

REDLINE

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

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
August 5, 2019

CHAPTER 7. USE OF STANDARD FORMS

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

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Part 1 of Title 12, Article 61, Colorado Revised Statutes, as amended by House Bill 19-1172 which becomes effective October 1, 2019.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive pursuant to section 24-4-103.3., C.R.S. (Senate Bill 14-063) and House Bill 19-1172 along with promulgating the necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

SPECIFIC PURPOSE OF RULEMAKING

The specific purpose of this rulemaking is to add, modify and amend the requirements for using standard forms for real estate brokers as a result of the mandatory rule review required by section 24-4-103.3., C.R.S. The Division of Real Estate conducted a review of all of its rules relating to the real estate practice act to assess the continuing need for and the appropriateness and cost-effectiveness of its rules. The review also determined whether the rules should be continued in their current form, modified, or repealed. After consultation with stakeholders, the proposed rules have been re-organized, re-indexed, and correctly categorized. As a result, Chapter 7 sets forth the requirements of using standard forms for real estate brokers. This rulemaking also revises the statutory citations as a result of the passage of House Bill 19-1172.

PROPOSED NEW, AMENDED AND REPEALED RULES

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

Chapter 7: Use of Standard Forms

7.1. Standard Forms

Pursuant to section 12-10-403(4), C.R.S., a Broker is authorized to complete Standard Forms for use in a real estate transaction, including Standard Forms intended to convey personal property as part of the real estate transaction, when a Broker is performing the activities for which a License is required and the Broker is acting as either a Single Agent or

Transaction-Broker. The Broker's use of Standard Forms must be appropriate for the transaction and the circumstances in which they are used. The Broker must advise the parties that Standard Forms have important legal consequences and that the parties should consult legal counsel before signing such forms. A Standard Form is:

A. Commission-Approved Form

A "Commission-Approved Form" is a form promulgated by the Commission for current use by Brokers. A Broker must use a Commission-Approved Form when such form exists and is appropriate for the transaction. The Broker may advise the parties as to the effects thereof. To obtain the forms promulgated by the Commission, visit the Division's website.

B. Attorney Form

An "Attorney Form" is a form drafted by a licensed Colorado attorney representing the Broker, the Employing Broker, or the Brokerage Firm. A Broker may only use an Attorney Form if a Commission-Approved Form does not exist or is not appropriate for the transaction. The form must contain the language that says: "This form has not been approved by the Colorado Real Estate Commission". The form must also include: the name of the attorney or law firm that prepared the Attorney Form and the name of the Broker, Employing Broker, or the Brokerage Firm for whom the form was prepared. The form may not be altered by the Broker other than by completing any blank spaces in the form. The Broker may advise the parties as to the effects thereof.

C. Client Form

A "Client Form" is a form provided by a party to the transaction if the Broker is acting in the transaction as either a Single Agent or Transaction-Broker for the party providing the form. The Broker must retain written confirmation that the form was provided by said party to the transaction. A Broker's use of such form is limited to inserting transaction-specific information within the form.

D. Government/ Lender Form

A "Government/Lender Form" is a form prescribed by a governmental agency, a quasi-government agency, or a lender regulated by state or federal law and the use of the form is mandated by such agency or lender. A Broker's use of such form is limited to inserting transaction-specific information within the form.

E. Colorado Bar Association Form

A "Colorado Bar Association Form" is a form used with the written approval of the Colorado Bar Association, or its successor organization, and specifically designated for use by Brokers in Colorado. Brokers may only use the form when a Commission-Approved Form does not exist or is not appropriate for the transaction. A Broker must use the form within any guidelines or conditions specified by the Colorado Bar

Association or its successor organization. The form may not be altered by the Broker other than by completing any blank spaces in the form. A Broker may not use any forms published or distributed by the Colorado Bar Association unless such form contains the following language that says: "This form has been approved by the Colorado Bar Association for use by Real Estate Brokers in Colorado in accordance with the guidelines provided with this form". The Broker may advise the parties as to the effects thereof.

F. Disclosure Form

A "Disclosure Form" is a form used for disclosure purposes only and the disclosure does not claim to waive or create any legal rights or obligations affecting any party to the transaction. The form must contain the language that says: "This form has not been approved by the Colorado Real Estate Commission". The Broker may advise the parties as to the effects thereof. The form may only provide information concerning:

1. The real estate involved in the transaction specifically; or
2. The geographic area in which the real estate is located generally.

G. Title Company Form

A "Title Company Form" is a form prescribed and completed by a title company that is providing closing services in a transaction. The Broker may advise the parties as to the effects thereof.

H. Letter of Intent

A "Letter of Intent" is created or prepared by a Broker, Employing Broker, or Brokerage Firm. The Letter of Intent must state on its face that it is nonbinding and creates no legal rights or obligations. The form must contain the language that says: "This form has not been approved by the Colorado Real Estate Commission". The Broker may advise the parties as to the effects thereof.

7.2. Permitted and Prohibited Modifications and Form Reproduction of Commission-Approved Forms as set forth in Rule 7.1.A.

- A. A Broker or Brokerage Firm may add the Brokerage Firm's name, Trade Name, address, telephone, e-mail, Trademark or other identifying information on a Commission-Approved Form.
- B. A Broker or Brokerage Firm may add initial lines at the bottom of a page of any Commission-Approved Form.
- C. Any deletion or modification to the printed body of a Commission-Approved Form must result from negotiations or the instruction(s) of a party to the transaction. Any deletion must be made directly on the printed body of the form by striking through the deleted portion in a legible manner that does not obscure the deletion that has been made.

- D. Blank spaces on a Commission-Approved Form may be lengthened or shortened to accommodate the relevant data or information.
- E. Provisions that are inserted into blank spaces must be printed in a font style or type that clearly differentiates such insertions from the font style or type used for the Commission-Approved Form language.
- F. A Broker may delete part or all of the following provisions of the Commission-Approved "Contract to Buy and Sell Real Estate" Forms (even if the provision has since been changed to a different section number) or corresponding provisions in other Commission-Approved Forms, if such provisions do not apply to the transaction. In the event any provision is deleted, the provision's caption or heading must remain unaltered on the form followed by the words "omitted-not applicable".

1. Section 2.5. Inclusions
2. Section 2.6. Exclusions
3. Section 2.7. Water Rights/Well Rights
4. Section 4.2. Seller Concession
5. Section 4.5. New Loan
6. Section 4.6. Assumption
7. Section 4.7. Seller or Private Financing
8. Section 5. Financing Conditions and Obligations
9. Section 6. Appraisal Provisions
10. Section 7. Owners' Association
11. Section 8.6. Right of First Refusal or Contract Approval
12. Section 9. New ILC, New Survey
13. Section 10.6. Due Diligence
14. Section 10.8. Source of Potable Water (CBS1, CBS2, CBS4, CBSF1)
15. Section 10.9. Existing Leases; Modification of Existing Leases; New Leases (CBS2, CBS3, CBS4)
16. Section 11. Estoppel Statements (CBS2, CBS3, CBS4)
17. Section 15.3. Status Letter and Record Change Fees

18. Section 15.4. Local Transfer Tax
19. Section 15.5. Private Transfer Fee
20. Section 15.7. Sales and Use Tax
21. Section 16.2. Rents
22. Section 16.3. Association Assessments

G. A Broker may delete part or all of the following provisions of the “Counterproposal” and the “Agreement to Amend/Extend Contract” if such provisions do not apply to the transaction. In the event any provision is deleted, the provision’s caption or heading must remain unaltered on the form followed by the words “omitted-not applicable”.

1.Section 3. Dates and Deadlines Table

2.Section 4. Purchase Price and Terms [in the Counterproposal only]

H. A Broker or Brokerage Firm may add signature lines and identifying labels for the parties’ signatures on a Commission-Approved Form.

I. A Broker or Brokerage Firm may modify, strike, or delete such language on a Commission-Approved Form as the Commission may from time to time authorize the language to be modified, stricken, or deleted.

J. A Broker must explain all permitted modifications, deletions, omissions, insertions, additional provisions, and addenda to the principal party and must recommend that the parties obtain expert advice as to the material matters that are beyond the expertise of the Broker.

K. Commission-Approved Forms used by a Broker, including permitted modifications made by a Broker, must be legible.

L. Brokers or Brokerage Firms generating Commission-Approved Forms in an electronic format must ensure that the forms are protected so as to prevent inadvertent changes or prohibited modifications of Commission-Approved Forms by the Broker or recipient.

7.3. Additional Provisions

A. Any “Additional Provision” which by its terms serves to delete or modify portions of a Standard Form as set forth in Rule 7.1. must result from negotiations or the instruction(s) of a party to the transaction.

B. A Broker who uses a transaction-specific clause or clauses drafted by the Broker’s, Employing Broker’s, or Brokerage Firm’s licensed Colorado attorney must ensure that the Broker understands the clause, and the clause is used and completed appropriately.

The Broker must retain the clause(s) prepared by the Broker's, Employing Broker's, or Brokerage Firm's licensed Colorado attorney for four (4) years from the date that the clause was last used by the Broker. The Broker must provide those clause(s) and the name of the licensed Colorado attorney or law firm that prepared the clause(s) upon request by the Commission.

7.4. Prohibited Provisions

- A. No contract provision, including modifications or additional provisions permitted as set forth in Rules 7.2. and 7.3., will relieve a Broker, Employing Broker, or Brokerage Firm from compliance with section 12-10-201, C.R.S., et seq., or these Rules.
- B. A Broker who is not a principal party to the contract may not have personal provisions, personal disclaimers, or exculpatory language in favor of the Broker, Employing Broker, or Brokerage Firm inserted into a Standard Form. A Broker may, at the direction of a principal party, include language regarding the payment of the Broker's or Brokerage Firm's commission if this is a negotiated term between the principal parties of the Commission-Approved "Contract to Buy and Sell Real Estate" Form.

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

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

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