arrange to accept, either directly or indirectly, any incentive, disincentive, remuneration, commission, fee or other thing of value to or from another person or entity in any form in connection with any past, present, or future title insurance business, any closing and settlement services or any other title insurance business except for "services actually rendered" as defined in section 12-61-113.2 (2) (e), C.R.S., to or on behalf of any of the following:
  - 1. Any "settlement producer" as defined in section 10-11-102(6.5), C.R.S., or a person that provides settlement services as defined in section 12-61-113.2 (1) (c), C.R.S.
  - 2. Any owner or prospective owner, lessee or prospective lessee of real property or any interest in the real property;
  - 3. Any obligee or prospective obligee of any obligation secured or to be secured either in whole or in part by real property or any interest in the real property; or,
  - 4. Any person who is acting as or who is in the business of acting as agent, representative, attorney or employee of any of the persons described in 1, 2 or 3 above, or any other party to the instant transaction.
- B. The factors the Commission will consider when determining whether incentive, disincentive, remuneration, commission, fee or other thing of value for the referral of title insurance business exists or will exist include, but are not limited to:
  - 1. Whether the costs of any settlement producer are being or will be defrayed by the licensee's actions;
  - 2. Whether the remuneration is being or will be given to a discrete settlement producer as opposed to a bona fide association of settlement producers;
  - 3. Whether a pattern or practice of referrals to the real estate broker exists or will exist; and
  - 4. Consideration of the advertising value of the incentive, disincentive, remuneration, commission, fee or other thing of value.
- C. Bona fide advertising, marketing, or other acts in furtherance of maintenance and development of client relationships are not prohibited unless such conduct otherwise constitutes violation of the statutes or rules applicable to licensed real estate brokers.
- D. Section 12-61-113.2 (2)(a), C.R.S., permits an affiliated business arrangement where the person referring the business to the affiliated business arrangement receives payment

only in the form of a return on an investment and where it does not violate section 12-61-113, C.R.S.

- E. Prohibited acts, practices, incentives, disincentives, remuneration, commissions, fees or other things of value include, but are not limited to, the following:
  - 1. Affiliated business arrangements prohibited by section 12-61-113.2, C.R.S., that mandate the referral of title insurance business. Prohibited arrangements include, but are not limited to the following:
    - a. Arrangements in which the amount of the return on the ownership interest is in some fashion conditioned on the number of or premium volume of referrals made, such as where owners or stockholders receive dividends or bonuses based on the number of referrals generated or achievement of certain referral plans or goals;
    - b. Arrangements in which the ownership interests themselves are conditioned on the referrals, such as where the stock certificates are distributed based on the number of or premium volume of the referrals made in the past or to be made in the future;
    - c. Arrangements in which owners or stockholders receive anything of value that is directly tied to the referral of business; and
    - d. Arrangements in which the cost of the ownership opportunity is not equivalent for all investors.
  - 2. "Sham" affiliated business arrangements as defined in Commission Rule E-46.
  - 3. Receiving, attempting to receive, or arranging for, from a settlement producer, discounts primarily based on the volume of business the broker refers to the provider of settlement services.
  - 4. Violation of Commission Rule E-36 regarding "good funds" .
  - 5. Except as otherwise permitted in Section 38-35-125 (2), C.R.S., arranging for the disbursement of closing and settlement services funds before all necessary conditions of the transaction have been met.
  - 6. Arranging for or accepting a title commitment without charge or at a reduced charge, unless, within a reasonable time after the date of issuance, appropriate title insurance coverage is issued for which the scheduled rates and fees are paid. Any title commitment charge must have a reasonable relation to the cost of production of the commitment and cannot be less than the minimum rate or fee for the type of policy applied for, as set forth in the insurer's current schedule of rates and fees. This provision does not apply where a title commitment is furnished in good faith in furtherance of a bona fide sale, purchase or loan transaction that for good reason is not consummated.
  - 7. Accepting or arranging for any portion of the following:
    - a. Advertising or promotional material or activity, including, but not limited to, any obligation, product, service, seminar, convention or publication for the benefit of any settlement producer, or ostensibly for the benefit of the real estate broker, the end result of which is the substantial subsidization of

an obligation, product, service, seminar, convention or publication of any settlement producer. This prohibition applies to ads placed in subdivision or tract brochures, multiple listing services or books, exchange bulletins, newsletters, information sheets, programs, announcements and periodicals or similar matter associated with meetings, seminars or conventions of such settlement producers as well as registers and directories of such persons;

- b. The cancellation fee for a title report or other fee before or after inducing such settlement producer to cancel an order with another title entity;
  - c. Furniture, equipment, office supplies, telephones, or automobiles, including any portion of the cost of renting, leasing, operating or maintaining the above-mentioned items, unless such provider of settlement services pays no more than its allocable share of the actual costs for such goods and services commensurate with the actual usage of such goods services, and facilities actually furnished;
  - d. Rent to or from any settlement producer for premises wherever situated, regardless of the purpose, at a rent that is materially in excess of or materially below market value when compared with the amount paid per square foot for comparable space in the geographic area;
  - e. Incentives, gifts, prizes, retreats, transportation and vacations, including, but not limited to other similar things of value;
  - f. Salary, compensation or services, except for services actually rendered, including, but not limited to:
    - i. All or any part of the time or productive effort of any employee or affiliate of the real estate broker (e.g., office manager, secretary, clerk, messenger) to any settlement producer at less than the fair market value of the services;
    - ii. Compensation of a settlement producer or associate of a settlement producer;
    - iii. The salary or any part of the salary of a relative of any settlement producer which payment is in excess of the reasonable value of the work actually performed by such relative on behalf of the real estate broker; and
    - iv. Services by any settlement producer which services are required to be performed by such settlement producer in his or her professional capacity, and for which the settlement producer would not normally charge the real estate broker.
8. Paying a settlement producer or other person described in Section A of this rule to make an inspection and appraisal of property, except for services actually rendered.
9. Any transaction in which any person receives, or is to receive, securities of the settlement producer or its affiliates at prices below the normal market price, or bonds or debentures that guarantee a higher than normal interest rate, whether or not the consummation of such transaction is directly or indirectly related to the



number of closing and settlement services or title orders coming to the title entity through the efforts of such person.

10. Accepting or arranging for less than the scheduled rate or fee for a specified real estate or closing and settlement service, or for a policy of title insurance.
11. Accepting or arranging for waiver of all or any part of the title entity's established rate or fee for services that are not the subject of rates or fees filed with the Colorado Commissioner of Insurance required to be maintained on the entity's schedules of rates and fees.
12. Except as otherwise permitted by 12-61-113(1), C.R.S., and the rules and regulations of the Commission, accepting or arranging for information, including, but not limited to, farm packages, appraisals, estimates of income production potential, information kits or similar packages containing information about one or more parcels of real property without a charge that is commensurate with the actual cost of the work performed and the material furnished, and making a good faith effort to collect payment in the amount of such charge.
13. Accepting or arranging for accumulation, credit or deferral of the charge for a title policy or closing and settlement services in order to "qualify" the charge for said policy and a later transaction for a lower rate, except to the extent that a properly filed and justified rate or fee is in place for a deferred rate.
14. Accepting or arranging for a guarantee, either directly or indirectly, of any loan to any settlement producer, regardless of the terms of the note or guarantee.
15. Accepting or arranging for a guarantee of the performance of closing and settlement services, or the performance of any other undertaking that are to be performed by any settlement producer.
16. Accepting or arranging for, either directly or indirectly, a "compensating balance" or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by such lending institution to any settlement producer, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution.
17. Accepting or arranging for the payment of the fees or charges of an outside professional (e.g., an attorney, engineer, appraiser, or surveyor) whose services are required by any settlement producer to structure or complete a particular transaction.
18. Accepting or arranging for real estate broker services (e.g. computerized bookkeeping, forms management, computer programming, or any similar benefit) to or from any settlement producer at less than the fair market value of the services.
19. Accepting, or arranging for payment for, any business form provided to any settlement producer other than a form regularly used in the conduct of the real estate broker that form is furnished solely for the convenience of the real estate broker and does not constitute a direct monetary benefit to any settlement producer.
20. Accepting or arranging for the payment into escrow of any of the title entity funds or "closing short", except as provided in Section 38-35-125 (2), C.R.S.

21. Accepting or arranging for charges that are less than the actual cost of the closing and settlement service of the real estate broker.
- F. To the extent the activities and information are provided on a non-discriminatory basis, that such acts and practices have not been provided in a manner to circumvent the intent of this rule, and are in no way conditioned, directly or indirectly, upon prohibited referrals, prohibited acts, practices, incentives, disincentives, remuneration, commissions, fees or other things of value do not include, but may not be limited to, the following:
1. Accepting or arranging for, either orally or in writing, an ownership and encumbrance report ("O&E") or a copy of an instrument of public record, including but not limited to, a deed, deed of trust, mortgage, contract, map, plat, or declaration of covenants, conditions and restrictions. Any such report or instrument may be accepted without charge provided and to the extent that:
    - a. All persons requesting such information are treated equally; and
    - b. The information is provided as presented by the public records and nothing of material value is added to the information; and
    - c. The information furnished contains no advertising or promotional material on behalf of the settlement producer to whom the information is provided.
    - d. Commission rules do not prohibit a real estate broker from imposing a reasonable charge for any and all of the above information, or for additional information, provided the charge is the same for all persons, and is assessed on a non-discriminatory basis.
  2. Accepting or arranging for an insured closing letter or closing protection letter that substantially conforms to an American Land Title Association ("ALTA") promulgated form.
  3. Accepting or arranging for published or printing real estate industry related educational information or accepting or arranging for educational seminars for the benefit of settlement producers, as long as consistent with all other provisions of this rule.
  4. Accepting or arranging for advertising or marketing in furtherance of the development of client relationships, when performed in the bona fide and legitimate promotion of the real estate broker's business, as long as consistent with all other provisions of this rule including, but not limited to:
    - a. Things of reasonable value given to a bona fide trade or industry association.
    - b. Advertising novelties and promotional gift items that bear the name of the real estate broker (but not the name of the recipient) to settlement producers, provided and to the extent that:
      - i. The items constitute advertising directed impersonally at the general consumer public, and are provided to settlement producers on a non-discriminatory basis; and
      - ii. The items are valued at no more than \$10; and,
      - iii. Distribution, if by mail, is made on a nonselective basis to all persons known or reasonably believed to be members of the business or

professional group in the natural geographic area or political subdivision toward which the advertising effort is directed.

c. Customer entertainment provided that:

- i. It is interactive, personal contact between a real estate broker representative who is physically present and a settlement producer; and
- ii. It is conducted to promote real estate products and services of the real estate broker; and
- iii. Any benefit conferred to a settlement producer is incidental to the promotion of the real estate broker's products and services; and
- iv. The expenditure bears a reasonable relationship to the benefit derived by the real estate broker from the activity.

5. Accepting or arranging for the use of office space or other accommodations within a settlement producer's office or business space, provided that rent is paid in accordance with this rule and the arrangement is consistent with the intent of this rule. In determining whether an office or accommodations sharing arrangement is permitted under this rule, the Commission shall consider the following factors, including, but not limited to:

- a. Whether written notice has been provided to the consumer disclosing that an office or accommodations sharing arrangement exists and that the consumer has the right to use another real estate broker;
- b. Whether the real estate broker's space is clearly and conspicuously identified separately from the settlement producer's space;
- c. Whether the real estate broker's space can be readily locked and secured independently from the settlement producer's space;
- d. Whether the real estate broker's space is directly and easily accessible to the public without entering the settlement producer's primary workspace, such as where the real estate broker's entrance leads to or from a common area or the exterior of the premises; and
- e. Whether the real estate broker, directly or indirectly pays for or subsidizes the settlement producer's expenses as proscribed by §12-61-113.2, C.R.S.

G. Nothing herein shall be construed in a manner that conflicts with the provisions of §10-11-108(2)(b) or 12-61-113.2, C.R.S. or the rules and regulations of the Colorado Real Estate Commission or the Colorado Division of Insurance.

H. For the purposes of this rule, "title entity" means a "title insurance company" as defined in section 10-11-102 (10), C.R.S., and a "title insurance agent" as defined in section 10-11-102 (9), C.R.S.

I. Noncompliance with this rule, whether defined or reasonably implied under this rule E-22, may result, after proper notice and hearing, in the imposition of any of the sanctions available in the Colorado statutes pertaining to the business of real estate brokers or other laws which include the imposition of fines and/or discipline of a license.

J. The following are hereby incorporated by reference as written on or before the effective date of this rule. This rule does not include later amendments to or editions of the incorporated material. A copy of these references may be examined at any state publications depository library. For additional information regarding how to obtain a copy please contact Rulemaking Coordinator, Colorado Division of Real Estate, 1560 Broadway Ste. 925, Denver, CO 80202.

1. The federal Real Estate Settlement Procedures Act, 12 U.S.C. sec. 2601 et seq.

2. The American Land Title Association (ALTA) Closing Protection Letter (rev. 3/27/97); the ALTA Closing Protection Letter – Regulatory (rev. 10-17-98); the ALTA Closing Protection Letter – Non-Residential Limitations (rev. 10-17-98); and the ALTA Closing Protection Letter – Single Transaction Limited Liability (rev. 10-17-98).

E-23. A licensed Colorado broker who cooperates with a broker who is licensed in another state or country but is not licensed in Colorado may pay such out-of-state broker a finders fee or share of the commission under these circumstances:

(a) The broker licensed in the other state or country must reside and maintain an office in the other state or country.

(b) All advertising, negotiations, contracting and conveyancing done in Colorado must be performed in the name of the licensed Colorado broker.

(c) All money collected from the parties to the transaction prior to closing shall be deposited in the name of the licensed Colorado broker according to Commission rules. This rule shall also apply to payment made to citizens or residents of a country which does not license real estate brokers if the payee represents that they are in the business of selling real estate in said country.

E-24. A real estate licensee who procures or attempts to procure a real estate license by fraud, misrepresentation, deceit or by making a material misstatement of fact in an application for such license, will be subject to disciplinary action pursuant to 12-61-113, C.R.S., as amended.

E-25. When acting in a licensed capacity or when a licensee sells, buys or leases real property on the licensee's own account, such licensee shall have a continuing duty to disclose any known conflict of interest that may arise in the course of the transaction. In addition, when a licensee sells, buys or leases real property on the licensee's own account, such licensee shall disclose in the contracting instrument, or in a separate concurrent writing, that they are a real estate licensee.

E-26. Repealed.

E-27. No licensee shall make misrepresentations regarding future availability or costs of services, utilities, character and/or use of real property for sale or lease of the surrounding area.

E-28. A licensee shall not accept, directly or indirectly, a fee, commission or other valuable consideration from a pre-owned home warranty service company or its affiliate for services rendered in connection with the sale of a pre-owned home warranty service contract.

E-29. The terms "employment", "in the employ of", "employed", "employing", "placed under contract", or "engaged", as used in the licensing statutes (12-61-101 C.R.S. et seq.) and Commission Rules, shall refer to any contractual relationship by or between a real estate broker and another licensee, which may be with or without limitation as to the time, place, or manner of performance of the licensee's activities, but which shall not relieve the real estate broker from the statutory requirement that the real estate broker shall exercise authority, direction and control over

licensee's conformance to the licensing statutes and Commission Rules in the performance of such licensee's activities pursuant to 12-61-103 (6)(c)(l) C.R.S., 12-61-113 (1) (o) C.R.S., 12-61-118 C.R.S., and Commission Rules. Whenever a complaint is filed with the Real Estate Commission against an employed licensee, the Commission shall cause an investigation to be made to ascertain whether there may have been a violation of 12-61-113(1)(o) C.R.S. by the employing real estate broker in failing to exercise a reasonable or high level of supervision over such licensee's activities with reference to the licensing statutes and Commission Rules. Such supervision, pursuant to 12-61-118 C.R.S. shall include all broker employees, including but not limited to secretaries, bookkeepers and personal assistants of licensed employees.

E-30. To ensure compliance with commission statutes and rules regarding supervision, employing brokers shall have the following responsibilities:

- (a) Maintain all trust accounts and trust account records;
- (b) Maintain all transaction records;
- (c) Develop an office policy manual and periodically review office policies with all employees;
- (d) Provide for a high level of supervision of newly licensed persons pursuant to rule E-32;
- (e) Provide for a reasonable level of supervision for experienced licensees pursuant to rule E-31;
- (f) Take reasonable steps to ensure that violations of statutes, rules and office policies do not occur or reoccur;
- (g) Provide for adequate supervision of all offices operated by the broker, whether managed by licensed or unlicensed persons.

**E-31. Reasonable supervision**

Pursuant to section 12-61-113(1)(o), C.R.S., and in addition to the requirements of Commission Rule E-30 "reasonable supervision" of licensees with two or more years of experience shall include, but not be limited to, compliance with the following:

- (a) Maintaining a written office policy describing the duties and responsibilities of licensees employed by the broker. A copy of the written policy shall:
  - (1) be given to, read and signed by each licensee;
  - (2) be available for inspection, upon request, by any authorized representative of the Commission.
- (b) Reviewing all executed contracts in order to maintain assurance of competent preparation.
- (c) Reviewing transaction files to ensure that required documents exist.
- (d) Nothing in this rule shall prohibit an employing broker from delegating supervisory authority to other experienced licensees.
  - (1) Employed licensees who accept supervisory authority from an employing broker shall bear responsibility with the employing broker for ensuring compliance with the Commission statutes and rules by all supervised licensees.
  - (2) Any such delegation of authority shall be in writing and signed by the employed

licensee to whom such authority is delegated. A copy of such delegation shall be maintained by the employing broker for inspection, upon request, by any authorized Commission representative.

- (3) An employing broker shall not contract with any employed licensee so as to circumvent the requirement that the broker supervise employed licensees.

E-32. In addition to the requirements of Rule E-31 and pursuant to section 12-61-103 (6)(c)(I) C.R.S., an employing broker shall provide a "high level of supervision" for licensed persons with less than two years experience as follows:

- (a) Provide specific training in office policies and procedures;
  - (b) Be reasonably available for consultation;
  - (c) Provide assistance in preparing contracts;
  - (d) Monitor transactions from contracting to closing;
  - (e) Review documents in preparation for closing;
  - (f) Ensure that the employing broker or an experienced licensee attends closings or is available for assistance.
  - (g) Nothing in this rule shall prohibit an employing broker from delegating supervisory authority to other experienced licensees.
- (1) Employed licensees who accept supervisory authority from an employing broker shall bear responsibility with the employing broker for ensuring compliance with the Commission statutes and rules by all supervised licensees.
  - (2) Any such delegation of authority shall be in writing and signed by the employed licensee to whom such authority is delegated. A copy of such delegation shall be maintained by the employing broker for inspection, upon request, by any authorized Commission representative.

E-33. Following proper disclosure pursuant to 12-61-808 C.R.S., a broker engaged as a single agent for one party to a transaction may assist the other party by performing such ministerial tasks as showing a property, preparing and conveying written offers and counteroffers, making known the availability of financing alternatives and providing information related to professional, governmental and community services which will contribute to completion of the transaction and successful fulfillment of the agency. Performing such ministerial tasks shall not of themselves violate the terms of an agency relationship between a broker and a buyer, seller, tenant or landlord and shall not create an agency or transaction-broker relationship with the person being assisted.

E-34. A licensee must present all offers to purchase or lease to the owner's listing broker only if such owner has a written unexpired contract in connection with the sale or lease of real property which grants to the owner's listing broker an exclusive right to sell or lease.

E-35. Written disclosures pursuant to C.R.S. 12-61-808 shall be made to a buyer or tenant prior to engaging in activities enumerated in C.R.S. 12-61-101 (2) and (3).

- a. For purposes of this rule, such activities occur when a licensee elicits or accepts confidential information from a buyer or tenant concerning the buyer's or tenant's real estate needs,

motivation, or financial qualifications.

- b. Such activities do not include a bona fide "open house" showing, preliminary conversations or "small talk" concerning price range, location and property styles, or responding to general factual questions from a potential buyer or tenant concerning properties which have been advertised for sale or lease.

E-36. Pursuant to 38-35-125, a real estate licensee who provides closing services shall not disburse funds or instruct an agent to disburse funds until those funds have been received and are either:

- (1) available for immediate withdrawal as a matter of right from the financial institution in which the funds have been deposited or
- (2) available for immediate withdrawal as a consequence of an agreement of a financial institution in which the funds are to be deposited or a financial institution upon which the funds are to be drawn. Such agreement with a financial institution must be for the benefit of the licensee providing the closing service. If the agreement contains contingencies or reservations no disbursements can be made until these are satisfied. (Statement of Basis and Purpose as adopted by the Real Estate Commission on October 5, 1988.)

E-37. There is no obligation for a licensee to prepare any legal documents as part of a real estate transaction. However, if a licensee or the licensee's agent prepares any legal document, the licensee or the licensee's agent may not charge a separate fee for preparation of such documents. A licensee shall not be responsible for fees charged for the preparation of legal documents where they are prepared by an attorney representing the purchaser or seller. Costs of closing not related to preparation of legal documents may be paid by the licensee or by any other person. A broker who closes transactions and charges separately for costs of closing not related to the preparation of legal documents must specify the costs and obtain the written consent of the parties to be charged.

E-38. **Office Policy Contains Designation of Brokerage Relationship**

For purposes of this rule, seller shall include landlord and buyer shall include tenant. Pursuant to CRS 12-61-802(1.5), an employing broker or employed broker must be designated in writing by the employing broker to serve as a single agent or transaction-broker for the seller or buyer. Employing brokers comply with the statute if they make such written designation, as appropriate to the broker's business, in an office policy that states:

- 1. **listing contracts by single individual:** that the individual broker entering into the listing contract is the seller's designated agent or designated transaction-broker, whichever is appropriate.
- 2. **right to buy or tenant contracts by individual:** that the individual broker entering into the right to buy or tenant contract is the buyer's designated agent or transaction broker, whichever is appropriate.
- 3. **listing contracts by teams:** that the individual team member(s) entering into the listing contract is the seller's designated agent or transaction-broker, whichever is appropriate, in which case that designation and brokerage relationship shall apply to all members of the team.
- 4. **right to buy or tenant contracts by teams:** that the individual team member(s) entering into the right to buy or tenant contract is the buyer's designated agent or transaction-broker, whichever is appropriate, in which case that designation and brokerage relationship shall apply to all members of the team.

5. **individuals or teams working with both buyer and seller:**

- (a) that the individual(s) or team is a transaction-broker for both buyer and seller, or,
- (b) that the individual(s) or team is a single agent for the seller or buyer, and that the other party is a customer.

6. **substitute or additional brokers:** that the employing broker reserves the right to substitute or add other designated brokers, as appropriate, which shall be disclosed to the buyer or seller.

7. **transaction broker - written disclosure:** that the broker working with a buyer or seller as a Transaction-Broker as a result of a written disclosure, is the designated broker for that buyer or seller.

E-39. **Office brokerage relationship policy must be written**

Pursuant to 12-61-803 and 808 C.R.S., a broker shall adopt a written office policy which identifies and describes the relationships in which such broker and any employed licensee may engage with any seller, landlord, buyer or tenant as part of any real estate brokerage activities. A broker may adopt any policy suitable to the broker's business, subject to the following:

- a. An office policy shall apply to all licensees in the office;
- b. An office policy shall be given and explained to each licensee and shall be read, agreed to and signed by each licensee;
- c. An office policy shall, in a manner compliant with Commission Rule E-38, identify the procedures for the designation of brokers who are to work with a seller, landlord, buyer or tenant pursuant to 12-61-803(6), C.R.S., except office policies of real estate brokerage firms that consist of only one licensed natural person.
- d. An office policy shall identify and provide adequate means and procedures for the maintenance and protection of confidential information that:
  - (1) The seller or landlord is willing to accept less;
  - (2) The buyer or tenant is willing to pay more;
  - (3) Information regarding motivating factors for the parties;
  - (4) Information that a party will agree to other financing terms;
  - (5) Material information about a party not required by law to be disclosed;
  - (6) Facts or suspicions which may psychologically impact or stigmatize a property;
  - (7) All information required to be kept confidential pursuant to sections 12-61-804(2), 12-61-804(2), 12-61 805(2) and 12-61-807(3), C.R.S.
- e. An office policy may permit an employing broker to supervise a transaction and to participate in the same transaction as a designated broker.

E-40. A broker shall not enter into a brokerage relationship with one party as an agent and the other party as a transaction broker. A broker who works with both the buyer and seller in the same real estate



transaction may do so as (1) a Transaction-Broker for both buyer and seller (2) a single agent for the seller, treating the buyer as a customer or (3) a single agent for the buyer, treating the seller as a customer. These options shall be disclosed and made a part of the agreement between the parties to the listing contract, right to buy contract or tenant contract, whichever is appropriate.

E-41. Change of status disclosure in writing

A broker working with both the buyer and seller in the same real estate transaction who changes from working as a party's agent to assisting the parties as a Transaction-Broker shall either: check 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, if applicable, or provide the written "Change of Status (Transaction-Brokerage Disclosure)" to the party that has the changed relationship (seller and buyer) with the broker, at the time the broker begins to assist as a Transaction-Broker, but not later than at the time the party signs the contract. For purposes of this rule, seller shall include landlord, and buyer shall include tenant.

E-42. When a real estate licensee prepares a competitive market analysis (cma) for any reason other than the anticipated sale or purchase of the property, the licensee must include a notice stating: "The preparer of this evaluation is not registered, licensed or certified as a real estate appraiser by the state of Colorado" .

E-43. Square Footage Disclosure *[Eff. 04/30/2009]*

This rule applies to transactions involving the sale and purchase of residences, new or existing. It requires the listing licensee to disclose the square footage of the floor space of the living area of the residence to the buyer and seller when a licensee disseminates such information, including submission to a multiple listing service. If the licensee personally measures or provides information from another source of measurement of the residence's square footage the licensee shall use the Commission approved form for such disclosure. The licensee listing the property is responsible for accurately representing any source of square footage. *[Eff. 04/30/2009]*

(a) Licensee measurement. A licensee is not required to measure the square footage of a property. If the licensee takes an actual measurement it does not have to be exact, however, the licensee's objective must be to measure accurately and calculate competently in a manner that is not misleading, and: *[Eff. 04/30/2009]*

i. The standard, methodology or manner in which the measurement was taken must be accurately disclosed to the buyer and seller; *[Eff. 04/30/2009]*

ii. The buyer and seller must be advised that the measurement is for purposes of marketing and is not a measurement for loan, valuation or any other purpose; and *[Eff. 04/30/2009]*

iii. The buyer and seller must be advised that if exact square footage is a concern, the property should be independently measured. *[Eff. 04/30/2009]*

(b) Other sources of square footage. If a buyer or seller is provided information from another source for square footage, that source (whether an actual measurement, building plans, prior appraisals, assessors office, etc.) shall include the date of issuance if any and must be disclosed to the buyer and seller in writing by the licensee, in a timely manner. Such disclosure must be on the Commission approved form and must advise the recipient to verify the information. A licensee may not provide information to a person from a source known to be unreliable and is responsible for indicating obvious mismeasurement by others. *[Eff. 04/30/2009]*

- (c) A licensee working with a buyer must advise that if exact square footage is a concern, the property should be independently measured. This requirement is fulfilled by the licensee supplying such buyer a copy of the Commission approved form for disclosing square footage. *[Eff. 04/30/2009]*

E-44. Upon suspension, revocation, expiration or transfer of inactive status of a real estate license, the licensee is responsible for immediate compliance with the following:

- 1) Cease any activities requiring a license.
- 2) Return the license and pocket card to the Commission. If an employing broker, return the licenses of all employed licensees and inform such licensees of the action taken.
- 3) Cease all advertising, including but not limited to use of office signs, yard signs, billboards, newspapers, magazines, the internet, direct mailings, and multiple listing services.
- 4) Inform all owners, buyers and tenants of the action taken. If an employing broker, release all principals from any listings, management agreements, or other contractual obligations which require a license.
- 5) If an employing broker, ensure that all entrusted funds have been properly accounted for and/or that all closings are properly completed.
- 6) Commissions or fees may be received by licensees only for transactions where the commission or fees was earned prior to the suspension, revocation, expiration or transfer to inactive status.

E-45. A designated broker shall be permitted to reveal to a supervising broker, and a supervising broker shall be permitted to receive, confidential information as authorized by the informed consent of the party the designated broker(s) is assisting or working with, without changing or extending the designated brokerage relationship beyond the designated broker. A supervising broker, for purposes of this rule, is a broker performing the responsibilities set forth in rules E-30, 31 and 32. Confidential information includes the information referenced in sections 12-61-804 (2); 805 (2) and 807 (3) C.R.S.

E-46 A ffiliated Business Arrangements

- A. This rule concerns creation and conduct of an "affiliated business arrangement" as defined in Section 12-61-113.2(1)(a). This rule governs real estate licensees and is not intended to extend the regulatory authority of the Commission or the Division to any person other than real estate licensees.
- B. A "provider of settlement services" for purposes of Section 12-61-113.2 et seq includes but is not limited to brokers acting as agents or transaction brokers, real estate brokerage firms, and employing brokers.
- C. A licensee or employing broker of a licensee shall disclose the existence of an affiliated business arrangement pursuant to Section 12-61-113.2(2)(b) by disclosing the affiliation to the party they are referring, either seller, buyer or both, by using and having that party sign the Affiliated Business Arrangement Disclosure Statement promulgated by HUD pursuant to the Real Estate Settlement Procedures Act. The disclosure shall be made prior to, but no later than, the referral of settlement services business.
- D. A copy of the signed disclosure shall be retained in the file and a copy given to the referred party.

E. Sham affiliated business arrangements are prohibited.

1. In considering whether a real estate broker is a legitimate affiliated business arrangement or a "sham" affiliated business arrangement, the factors the Commission will consider include the following:

- a. Whether the real estate broker operates in a manner that evidences a good faith effort to conform to applicable real estate laws;
- b. Whether the title entity maintains a separate and distinct, verifiable physical location. In the event the real estate broker shares office space with another settlement service provider, the Commission may consider the factors set forth in paragraph F5 of Rule E22, inclusive, in determining compliance with this provision.
- c. Whether the employees of the real estate broker are shared with other settlement service providers within the affiliated business arrangement.

In determining whether an individual is an employee of the real estate broker, the Commission may consider the following factors:

- i. Whether the real estate broker issues or causes to be issued an annual Internal Revenue Service Form W-2 to the employee;
  - ii. Whether the employee is subject to the real estate broker's supervision and control;
  - iii. Whether the employee devotes fixed periods of time exclusively to the business of the real estate broker or whether the employee is compensated on a fluctuating per hour basis or per transaction basis;
  - iv. Whether the employee is physically located in the office of the real estate broker.
- d. Whether the real estate broker performs core title services, by and through its employees. In accordance with the HUD Statement of Policy 1996-4 the real estate broker shall not collect premiums for services not actually performed.
  - e. What, if any, the settlement services the real estate broker has contracted to other sources.

2. In addition to the above factors, the Commission will consider the guidelines set forth in the HUD statement of Policy 1996-2, Sham Controlled Business Arrangements (commonly referred to as the "HUD 10-Step Sham Test") and that statement is incorporated by reference. A copy of this document is available for public inspection at the office of the Division of Real Estate, 1560 Broadway, Ste. 925, Denver, CO, 80202, weekdays between 8 a.m. and 5 p.m.; excluding state observed holidays. The Commission may also consider any other relevant facts and circumstances relating to the above factors and to those elements set forth in the 10-Step Sham Test.
3. The disclosures to the Commission required by Section 12-61-113.2 (3) and (4) shall be made in a form or manner required by the Commission and shall be:

- a. At the time of a new application for active licensure or at the time of activation of an inactive license, the licensee shall disclose to the Commission the names of all affiliated business arrangements to which the licensee is a party. The written disclosure shall include the physical location of the affiliated business.
    - b. Upon the transfer of an active license to another brokerage firm, the active licensee shall disclose to the Commission the names of all affiliated business arrangements to which the licensee is a party. The written disclosure shall include the physical location of the affiliated business.
    - c. On an annual basis, each employing broker shall disclose to the Commission the names of all affiliated business arrangements to which the employing broker is a party. The written disclosure shall include the physical location of the affiliated business.
  - F. Noncompliance with this rule, whether defined or reasonably implied under this rule E-46, may result, after proper notice and hearing, in the imposition of any of the sanctions available in the Colorado statutes pertaining to the business of real estate brokers or other laws which include the imposition of fines and/or discipline of a license.
  - G. The following are hereby incorporated by reference as written on or before the effective date of this rule. This rule does not include later amendments to or editions of the incorporated material. A copy of these references may be examined at any state publications depository library. For additional information regarding how to obtain a copy please contact Rulemaking Coordinator, Colorado Division of Real Estate, 1560 Broadway Ste. 925, Denver, CO 80202.
    - 1. The HUD policy statement 1996-2, which is the Policy Statement on Sham Controlled Business Arrangements.
    - 2. The HUD policy statement 1996-4, which is the Statement of Enforcement Standards: Title Insurance Practices in Florida; Final Rule.
- E-48. No licensee shall file a lien, a lis pendens or record a listing contract to secure the payment of a commission or other fee associated with real estate brokerage duties. A licensee shall not cause the title to a property to become clouded or otherwise interfere with the transfer of title when the licensee is not a principal in the transaction.
- E-49. A licensee shall make written notification to the Commission within 30 calendar days of any of the following:
- (a) A plea of guilt, a plea of nolo contendere or a conviction of any crime identified by 12-61-113(1)(m), C.R.S.
  - (b) A violation or aiding and abetting in the violation of the Colorado or federal fair housing laws.
  - (c) Any disciplinary action taken against a licensee in any other jurisdiction, if the licensee's action(s) would constitute a violation of the real estate license law in Colorado.
  - (d) A suspension or revocation of a license, registration, or certification by Colorado or another state, within the last five years, for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty that denied the licensee the authorization to practice as a mortgage broker, a real estate broker or salesperson, a real estate appraiser, an insurance producer, an attorney, a securities broker-dealer, a securities sales

representative, an investment advisor, or an investment advisor representative.

**G. Brokers acting under 12-61-101(2)(j) C.R.S.**

**G-1. Repealed (1-6-00)**

- [(a) The funds may be withdrawn from the trust fund account at any time for the purpose of returning the funds to the payor thereof in accordance with the terms of the contract or receipt.
- (b) The funds may be withdrawn from the trust or escrow fund account when and if the broker reasonably believes the evidence available that said tenant has obtained a rental through information supplied by or on behalf of the broker.]

G-2. Pursuant to 12-61-113(1.5) C.R.S., every person licensed acting under 12-61-101(2)(j) C.R.S. shall give a prospective tenant a contract or receipt. At the time of acceptance of an advance fee from a prospective tenant, a broker shall provide the prospective tenant with a written contract or receipt which shall include at least the following:

- (a) Name, business address and telephone number of the brokerage company.
- (b) Acknowledgment of receipt of advance fee.
- (c) A description of the services to be performed by the broker, including significant conditions, restrictions and limitations where applicable, and hours of operation.
- (d) The prospective tenant's specifications for the rental property, including but not limited to:
  - (1) Type of structure, e.g., detached single family, apartment, duplex, condominium, mobile home, et cetera.
  - (2) Location by commonly accepted residential area name, by designation of boundary streets and municipality or in any other manner affording a reasonable means of identifying acceptable locations.
  - (3) Furnished or unfurnished.
  - (4) Number of bedrooms.
  - (5) Earliest occupancy date desired.
  - (6) Maximum acceptable monthly rental.
  - (7) Pets.
  - (8) Garage, carport or off-street parking.
- (e) Contract expiration date.
- (f) Date of execution.
- (g) Signatures of the prospective tenant, the broker, and if negotiated by a licensee in the employ of a broker, then the employed licensee shall sign on behalf of the employing broker.
- (h) The address and the phone number of the Real Estate Commission in prominent letters.

- (i) A statement that the regulation of rental location services is under the jurisdiction of the Real Estate Commission.
- (j) Recital in bold face and capitals that:

**IF THE INFORMATION CONCERNING RENTAL FURNISHED BY THE BROKER IS SHOWN TO BE NOT CURRENT OR ACCURATE IN REGARD TO THE TYPE OF RENTAL DESIRED, THE FULL FEE SHALL BE REPAID OR REFUNDED TO THE PROSPECTIVE TENANT UPON WRITTEN DEMAND. CURRENT RENTALS HAVE BEEN VERIFIED AS TO AVAILABILITY WITHIN THE PAST FOUR BUSINESS DAYS.**

G-3. Whenever the prospective tenant visits the broker's office, a list of all addresses given to the prospective tenant shall be prepared in duplicate. A copy shall be given to the prospective tenant and the original shall be retained by the broker for a period of 90 days and either affixed to the client's contract or receipt or be placed in the client's file if a separate file is kept. The list shall clearly indicate the following:

- (a) The date the addresses were furnished to the prospective tenant.
- (b) The type of unit, e.g., detached single family residence, apartment, duplex, condominium, mobile home, etc.
- (c) Whether the unit is furnished or unfurnished.
- (d) The date when the unit will be available for occupancy.
- (e) The date when the unit was most recently entered on the agency's listing records.
- (f) The date when the housing accommodation was last verified by the agency to be available for rent.
- (g) The address and municipality of the housing accommodation.
- (h) The name and address of the property owner or their authorized agent and the telephone number, if available.
- (i) The monthly rent required by the landlord.
- (j) The number of bedrooms and total number of rooms.
- (k) Whether a written lease is required and, if so, the minimum lease term required by the landlord.
- (l) Any lawful restrictions as to pets, children, furnishings, occupants or activities imposed by the landlord.

G-4. Repealed effective 1-1-97

G-5. Where addresses are furnished to the prospective tenant by telephone or any other manner not requiring the prospective tenant's presence at the broker's office, the addresses shall be noted on the broker's copy of the list. The list shall indicate by which broker or employee of the broker the addresses were furnished and the broker's copy shall be retained for a period of one year.

G-6. Each broker engaged in locating or assisting in locating rental properties for an advance fee shall abide by the following regulations regarding advertising practices:

- (a) Licensee shall make written registries, posted in a conspicuous place or otherwise disclosed to fee payors, of all advertisements or other publications published or caused to be published by the broker, together with address of each property advertised, the name of the party who offered the property for rent and his or her telephone, if any.
- (b) No property shall be advertised which has not been verified for availability four business days or less before said advertisement shall be printed.
- (c) Each property advertised for rent or lease through the use of any media form shall be assigned a code (and one code only) in accordance with a uniform coding system adopted by the broker, which code shall also appear in any media advertising placed by said broker. Coding of municipalities shall be included within the uniform system so as to be accurately reflected in media advertising.
- (d) A copy of all advertising submitted to any media group for publication (including television, radio, newspaper and mimeographed sheets), together with the name of the person submitting the same, shall be maintained by a broker for a period of one year after publication.
- (e) No licensee acting under 12-61-101(2)(j) C.R.S. shall advertise or furnish a prospective tenant with the address of a prospective rental unless such licensee has received specific authorization to list said property from the owner or owner's authorized agent. Specific authorization may be by writing, signed by the owner or owner's agent, or orally, if the broker notes the name of the owner or owner's agent, the date of authorization, and the telephone number of the person so authorizing.

G-7. Pursuant to 12-61-113(1)(n) C.R.S., a licensee acting under 12-16-101(2)(j) C.R.S. shall be considered unworthy or incompetent in the conduct of their business where:

- (a) The licensee violates Rule G-6.
- (b) With particular respect to media advertising:
  - (1) The property is not actually located in the area represented.
  - (2) The rental price shown is less than that asked by the owner of the available property.
  - (3) The property is non-existent or cannot be verified as currently for rent by the licensee.
  - (4) The specifics of the property advertised differ materially from the property as it exists.
  - (5) A property is advertised in such a way or under such a heading as to indicate the property is of a different type than it actually is. The word "type" refers to such designations as: single family detached residence, duplex, apartment, condominium, townhouse, or mobile home.
- (c) The licensee fails or refuses to abide by the terms of the contract or receipt between himself and a prospective purchaser.
- (d) The broker fails or refuses to refund money pursuant to the terms of the contract or receipt.
- (e) The broker has failed to keep accurate records as specified in these rules or has failed to retain said records for the prescribed time periods.

THE STATEMENT OF BASIS AND PURPOSE FOR THESE RULES AS ADOPTED IS INCORPORATED

HEREIN BY REFERENCE AND IS AVAILABLE FOR INSPECTION IN THE OFFICE OF THE COLORADO REAL ESTATE COMMISSION.

Rules H-1 Through H-26. Repealed.

## **I. Declaratory Orders.**

1. Any person <sup>\*1</sup> may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission.

<sup>\*1</sup> refers to existing definition of "person" in APA, rule or statute, if any.

2. The Commission will determine, in its discretion and without prior notice to the petitioner, whether to rule upon any such petition. If the Commission determines it will not rule upon such a petition, the Commission shall issue its written order disposing of the same, stating therein its reasons for such action. A copy of such order shall forthwith be transmitted to the petitioner.

3. In determining whether to rule upon a petition filed pursuant to this rule, the Commission will consider the following matters, among others:

- (a) whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Commission;
- (b) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission;
- (c) whether the petition involves any subject, question or issue which is the subject of a formal matter or investigation currently pending before the Commission or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission and in which petitioner may intervene;
- (d) whether the petition seeks a ruling on a moot or hypothetical question and will result in merely an advisory ruling or opinion;
- (e) whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

4. Any petition filed pursuant to this rule shall set forth the following:

- (a) the name and address of the petitioner and whether the petitioner is licensed pursuant to C.R.S. 1973, 12-61-101, et seq.
- (b) the statute, rule or order to which the petition relates;
- (c) a concise statement of all the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.



5. If the Commission determines that it will rule on the petition, the following procedures shall apply:
- (a) the Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:
    - (1) any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition;
    - (2) the Commission may order the petitioner to file a written brief, memorandum or statement of position;
    - (3) the Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing;
    - (4) the Commission may dispose of the petition on the sole basis of the matters set forth in the petition;
    - (5) the Commission may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition;
    - (6) the Commission may take administrative notice of facts pursuant to the Administrative Procedure Act (C.R.S. 1973, 24-4-105(8)) and utilize its experience, technical competence and specialized knowledge in the disposition of the petition;
    - (7) if the Commission rules upon the petition without a hearing, it shall issue its written order, stating therein its basis for the order. A copy of such order shall forthwith be transmitted to the petitioner.
  - (b) The Commission may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to petitioner and any other facts the petitioner desires the Commission to consider.
6. The parties to any proceeding pursuant to this rule shall be the Commission and the petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition to intervene shall set forth the same matters as required by section 4 of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Commission.
7. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to C.R.S. 1973, 21-4-106.

\*1 refers to existing definition of "person" in APA, rule or statute, if any.

#### **J. Repealed**

#### **K. Exceptions and Commission Review of Initial Decisions**

- K-1. 1. All Designations of Record, Requests, Exceptions and Responsive Pleadings ("Pleadings" ) must be in written form, mailed with a certificate of mailing to the Commission.
2. All Pleadings must be filed with the Commission by 5:00 p.m. on the date the filing is due. These rules do not provide for any additional time for service by mail. Filing is in receipt of a pleading by the Commission.
3. Any Pleadings must be served on the opposing party by mail or by hand delivery on the date which the Pleading is filed with the Commission.
4. All Pleadings must be filed with the Commission and not with the Office of Administrative Courts. Any Designations of Record, Requests, Exceptions or Responsive Pleadings filed in error with the Office of Administrative Courts will not be considered. The Commission's address is:

Colorado Real Estate Commission

1560 Broadway, Suite 925

Denver, CO 80202

- K-2. 1. The Commission hereby preserves the Commission's option to initiate a review of an initial decision on its own motion pursuant to § 24-4-105(14)(a)(II) and (b)(III), C.R.S. outside of the thirty day period after service of the initial decision upon the parties without requiring a vote for each case.
2. This option to review shall apply regardless of whether a party files exceptions to the initial decision.
- K-3. 1. Any party seeking to reverse or modify the initial decision of the administrative law judge shall file with the Commission a designation of the relevant parts of the record for review ("Designation of Record" ). Designations of Record must be filed with the Commission within twenty days of the date on which the Commission mails the initial decision to the parties' address of record with the Commission.
2. Even if no party files a Designation of Record, the record shall include the following:
- a. All pleadings;
  - b. All applications presented or considered during the hearing;
  - c. All documentary or other exhibits admitted into evidence;
  - d. All documentary or other exhibits presented or considered during the hearing;
  - e. All matters officially noticed;
  - f. Any findings of fact and conclusions of law proposed by any party; and
  - g. Any written brief filed.
3. Transcripts: Transcripts will not be deemed part of a Designation of Record unless specifically identified and ordered. Should a party wish to designate a transcript or portion thereof, the following procedures will apply:

- a. The Designation of Record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, or may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript.
- b. Any party who includes a transcript or a portion thereof as part of the Designation of Record must order the transcript or relevant portions by the date on which the Designation of Record must be filed (within twenty days of the date on which the Commission mails the initial decision to the parties).
- c. When ordering the transcript, the party shall request a court reporter or transcribing service to prepare the transcript within thirty days. The party shall timely pay the necessary fees to obtain and file with the Commission an original transcription and one copy within thirty days.
- d. The party ordering the transcript shall direct the court report or transcribing service to complete and file with the Commission the transcript and one copy of the transcript within thirty days.
- e. If a party designates a portion of the transcript, the opposing party may also file a Supplemental Designation of Record, in which the opposing party may designate additional portions of the transcript. This Supplemental Designation of Record must be filed with the Commission and served on the other party within ten days after the date on which the original Designation of Record was due.
- f. An opposing party filing a Supplemental Designation of Record must order and pay for such transcripts or portions thereof within the deadlines set forth above. An opposing party must also cause the court reporter to complete and file with the Commission the transcript and one copy of the transcript within thirty days.
- g. Transcripts that are ordered and not filed with the Commission in a timely manner by the reporter or the transcription service due to non-payment, insufficient payment or failure to direct as set forth above will not be considered by the Commission.

K-4. 1. Any party wishing to file exceptions shall adhere to the following timelines:

- a. If no transcripts are ordered , exceptions are due within thirty days from the date on which the Commission mails the initial decision to the parties. Both parties' exceptions are due on the same date.
  - b. If transcripts are ordered by either party , the following procedure shall apply. Upon receipt of transcripts identified in all Designations of Record, the Commission shall mail notification to the parties stating that the transcripts have been received by the Commission. Exceptions are due within thirty days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.
2. Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings shall be filed within ten days of the date on which the exceptions were filed with the Commission. No other pleadings will be considered except for good cause shown.
  3. The Commission may in its sole discretion grant an extension of time to file exceptions or responsive pleadings, or may delegate the discretion to grant such an extension of time to the Commission's designee.

- K-5. 1. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings.
2. It is within the sole discretion of the Commission to grant or deny a request for oral argument. If oral argument is granted, both parties shall have the opportunity to participate.
3. Each side shall be permitted ten minutes of oral argument unless such time is extended by the Commission or its designee.

#### **S. For Subdivision Developers**

**Approved by the Attorney General and the Executive Director of the Department of Regulatory Agencies.**

**In pursuance of and in compliance with Title 12, Article 61, C.R.S. 1973, as amended, and in pursuance of and in compliance with Title 24, Article 4, C.R.S. 1973, as amended.**

- S-1. The Registration and Certification of Subdivision Developers under Title 12, Article 61, Part 4, C.R.S. does not exempt the subdivision developer from the requirements for the licensing of real estate brokers under Title 12, Article 61, Part 1, C.R.S. Exemptions from the licensing of real estate brokers are made only under 12-61-101(4) C.R.S.
- S-2. The person, firm, partnership, joint venture, limited liability company, association, corporation or other legal entity, or combination thereof, who will sign as seller or lessor in any contract of sale, lease or on any deed purporting to convey any site, tract, lot or divided or undivided interest from a subdivision, as defined in 12-61-401(3) C.R.S., must secure a Subdivision Developer's Certificate before negotiating or agreeing to sell, lease or transfer and before any sale, lease or transfer is made. If such person is acting only as a trustee, the beneficial owner of the Subdivision must secure a Subdivision Developer's Certificate.
- S-3. If an applicant is a corporation, the individual applying on behalf of the corporation shall be an officer or director authorized to apply on behalf of said corporation.
- S-4. If the applicant is a partnership, one of the general partners of the partnership shall apply on behalf of the partnership.
- S-5. If the applicant is a joint owner of the subdivision, such applicant may apply on behalf of all Joint owners of such subdivision.
- S-6. If the applicant is a limited liability company, one of the managers or member-managers shall apply on behalf of the company.
- S-7. The Real Estate Commission shall issue a certificate, refuse certification or demand further information within sixty (60) days from the date of receipt of the application by the Commission.
- S-8. If additional information is required by the Real Estate Commission, the Commission shall give written notice in detail of the information so required and shall allow an additional sixty (60) days to present such material before cancellation of the application, which period may be extended only upon showing of good cause.
- Rule S-9. Repealed.
- Rule S-10. Repealed.
- S-11. Notification must be made to the Real Estate Commission within 10 days of any change in the

principal office address of the developer or the natural person.

S-12. Pursuant to 12-61-405 C.R.S., any subdivision developer who has received written notification from the Commission that a complaint has been filed against the developer, shall submit a written answer to the Commission within a reasonable time set by the Commission.

S-13. Repealed.

S-14. Failure to submit any written response required by S-13 shall be grounds for disciplinary action unless the Commission has granted an extension of time or, unless such answer would subject such person to a criminal penalty.

S-15. Records as required under Title 12, Article 61, Parts 1-8 C.R.S. and rules promulgated by the Commission, may be maintained in electronic format. An electronic record as defined in 24-71.7-103 C.R.S. means a record generated, communicated, received, or stored by electronic means. Such electronic records must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the Commission, or by any principal party to a transaction, printed records shall be produced.

S-16. Repealed.

S-17. In compliance with 12-61-403 the applicant for a subdivision developer's certificate shall provide the Commission with the following information concerning the subdivision(s) to be registered:

(a) The address or actual physical location of each subdivision from which sales are intended to be made.

(b) Copies of a recorded deed or other documents evidencing the title or other interest in the subdivision and a title commitment, policy or report, abstract and opinion, or other evidence acceptable to the Commission documenting the condition of such title or interest.

(c) Sample copies of contracts of sale, notes, deeds and other legal documents prepared by the developer or an attorney representing the developer which are to be used to effectuate the sale or lease. The commission may disapprove the form of the documents submitted and may deny an application for registration until such time as the applicant submits such documents in a form that is satisfactory to the commission.

(d) In compliance with 12-61-403(3)(e) C.R.S., a subdivision developer of time share use projects shall submit to the Commission a "Nondisturbance Agreement" by which the holder of a blanket encumbrance against the project agrees that its rights in the time share use project shall be subordinate to the rights of the purchasers. From and after the recording of a nondisturbance agreement, the person executing the same, such person's successors and assigns, and any person who acquires the property through foreclosure or by deed in lieu of foreclosure of the blanket encumbrance, shall take the time share use project subject to the rights of purchasers. Every nondisturbance agreement shall contain the covenant of the holder of the blanket encumbrance that such person or any other person acquiring through such blanket encumbrance shall not use or cause the time share use project to be used in a manner which would prevent the purchasers from using and occupying the time share use project in a manner contemplated by the time share use plan. Any other "trust" or "escrow" arrangement which fully protects the purchasers' interest in the project as contemplated by 12-61-403(3)(e) C.R.S. will be approved by the Real Estate Commission.

(e) If the developer of a subdivision is other than a natural person, proof of registration in

accordance with state and local requirements shall accompany the application.

- (f) Copies of the recorded declaration, covenants, filed articles of incorporation and bylaws of any owners association.

S-18. Repealed (1-1-95)

S-19. Repealed (1-1-95)

S-20. Pursuant to 12-61-403(3)(e) C.R.S. where a subdivision developer receives cash or receivables from a purchaser for an uncompleted project, the Commission will register such developer only after:

- (a) The developer establishes an escrow account, with an independent escrow agent, of all funds and receivables received from purchasers: or,
- (b) The developer obtains a letter of credit or bond payable to an independent escrow agent or any other financial arrangement, the purpose of which is to ensure completion of accommodations and facilities and to protect the purchaser's interest in the accommodations and facilities.

S-21. A subdivision developer shall furnish to the Commission such additional information as the Commission shall from time to time deem necessary for the enforcement of Title 12, Article 61, Part four C.R.S.

S-22. Renewal of the registration and certification as a subdivision developer can be executed only on the renewal application provided by the Commission accompanied by the proper fees by December 31st of each year.

S-23. Pursuant to 12-61-406(2.5)(a) C.R.S. and 12-61-406(3) C.R.S., subdivision developers shall supply the following information to the Commission in addition to the requirements of 12-61-403 C.R.S. and 404(4) C.R.S. and prior to contracting with the public shall disclose to prospective purchasers in the sales contract or in a separate written disclosure document, the following:

- (a) The name and address of the developer and of the subdivision lots or units;
- (b) An explanation of the type of ownership or occupancy rights being offered;
- (c) A general description of all amenities and accommodations. The description must include the specific amenities promised, ownership of such amenities, the projected completion date of any amenities to be constructed, and a statement setting forth the type of financial arrangements established in compliance with Rule S-20;
- (d) In compliance with 12-61-405(1)(i), a statement in bold print immediately prior to the purchaser's signature line on the sales contract disclosing the rescission right available to purchasers and that the rescission right cannot be waived; the minimum allowable rescission period in Colorado is five days;
- (e) A general description of all judgments and administrative orders issued against the seller, developer, homeowners association or managing entity which are material to the subdivision plan;
- (f) Any taxes or assessments, existing or proposed, to which the purchaser may be subject or which are unpaid at the time of contracting, including obligations to special taxing authorities or districts;

- (g) A statement that sales will be made by brokers licensed by the State of Colorado unless specifically exempted pursuant to C.R.S. 12-61-101(4) and the sales contract shall disclose the name of the real estate brokerage firm and the name of the broker establishing a brokerage relationship with the developer;
- (h) When a separate document is used to make any of the disclosures required in this Rule S-23, this statement must appear in bold print on the first page of the document and preceding the disclosure: The State of Colorado has not prepared or issued this document nor has it passed on the merits of the subdivision described herein;
- (i) A statement that all funds paid by the purchaser prior to delivery of deed will be held in trust by the licensed real estate broker named in the contract or a clear statement specifically setting forth who such funds shall be delivered to, when such delivery will occur, the use of said funds and whether or not there is any restriction on the use of such funds (This must be disclosed in contract);
- (j) A statement that immediately following the date of closing, the purchaser's deed will be delivered to the Clerk and Recorder's office for recording or a clear statement specifically setting forth when such delivery will occur; for the purposes of this Rule, the date of closing is defined as the date the purchaser has either paid the full cash purchase price or has made partial cash payment and executed a promissory note or other evidence of indebtedness for the balance (See Rule S-30) (This must be disclosed in the contract);
- (k) A statement that a title insurance policy, at no expense to the purchaser, will be delivered within sixty days following recording of deed unless specifically agreed to the contrary in the contracting instrument (See Rule S-31) (This must be disclosed in contract);
- (1) Where an installment contract is used:
  - (i.) Whether or not the purchaser's deed is escrowed with an independent escrow agent and if so the name and address of the escrow agent (This must be disclosed in contract);
  - (ii.) The amount of any existing encumbrance(s), the name and address of the encumbrancer, and the conditions, if any, under which a purchaser may cure a default caused by non-payment;
  - (iii.) A clear statement that a default on any underlying encumbrance(s) could result in the loss of the purchaser's entire interest in the property; and
  - (iv.) A clear statement advising the purchaser to record the installment contract.
  - (v) Pursuant to 12-61-403(3)(e) C.R.S., an agreement by which the holder of any blanket encumbrance against the project agrees that its rights and the rights of its successors or assigns in the project shall be subordinate to the rights of purchasers, or any other "trust", "escrow" or release arrangement which fully protects the purchasers' interest in the project.
- (m) The provisions for and availability of legal access, roads, sewage disposal, public utilities, including water, electricity, gas, telephone and other promised facilities in the subdivision, and whether these are to be an expense of the developer, the purchaser or a third party;
- (n) If the subdivision has a homeowners or similar association:
  - (i.) Whether membership in such association is mandatory;

- (ii.) An estimate of association dues and fees which are the responsibility respectively of the purchaser and the developer;
  - (iii.) A description of the services provided by the association;
  - (iv.) Whether the developer has voting control of the association and the manner in which such control can or will be transferred; and
  - (v.) Whether the developer has any financial interest in or will potentially derive any income or profit from such association, including the developer's right to borrow or authorize borrowing from the association.
- (o) In addition to the disclosures in (a) through (n) above, if sales are to be made from a time share project as defined in 12-61-401(4):
- (i.) A description of the time share units including the number of time share units, the length and number of time share interests in each unit, and the time share periods constituting the time share plan;
  - (ii.) The name and business address of the managing entity under the time share plan, a description of the services that the managing entity will provide, and a statement as to whether the developer has any financial interest in or will potentially derive any income or profit from such managing entity, and the manner, if any, by which the purchaser or developer may change the managing entity or transfer the control of the managing entity;
  - (iii.) An estimate of the dues, maintenance fees, real property taxes and similar periodic expenses which are the responsibility respectively of the purchaser and the developer and a general statement of the conditions under which future changes or additions may be imposed. Such estimate will include a statement as to whether a maintenance reserve fund has been or will be established; the manner in which such reserve fund is financed if not cash funded; an accounting of any outstanding obligations either in favor of or against the fund; the developer's right to borrow or authorize borrowing from the fund; and the method of periodic accounting which will be provided to the purchaser;
  - (iv.) A description of any insurance coverage provided for the benefit of purchasers; and
  - (v.) That mechanic's liens law may authorize enforcement of the lien by selling the entire time share unit.
- (p) In addition to the disclosures in (a) through (o) above, if sales are to be made from a time share use project as defined in 12-61-401(4):
- (i.) The specific term of the contract to use and what will happen to a purchaser's interest upon termination of said contract;
  - (ii.) A statement as to the effect a voluntary sale, by the developer to a third party, will have on the contractual rights of time share owners;
  - (iii.) A statement that an involuntary transfer by bankruptcy of the developer may have a negative effect on the rights of the time share owners; and
  - (iv.) A statement that a Federal tax lien could be enforced against the developer by compelling the sale of the entire time share project.



- (q) If time shares, as defined in 12-61-401(4), are to be sold from a subdivision which: (1) contains two or more component sites situated at different geographic locations or governed by separate sets of declarations, by-laws or equivalent documents; and (2) does not include, subject to agreed upon rules and conditions, a guaranteed, recurring right of use or occupancy at a single component site:
- (i) For each component site, the information and disclosures required by Rule S-23(a) through (p);
  - (ii) A general description of the subdivision;
  - (iii) For each term of usage or interest offered for sale, the total annual number of available daily use periods within the entire subdivision and within each component site for that term, regardless of whether such use periods are offered to a purchaser by days, weeks, points or otherwise, and a calculation represented on a chart or grid showing each component site's annual daily use periods as a percentage of the entire subdivision's annual daily use periods;
  - (iv) A clear description in the sales contract of the interest and term of usage being purchased and a definite date of termination of the purchaser's interest in the subdivision, which date will be not later than the termination date of the subdivision's interest in a specifically identified component site;
  - (v) A clear disclosure and description of any component site which is not legally guaranteed to be available for the purchaser's use, subject to the by-laws and rules of the subdivision, for the full term of the purchaser's usage interest;
  - (vi) The system and method in place to assure maintenance of no more than a one-to-one ratio of purchasers' use rights to the number of total use rights in the subdivision for each term of usage being offered for sale, including provisions for compensation to purchasers resulting from destruction of a component site or loss of use rights to any component site;
  - (vii) Whether the developer maintains any type of casualty insurance for the component sites in addition to that maintained by the site owners association or other interested parties, including the manner of disposition of any proceeds of such insurance resulting from the destruction or loss of use rights to any component site;
  - (viii) A description of the system or program by which a purchaser obtains a recurring right to use and occupy accommodations and facilities in any component site through use of a reservation system or otherwise, including any restrictions on such rights or any method by which a purchaser is denied an equal right with all other users to obtain the use of any accommodation in the subdivision;
  - (ix) A description of the management and ownership of such reservation system or program, whether through the developer, an owners association, a club or otherwise, including the purchaser's direct or indirect ownership interest or rights of control in such reservation system;
  - (x) Whether the developer, club or association which controls the reservation system or any other person has or is granted any interest in unsold, non-reserved or unused use rights and whether the developer, club, association or other person may employ such rights to compete with purchasers for use of accommodations in the subdivision or any component site and, if so, the nature and specifics of

those rights, including the circumstances under which they may be employed;

- (xi) The method and frequency of accounting for any income derived from unsold, non-reserved or unused use rights in which the purchaser, either directly or indirectly, has an interest;
- (xii) The system and method in place, including business interruption insurance or bonding, to provide secure back-up or replacement of the reservation system in the event of interruption, discontinuance or failure;
- (xiii) The amount and details of any component site, reservation system or other periodic expense required to be paid by a purchaser, the name of the person or entity to which such payments shall be made, and the method by which the purchaser shall receive a regular periodic accounting for such payments;
- (xiv) If component site expenses are included in those periodic payments made by a purchaser, a statement for each component site from the owners association or other responsible agency acknowledging that payment of such expenses as taxes, insurance, dues and assessments are current and are being made in the name of the subdivision;
- (xv) Evidence that an escrow system with an independent escrow agent is in place for receipt and disbursement of all moneys collected from purchasers that are necessary to pay such expenses as taxes, insurance and common expenses and assessments owing to component site owners associations or others or a clear description of the method by which such funds will be paid, collected, held, disbursed and accounted for;
- (xvi) A clear statement in the sales contract as to whether a purchaser's rights, interests or terms of usage for any component site within the subdivision can subsequently be modified from those terms originally represented and a description of the method by which such modification may occur;
- (xvii) If the subdivision documents allow additions or substitutions of accommodations or component sites, a clear description of the purchaser's rights and obligations concerning such additions or substitutions and the method by which such additions or substitutions will comply with the provisions of this rule;
- (xviii) A clear description of any existing incidental benefits or amenities which are available to the purchaser at the time of sale but to which the purchaser has no guaranteed right of recurring use or enjoyment during the purchaser's full term of interest in the subdivision.

S-24. A time share developer shall disclose to the public whether or not a time share plan involves an exchange program and, if so, shall disclose and deliver to prospective purchasers, a separate written document, which may be provided by an exchange company if the document discloses the following information:

- (a) The name and the business address of the exchange company;
- (b) Whether the purchaser's contract with the exchange program is separate and distinct from the purchaser's contract with the time share developer;
- (c) Whether the purchaser's participation in the exchange program is dependent upon the time share developer's continued affiliation with the exchange program;

- (d) Whether or not the purchaser's participation in the exchange program is voluntary;
- (e) The specific terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes, if any, may be made in the terms and conditions of such contractual relationship;
- (f) The procedure of applying for and effecting changes;
- (g) A complete description of all limitations, restrictions, accrual rights, or priorities employed in the operation of the exchange program, including but not limited to limitations on exchanges based on seasonability, unit size, or levels of occupancy; and if the limitations, restrictions or priorities are not applied uniformly by the exchange program, a complete description of the manner of their application;
- (h) Whether exchanges are arranged on a space-available basis or whether quarantees of fulfillment of specific requests for exchanges are made by the exchanging company;
- (i) Whether and under what conditions, a purchaser may, in dealing with the exchange program, lose the use and occupancy of the time share period in any properly applied for exchange without being offered substitute accommodations by the exchange program;
- (j) The fees for participation in the exchange program, whether the fees may be altered and the method of any altering;
- (k) The name and location of each accommodation or facility, including the time sharing plans participating in the exchange program.

S-25. All approvals for the use of reservation agreements issued pursuant to 12-61-402(2) C.R.S. shall expire on December 31 following the date of issuance. Approval shall be renewed, except as provided in section 12-61-405C.R.S., by payment of a renewal fee established pursuant to section 12-61-111.5 and completion of a renewal application.

S-26. Upon request of the Commission pursuant to an investigation, a subdivision developer shall file with the Real Estate Commission an audited financial statement in conformity with accepted accounting principles, and sworn to by the developer as an accurate reflection of the financial condition of the developer and/or the owners association controlled by the developer.

S-27 . (NEW) Any adverse order, judgment, or decree entered in connection with the subdivided lands by any regulatory authority or by any court of appropriate jurisdiction shall be filed with the Real Estate Commission by the developer within thirty (30) days of such order, judgment or decree being final.

S-28 .

- (a) A subdivision developer is not required to file amendments to its registration filed with the Real Estate Commission when revisions are made to documents previously submitted to the Commission so long as the revised documents continue to (i) comply with title 12, article 61, part 4 C.R.S. and the rules and regulations promulgated thereunder; and (ii) to reflect accurately the subdivision offering.
- (b) Notwithstanding the above, and in addition to the notice requirements under ruleS-11 and rule S-27, subdivision developers shall provide the Commission with notice of the following events within ten (10) days after such event, unless otherwise provided below:
  - (1) A change in the information provided in the registration pursuant to sections 12-61-

403 (2)(a)(iv), (vi), (vii) or (viii) C.R.S.;

- (2) A change in the terms of any non-disturbance agreements or partial release provisions in connection with any documents previously submitted to the Commission pursuant to section 12-61-403 (3)(e) C.R.S. and rule S-17 (d);
- (3) Any new lien encumbering the subdivision or any part thereof other than encumbrances created or permitted by purchasers;
- (4) The termination or transfer of any escrow account, letter of credit, bond, or other financial assurance approved by the Commission pursuant to rule S-20, notice of which shall be filed with the Commission prior to the effective date of such termination or transfer;
- (5) Cancellation, revocation, suspension, or termination of the subdivision developer's authority to do business in this state; and
- (6) Any lis pendens, lawsuit or other proceeding filed against the subdivision or subdivision developer affecting the subdivision developer's ability (i) to convey marketable title to the registered subdivision or any interest therein or (ii) to perform the subdivision developer's obligations in connection with the registered subdivision.

(c) Notification under this rule S-28 shall be made on a form approved by the Commission. The subdivision developer shall have a period of ten (10) days after receipt of notice to take such action as may be required by the Commission in connection with any filings made under this rule S-28.

(d) Within ten (10) days after receipt of a written request from the Commission, a subdivision developer shall have the duty to provide to the Commission copies of all documents then in use at the subdivision.

S-29 . (NEW) No subdivision developer shall make misrepresentations regarding future availability or costs of services, utilities, character and/or use of real property for sale or lease of the surrounding area.

Rule S-30. (a) Unless sale is by means of an installment contract the delivery of deed shall be made within sixty days after closing. For the purposes of this Rule, the date of closing is defined as the date the purchaser has either paid the full cash purchase price or has made partial cash payment and executed a promissory note or other evidence of indebtedness for the balance (This must be disclosed in the contract).

(b) If sale is by means of an installment contract, the delivery of deed shall be made within sixty days after completion of payments. A contract which requires the execution of a promissory note or other evidence of indebtedness that accrues interest and/or requires payments prior to the recording of a deed shall be deemed to be an installment contract pursuant to 12-61-403(3)(g) C.R.S. and Commission S-23.

NEW Rule S-31. An abstract of title or title insurance policy shall be delivered within a reasonable time after completion of payments by a purchaser. Any period of time exceeding sixty days shall be deemed unreasonable for purposes of this rule. The parties may contract to eliminate this requirement, but such waiver must be in writing and in a conspicuous manner and/or print. The presence of waiver on the back of a contract shall not be deemed conspicuous for purposes of this rule.

Rule S-32. All developers shall provide a title insurance commitment or other evidence of title approved by the Commission within a reasonable time after execution of any contract to purchase. Any period of time in excess of ninety (90) days shall be deemed unreasonable for purposes of this rule. This requirement may be waived by the parties in writing if the waiver is made in a conspicuous manner and/or print. The presence of the waiver on the back of a contract shall not be deemed conspicuous for purposes of this rule.

THE STATEMENT OF BASIS AND PURPOSE FOR THESE RULES AS ADOPTED IS INCORPORATED HEREIN BY REFERENCE AND IS AVAILABLE FOR INSPECTION IN THE OFFICE OF THE COLORADO REAL ESTATE COMMISSION.

### S-33. Declaratory Orders

1. Any person <sup>\*1</sup> may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission.

<sup>\*1</sup> refers to existing definition of "person" in APA, rule or statute, if any.

2. The Commission will determine, in its discretion and without prior notice to the petitioner, whether to rule upon any such petition. If the Commission determines it will not rule upon such a petition, the Commission shall issue its written order disposing of the same, stating therein its reasons for such action. A copy of such order shall forthwith be transmitted to the petitioner.
3. In determining whether to rule upon a petition filed pursuant to this rule, the Commission will consider the following matters, among others:
  - (a) whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Commission;
  - (b) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission;
  - (c) whether the petition involves any subject, question or issue which is the subject of a formal matter or investigation currently pending before the Commission or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission and in which petitioner may intervene;
  - (d) whether the petition seeks a ruling on a moot or hypothetical question and will result in merely an advisory ruling or opinion;
  - (e) whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.
4. Any petition filed pursuant to this rule shall set forth the following:

- (a) the name and address of the petitioner and whether the petitioner is licensed pursuant to C.R.S. 1973, 12-61-401, et seq.
  - (b) the statute, rule or order to which the petition relates;
  - (c) a concise statement of all the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.
- 5. If the Commission determines that it will rule on the petition, the following procedures shall apply:
  - (a) the Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:
    - (1) any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition;
    - (2) the Commission may order the petitioner to file a written brief, memorandum or statement of position;
    - (3) the Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing;
    - (4) the Commission may dispose of the petition on the sole basis of the matters set forth in the petition;
    - (5) the Commission may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition;
    - (6) the Commission may take administrative notice of facts pursuant to the Administrative Procedure Act (C.R.S. 1973, 24-4-105(8)) and utilize its experience, technical competence and specialized knowledge in the disposition of the petition;
    - (7) if the Commission rules upon the petition without a hearing, it shall issue its written order, stating therein its basis for the order. A copy of such order shall forthwith be transmitted to the petitioner.
  - (b) The Commission may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to petitioner and any other facts the petitioner desires the Commission to consider.
- 6. The parties to any proceeding pursuant to this rule shall be the Commission and the petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition

to intervene shall set forth the same matters as required by section 4 of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Commission.

7. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to C.R.S. 1973, 24-4-106.

Rule S-34. Repealed.

Rule S-35. Failure to disclose to subdivision purchasers the availability of legal access, sewage disposal, public utilities, including water, electricity, gas and telephone facilities in the subdivision and at whose expense, when proven, is a violation of C.R.S. 12-61-405(1) (b). (Statement of Basis and Purpose as adopted by the Real Estate Commission on October 5, 1988.)

S-36 Pursuant to 12-61-405(1)(e) C.R.S., 12-61-406(2.5) (b) C.R.S. and 12-61-406(4) C.R.S., a developer shall maintain in a Colorado place of business, and produce for inspection upon reasonable request by an authorized representative of the Commission, copies of the following documents and business records:

- (1) The sales contract, transfer or lease agreement, installment sale agreement, financing agreement, buyer and seller settlement statement, title policy or commitment, trust deed, escrow agreement, and other documents executed by the parties or on behalf of the developer in the sale, lease or transfer of any interest in a subdivision.
- (2) Records showing the receipt and disbursement of any money or assets received or paid on behalf of any homeowner or similar association managed or controlled by a developer.

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## **Editor's Notes**

### **History**

Rule F-1, Rule F-7 eff. 10/30/2007.

Rule F-7 eff. 11/30/2007.

Emer. Rule F-7 eff. 01/08/2008.

Emer. Rule F-7 eff. 03/04/2008.

Rules B-6, B-7, B-9, F-7 eff. 05/01/2008.

Emer. Rules B-6, B-7 eff. 05/06/2008.

Rules B-6, B-7 eff. 07/30/2008.

Emer. Rule B-2 eff. 08/05/2008.

Rule A-14, B-2, E-48, E-49, F-7, K-1, K-2, K-3, K-4, K-5 eff. 10/30/2008.

Emer. Rule F-7 eff. 11/04/2008.

Emer. Rule A-15 eff. 12/02/2008.

Emer. Rule F-7 eff. 01/06/2009.

Rule F-7 eff. 01/30/2009.

Rule A-15 eff. 03/02/2009.

Rule F-7 eff. 03/30/2009.

Rules E-4, E-43 eff. 04/30/2009.

Emer Rule F-7 eff. 06/02/2009.

Rule F-7 eff. 07/31/2009.

Rule F-1 eff. 08/30/2009.