

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 6. PRACTICE STANDARDS

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 practice standards 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 The review also determined whether the rules should be continued in their current form, modified, or repealed.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 6 sets forth the practice standards and investigation requirements 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PROPOSED NEW, AMENDED AND REPEALED RULES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 6: Practice Standards

- 6.1. Real Estate License
 - A. A License is nontransferable.
 - B. Neither a Broker nor Brokerage Firm may lend their name or License for the benefit of another person, partnership, limited liability company, or corporation.

- C. Associate Brokers must not present or hold themselves out to the public as an Employing Broker or Independent Broker.
- D. An Employing Broker must not knowingly permit Associate Brokers to present or hold themselves out to the public as an Employing Broker or Independent Broker.
- E. A Broker must not procure or attempt to procure a License by fraud, misrepresentation, deceit, or by making a material misstatement of fact in an application for such License pursuant to section 12-10-217(1)(s), C.R.S.

6.2. Competency

- A. In order to conduct Real Estate Brokerage Services, a Broker must possess the necessary experience, training, and knowledge to provide Real Estate Brokerage Services and maintain compliance with the applicable federal, state and local laws, rules, regulations and ordinances.
- B. If a Broker does not have the necessary experience, training, and knowledge, the Broker must:
 - 1. Decline to provide Real Estate Brokerage Services;
 - 2. Obtain the necessary experience, training, and knowledge;
 - 3. Obtain the assistance of their Employing Broker, Supervisory Broker, a Broker who meets the requirements as set forth in subsection A. of this Rule, or legal counsel that is competent in the matter; or
 - 4. Co-list with another Broker who meets the requirements as set forth in subsection A. of this Rule.

6.3. Employing Broker's Responsibilities and Supervision

- A. Employing Broker Exercises Authority, Direction, and Supervision
 - 1. Employing Brokers must exercise authority, direction, and supervision over any Associate Brokers shown in the records of the Commission as supervised by the Employing Broker to ensure conformance to the Commission statutes and these Rules in the performance of the Associate Broker's activities pursuant to sections 12-10-203(5)(c)(I), 12-10-217(1)(r), and 12-10-222, C.R.S., and these Rules. Whenever a complaint is filed with the Commission against an Associate Broker, the Commission may investigate whether there have been violations of section 12-10-217(1)(r), C.R.S. by the Employing Broker.
 - 2. Employing Brokers must also supervise, pursuant to section 12-10-222, C.R.S., all unlicensed employees, including, but not limited to, Unlicensed On-Site Managers, secretaries, bookkeepers, and personal assistants of Associate Brokers.

B. Employing Broker's Responsibilities

Employing Brokers must:

1. Maintain all Trust and Escrow Accounts and records as set forth in Chapter 5 of these Rules;
2. Maintain all transaction records as set forth in Rule 6.20.;
3. Develop the Brokerage Firm's written policies as set forth in Rule 6.4.;
4. Provide for a "Reasonable-Level of Supervision" for all Associate Brokers as set forth in subsection C. of this Rule;
5. Provide for a "High-Level of Supervision" for New Associate Brokers as set forth in subsection D. of this Rule;
6. Take reasonable steps to ensure that violations of statutes, rules, and office policies do not occur or reoccur; and
7. Provide for adequate supervision of all branches or offices operated by the Employing Broker.

C. "Reasonable-Level of Supervision" by Employing Brokers

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

1. Maintaining a written Office Policy Manual as set forth in Rule 6.4.B., which must:
 - a. Be given to and signed by each Associate Broker; and
 - b. Be available for inspection, upon request, by any authorized representative of the Commission.
2. Ensuring all executed contracts are reviewed to maintain assurance of competent preparation. If the Employing Broker has concerns about the preparation of a contract, Employing Broker should contact the Associate Broker.
3. Ensuring all transaction files are reviewed for the required documents. If required documents are not present, the Employing Broker should contact the Associate Broker.

D. "High-Level of Supervision" by Employing Brokers

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

1. Providing specific training in office policies and procedures;
2. Being reasonably available for consultation;
3. Providing assistance in preparing contracts;

4. Monitoring transactions from contracting to closing;
5. Reviewing documents in preparation for closing; and
6. Ensuring that the Employing Broker or another Associate Broker with more than two (2) years' Active experience attends closings with a New Associate Broker or is available for assistance.

E. Supervision of Unlicensed On-Site Manager

Employing Brokers must:

1. Actively and diligently supervise all activities of any Unlicensed On-Site Manager or delegate supervisory authority as set forth in subsection F. of this Rule;
2. Require the Unlicensed On-Site Manager to report directly to either the Employing Broker or a Supervisory Broker;
3. Require the Unlicensed On-Site Manager to account for and remit all monies, including rents and security deposits, collected on behalf of the Employing Broker or owner to the Employing Broker or Supervisory Broker;
4. Ensure that property maintenance scheduled by the Unlicensed On-Site Manager is performed in accordance with the Property Management Agreement; and
5. Instruct the Unlicensed On-Site Manager not to negotiate any of the material terms of a lease or rental agreement with a Consumer.

F. Delegation of Supervision

Employing Brokers may delegate supervisory authority to other experienced Associate Brokers for both "Reasonable-Level of Supervision" and "High-Level of Supervision" as follows:

1. Supervisory Brokers must bear responsibility along with the Employing Broker for ensuring compliance with the Commission statutes and these Rules for those persons the delegated Associate Broker is supervising.
2. Any delegation of authority must be in writing and signed by the Supervisory Broker. A copy of such delegation must be maintained by the Employing Broker for inspection, upon request, by any authorized Commission representative.
3. The Supervisory Broker must have competency as set forth in Rule 6.2. in the area of practice in which the Supervisory Broker is supervising.
4. An Employing Broker must not contract with any Associate Broker so as to circumvent the requirement that the Employing Broker supervise Associate Brokers.

G. Confidential Information Revealed to Employing Broker or Supervisory Broker

Associate Brokers may reveal to an Employing Broker or a Supervisory Broker confidential information about the Associate Broker's client. Associate Brokers' disclosure of such confidential information does not change or extend the Brokerage Relationship beyond the Associate Broker. Confidential information includes the information pursuant to sections 12-10-404(2), 12-10-405(2) and 12-10-407(3), C.R.S.

6.4. Brokerage Firm's Policies

A. Brokerage Firm's Brokerage Relationship Policy

1. An Employing Broker or Independent Broker must adopt a written office policy which identifies and describes the relationships in which such Employing Broker, Independent Broker, and any Associate Brokers may engage with any Consumers prior to providing any Real Estate Brokerage Services pursuant to sections 12-10-403 and 12-10-408, C.R.S.
2. An Employing Broker or Associate Broker must be designated in writing by the Employing Broker to serve as a Single Agent or Transaction-Broker for a Consumer pursuant to section 12-10-402(3), C.R.S. and as set forth in Rule 6.6.

B. Office Policy Manual

Employing Brokers must also adopt any written policies suitable to the Brokerage Firm's business, subject to the following as applicable:

1. Applies to all Associate Brokers in the Brokerage Firm.
2. Be given to and signed by each Associate Broker.
3. Identifies the procedures for the designation of Brokers who are to work with Consumers pursuant to section 12-10-403(6), C.R.S. and as set forth in subsection A. of this Rule.
4. Identifies and provides adequate means and procedures for the maintenance and protection of confidential information that:
 - a. The seller or landlord is willing to accept less;
 - b. The buyer or tenant is willing to pay more;
 - c. Information regarding motivating factors for the parties;
 - d. Information that a party will agree to other financing terms;
 - e. Material information about a party not required by law to be disclosed;
 - f. Facts or suspicions which may psychologically impact or stigmatize a property; and
 - g. All information required to be kept confidential pursuant to sections 12-10-404(2), 12-10-405(2) and 12-10-407(3), C.R.S.

5. Permits an Employing Broker to supervise a transaction and to participate in the same transaction as a Designated Broker.

6.5. Brokerage Relationships Disclosures in Writing

- A. Written disclosures pursuant to section 12-10-408, C.R.S. must be made to a Consumer prior to eliciting or discussing confidential information from a Consumer for Real Estate Brokerage Services.
- B. Such activities do not include preliminary conversations or “small talk” concerning price range, location and property styles, or responding to general factual questions from a potential Consumer concerning properties which have been Advertised for sale or lease.

6.6. Brokerage Relationships

- A. Listing Contract by Individual Associate Broker: An Associate Broker may enter into a Listing Contract as the Designated Broker for a particular Consumer in a particular transaction as either a Single Agent or Transaction-Broker.
- B. Listing Contract by Members of a Team: The individual team member(s) must all be the Designated Broker for a particular Consumer in a particular transaction as either Single Agents or Transaction-Brokers. The names of all the members of the Team must be disclosed in the Listing Contract.
- C. Transaction-Broker: A Broker working with a Consumer as a Transaction-Broker is the Designated Broker for that Consumer.
- D. Substitute or Additional Designated Brokers: The Employing Broker may substitute or add other Designated Brokers, as appropriate, which must be disclosed to the Consumer.

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

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

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

6.8. Ministerial Tasks

When a Broker is engaged as a Single Agent or a Transaction-Broker for one party and treating the other party as a Customer, the Broker may assist the Customer by performing ministerial tasks. Ministerial tasks include: 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. Performing ministerial tasks will not of themselves violate the terms of any relationship between the Broker and the Consumer with which the Broker has a Brokerage Relationship and will not create an agency or Transaction-Broker relationship with the Customer being assisted.

6.9. Change of Status Disclosure in Writing

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

6.10. Advertising

A. Names

1. Pursuant to section 12-10-203(9), C.R.S., no Broker will be licensed to conduct Real Estate Brokerage Services under more than one (1) Brokerage Firm.
2. Pursuant to section 12-10-203(9), C.R.S., no Broker or Brokerage Firm will conduct or promote Real Estate Brokerage Services except in the name under which that Broker or Brokerage Firm appears in the records of the Commission.
3. Brokers will not Advertise so as to mislead the public concerning the identity of the Broker or the Broker's Brokerage Firm.
4. All Advertising must be done clearly and conspicuously in the name of the Broker's Brokerage Firm. However, a Broker who Advertises real property owned by the Broker which is not listed for sale or lease with the Broker's Brokerage Firm is exempt from Advertising the Broker's own property in the Broker's Brokerage Firm's name.
5. A Brokerage Firm may use a Trade Name in addition to or instead of the Brokerage Firm's legal name. The Trade Name must be filed with the Commission.
6. A Brokerage Firm may use a Trademark in conjunction with the Brokerage Firm's legal name or Trade Name with permission of the owner of such Trademark.
 - a. A Brokerage Firm that uses a Trade Name or Trademark owned by a third party is required to use one (1) of the following statements, which must appear in a clear and conspicuous manner so as to attract the attention of the public:
 - i. "Each (insert general Trade Name) brokerage business is independently owned and operated." or
 - ii. "Each office independently owned and operated."
 - b. Upon written request, the above statements may be modified with consent of the Commission.
7. No Brokerage Firm will use more than one (1) Trade Name; however, upon written request and with the consent of a representative of the Commission, a

Brokerage Firm may use more than one (1) Trademark. Use of the Trademark(s) is only acceptable if the Brokerage Firm has obtained permission of the registrant of such Trademark.

8. No Broker may use a professional designation in Advertising unless the Broker is in good standing and the designation is easily verifiable by the public and the Commission. A Broker that Advertises an award, membership, or achievement must be able to provide verification of the validity of such claims upon request from any member of the public or Commission.

B. Teams

1. Brokers who form a Team must not Advertise in a manner that misleads the public as to the identity of the Team's Brokerage Firm. Teams are prohibited from using the following terms in the Team's name:

- a. Realty,
- b. Real estate,
- c. Realtors,
- d. Company,
- e. Corporation,
- f. Corp.,
- g. Inc.,
- h. LLC,
- i. LP or LLP, or
- j. Any other term that would imply a separate entity from the Brokerage Firm with which the Team Brokers are licensed.

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

3. If requested by a Consumer, the Commission, another Brokerage Firm or Broker, the Brokerage Firm will provide the names of the Brokers that belong to any Team licensed with the Brokerage Firm.

4. Brokers may not allow the use of the Team's name by other Brokers outside the Team's Brokerage Firm.

C. Brokerage Firms and Brokers are responsible for ensuring that all Advertising is accurate and complies with copyright laws and other applicable laws and regulations.

D. Electronic Media

1. When a Broker owns or controls Electronic Media, each Viewable Page must include: the Broker's name or Broker's Team name and the Broker's Brokerage

Firm's name. Any expired listings must be removed from the Broker's Electronic Media within three (3) days of a Listing Contract expiring.

2. If a Broker authorizes a third party for the Broker's Electronic Media Advertising, the Broker is responsible for ensuring that the information provided to such third party is accurate. The Broker must submit a written request to any third party syndicators to have all expired listings removed from Electronic Media within three (3) days of a Listing Contract expiring.
3. A Broker who communicates through email, chat, instant messages, newsgroups, discussion lists, bulletin boards, blogs, or other similar means for purposes of Advertising the Broker's Real Estate Brokerage Services must use the Broker's name or Team's name and the name of the Broker's Brokerage Firm. However, once a Broker has disclosed the Broker's name or Team's name and the Broker's Brokerage Firm to a specific Consumer, the Broker is not required to continue to make the same disclosure to the specific Consumer.
4. When it is not reasonable for a Broker to disclose the Broker's name or Team's name and the Brokerage Firm's name in an Electronic Media because space is limited, the Broker will disclose the Broker's name or Team's name and the Brokerage Firm's name clearly and conspicuously within the first click of the mouse.

E. Sales Data

General sales data Advertising, regardless of the medium, which recaps sales activity over a period of time in a given subdivision or geographical area must include all of the following:

1. Cite the source of the data; and
2. Include a disclaimer, if accurate, that all reported sales:
 - a. Were not necessarily listed or sold by the Broker; and
 - b. Are intended only to show trends in the area or will separately identify the Broker's own sales activity.

F. Authority to Advertise

Brokers may not Advertise the availability or price of a property whether for sale or lease without authority from the owner or the owner's Broker and disclosure of the owner's Brokerage Firm.

G. Price Set by Owner

The price quoted in any Advertising will not be anything other than the price agreed upon between the Broker and the owner.

6.11. Square Footage Disclosure

When a Broker Advertises the square footage of a residential property, including for submission to a multiple listing service, the Broker must disclose the source of the square

footage of the floor space of the living area of the residence to Consumers on the Commission-Approved Form.

A. Broker Measurement

A Broker is not required to measure the square footage of a property. If the Broker takes an actual measurement, it does not have to be exact; however, the Broker's objective must be to measure accurately and calculate competently in a manner that is not misleading and must:

1. Disclose to the Consumer the standard, methodology, or manner in which the measurement was taken;
2. Advise that the measurement is for purposes of marketing and is not a measurement for loan, valuation, or any other purpose; and
3. Advise that if exact square footage is a concern, then the property should be independently measured.

B. Other Sources of Square Footage

If a Consumer is provided information from a source other than the Broker's own measurement for square footage, that source (whether an actual measurement, building plans, prior appraisals, assessor's office, etc.) must include the date of issuance, if any, and must be disclosed to the Consumers in writing by the Broker in a timely manner. Such disclosure must be on the Commission-Approved Form. A Broker may not provide information to a person from a source known to be unreliable and is responsible for indicating obvious mismeasurement by others.

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

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

6.13. Offers must be Presented to Other Broker

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

6.14. Contracts

A. Document Preparation and Duplicates

1. Contracting instruments for all real estate or business opportunity transactions in which a Broker prepares the contract must 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 contract must be disclosed in an amendment to the contract.
2. A Broker must deliver Duplicates of all documents prepared by the Broker to all Consumers or their representatives at the time such document was prepared by the Broker as set forth in Rule 6.19.

B. No Fees to Brokers for Legal Document Preparation

Brokers are not obligated to prepare any legal documents as part of a real estate transaction. If the Broker or the Broker's designee prepares any legal document, the Broker or the Broker's designee may not charge a separate fee for preparation of such legal documents. The Broker is not responsible for fees charged for the preparation of legal documents where they are prepared by an attorney representing the Consumer. Costs of closing not related to preparation of legal documents may be paid by the Broker 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.

C. Listing must be in Writing

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

D. Listings must have Termination Date

All Listing Contracts or other written agreements between a Consumer and a Brokerage Firm or Broker to perform Real Estate Brokerage Services must have a definite date for termination pursuant to section 12-10-409(1)(b), C.R.S.

E. Holdover Agreement

When a Listing Contract or other written agreement contains a provision entitling a Brokerage Firm to a commission 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 Consumer during the term of the agreement, including any extension thereof.

F. Brokers must recommend title exam and legal counsel

Brokers are not permitted to give advice on exceptions to title as such conduct would constitute the unauthorized practice of law. Brokers must recommend, before the applicable deadlines, that Consumers should examine all title exceptions and encourage Consumers to seek guidance from a licensed attorney.

G. Review of Deeds

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

6.15. Sign Crossing

- A. Brokers will not negotiate a Listing Contract directly with a Consumer for compensation from said Consumer if such Broker knows the Consumer has an unexpired Listing Contract with another Brokerage Firm granting said Brokerage Firm an exclusive contract.
- B. However, if a Broker is contacted by a Consumer who is currently subject to an exclusive Listing Contract, and the Broker has not initiated the discussion, the Broker may negotiate the terms upon which to take a future Listing Contract or, alternatively, may take a Listing Contract to become effective upon expiration or termination of any existing Exclusive Listing.
- C. The burden of inquiry is on the Broker to determine the existence of the Listing Contract and to advise the Consumer to seek guidance from a licensed attorney.

6.16. Access Information for a Property

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

6.17. Duty to Disclose Conflict of Interest and License Status

- A. Brokerage Firms and Brokers have a continuing duty to disclose, in writing, any known conflict of interest that may arise in the course of any real estate transaction.
- B. If a Broker sells, buys, or leases real property on the Broker's own account, such Broker must disclose in the contracting instrument, or in a separate concurrent writing, that they are a licensed Broker.
- C. A Brokerage Firm or Broker engaged in Property Management Services has a duty to disclose, in writing, any known conflict of interest that may arise in the selection or use of a business or vendor that provides services applicable to lease transactions, including property maintenance. The Brokerage Firm or Broker is required to disclose any ownership, financial, or familial interest associated with the selection or use of a particular business or vendor.

6.18. Affiliated Business Arrangement Disclosures

Pursuant to section 12-10-218(2)(b), C.R.S., an Employing Broker and/or a Broker must make the following disclosures in writing:

- A. The existence of an Affiliated Business Arrangement to the Consumer they are referring at or prior to the time the referral is made. The disclosure must comply with RESPA.
- B. Prior to or at the time the Contract to Buy and Sell is executed by the Consumers, the existence of an Affiliated Business Arrangement with the Brokerage Firm or Broker must be disclosed in writing to all parties to the transaction.

- C. A Broker is required to make the following disclosures to the Commission.
 - 1. At the time a Broker enters into or changes an Affiliated Business Arrangement, the Broker must disclose the names of all Affiliated Business Arrangements to which the Broker is a party. The written disclosure must include the physical location of the affiliated businesses.
 - 2. On an annual basis, each Employing Broker must disclose the names of all Affiliated Business Arrangements to which the Employing Broker or Brokerage Firm is a party. The written disclosure must include the physical location of the affiliated businesses.
- D. Written disclosures to the Commission must be made through the Colorado Affiliated Business Online Services database, which is accessible through the Division's website.

6.19. Closing Responsibility

- A. Pursuant to section 12-10-217(1)(j), C.R.S, at the time of closing, the Broker who has established a Brokerage Relationship with one or multiple Consumers in a transaction will be responsible for the proper closing of the transaction. The Broker must ensure such Consumer receives an accurate, complete and detailed closing statement that is signed by the Broker. If Broker is licensed with a Brokerage Firm, Broker must deliver closing statements to the Brokerage Firm along with any other closing documents, immediately following closing. Nothing in this Rule relieves an Employing Broker of the responsibility for fulfilling supervisory responsibilities pursuant to sections 12-10-203(5)(c)(I), 12-10-217(1)(r), and 12-10-222, C.R.S and as set forth in subsections C. and D. of this Rule.
- B. If closing documents and closing statements are prepared and closed by a Broker, the Broker is responsible for the accuracy and completeness of the closing statements and closing documents.
- C. If a Broker has a Brokerage Relationship with a Consumer in a transaction, the Broker must review closing documents and attend closing or be reasonably available. If a Broker will not be available to attend closing and review closing documents, another Broker designated by the Brokerage Firm may review and attend closing on the Broker's behalf and will assume joint responsibility with the absent Broker for its accuracy, completeness, and delivery of the signed closing statement as set forth in subsection A. of this Rule.
- D. Any Broker receiving earnest money must deliver earnest money as set forth in Rule 5.12.A.
- E. Pursuant to section 38-35-125, C.R.S, a Broker or a Brokerage Firm must not disburse or authorize disbursement of 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 with a financial institution in which the funds are to be deposited or a financial institution upon which the funds are to be drawn. The agreement with a financial institution must be for the benefit of the Broker and Brokerage Firm providing the closing service. If the agreement contains contingencies or reservations, no disbursements can be made until these are satisfied.

6.20. Transaction File Requirements

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

6.21. Referral Fees and RESPA

- A. Brokers and Brokerage Firms will not pay or receive a referral fee except in accordance with RESPA and unless a reasonable cause for payment of the referral fee exists pursuant to section 12-10-304(1), C.R.S.
- B. RESPA prohibits settlement service providers from giving or receiving any Thing of Value to another settlement service provider for the referral of business when the transaction involves a federally related residential mortgage.

1. Transactions Involving a Federally related Residential Mortgage

A Broker or Brokerage Firm, whether engaged in an Affiliated Business Arrangement pursuant to section 12-10-218, C.R.S. or not, will not accept or give any incentive, disincentive, remuneration, commission, fee, or other Thing of Value to or from a settlement service provider for the referral of business in a real estate transaction involving a federally related residential mortgage transaction. Nothing in subsection B. of this Rule prohibits a person or entity from receiving a bona fide salary, commission, or other compensation for services rendered or as a return on their ownership interest in an Affiliated Business Arrangement.

2. Transaction Not Involving a Federally related Residential Mortgage

A Broker or Brokerage Firm will not accept, directly or indirectly, a placement fee, commission or other Thing of Value for referring a settlement service provider in any real estate transaction unless the Broker or Brokerage Firm first discloses in writing such compensation to whomever the Broker or Brokerage Firm is referring at the time of making such referral.

- C. Only Brokerage Firms licensed in Colorado are permitted to receive a commission on transactions for real estate located in Colorado. Pursuant to section 12-10-217(1)(l), C.R.S., a Colorado Brokerage Firm may pay a brokerage firm or broker licensed in another Jurisdiction or country a referral fee under the following circumstances:

- 1. The brokerage firm or broker licensed in another Jurisdiction or country actually referred a client to the Broker or Brokerage Firm.
- 2. The brokerage firm or broker licensed in the other Jurisdiction or country must reside and maintain an office in the other Jurisdiction or country. Subsection C of this Rule applies 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 that country.

3. All Advertising, negotiations, contracting, and conveyancing regarding the Colorado property must be performed by a Broker licensed in Colorado.
4. All money collected from the parties to the transaction prior to closing must be deposited in the name of the Brokerage Firm licensed in Colorado as set forth in Chapter 5 of these Rules.

6.22. Prohibited Remedies for Compensation

- A. If for any reason the seller fails, refuses, neglects, or is unable to consummate the transaction as provided for in the contract, and through no fault or neglect of the buyer the real estate transaction cannot be completed, the Brokerage Firm has no right to any portion of the earnest money deposit which was deposited by the buyer.
- B. In a residential transaction, unless Broker has adjudicated a claim and a judgment is entered, no Broker will file or threaten to file a lien, a lis pendens, record a Listing Contract to secure the payment of a commission or other fee associated with Real Estate Brokerage Services, cause the title to a property to become clouded or interfere with the transfer of title when the Broker is not a principal in the transaction.
- C. A Brokerage Firm and Broker who has Commercial Real Estate listed for lease and has provided Real Estate Brokerage Services that resulted in procuring a tenant who has leased any interest in the Commercial Real Estate in accordance with the written agreement between the Brokerage Firm and the owner may file a lien pursuant to section 38-22.5-103, C.R.S. against the Commercial Real Estate in the amount of the compensation set forth in the written agreement. If the Commercial Real Estate has been conveyed to a bona fide buyer prior to the recording of the notice to lien pursuant to section 38-22.5-104, C.R.S., a Brokerage Firm or Broker may not file a lien for a commission that is due as the result of a lease renewal.

6.23. Immediate Notification of Conviction, Plea or Violation Required

A Broker must provide written notification to the Commission within thirty (30) calendar days for any of the following:

- A. A plea of guilty, a plea of nolo contendere, or a conviction of any crime as pursuant to section 12-10-217(1)(n), 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 Broker in any other Jurisdiction, if the Broker's action(s) would constitute a violation of Commission statutes and these Rules; and
- D. A suspension or revocation of a license, registration, or certification by Colorado or another Jurisdiction, within the last five (5) years, for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty that denied the Broker the authorization to practice as a mortgage loan originator, 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.

6.24. Electronic Records and Production of Records

All records required to be maintained by Brokers or Brokerage Firms may be maintained as Electronic Records. Electronic Records or printed records must be produced upon request by the Commission or any principal party to a transaction and must be in a format that has the continued capability to be retrieved and legibly printed.

6.25. Investigations or Audits by Commission

A. Notification of a Complaint that has been Assigned for Investigations or an Audit

1. A Broker or Brokerage Firm will receive written notification from the Commission regarding the following:

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- a. A complaint has been filed and an investigation has been initiated. A copy of the complaint that has been filed against the Broker or Brokerage Firm will be provided; or
- b. The Broker or Brokerage Firm has been selected for an audit.

2. Upon receipt of the Commission's notification, a Broker or Brokerage Firm must submit a written response to the Commission. Failure to submit a written response within the time set by the Commission in its notification will be grounds for disciplinary action regardless of the question of whether the underlying complaint or audit warrants further investigation or subsequent action by the Commission. The written response must contain the following:

- a. A complete and specific answer to the factual recitations, allegations, or averments made in the complaint filed against the Broker or Brokerage Firm, 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. A complete transaction file and any documents or records requested in the notification letter.
- d. Any further information relative to the complaint or audit that the Broker or Brokerage Firm believes to be relevant or material to the matters addressed in the notification letter.

B. Extension to Respond

Upon request, the Commission will grant extensions of time for Brokers or Brokerage Firms to respond to any complaint or audit provided such request is reasonable.

C. Produce Records for Investigation or Audit

Brokers and Brokerage Firms must retain and produce for inspection by the Commission any document or record as may be reasonably necessary for investigation or audit in the enforcement of Commission statutes and these Rules. Failure to submit such documents or records within the time set by the Commission in its notification will be grounds for

disciplinary action unless the Commission has granted an extension of time for such production.

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

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

A. If an Associate Broker:

1. Cease any activities requiring a License.
2. Inform the Employing Broker of the change in license status.
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 impacted Consumers within seven (7) days of the action taken and the impact that the change in license status will have on any pending transaction. It is the responsibility of the Employing Broker to ensure that another Associate Broker is designated to perform the duties requiring a License in all pending transactions, or to release the affected parties from any Listing Contract(s) with the Brokerage Firm.

B. If an Independent Broker:

1. Cease any activities requiring a License.
2. 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.
3. Notify all impacted Consumers within seven (7) days of the action taken and the impact that the change in license status will have on any pending transaction.
4. Release the affected parties from any active Listing Contract(s) with the Independent Broker.
5. Instruct the affected parties to seek guidance from a licensed attorney or retain a new Brokerage Firm regarding any pending transactions.
6. The Independent Broker is responsible for accounting for all funds, returning all Trust and Escrow Account records and making all final disbursements to the rightful beneficiaries within thirty (30) days of the change in license status. The Independent Broker is also responsible for providing the Commission with a full list of all impacted Consumers' contact information within seven (7) days and for maintaining all records for four (4) years.

C. If an Employing Broker:

1. Cease any activities requiring a License.

2. 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.
 3. The Employing Broker is personally responsible for the handling of any and all earnest money deposits, Trust or Escrow Account funds received or disbursed by the Brokerage Firm. The Employing Broker is responsible for returning all Trust and Escrow Account records to the Brokerage Firm.
 4. The Brokerage Firm must designate a new Employing Broker to be responsible for the management and supervision of the licensed actions of the Brokerage Firm and all Associate Brokers shown in the Commission's records as being in the employ of the Brokerage Firm. Pursuant to section 12-10-203(6)(c), C.R.S., the Brokerage Firm may also seek a Temporary License to prevent hardship if none of the Brokerage Firm's Associate Brokers hold an Employing Broker level license.
 5. If the Brokerage Firm is unable to designate a new Employing Broker or is not granted a Temporary License, the Licenses of the Brokerage Firm and any Associate Brokers will be placed on Inactive status. The Employing Broker must also perform all duties as set forth in subsection C.6. of this Rule.
 6. If a Brokerage Firm's License becomes Inactive, Expired or revoked, the Employing Broker will have seven (7) days to notify all Consumers impacted as to the effect of such license status change will have on the Associate Brokers and all pending transactions. The Employing Broker is responsible for accounting for all funds, returning all Trust and Escrow Account records and making all final disbursements to the rightful beneficiaries within thirty (30) days of the change in license status. The Employing Broker is also responsible for providing the Commission with a full list of all impacted Consumers' contact information within seven (7) days and for maintaining all records for four (4) years.
- D. Commissions or fees may be received by a Broker or Brokerage Firm only for transactions where the commission or fee was earned prior to that Broker's or Brokerage Firm's suspension, revocation, expiration, or transfer to Inactive status.

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.