Colorado Real Estate Principles

Volume 1

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Third Edition
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Attention Students

**IMPORTANT INFORMATION: HOW TO GET HELP IF YOU NEED IT!**

Thank you for choosing Kaplan Professional Schools, Colorado's premier real estate school! It is our goal to make your experience with us both educational and enjoyable.

Welcome to the Colorado-specific portion of the licensing program. This portion of the licensing program consists of five courses in two volumes. Volume 1 contains Course 1: Current Legal Issues, and Course 2: Colorado Contracts & Regulations. Volume 2 contains Course 3: Practical Applications, Course 4: Trust Accounts & Record Keeping, and Course 5: Closings & Settlement. The following information will help you through the program:

1. The Student User’s Guide is an essential resource for information on the entire pre-license program, broker licensing requirements, and Kaplan’s policies and procedures. Download it from your My Site page and read it before beginning your studies.
2. At the beginning of each unit is a Study Plan. Be sure to follow the study plan carefully and complete each assignment listed.
3. If you need help outside of class, e-mail an instructor at our Instructor AnswerMail: kaplanreschools.instructor@kaplan.com (responses provided within 24 hours on weekdays).
4. If you have questions about the exam or other course material, or need to reach a staff member, please call 800-660-1495.
5. To check whether the school is open during inclement weather call 800-660-1495.

Once again, thank you for choosing Kaplan Professional Schools! Your decision to work toward obtaining a real estate license is an important one. Everyone at Kaplan Professional Schools is committed to helping you accomplish that goal.
The Current Legal Issues section of this book is an introduction to the Colorado-specific portion of the licensing program along with a review of items that were covered in the national portion of the course. The Colorado Real Estate Commission, a broker’s limited right to practice law, and square footage disclosure are among the topics covered here. National issues such as Fair Housing and RESPA are also discussed. Finally, case studies involving issues that arise from these topics will be reviewed.

You must pass the Current Legal Issues Final Exam to get credit for this course.
Current Legal Issues

Study Plan

Before Class:

- **Live Classroom and Online Students:** Before coming to class or watching the lecture online, read the Current Legal Issues materials that follow, including the lecture outline, and review the case studies.

- **Book-Only Students:** Read the Current Legal Issues materials that follow and work through each case study considering the issues involved and possible outcomes of Colorado Real Estate Commission decisions. Work through the lecture outline, trying to complete the fill-ins. Check your answers against the key found in the Appendix to this book.

After Class:

- Take the Current Legal Issues Final Exam.
- Prepare for Contracts & Regulations.
THE COLORADO REAL ESTATE COMMISSION

The Colorado legislature has established the Colorado Real Estate Commission (the “Commission”) to protect the public in real estate transactions. The Commission adopts Rules and issues “Position Statements” to help enable the laws passed by the legislature and to provide guidance to the real estate community. The Commission is a valuable resource for Colorado brokers and it is important for all brokers to understand how it works. The five Commission members are appointed for three-year terms. The Commissioners are supported by a staff of administrative and enforcement employees at the Division of Real Estate. One of the processes the Commission uses to meet its mandate to “protect the public” is how it handles complaints about real estate brokers.

Complaints

When the Commission receives a written complaint about a licensee, the staff of the Commission must investigate it. Members of the public who voice verbal complaints typically will be advised to file a formal written complaint. This is because formal written complaints require investigation and response by the Commission, while verbal complaints do not require the Commission to take action.

Written complaints from the public are investigated and the complaining party (the “complainant”) receives a response from the Commission in all cases. Licensees (brokers) can also file written complaints against each other when rule or law violations are suspected.

Once a complaint is received, the process begins with gathering information. The Commission investigative staff will review the allegations to determine whether it appears rule or law violations have occurred. If not, the complaining party will be so advised and the complaint will be dismissed.

Complaints relating to compensation disputes between brokers, complaints based solely on “ethics” violations, and complaints related to generally poor (but legal) business practices will not be pursued. These issues are outside the purview of the Real Estate Commission. The important question is “Did the broker violate the law or a Commission rule?”

If a violation does appear to have occurred, the staff will contact the licensee being investigated (the “respondent”) to advise the licensee of the complaint and obtain an initial response. The broker MUST respond to the Commission’s inquiry. Failure to do so is a violation in itself, which is often more serious than the original complaint. Additionally, the employing broker should be notified about the investigation.

Note that before receiving a response, the Commission does not have the right to start a lawsuit, subpoena, or take the firm’s records. Any removal of records or other serious action would occur as part of an ongoing investigation, not prior to the response.
Based on the information gathered from the complainant and the respondent, the Commission staff will make their determination as to whether or not a violation has occurred and will submit its findings to the Commissioners.

At the monthly Commission meeting, the Commissioners will review the complaint and decide the next course of action based on the allegations, the staff recommendations, and the history of the respondent-broker, if any. Their next action will typically follow one of three directions:

1. If there appears to be no infraction or there is insufficient evidence to support proceeding to a hearing, the Commissioners can dismiss the complaint.
2. If the infraction appears to be minor and there is no history of problems with the respondent-broker, the Commissioners can issue a “Letter of Admonishment” to the broker. This is the lowest form of disciplinary action and serves as a warning to the broker to be careful in the future.
3. If there appears to be a violation serious enough to pursue a hearing, the Commissioners and staff will work in conjunction with other sources including the Attorney General’s office to prepare a case. The respondent will be advised of this course of action including the right to counsel and the right to present evidence and witnesses relevant to the matter at the hearing.

If the Commissioners determine that the situation warrants a hearing, the matter is referred to an Administrative Law Judge to hear the case. This is not a jury trial, but evidence and testimony is presented by both sides. The judge hears the case and renders a decision, but does not impose the discipline, if any. The judge refers the matter back to the Real Estate Commission to dismiss the case or impose penalties.

If the matter is referred back to the Commission for disciplinary action, a number of options are available to the Commissioners depending on the nature of the situation:

- Public censure: Written reprimand, which is typical for lesser offenses and first-time violations
- Suspension of the broker's license (normally for a year or less)
- Revocation of the broker's license
- Fines of up to $2,500

In addition, in most cases the Commission will require the broker to obtain additional education in an effort to correct the problem behavior. All disciplinary actions are made part of the broker’s public record and are posted on the Commission’s Web site.

The Commission cannot impose actual damages (money awarded to the complainant). However, negotiations during the hearing process will frequently result in the broker agreeing to restitution in some form. In other words, if the broker agrees to pay the complainant money owed, it is considered restitution. Once agreed to by the broker, it becomes an enforceable agreement.

The Commission does not have authority to investigate or prosecute criminal matters. However, during the investigation process, if it appears that criminal conduct may have occurred, in addition to any license action that is taken, the
Commission can refer the matter to the appropriate district attorney for criminal investigation and prosecution.

**Audits**

Only employing brokers are allowed to have and maintain trust accounts. The employing broker is required to have a written office policy and to maintain all transaction files for four years. Auditing a brokerage firm’s files and trust accounts is part of the Real Estate Commission’s obligation to enforce its own rules and related state statutes and is a standard practice. The audit can be a simple routine audit done on a random basis, or the result of a complaint investigation specific to a particular firm. In any case, an audit can be performed by the Commission at any time with or without advance notice to the brokerage firm. In a routine audit, the chosen firm is given notice of the request to audit and the audit is set by appointment. It is standard practice for the Commission to audit a certain random percentage of brokerage firms each year, and it does not indicate that the brokerage firm has broken the law.

Audits allow the Commission to examine any of the brokerage firm’s files, trust accounts, and other documentation the brokerage firm is required to maintain. Routine audits typically review the trust account, past transaction files, the written office policy, and any property management records. The intent is to ensure compliance with the appropriate rules and to make recommendations for improved operations. While most brokerage firms do not actually look forward to being audited, they typically benefit from the experience. If the audit reveals errors or procedures that risk future violations, suggestions are made by the Commission to correct the problem areas. If serious problems are discovered, the Commission can open an investigation on its own and pursue appropriate disciplinary action.

Audits that are prompted by a complaint can be general in nature or specific to the issue. Such an audit is normally less pleasant than a routine audit and evidence of wrongdoing will be used as part of the investigation and disciplinary process.

**Rule Making/Modifications/Position Statements**

Rules are created for a variety of reasons including changes in law or statute, public protection concerns, public input, and changes in business practices.

When a rule needs to be modified (or a new rule created), a public hearing process is followed to give the general public and the real estate community an opportunity to raise concerns and present testimony. These hearings are often held in various parts of the state to provide everyone a reasonable opportunity to attend. The hearings and proposals are published in a Notice of Proposed Rule Making. If someone cannot attend a hearing, statements can usually be submitted in written form prior to the cutoff deadline.

The Commissioners consider the testimony and other comments presented and make their final determination about the proposed rules. On occasion, the Commission determines it is essential that a rule becomes effective immediately without the delay necessitated by the public hearing process. In those cases, an Emergency Rule can be implemented.
In an effort to provide clarification and guidance to the real estate community when questions arise about particular rules or issues, the Commission may issue a Position Statement. This is a full discussion of a certain rule or point of law the Commission realizes the real estate community has found confusing. Position Statements do not have the force and effect of a Commission Rule (or a Colorado law), but they provide clear notice to the real estate community how the Commission will interpret the rules and laws should a real estate broker’s conduct come into question.

A BROKER’S RIGHT TO PRACTICE LAW AND RULE F

Two landmark real estate cases occurred in 1957 that impacted how real estate brokerage is practiced in Colorado. In the first case, Conway-Bogue Realty Investment Company v. Denver Bar Association, brokers were given a limited right to practice law. This includes the right to fill in real estate contracts and explain their meaning to clients.

The Colorado Supreme Court stipulated three requirements for brokers under the Conway-Bogue decision:

- The brokerage firm must be connected with the transaction as a broker. This means that brokers may not prepare documents for parties with whom they do not have a relationship to represent called a “brokerage relationship.” They must be acting as either an agent or a transaction-broker for one of the parties to the transaction or be in violation of this requirement.
- There must be no fee for preparing the documents other than the normal real estate commission. Part of the fee structure of a commission is the preparation of appropriate documents for that transaction; charging additional fees to prepare legal documents such as deeds and bills of sale is not acceptable.
- The documents must be prepared on commonly used, printed, standard, or approved forms. A standard form is one created by an attorney to fit general situations. An apartment lease, for example, is often a standard form, purchased at an office supply store or from an Internet site. This form can be used by a broker to meet the client needs. Approved forms are those approved by the Colorado Real Estate Commission and fall under Rule-F promulgated by the Colorado Real Estate Commission to identify which forms are approved for use by Colorado real estate brokers.

The court added a requirement that real estate brokers must recommend the use of attorneys to their clients and customers in real estate transactions. Buyers and sellers are not required to use an attorney, but the real estate broker must make it clear that the broker is not an expert in certain areas and the buyer or seller may wish to consult with a lawyer.

The second landmark case was Title Guaranty Co. v. Denver Bar Association. This case determined that title companies, unlike real estate brokers, do NOT have the right to complete legal documents. A real estate broker must hire the title company as a “scrivener” to complete all legal documents, such as deeds, bills of sale, notes, and deeds of trust. The broker who orders the legal documents is required to pay the title company for completing the requested documents. The form used to
hire the title company is called “Closing Instructions” and is to be completed no later than delivery of the earnest money to the listing brokerage firm.

Two other important points came from this case. First, brokers are not allowed to receive referral fees or other inducements from title companies. In addition, a real estate broker must recommend to the buyer or seller, prior to the closing of a real estate transaction, that an attorney examine the title.

**Standard and Approved Forms—Rule F**

The *Conway-Bogue* decision required that brokers use standard or approved forms when they assist real estate clients and customers. Beginning in 1971, the Colorado Real Estate Commission developed and approved a wide variety of forms to assist brokers in complying with the *Conway-Bogue* decision.

Rule F describes the forms and requires that brokers MUST use approved forms when one exists for the goal the broker is trying to achieve. Additional requirements of this rule are as follows:

- Brokers may not alter the standard language as approved.
- Brokers may add information identifying the brokerage firm when the forms are printed.
- If any approved provision of a form is deleted or struck out as directed by a party to the contract, it must be crossed out so the deleted words remain legible. For example:

  Acceptable: This strikethrough is acceptable.
  Not acceptable: This strikethrough is not acceptable.

- Language added in blank spaces must be in italics or in different typeface/font than the pre-printed language so the reader can tell the difference between the language added to the blanks and the approved language.
- Certain specific provisions may be omitted from the approved form when it is printed if those provisions do not apply to a particular transaction. Nevertheless, the caption or heading must be retained and the word “OMITTED” must be added after the caption.

  For example, to omit the “Assumption” subsection in the Contract to Buy and Sell, all the financing language could be omitted as long as the heading plus omitted is still printed:

  4.6. Assumption. OMITTED

- All approved forms must have a statement of Commission approval on the first page:

  The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission (insert form number).
  The “differentiated additions” (in the above text) are the words the broker fills in the blanks and must be in a different type style.

- A broker who is NOT a party to a contract may not add personal provisions, personal disclaimers or exculpatory language in an addendum. These would, however, be acceptable in an employment agreement where the broker is
a principal party. Provisions limiting a broker's liability are referred to as exculpatory clauses.

For example: This means that a broker or brokerage may create and attach an addendum to the Exclusive-Right-to-Sell contract modifying or adding to the contract. However, the broker who is not a party to the Contract to Buy and Sell (this agreement is between the buyer and the seller) may not add an addendum, especially one that tries to modify or limit the broker's obligations to the parties.

Rule F-3 regarding addenda: If a broker uses a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form, and the addendum does not result from negotiations of the parties, then such addendum must be prepared by one of the following:

- An attorney representing the broker or brokerage firm
- A principal to the transaction
- An attorney representing a principal party

NOTE: Such addenda MAY NOT be prepared by the broker or brokers for the parties.

FOR EXAMPLE The Contract to Buy and Sell does not address mold disclosure, an important issue in property. Therefore, many firms have had their attorneys prepare a mold disclosure form to be attached the Contract to Buy and Sell. Since the form was not negotiated between the buyer and the seller, an attorney for the firm must prepare this addendum and the law firm's name and who prepared the form must be part of the agreement.

Any addenda used by a broker to explain or add to the terms of the approved form must be carefully prepared as described in Rule F-3 and must contain a disclaimer saying the language of the addendum is not approved by the Colorado Real Estate Commission. The brokerage firm is not allowed to have their attorney prepare contracts for general use in the firm. The brokers would need to use Commission-approved forms.

Computer-generated contract forms: There are a number of computer software programs available to complete and generate the approved Colorado forms. Rule-F requires these software programs to reproduce the Commission language exactly as approved. Additionally, the software program must have a security feature to prevent the user from altering the approved language or deleting part of the form.

Rule-F also states that contract forms may not be filled out prior to negotiation with the party. Brokers are obligated to write and present all offers as given to them by the seller or buyer.

The Commission has not approved forms for every possible type of transaction. There are no approved lease forms, and there are no approved forms for the various types of conveyance deeds. Brokers may use standard forms available from office supply stores and legal printing companies for these documents.
Rule F does not apply to the following:

- Contracts for new homes with warranties
- Contracts prepared by a subdivision developer
- An installment land contract form has not been approved by the Commission; it is recommended that a broker using an installment land contract should have it drafted by an attorney

Attorneys do not fall under these rules and may prepare contracts for any party in the transaction or, if requested, for the brokerage firm in a specific transaction.

## OTHER COLORADO LEGAL ISSUES

**Methamphetamine Labs**  The Colorado legislature has taken steps to ensure buyers receive some protection from unknowingly purchasing houses that have ever been used as Methamphetamine (meth) labs. Disclosure requirements have been placed on sellers regarding known previous use of the property as a meth lab. Sellers may be exempt from the disclosure requirement if the property has been remediated (cleaned) according to very precise state standards. Legal guidance in this area is essential if a broker is involved in the listing, sale, or purchase of a property that has had, or might have had, a meth lab.

**Foreclosures**  Colorado and other states have experienced many issues surrounding the purchase and sale of properties “in foreclosure” (a property where the owner has defaulted on the mortgage loan and the lender has initiated procedures to sell the property to repay itself the outstanding loan amount). Colorado has enacted laws intended to protect sellers whose property is in foreclosure at the time of the listing and sale. The law requires disclosure of the situation and places very stringent requirements on real estate licensees involved in such situations. This is another area where competent legal advice is essential for the broker to ensure compliance with the law.

**Square Footage Disclosure and Measuring Houses**  The proper reporting of the square footage of a house is often a significant issue. Whether square footage is used for the purpose of marketing a house (i.e., including this info in the MLS listing or in an advertisement) or is of concern to a buyer, accuracy is essential. The Colorado Real Estate Commission has taken the position that the method used to measure square footage is to be consistent with local custom, as long as everyone in that market measures and reports it the same way, that method is deemed sufficient to preserve accuracy of reporting. However, the Commission also requires licensees to use the Square Footage Disclosure form whenever square footage is used for marketing to ensure all the parties have the same understanding as to the methodology and the source of the measurement. This form is discussed further in Course 2 (Colorado Contracts & Regulations).

**Seller’s Property Disclosure**  Sellers and the brokers that represent them are required to disclose all material facts about the property being sold. The Colorado Real Estate Commission has an approved form for the seller to use for these disclosures. This form is to be completed by the Seller, not the listing Broker, to the best of the seller’s current actual knowledge. The listing broker then gives the form to the buyer and verifies that the buyer received the form. The form is to be delivered either before an offer is written or by the date requested in the Contract to
Buy and Sell. This form is used to protect brokers from the seller failing to disclose latent, hidden defects. Brokers are obligated to conduct a visual inspection of the property and to verify that there are no undisclosed visible defects.

**FAIR HOUSING ISSUES**

Real estate brokers working with buyers and sellers are subject to fair housing laws. Tricky situations can arise that might lead a well-intentioned broker, new or experienced, into committing a fair housing violation. Fair housing laws are intended to ensure the ability of every consumer to be able to purchase real estate anywhere based solely on the buyer's financial ability to pay for it. Some violations are clear and easy to identify. Others might not be. Consider the following examples:

- A buyer wants to purchase property in a neighborhood comprised of people of a similar ethnic or religious background and asks the broker to show houses only in such neighborhoods.
- A seller wants to be sure that the “right kind” of people buy the house so the neighbors are “comfortable” with the new owners.

A broker should never suggest neighborhoods to a potential buyer based on where the buyer might go to church, synagogue, or any other religious institution. Even suggesting a neighborhood based on the school district might be a violation. Brokers are well-advised to point interested buyers to sources of information and let them do their own research and form their own opinions.

Housing discrimination can take many forms but be aware that courts are apt to treat potential complaints very seriously and any leniency shown by the courts will favor the member of the public alleging a violation, not the broker or other alleged wrongdoer.

Seeking assistance and counsel from the employing broker in any situation where a broker associate is unsure, even if something just doesn’t “feel right,” is a wise course of action.

**REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)**

RESPA is the federal law that applies to lenders, title companies, and real estate brokers. It requires lenders to make certain disclosures to consumers about residential mortgage loans. The law also prohibits the payment or receipt of kickbacks and certain kinds of referral fees (referral fees between brokers are permitted). Basically, unless a buyer pays the entire purchase price in cash or obtains a loan from the seller of the home (private financing), RESPA will apply because a federally-regulated lender will be involved in making the loan.

RESPA is a complex set of laws and regulations. For example, RESPA prohibits title companies from regularly providing dinner and receptions to real estate agents, but it does permit a title company representative to buy a broker dinner as long as business is discussed, and as long as such dinners are not a regular occurrence. Sound confusing? RESPA is a source of frustration for some brokers, especially when they think it interferes with their business or marketing practices. No
one wants to violate the law, especially federal law, which often carries even more severe fines and penalties than state law. However, to avoid such violations, it is necessary to understand the law. Brokers are encouraged to seek education in this important aspect of real estate brokerage. Figure 1.1 illustrates some RESPA basics that you should become familiar with.

**Figure 1.1**

**RESPA Dos and Don'ts**

**RESPA DO’s**

Real estate brokers and agents must comply with the Real Estate Settlement Procedures Act, or RESPA. Violators of RESPA may receive harsh penalties, including triple damages, fines, and even imprisonment. Here are a few examples of what RESPA allows.

- **Allows** a title agent to provide, during an open house, a modest food tray in connection with the title company’s marketing information indicating that the refreshments are sponsored by the title company.
- **Allows** a home inspection company to sponsor association events when representatives from that company also attend and post a sign identifying its services and sponsorship of the event.
- **Allows** you to jointly advertise with a mortgage broker if you pay a share of the costs in proportion with your prominence in the advertisement.
- **Allows** a lender to pay you fair market value to rent a desk, copy machine and phone line in your office to pre-qualify applicants.
- **Allows** a hazard insurance company to give you marketing materials such as notepads, pens and desk blotters which promote the hazard insurance company’s name.
- **Allows** a title agent to pay for your dinner when business is discussed, provided that such dinners are not a regular occurrence.

Speak with a RESPA attorney to make sure you comply with all applicable laws. Some state and local laws prohibit activities that are permissible under RESPA.

For additional information on RESPA visit: www.realtor.org/RESPA

**RESPA DON’Ts**

RESPA prohibits giving or receiving anything for the referral of settlement services, subject to certain exceptions. Violators of RESPA may receive harsh penalties, including triple damages, fines, and even imprisonment. Here are a few examples of what RESPA prohibits.

- **Prohibits** a title company from regularly providing dinner and reception for real estate agents.
- **Prohibits** acceptance of discounted or free business equipment, such as a free lock-box.
- **Prohibits** acceptance of reimbursement of the cost for an open house lunch from a mortgage broker who doesn’t display any marketing materials at the event.
- **Prohibits** acceptance of a dinner paid for by a home inspector who doesn’t attend the dinner to market his/her services to you.
- **Prohibits** acceptance of contributions from a title company to offset the cost of a real estate agent’s promotional event except to the extent of the value of any marketing done by the title company during that event.
- **Prohibits** accepting gifts from mortgage brokers, such as paying your greens fees.
- **Prohibits** a mortgage broker or title company from paying for your tickets to a sporting event.
- **Prohibits** participation in a tropical “get away” weekend, the cost of which is underwritten by a title company, during which only two hours is dedicated to marketing by the title company and the remainder is recreation.
- **Don’t EVER** accept payment from a mortgage lender just for taking a loan application.

Disclaimer: The DO’s and DON’Ts examples listed here are just that, only examples. They are not all-inclusive and small variations in the facts can lead to different outcomes. They also do not take into consideration any additional regulations that may have been imposed in your state. Consult a lawyer familiar with RESPA for specific advice.
I. FUNCTIONS OF THE REAL ESTATE COMMISSION

A. Complaints and Investigation

1. The Commission must investigate all complaints.
   a) Once the complaint is verified, the Commission has two options. The Commission can
      (1) dismiss the complaint, or
      (2) ask the broker to ____________________________.
   b) Until the response is received, the Commission may not
      (1) ____________________________,
      (2) start a lawsuit, or
      (3) seize the brokerage firm’s records.
2. Once the response is received, the Commission may
   a) dismiss the case,
   b) issue the lowest form of discipline (a formal warning) called a ________________
      ___________, or
   c) send to a hearing with an Administrative Law Judge.
3. After the hearing and the judge’s verdict, the matter is referred back to the Commission. The Commission has the following options:
   a) Public censure of the broker
   b) Suspend the broker’s license
   c) Revoke the broker’s license
   d) Fine the broker up to $2,500 per incident

      NOTE: The Commission does not have the right to file criminal charges or assess damages. The Commission may, however, refer the case to the proper criminal authority.

4. Records of all brokers are maintained on the Commission Web site.

B. Audits

1. The Real Estate Commission can audit a brokerage firm at any time.
2. As a standard of practice, the Commission audits brokerage firms on a regular, random basis.
3. The Commission is available to assist all brokers with questions, and the broker can remain anonymous if preferred.
II. **CONWAY-BOGUE AND RULE F**

1. *Conway-Bogue* and Rule F require brokers to use standard or ________________ in the practice of real estate.

2. The Colorado Real Estate Commission has approved a wide variety of forms to ________________ in complying with *Conway-Bogue*.

3. Rule F requires that ________________ when applicable.

4. Rule F keeps brokers in ________________ with the *Conway-Bogue* decision.

5. Rule F-1 “permitted and prohibited form modifications” states the following:
   
   a) Brokers may not alter the standard language as approved.

      (1) Brokers may add information identifying the brokerage firm when the forms are printed.

      (2) If any approved provision of a form is deleted or struck out as directed by a party to the contract, it must be crossed out so the deleted words remain legible. For example:

         Acceptable: This strikethrough is acceptable

         Not acceptable: This strikethrough is not acceptable

      (3) Language added in **blank spaces** must be in *italics* or in different typeface or **font** than the pre-printed language so the reader can tell the difference between the language added to the blanks and the approved language.

   b) Certain **specific** provisions may be omitted from the approved form when it is printed if those provisions do not apply to a particular transaction. Nevertheless, the caption or heading must be retained and the words “OMITTED” must be added after the caption.

   For example, to omit the “Assumption” subsection:

   4.6. Assumption. OMITTED

   c) Approved forms must have a statement of Commission approval on the first page:

   The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission (insert form number).

6. Rule F-2 requires that the “Additional Provisions” section of any form must include only transaction-specific agreements ________________ between the parties and be labeled as follows:

   “The following additional provisions have not been approved by the Colorado Real Estate Commission.”

7. A broker who is **not** a party to a contract ________________ add personal provisions, personal disclaimers, or **exculpatory language** in an addendum. These would, however, be acceptable in an employment agreement where the broker is a principal party.

   Provisions limiting a broker’s liability are sometimes referred to as **“exculpatory clauses.”**
8. Any addenda used by a broker to explain or add to the terms of the approved form must be carefully prepared as described in Rule F-3 and must contain a disclaimer that the language of the addendum is not approved by the Colorado Real Estate Commission.

   a) **Rule F-3 Addenda:** If a broker uses a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form, and the addendum does not result from the __________________________ of the parties, then such addendum must be prepared by

       (1) an attorney representing the broker or brokerage firm,

       (2) a principal to the transaction, or

       (3) an attorney representing a principal party.

       **NOTE:** Such addenda may not be prepared by __________________________ for the parties.

       (4) Broker must retain the addendum for four years from the last date the addendum was used.

       (5) Broker must be able to provide the Commission with the name of the attorney or law firm that prepared the addendum upon request.

9. Computer-generated contract forms

   a) Computer software programs are available to complete and generate the approved forms.

   b) These software programs must reproduce the Commission language __________________________ as approved.

   c) The software program must have a security feature to prevent the user from altering the approved language or deleting part of the form.

10. The Commission has not approved forms for every transaction. There are no approved lease forms or forms for the various types of conveyance deeds.

    a) Brokers may use standard forms available from office supply stores and legal printing companies for these documents.

11. Contract forms may not be filled out __________________________ with the party.

12. Rule F does not apply to the following:

    a) Contracts for __________________________

    b) Contracts prepared by a subdivision developer

    c) An installment land contract form has not been approved by the Commission. It is recommended that a broker using an installment land contract should have it drafted by an attorney.

13. Attorneys do not fall under these rules and may prepare contracts for any party in the transaction or, if requested, for the brokerage firm in a __________________________.

    a) A brokerage firm is not allowed to have its attorney prepare contracts for _______________ _______________. The brokers would need to use Commission approved forms.
III. OTHER CURRENT LEGAL ISSUES

1. Methamphetamine laboratory (meth lab)
   a) Sellers must disclose if the property has been used as a meth lab.
      (1) If the property is cleaned and certified per state regulations, the seller
           ________________
           ________________
   b) The buyer has the right to have the property tested and if it tests positive, the buyer may
      terminate the contract.

2. Measuring properties
   a) If a listing broker uses square footage in the marketing of a residential property, the broker
      must
      (1) use the approved “Square Footage Disclosure”;
      (2) ________________ to measure the property; or
      (3) ________________ of the measurement, such as an appraisal.

3. Seller’s Property Disclosure
   a) The seller is expected to use the form to list all material facts about the property.
   b) The form is filled out to the best of the ________________
   c) The ________________ to confirm receipt of the form.
   d) Brokers ________________

IV. FAIR HOUSING

1. Federal Fair Housing protected classes:
   F ________________
   R ________________
   e equal
   S ________________
   H ________________
   C ________________
   o opportunity
   R ________________
   N ________________
   Colorado adds ________________
2. A broker suggesting that someone live by a certain church, school, or in a certain area would be guilty of ________________.

3. Declining to give a buyer a loan because of high crime rates in a neighborhood is an example of ________________.

4. A broker suggesting that values will go down because a different ethnic group has moved in may be guilty of ________________.

V. **RESPA**

1. Governs any residential transaction involving a federally-regulated loan

2. Covers relationships, if any, between the brokers, lenders, title companies and other entities involved in real estate transactions

3. Prevents kickbacks between these entities

4. Referral fees between brokers okay

5. Know the basic DOs and DON’Ts


**CASE STUDIES**

These case studies are taken from actual cases investigated by the Real Estate Commission. They represent the types of situations a broker can encounter. They can be instructive for new licensees to review and consider what might have gone wrong and what might have been done to avoid the problem in the first place.

For the classroom exercises, you may be acting in the role of a member of the Real Estate Commission. You will review the facts of the situation as presented and consider whether or not a violation of rules or law has occurred. If you find a referral to a hearing is appropriate (violations have occurred), then you are to develop guidelines for a settlement proposal you think would equitably resolve the matter (an Expedited Settlement). The respondent-broker will not be present during your deliberations, so you may only consider the facts presented in the case scenario.

In developing the Expedited Settlement, you should consider the nature of the complaint and the various disciplinary options available to you. If appropriate, restitution should be included in the settlement offer. If criminal behavior is evident, you should also discuss referral to the district attorney.

These complaints can come from the public, other real estate brokers, or from the Commission staff.

**CASE #1**

Purchasers entered into a purchase contract on a rural property. The contract contained a contingency: “Seller to provide all pertinent information regarding the well and septic to include results from testing all the systems.”

The listing broker had managed the property as a rental and was aware that the well produced water at a very low rate (six gallons per hour). He claimed that he made the buyers’ broker aware of that fact. The buyers’ broker denied being given such disclosure. The brokers also disagreed on the transfer and receipt of a previous well test; however, neither had a signature showing the buyer had received the disclosure.

The seller in the Seller’s Property Disclosure form stated that the well was working; however, the seller lived out of state and had not seen the property for a year. The purchasers were not made aware of the information regarding the flow rate and were not given the results of the old well test. As of the day of closing, the purchasers had not received any information relating to the contingency.

The buyers’ broker claims he informed the purchasers that they could delay the closing. The purchasers did not recall being given that advice and stated that they closed because the listing broker assured them there was no problem with the well.

Approximately two weeks after closing, the purchasers were completely out of water and sought assistance from the real estate brokers.
The purchasers contacted the Real Estate Commission when they became dissatisfied with the response from the brokers.

What do you think?

- Has there been a violation of real estate license law or Commission rules?

- What procedures could have been used to address the issue of “bad memories” on the part of the buyers and the brokers?

- Do you have any suggestions regarding the wording of the contingency?

- What is your decision about what should happen to the brokers?

**CASE #2**

Second-year CSU college student Buyer Ryan and his parents had decided to purchase a condominium near the campus for Ryan to live in rather than the dorms. Buyer Ryan has a medium-sized dog that is considered a member of the family. Through a classmate, Ryan met Broker Jeff, who had been licensed for four months. Buyer Ryan told Jeff the most important consideration in finding a property is that the dog be allowed. The parties entered into an Exclusive-Right-to-Buy contract with Jeff representing Ryan as an agent.

Ryan quickly found a unit in the Westside Condominiums that interested him. The MLS printout for that unit indicated that dogs and cats were allowed. While previewing the unit, Broker Jeff and Ryan noticed another unit for sale. They looked at the second unit and decided to make an offer on it instead. The MLS printout for the second unit did not address pets.
Ryan wanted his friend to see the unit so they went by a few days later. Ryan and his friend noticed “No Dogs Allowed” signs in various places around the complex. Ryan asked Broker Jeff about the signs. Broker Jeff replied that residents’ dogs were allowed on the property but that non-residents’ dogs were not. After closing, Ryan received notice from the Westside Owner’s Association that having a dog violated the Association’s covenants. This was the first time Ryan or his parents were provided with the governing documents for the community.

**Broker’s Response**

Broker Jeff stated that he was provided with a copy of the covenants with the title commitment. Jeff put them in his work file and admits to not providing a copy to Ryan. He believed it was the responsibility of the seller or the title company to provide the documents to Ryan. The contract does call for the seller to provide the governing documents, but Broker Jeff’s statutory obligations as a buyer’s agent require that he exercise skill and care, which means assurance that the buyer’s interests are safeguarded.

The title company could not confirm mailing a copy of the covenants to Ryan or his parents. The employing broker admits not telling Jeff that he needed to provide Ryan with a copy of the covenants, and he further stated that he advises his agents not to review title work or HOA documents because they are not experts.

**What do you think?**

- Has there been a violation of real estate license law or Commission rules?

- What procedures led to the problem?

- What should have been done differently by the buyer’s broker?

- Do employing brokers have a responsibility to review title work?
Broker Sarah managed several homeowners’ associations and one commercial shopping center for a number of years. A Real Estate Commission examination began after clients discovered that the Broker had left town without notice. The audit covered a period of two years and discovered a shortage totaling $54,000 in various accounts.

Although monthly reports were made to the associations, Broker Sarah withdrew various amounts of funds from the escrow accounts for personal and business use. She was able to conceal these activities because of the lack of any independent audit. The records were not reviewed in detail by the associations concerned, and some association board members and a property owner were long-time friends of Broker Sarah. Several large checks were written to legitimate parties according to check stub entries, but were in fact cashed by Broker Sarah.

Amounts entered in the monthly reports were misstated to create secret cash reserves in the account for the broker’s personal use. Beginning and ending check numbers shown in the annual association reports were out of sequence and voided checks were used to manipulate the account balances and bank reconciliations.

Stub balances were misstated to agree with forced bank reconciliations and amounts actually paid to vendors frequently differed from those reported. Some cash receipts were never deposited to the escrow accounts.

What do you think?
- Has there been a violation of real estate license law or Commission rules?
- Is it appropriate for a broker to mix personal and trust funds?
- What might the associations have done to have avoided this problem?
CASE #4

Broker Mary listed a residential property for her sister and brother-in-law as a sellers’ agent. At the time of the listing, the sellers completed a Seller’s Property Disclosure (SPD) form that indicated the property had settling, sliding, and expansive soil. After nearly a year, the property had not sold and Broker Mary decided to buy it from her clients as an investment property.

Broker Mary told a close friend, Broker Paul, that the property had structural problems. Paul visited the property and noticed that the living room floor was uneven. Paul referred Mary to a contractor friend to repair the property. The contractor performed repairs on the living room floor and other areas of the home at a cost of $25,000.

Some months later Broker Paul executed an Exclusive-Right-to-Sell listing agreement with Broker Mary as seller. Broker Paul completed a Seller Property Disclosure form by lining through each page and on page 1 indicating that the seller had never lived in the property. Within a few days, the property was under contract and closing occurred.

Six months later, the property showed cracks in walls, and windowsills were breaking away from the walls. The new owners hired a structural engineer to inspect the property. The engineer’s report stated that due to structural distress, the property was no longer habitable. The buyers filed a complaint with the Colorado Real Estate Commission for alleged failure to disclose a known material defect. Both Broker Mary and Broker Paul were named in the complaint.

Broker’s Response

Broker Paul believes the way he completed the Seller’s Property Disclosure was proper, as he wanted the buyers to know that the seller had never lived in the property. Furthermore, Broker Paul states to the best of his knowledge there were no disclosures because according to Broker/Seller Mary, all of the repairs had been completed. Broker Mary states that Broker Paul told her she did not have to disclose the structural problems since they had been repaired. It is learned that the repairman is not a licensed contractor and had little experience with structural repairs. According to Mary, due to the death of her two dogs, she was emotionally distressed and did not pay much attention to what was going on at the property during the time the repairs were done.

What do you think?

Has there been a violation of real estate license law or Commission rules?
Was Broker Mary protected from Real Estate Commission oversight by listing the property with another broker? Was Broker Paul’s conduct appropriate?

Do you have suggestions for how the brokers might have better handled this situation?
The national portion of this course (Law and Practice) covered vocabulary and concepts common to the real estate business in nearly all states. In Colorado Contracts & Regulations you will apply this knowledge to the way real estate is practiced in Colorado. This course covers specific facts related to license law, Colorado Real Estate Commission rules, and mandatory standard forms required to practice real estate in Colorado.

Different material calls for a different study method. In Contracts & Regulations, you will use (along with the Course Reading Guide) the following three books:

- *Colorado Real Estate Principles Volume 1*, which includes the following:
  - Course 2: Colorado Contracts & Regulations
  - Appendix: Answers to Fill-ins and Case Studies
- *Colorado Contracts and Forms Supplement*
- *The Colorado Real Estate Manual (CREM)*
Preparing for Each Class

Weekday students will continue to complete two units each day of class. Evening students will complete one unit per class but should prepare to study for multiple evenings to keep up with the pace of the course. Home study students should plan a pace they can maintain with regular study of each unit.

- **Before class or online lecture:** Please read the unit text and any other reading in the CREM as assigned in the Course Reading Guide. Read for general understanding. This is not the time to memorize facts or identify test concepts.

- **During class or online lecture:** The class session reviews the notes from each unit. The instructor will present PowerPoint slides with explanations to complete the fill-ins in the course text.

- **Home study book-only students:** Using a pencil, fill in the blanks for each unit in this book. Be sure to read and review the forms covered in each unit in the *Colorado Contracts and Forms Supplement*. In addition to the reading assignments listed in the Course Reading Guide, you will find additional rules cited throughout the text. You may find it useful as you work through the unit to read these rules in the CREM to help clarify a particular point or concept. After working through each unit, use the Appendix to check your work and correctly fill in the blanks.

After Class

- Now that the fill-ins are complete, read the unit to make sure that you understand all the content.

- Each unit has specific study tools to help reinforce the material. Complete all these exercises to obtain the maximum benefit. These tools include the following:
  - **Key Concept Reviews:** These highlight the most important concepts from the unit. Test yourself by asking, “What do I know about this concept?” Review any unfamiliar vocabulary terms in the glossary of the *Modern Real Estate Practice Workbook*.
  - **Unit Review Exams and Final Exam:** The review exams at the end of Units 1, 2, 4, and 6 are another way to review topics covered in class. The Unit 4 Midterm Exam and the Final Exam are graded, and you must score 80 percent or higher for successful completion of the course. However, it is still important to complete the other review exams because some of them will be reviewed at the beginning of the following unit. All unit exams are open-book exams. Try to complete these exams without looking up the answers to help determine what you know. This will prepare you for the final exam and licensing exam, which are closed book. Once you complete the exam, research the answers to questions you answered incorrectly in the book. This research is part of the learning process. The Final Exam will be an online closed-book exam.
Using These Materials

- In the national portion of this course, you read the text and then used a Lecture Outline to review the content. In Contracts & Regulations, the process is reversed. You will do the following:

1. Prepare for each unit by completing the unit’s assignments and any reading listed in the Course Reading Guide for the Colorado Real Estate Manual. These reading assignments are designed to give you an overview of the material in the unit. Read the assignment, but do not try to study everything in the assigned reading. In the unit lesson, we will point out the “need to know” material.

2. Study the material in class or while watching the online lecture and fill in the blanks with the instructor (or individually as a home study book-only student).

3. Review the material and forms through the study exercises in each unit and review exams.

- Plan your schedule around the time you’ll need to attend the lectures, complete the reading, and take the exams.

Using the Course Reading Guide

- In the guide, locate the current course and book (this is Colorado Real Estate Principles Volume 1, Course 2: Colorado Contracts and Regulations). Next, find the unit you are preparing for and the reading assignment for the CREM.

Using the Colorado Real Estate Manual (CREM)

- The CREM is published each year by the Real Estate Commission. It is used for prereading in this course.

- The CREM contains the statutes (laws), Commission rules, and Commission position statements that govern the activities of Colorado real estate brokers and transactions.

- It provides the basis for many questions on the state exam.

- Reading assignments will reference parts of the CREM that are important to read.

  - Your assignment will include the chapter number, name, and sometimes specific sections.

  - Example:

    - Chapter 5—Landmark Case Law, Sections I-II: Read only these sections

    - Chapter 14—Brokerage Relationships: Read the whole chapter

- CREM Chapter 1 covers license law (statute).

  - The reading can be challenging, but some state exam questions use this type of language.

  - The unit bullet points section may also paraphrase for easier understanding of the most important CREM statutes.

- CREM Chapter 2 covers the rules of the Real Estate Commission. These rules carry out the law and provide specific requirements.
CREM Chapter 3 covers Commission position statements.
— Position statements don’t make or change rules or statutes.
— Position statements interpret rules or statutes to guide licensees in following the rules.

Each chapter provides excellent educational material for the practice of the real estate business. You do not need to read the entire manual during this course. Most brokers use it as a resource throughout their career.

More information is available at the Colorado Division of Real Estate Website: www.dora.colorado.gov/dre.

Reviewing Commission-Approved Forms and Contracts Using the Colorado Contracts and Forms Supplement

You will find forms covered in class in the Colorado Contracts and Forms Supplement. Please bring the supplement to class and/or have it with you when viewing the online lectures.

Colorado-approved forms list in detail the duties of each party. Brokers must know the preprinted language of each form and what the parties agree to do (or not do). The Colorado Real Estate Commission tests this information on licensing exams and expects every licensee to be thoroughly familiar with all contract provisions.

This course will cover the forms in detail by describing and discussing the approved language in each section. Rather than focusing on completing the blanks in the forms, remember that this course is a thorough review of the preprinted information in the approved forms.
Real Estate Brokerage in Colorado

Focus on Understanding
- Levels of authority
- Brokerage relationships
  - Limited agent
  - Transaction-broker
- Designated brokerage
- Broker’s limited right to practice law

Study Plan

Before Class:
- Read this unit.
- Review the chapters in the CREM that are listed in the Course Reading Guide.
- Use the Colorado Contracts and Forms Supplement to review the forms discussed in this unit because they will be covered in class.
- Bring the Colorado Contracts and Forms Supplement to class.

After Class:
- Review Unit 1 now that the blanks are all filled in.
- Review the contract forms covered in this unit.
- Be sure you understand the key concepts at the end of Unit 1.
- Complete the Review Exam at the end of Unit 1 (it will not be graded) and then check your answers.
COLORADO REAL ESTATE LICENSING AND LEVELS OF AUTHORITY

Colorado real estate brokers work under the jurisdiction of the Colorado Real Estate Commission and the license law approved by the state legislature. The license law establishes the way business is done and provides real estate services to sellers, buyers, landlords, and tenants. The Real Estate Commission assists brokers in following the law through specific rules, position statements, and approved forms. The Commission recognizes three levels of responsibility for brokers based on experience and additional education: (1) associate brokers, (2) independent brokers, and (3) employing brokers.

An associate broker is either a new broker with less than two years of active experience or a broker who (regardless of experience) is working under an employing broker. An associate broker with less than two years’ active experience must work under the supervision of an employing broker until the necessary experience is gained. During this period, the employing broker is responsible for maintaining a high level of supervision of the less experienced broker. This level of supervision would include specific training on company policies, assistance with closings, including attending closings or assigning other qualified brokers to attend closings, and being available to answer questions. During this period, the employing broker should aim to make sure the broker is gaining the competency necessary to work with less supervision in the future. After completing the experience requirement, the associate broker will qualify as an independent broker and may change to this license status without any further testing or education. The associate broker could also, with further education, apply to be an employing broker. No matter what level of license brokers have, they will be called associate brokers anytime their license is placed under an employing broker's license.

An independent broker must have a minimum of two years of active experience and may work independently and be licensed as an individual or a business entity. An independent broker may not hire or supervise other licensees which would include hiring a licensed assistant. An independent broker would have to have an employing broker level license to hire an actively licensed assistant.

Employing brokers must have a minimum of two years of active experience and must complete an additional 24-hour course in brokerage administration to be qualified to hire and supervise other licensees. Employing brokers must provide a reasonable level of supervision to employed brokers with two or more years of active experience. A reasonable level of supervision includes providing a company policy manual and assuring that all licensees, no matter their experience level, read it and sign that they have read it and agree to uphold the office policies. Employing brokers are also responsible for reviewing all contracts prepared by every broker to ensure they are correctly prepared. Employing brokers are accountable for all licensees whose licenses are held under them.

COLORADO BROKERAGE RELATIONSHIPS

Colorado real estate brokerage relationship laws are based on the common laws of agency and state statutes that define the relationships that brokers are allowed to have with consumers in real estate transactions. Colorado law allows for two types
of representation: agency and transaction brokerage. However, there is a third relationship in which the consumer is an unrepresented customer. Colorado does not allow dual or subagency relationships.

An active real estate licensee's job title is that of a real estate broker, not a real estate agent. A real estate agent is hired to represent a principal while a real estate broker has numerous jobs, including finding buyers and sellers to represent. Licensees begin work each day as real estate brokers who may or may not have a number of representation roles depending on how productive their business is. It is helpful to differentiate these two roles when learning about the laws of agency. Licensed real estate professionals always have the duties of a real estate broker but are not agents unless hired to represent a principal.

Brokers are hired to protect the interests, property, and/or money of principals and agree to fulfill basic fiduciary (trust) duties in addition to those that may be created through an agreement. Most agent’s or transaction-broker’s duties are the same under Colorado representation agreements. A broker acting as an agent is an advocate and has three additional job duties tied to obedience and loyalty.

**Overview of Agency Law**

Typical agency relationships exist between principals and attorneys, doctors, insurance and real estate agents, as well as stockbrokers. The fiduciary duties learned under the common law of agency of obedience, loyalty, disclosure, confidentiality, accounting, and reasonable skill and care (OLD CAR) apply to these relationships, along with any additional obligations created by the agreement between the parties.

Agents agree to represent the interests of a principal by putting the principal’s interest above their own. The principal gives the agent permission to act and advocate on the principal’s behalf. The agent’s actions, particularly in relation to third parties, may bind the principal. A listing broker who tells a buyer that “the seller will paint the living room” may have obligated the seller to paint the living room even if the seller/principal did not tell the agent she was willing to do so. The seller may become vicariously liable for the agent’s actions. Of course, the seller could seek recourse, such as insisting that the listing broker pay for the paint. The important issue is that real estate brokers must be careful not to make promises or statements that have not been expressed by the principal.

Agency may be created by express agreement, oral or written, or by implication. Implied agency is created by action, such as when a broker acts as an agent without anything in writing and is considered an agent by implication. Of particular concern is undisclosed agency, especially if the agent becomes an undisclosed dual agent.

**FOR EXAMPLE** Linda, the listing agent, received a call from a buyer interested in the property. Linda failed to disclose her agency relationship with the seller and told the buyer that “the seller is very motivated and will take $10,000 less than the current asking price.” By sharing the seller’s confidential information, which helps the buyer, Linda has become an undisclosed dual agent with a buyer agency relationship created by implication.
The agent’s obligations are spelled out in the representation contract and typically create a special agency relationship between the brokerage firm and the principal. In special agency, agents work with principals to sell or purchase property, and they do not have the power to bind the seller or the buyer by accepting a purchase contract for the party they represent. If the firm or broker is representing a principal as a property manager, the property management agreement typically establishes a general agency relationship in which the agent has limited power to bind the principal. This authority is created within the agreement and would allow the property manager to spend the principal’s money up to an amount agreed to by the parties. In rare cases, brokers might be given full power to bind a principal as though the principal were acting in his own interest; this is known as universal agency. Universal agency is created with a document called a power of attorney (POA) and makes the agent an attorney-in-fact. The power of attorney can be unlimited and give the agent full power over all the principal’s interests, or it can be limited (more typical in real estate) and give the agent power to perform only specific acts for the principal, such as attending the closing and signing the closing paperwork if the principal is unable to attend.

In Colorado, an agent may only act as a single agent representing one party in the transaction. This is the most typical relationship. The seller is represented by a listing single agent and the buyer is represented by a buyer's single agent. A broker who intends to work both sides of the transaction may not do so as an agent.

Colorado law also allows brokers to offer nonagent representation called transaction brokerage. The broker still has representation obligations to the buyer or the seller but does not have the full fiduciary obligations of an agent. Typically, a transaction-broker is required to disclose all material facts, maintain confidentiality about price, terms, and motivations, account for all funds, and use reasonable skill and care (DCAR). Because transaction-brokers have fewer obligations to consumers, they may work with both parties in a transaction. Transaction-brokers do not have the obligations of loyalty and obedience but still must maintain the confidentiality of each party, especially when working with both parties.

Colorado brokers can also work with consumers who do not have brokerage representation. In this case, the consumer is known as a customer. This occurs when the broker is representing another party as an agent without the option to move to transaction brokerage. Brokers owe customers disclosure of material facts, accounting, and honesty. Note that confidentiality is not an obligation in this situation, and if given or learning confidential information about the customer, the broker would be obligated to share this information with the party the broker represents.

Remember: Agents’ obligations are OLD CAR, transaction-brokers owe DCAR, and customers are given DAH.

**Brokerage Relationship Disclosure**

All states require that brokers, especially those acting as agents, disclose their agency or representation obligations no later than at the first substantive contact, which is typically the first physical contact. In all cases, brokers must disclose agency representation before receiving confidential information from the
consumer who is not represented. Under the fiduciary duty of disclosure, an agent is obligated to disclose to the principal anything about the other party that might benefit the agent's principal. In particular, if the agent learned information about the other party's willingness to pay more, terms they were willing to give, or motivations to move forward, the agent would be obligated to share this information with the principal.

Because most consumers do not understand the laws or obligations of agency, the law requires real estate professionals to disclose any agency relationships before the consumer is at a disadvantage in a subsequent transaction. Most states, including Colorado, have a written disclosure form that the broker is required to give to the consumer. Typically brokers may have rapport-building, nonspecific conversations without triggering the need to give the agency disclosure. When the conversation begins to lead to more specific points, especially when they are of a personal nature and the consumer appears to be interested in moving forward, the broker is obligated to stop the conversation and review the brokerage relationships available to the consumer. These options may include single agency, transaction-brokerage, or no representation for the consumer.

In most cases, the consumer is asked to sign a copy of the disclosure form for the brokerage file and is given a copy with the broker's signature to show that the form was reviewed and received by the consumer. However, the consumer cannot be forced to sign the disclosure. In this situation, a broker should note the refusal on the brokerage file copy to prove that the requirement was met, sign it, and then give the consumer a copy. The requirement to disclose the brokerage relationship has now been met, and the broker should have a clear idea of what type of relationship she has with the consumer.

For example, after reviewing the disclosure, the consumer/buyer could agree to work with the firm with the broker being an exclusive buyer's agent. The broker would have the buyer sign a buyer representation agreement, which clearly defines the duties and obligations of the parties. (This form will be reviewed later.)

**Applying Colorado Brokerage Relationship Law**

In Colorado, an agent's duties are the same fiduciary duties as an agent under the common law of agency (OLD CAR). By law, agency relationships also require a written agreement signed between the brokerage firm, the broker, and the principal. The two most common agreements are the Exclusive Right-to-Sell Contract and Exclusive Right-to-Buy Contract.

Under Colorado law, a broker acting as an agent may only be a single agent in a single transaction, representing only one side. Licensees may not act as dual agents; they may not represent both parties as an agent in a single transaction. An agent is an advocate promoting the interests of one party over the other. An easy way to think of this role is that the agent acts like a coach working and advocating for only one side of the transaction.

Under Colorado law, a transaction-broker is not an agent for either party. A transaction-broker acts like a referee. The transaction-broker does not promote one side over the other but simply passes information, and each side makes its own
decisions. The transaction-broker manages and is obligated to follow the directives of the party or parties the transaction-broker represents.

Transaction-broker is the default relationship in Colorado; it does not require a written agreement, only a written disclosure of responsibilities. Transaction-brokers are required to confirm the representation responsibilities that they owe to the member of the public. This confirmation is done with either an exclusive agreement or a disclosure form. The disclosure is completed using one of the five disclosure forms (listed below), but most typically with the Brokerage Disclosure to Buyer or Brokerage Disclosure to Seller (Sale by Owner). However, without a written agreement, the member of the public is under no obligation to pay the broker, so most brokers will complete a representation. The two most common written representation agreements are the Exclusive Right-to-Sell Contract and Exclusive Right-to-Buy Contract.

The broker could start the relationship representing one party as a transaction-broker (e.g., a seller’s transaction-broker with an Exclusive Right-to-Sell Contract) or the broker could use this same contract and be the seller’s agent with or without the right to become a transaction-broker if working with a buyer for the property (double end). Transaction-brokers can work with both sides without a conflict of interest because transaction-brokers do not have the obligations of loyalty, obedience, and advocacy. Transaction-brokers owe DCAR (disclosure, confidentiality, accounting, and reasonable skill and care) to the parties they represent. Remember, a transaction-broker simply acts as a referee, keeping both parties informed but not advocating for either one.

A broker who is unable to be neutral cannot be a transaction-broker (Commission Position Statement 31). For example, a broker typically could not be a transaction-broker when acting as the principal, the broker for a spouse or family member, the broker for a close personal friend or business associate, or the broker for repeat clients or multiple properties for the same client. In these situations, the broker would have to be an agent and, if double-ending the transaction, make the other party a customer.

Figure 1.1
Transaction-Broker versus Agent

While a broker is showing a house, the potential buyer asks, “Do you think a $250,000 price is the best we can do?”

A transaction-broker might say:

“The sellers have priced it at $250,000 after consulting with their broker. I can provide you with information about homes recently sold in this area if you would like.”

An agent might say:

“Before we toured the house, I ran a CMA and gathered information about recent sales in the neighborhood. As you can see, no home has sold for over $240,000 this year. If you would like to submit an offer, I would recommend something around $237,000 to $239,000. With the current sluggish market, I believe the sellers may be willing to sell for less and the risk of another buyer offering more is minimal. How would you like me to proceed?”
Colorado law defines a customer in a transaction as “a party to the real estate transaction with whom the broker has no brokerage relationship or no representation, because such party has not engaged or employed any broker” (12-61-802, C.R.S.). The broker remains a single agent for the party the broker has an agency agreement with and may do anything for a customer that does not compromise the agency agreement with the principal. The duties that licensees owe to a customer are disclosure, accounting, and honesty (DAH). Note that confidentiality is not owed to the customer but to the principal the agent represents. Brokers must make sure they fully disclose to the consumer/customer that any confidential information received by the agent must be shared with the agent’s principal.

For example, a broker would ask a potential buyer to be a customer when the broker’s agreement with the seller requires the broker to remain an agent (e.g., a listing broker representing her child as a listing agent). Remember, agents in Colorado are single agents—never dual agents.

The reverse situation could occur if the broker was an agent for the buyer and the buyer wanted to buy from an unrepresented seller (FSBO—for sale by owner). The broker would need to use the Brokerage Disclosure to Seller (For Sale By Owner) form.

**Explaining All This to the Public**

Typically, brokers don’t want to start each appointment with a one-hour lecture on brokerage relationships. Fortunately, the Real Estate Commission has provided a set of simplified definitions in five disclosure forms: Definitions of Working Relationships, Brokerage Disclosure to Buyer, Brokerage Disclosure to Seller (Sale by Owner), Brokerage Disclosure to Tenant, and Brokerage Duties Disclosure to Seller (REO & Non-CREC Approved Listing Agreements). The first two forms will be used in this course; however, brokers should be familiar with all the forms and use them when appropriate.

These forms are used to inform the public of the choices for representation and to give proper disclosure as required by law. A broker who has a written, signed exclusive representation agreement to act as an agent or transaction-broker does not need these forms unless the employing broker requires them.

**Definitions of Working Relationships Disclosure form.** The Definitions of Working Relationships disclosure form is used as a primary tool to educate the public about the brokerage relationships available under Colorado law. The form is not required for most transactions but provides a good introduction to the available relationships. It reviews the two brokerage relationships in which a broker may represent a member of the public, which are agency and transaction-brokerage. The form also describes the customer relationship.

The types of relationships a broker associate can offer to a consumer are first determined by the written office policy of the associate’s brokerage firm. The broker associate may then negotiate with the consumer to establish their working relationship.
For example, the brokerage firm could choose to offer only transaction-brokerage relationships. This means that no brokers in that firm can act as an agent for a member of the public. However, brokerage firms typically offer all types of relationships and allow broker associates to offer both agency and transaction brokerage and, if appropriate, make the consumer a customer.

**Brokerage Disclosure to Buyer form.** Like the Definitions of Working Relationships form, the Brokerage Disclosure to Buyer form, provides the Real Estate Commission definitions of the various relationships a broker can have with a seller or buyer. The broker and the buyer can use the form to create a transaction-broker relationship or make the buyer a customer. Additionally, this form is used to bring the broker into compliance with Commission Rule E-35, which requires brokerage relationship disclosure.

In transaction-brokerage relationships with buyers, brokers should be aware that if they don’t have a signed agreement, the buyer has no obligation to pay a commission or to use the broker exclusively. Buyers should be informed that they can accept the disclosed relationship or seek an exclusive relationship with the licensee or another broker.

This form is also used to make the buyer a customer when the broker is an agent to the seller and wants to double-end the transaction. Remember, receiving a fee from someone does not establish agency or any other relationship. A written agreement, disclosure, or, at times, the broker’s actions determine the brokerage relationship.

If the broker has a representation relationship with the seller, the terms of the listing with the seller will dictate the options the broker may offer the buyer (transaction brokerage or the buyer as a customer). Per Rule E-35, this disclosure is mandatory when the broker has an existing relationship with a seller. The broker must disclose the relationship (agency or transaction-broker) to any unrepresented buyer who inquires about the seller’s property.

The second page of the disclosure form is used to create a transaction-broker relationship or make the buyer a customer. The form makes it clear that the relationship the broker is disclosing is only for a particular property showing or property type the buyer has asked to see. The three options on the form are the following:

- **Customer:** This box is checked if the buyer will always be a customer. The broker plans to show an agency listing(s) to this buyer, and the seller has requested in the listing that the broker remain the seller’s agent for showings. The broker will not have an agreement to receive a fee from this buyer. The broker may assist the customer in any way that does not compromise the agency relationship with the seller.

- **Customer for Broker’s Listings – Transaction-Brokerage for Other Properties:** Check this box when the buyer may be a customer or the broker may represent the buyer as a transaction-broker, depending on the property being shown to the buyer. The broker will be a seller’s agent for that broker’s listings and a transaction-broker for all other properties.
Transaction-Brokerage Only: Check this third box when the broker will be a transaction-broker for all showings of any property, whether or not it is one of the broker's listings. It would create the default representation role without a signed exclusive agreement. Sellers of properties the broker has listed must allow in the written listing agreement a change of status from seller's agent to seller's transaction-broker, thus allowing the broker to work with both the buyer and the seller as a transaction-broker should the opportunity arise.

Choices for Double-Ending a Transaction Review

Colorado agency agreements provide the broker and the principal two options they may negotiate if the broker gets the opportunity to double-end the transaction. This occurs when the broker is working with both the buyer and the seller in the same transaction. The first choice is for the broker to remain an agent for either the buyer or the seller (stay a single agent) and treat the other party as a customer to double-end the transaction.

The second option is with permission from the principal or principals (if working as an agent for both seller and buyer) to automatically change to a transaction-broker to work both sides of the transaction. The permission for this change is given in the listing agreement. The law requires that a broker who has a brokerage relationship with both sides must treat both parties equally and cannot be an agent to one party and a transaction-broker to the other. The broker must change status to a transaction-broker when working with both sides.

Instead of double-ending the transaction, the broker could resign one relationship, treat that party as a customer, and keep the other agency relationship.
Brokerage Relationships

The brokerage firm and the broker may offer two forms of representation to the public.

Agent to principal who is
- seller or buyer, or
- landlord or tenant.
(Duties of OLD CAR)

Transaction-broker to
- seller or buyer, or
- landlord or tenant.
(Duties of DCAR)

May represent only one party at a time in the same transaction

May represent both parties in the same transaction (double-end)

Loyalty is owed to the party that employs the broker, not the party that pays the broker.

Broker working with an unrepresented customer is an agent for one party and cannot move to the middle to be a transaction-broker. This is used when double-ending the transaction.

Broker gives customers
- Disclosure
- Accounting
- Honesty

Customer is not represented by a broker. Broker is an agent for the other party.

Rule E-35 Disclosure of Brokerage Relationships

The law, implemented by Rule E-35, requires that brokers disclose in writing the relationships they may provide to the public: representation (agent or transaction-broker) or nonrepresentation (the consumer is a customer). Brokers must also disclose any existing relationship they have with one party to a transaction to the other party before discussing potential confidential information, such as motivations or financial qualifications. Don’t confuse in writing with signed; Rule E-35 says that the broker must give a written disclosure, not that the consumer has to sign it.
**FIGURE 1.3**

**Disclosure of Brokerage Relationships**

- **Rule E-35:** The broker must disclose his brokerage relationship, in writing, at first physical contact with a potential buyer or seller.

- **A broker** working for a seller must disclose the broker's relationship to a potential buyer. **Example:** Broker is holding an open house.

- The broker may have rapport building conversation with potential buyers who attend.

- The broker **must** disclose his relationship with the seller before receiving or accepting confidential information.

- **The buyer** receives the form signed by the broker.

- The buyer does **not** have to sign the form for the broker to be in compliance with Rule E-35.

- The broker has now met the requirements of Rule E-35 to disclose in writing at first physical contact before receiving or accepting any confidential information.

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**DESIGNATED BROKERAGE**

Under common law, once the brokerage firm has obtained an agency listing or buyer representation agreement, all the brokers in the firm are considered to be part of the agreement and are agents of the seller or the buyer. Because the firm and all of its brokers are under one umbrella, they owe the same fiduciary obligations to the seller and the buyer as the brokerage and the broker who signed the agreement. In these firms, if a broker brings a buyer to a company listing, the brokers and the firm become dual agents representing both the seller and the buyer.
Colorado removes the umbrella of brokerage relationships for the firm by allowing the employing broker to designate a broker to have an exclusive relationship with a buyer or a seller. This means that the brokerage firm, acting through the firm’s brokers, agrees to provide a set of services to a seller, a buyer, a landlord, or a tenant. The brokerage firm owns the listing contract and elects to provide services by designating a broker. The employing broker of the firm designates an individual broker (or a team) within the firm to enter into the brokerage relationship and represent a particular seller or buyer (or landlord or tenant). In designated brokerage, the brokerage relationship stops with the designated broker and does not extend to the rest of the brokerage firm or the employing broker. The agency or transaction-broker relationship (brokerage relationship) and its duties exist only between the seller or the buyer and the designated broker.

The broker designation must be in writing, which is typically done in the brokerage firm’s office policy. If necessary, the brokerage firm can replace a designated broker or add an additional designated broker.

Colorado designated-broker provisions allow a designated broker to seek advice from an employing broker and share information about a client with the employing broker without compromising the duty of confidentiality and without creating any brokerage relationship between the employing broker and the party the designated broker represents. In this situation, the role of the employing broker is to supervise and advise the broker associate. The duties of representation belong to the broker associate, even if the employing broker receives confidential information. The employing broker still has an obligation to make sure all representation contracts are fulfilled at the highest level.

Designated brokers must be careful to not provide information (actual knowledge) within the firm that violates confidentiality rules. Brokers should keep files secure and avoid sharing confidential information within the office because at any time another broker at the firm might represent the other party.
In-Company Transactions under Designated Brokerage

An in-company transaction is when brokers from the same firm represent both parties to a single transaction. For example, one broker works as the listing broker and another broker from the same firm works as the buyer’s broker for the listing. Under Colorado law, the designated broker working with one party is considered to be isolated from the confidential information learned by the other broker from the same firm. Without a brokerage relationship, no conflict arises.

A conflict arises if a broker is designated to provide services to both the buyer and the seller in the same transaction (double-ending) but has an agency relationship with one of the parties. As long as the single designated broker double-ending the transaction is a transaction-broker for both parties, there is no conflict of interest. Remember, a broker may not be an agent for one party and a transaction-broker for the other. The broker can change from agency status to transaction-broker status in order to double-end the transaction, but the principal(s) must give written permission first.

**Example 1:** A broker has an agency listing, and another broker in the same office shows the property to a buyer and writes an offer. There is no conflict of interest because Colorado law provides that the buyer’s broker does not automatically have imputed knowledge of the seller’s confidential information.

**Example 2:** A broker has an agency listing and a buyer the broker represents wants to see the listing. Both parties may agree to allow the broker to double-end the transaction and act as a transaction-broker. The broker will then earn the commissions for both the listing and the buying sides of the transaction.

The broker could also resign the agency with one party by having an employing broker designate a different broker from the office to work with that party. In this case, the
broker would not double-end the transaction, and the other broker would earn part of the commission. (The original broker could ask for and receive a referral fee.)

**FIGURE 1.6**

Review of Comparison of Duties

<table>
<thead>
<tr>
<th>Common Law Agent Duties</th>
<th>Colorado Limited Single Agent</th>
<th>Colorado Transaction-Broker</th>
<th>Colorado Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obedience</td>
<td>Yes</td>
<td>To the transaction</td>
<td>No</td>
</tr>
<tr>
<td>Loyalty</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Disclosure</td>
<td>Full disclosure to principal—benefits and risks</td>
<td>Only material facts</td>
<td>Only material facts</td>
</tr>
<tr>
<td>Confidentiality (PTM)</td>
<td>Yes (PTM)</td>
<td>Yes to both (if working with both) (PTM)</td>
<td>No</td>
</tr>
<tr>
<td>■ Price</td>
<td>■ Price</td>
<td>■ Price</td>
<td>No</td>
</tr>
<tr>
<td>■ Terms</td>
<td>■ Terms</td>
<td>■ Terms</td>
<td></td>
</tr>
<tr>
<td>■ Motivations</td>
<td>■ Motivations</td>
<td>■ Motivations</td>
<td></td>
</tr>
<tr>
<td>Accounting</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Reasonable skill and care</td>
<td>Yes</td>
<td>Yes</td>
<td>No—honesty</td>
</tr>
<tr>
<td>Created in Colorado by:</td>
<td>Written agreement (Listing Agreement or Buyer Representation Agreement)</td>
<td>Default relationship when no written agreement, Written disclosure required.</td>
<td>Written disclosure (Brokerage Disclosure to Buyer or Seller)</td>
</tr>
</tbody>
</table>

Remember that the duties the broker owes depends on the type of relationship with the consumer:
- Agent—OLD CAR
- Transaction-broker—DCAR
- Brokers owe customers—DAH (honesty)

**COLORADO BROKER’S LIMITED RIGHT-TO-PRACTICE LAW**

Colorado brokers have the right to fill in approved or standard real estate contracts and explain their meaning to clients. The Colorado Supreme Court affirmed this right in the landmark decision of *Conway-Bogue Realty Investment Company v. Denver Bar Association*. The court found that brokers may perform this limited practice of law under certain conditions:

1. The brokerage firm must be connected with the transaction through a brokerage relationship. Brokers may not prepare documents for parties with whom they do not have a brokerage relationship; they must be acting as either an agent or a transaction-broker for either party. Brokers may assist customers with the forms in their role as an agent for a seller or buyer.
2. There must be no fee for preparing the documents other than a typical real estate commission. Part of the fee structure of a commission is the preparation of appropriate documents for that transaction; charging additional fees to prepare legal documents such as deeds and bills of sale is not acceptable.
3. The documents must be prepared on commonly used printed standard or approved forms.
Real estate licensees must recommend that consumers seek legal tax advice or other counsel when contracting. Licensees must also recommend, prior to the closing of a real estate transaction, that the consumer have an attorney examine the title (Rule E-14). Buyers and sellers are not required to use an attorney, but brokers must make it clear that they are not experts in certain areas, so the buyer or the seller may wish to consult with a lawyer.

In the landmark case *Colorado Bar Association v. The Title Guaranty Company*, the Colorado Supreme Court found that brokers using a title company’s closing department may have the closing company prepare settlement sheets and other non-legal documents, but the closing company is not authorized to complete legal forms without the use of an attorney or broker. Brokers appoint title companies as their scrivener, using the approved Closing Instructions form, to complete legal forms such as deeds. The listing broker is obligated to pay for all legal documents created by the closing company.

In 1971, the Colorado Real Estate Commission developed and approved a wide variety of forms to assist brokers in complying with the *Conway-Bogue* decision. Commission Rule F keeps brokers in compliance with the *Conway-Bogue* decision by describing the forms and requiring that brokers use approved forms when available or a standard form if one is not.

Brokers may not alter a form’s standard language as it has been approved. A broker may add information identifying the brokerage firm when the forms are printed. If any approved provision of a form is deleted or struck out as directed by a party to the contract, it must be crossed out so the deleted words remain legible. For example:

- **Acceptable:** This strikethrough is acceptable.
- **Not acceptable:** This strikethrough is not acceptable.

All language the broker adds in blank spaces must be in italics or in different typeface or font than the preprinted language so the reader can tell the difference between the added language and the approved language.

Brokers are allowed to omit a group of specific provisions (e.g., financing terms) from the approved form when it is printed if those provisions do not apply to a particular transaction. However, it is important with all omissions that the reader of the document be made aware of the omitted item. The Commission requires that the caption or heading be retained and the word “OMITTED” be added after the caption.

- **For example, to omit the Assumption subsection:**
  
  4.6. Assumption. OMITTED
  
  The full paragraph for assuming a loan would then be deleted from the contract

All approved forms must have a statement of Commission approval on the first page.
Example:

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission (insert form number).

“Differentiated additions” refers to any of the language brokers used in the blanks.

A principal to a contract can add, delete, or draft language to be added to the contract. A broker who is not a party to the contract (typically the Contract to Buy and Sell) may not add, delete, or draft personal provisions, personal disclaimers, or *exculpatory language* to the contract or in an addendum. Exculpatory language or clauses are those that a broker might use to try and limit liability. The broker could use this type of language in an employment agreement, listing agreement, or buyer representation agreement in which the broker is a principal party to the contract.

Commission Rule F-3 in regard to addenda states that if a broker uses a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form, and the addendum does not result from the negotiations of the parties, the addendum must be prepared by an attorney representing the broker or brokerage firm, a principal to the transaction, or an attorney representing a principal party. A broker may not prepare these addenda because there were no negotiations between the parties. Brokers are allowed to translate what the parties are asking for into language that can be inserted into a contract such as “seller excludes the hot tub,” but may not draft new language the parties did not negotiate. An example would be adding a non-negotiated mold addendum to the Contract to Buy and Sell Real Estate. Any addenda used by a broker to explain or add to the terms of the approved form must be carefully prepared by one of the approved parties and must contain a disclaimer that the language of the addendum is not approved by the Colorado Real Estate Commission.

There are several excellent software programs available to complete and generate the approved forms. It is the broker’s job to verify that these software programs reproduce the Commission language exactly as approved. The software program must also have a security feature to prevent the user from altering the approved language or deleting part of the form.

The Commission has not approved forms for every possible type of transaction. For example, there are no approved lease forms or forms for the various types of conveyance deeds. Brokers may use standard forms available from office supply stores and legal printing companies for these documents. Brokers must use an approved form or standard form if one is available. Contract forms may not be filled out prior to negotiation with the party. Brokers must use the proper and most current form. To ensure this, it is the broker’s obligation to check the Commission’s Web site for the most recent forms, rules, and regulations.

Rule F does not apply to contracts for new homes with warranties or those prepared by a subdivision developer. These two groups typically use contracts created
by an attorney representing the seller or the developer. The Commission has not approved a form for an installment land contract, so it is recommended that brokers have it drafted by an attorney.

Attorneys do not fall under these rules and may prepare contracts for any party in the transaction or, if requested, for the brokerage firm in a specific transaction. But brokerage firms are not allowed to have their attorney prepare contracts for general use in the firm. For example, an employing broker could not have an attorney draft a contract to buy and sell for all of the firms’ brokers to use. Brokers must use the Commission-approved form. A party to the transaction may also prepare a contract or addendum, so the seller, the buyer, or an attorney for either party could draft a contract to buy and sell for a specific property.
UNIT 1 LECTURE OUTLINE

I. REAL ESTATE BROKERAGE IN COLORADO

A. Levels of broker authority

The Real Estate Commission recognizes three levels of responsibility for brokers that are based on experience and additional education.

1. An associate broker
   a) is a licensee with ______________________ of active experience, or a licensee with two or more years of experience who has chosen not to upgrade a license to an independent or employing broker,
   b) must work under the supervision of another broker qualified as an employing broker, and
   c) qualifies as an independent broker after two years of active experience.

   Note: Most real estate licensees work as associate brokers under an employing broker, no matter what experience or level of authority they have or could have.

2. An independent broker
   a) has a minimum of two years of active experience,
   b) may work independently and be licensed as an individual or a business entity,
   c) __________________________ other licensees, and
   d) is not required to undergo additional education to upgrade to this license type.

3. An employing broker
   a) has a minimum of two years of active experience,
   b) __________________________ other licensees, and
   c) must complete an additional 24-hour course in brokerage administration.

B. Colorado brokerage relationships

1. Agent
   a) In Colorado, an agent’s duties are the same fiduciary duties as those under the common law of agency (OLD CAR).
   b) Any brokerage firm and broker acting as an agent ________________ in Colorado. The two most common agreements are the Exclusive Right-to-Sell Listing Contract and Exclusive Right-to-Buy Listing Contract.
   c) A broker acting as an agent may only be a ______________________ in a single transaction, representing only one side.
d) Under Colorado law, licensees may not act as a dual agent (they may not represent both parties as an ______________ in a single transaction).

e) An agent is an ______________, promoting the interests of one party over the other. An agent ______________ working for only one side of the transaction.

2. Transaction-broker

a) A transaction-broker is not ______________ for either party. A transaction-broker acts like a referee.

b) The transaction-broker manages and is obligated to follow the directives of the party or parties the transaction-broker represents.

c) A broker may represent one party as a transaction-broker (e.g., a seller’s transaction-broker with an Exclusive Right-to-Sell contract), or a transaction-broker may assist ______________ ______________ without a conflict of interest (double-end the transaction).

d) A broker representing a consumer as a transaction-broker does not have all the fiduciary obligations that an agent has. Remember, this broker is simply ______________ (facilitator), keeping both parties informed.

e) Transaction-broker is the ______________ relationship in Colorado; it does not require a written agreement, only a written disclosure of responsibilities.

f) However, without a written agreement, the consumer is under no obligation to pay the broker.

g) Transaction-brokers are required to confirm the representation responsibilities the broker owes to the consumer.

(1) This ______________ is done either through an exclusive agreement or a disclosure form.

h) A broker cannot be a transaction-broker if the broker is unable to be neutral (CP-31 CREM). For example, a broker typically cannot be a transaction-broker when acting as

(1) the principal;

(2) the broker for a spouse or family member;

(3) the broker for a close personal friend, business associate; or

(4) the broker for repeat clients or multiple properties for the same client.

3. Customer

a) Colorado law also defines a customer in a transaction as “a party to the real estate transaction with whom the broker has ______________, or no representation, because such party has ______________.”
b) Typically, a broker would ask a potential buyer to be a customer when the broker's agreement with the seller requires the broker to remain an agent (e.g. a listing broker representing her child as a listing agent).

(1) The broker cannot be an agent for the buyer in this transaction. (Remember, agents in Colorado are single agents—never dual agents.)

(2) This would allow the broker to double-end the transaction and work with both the seller (principal) and buyer (customer) and get paid a full commission.

(3) The broker would work with both parties but would represent only the seller; the buyer would be an unrepresented customer.

c) The broker must disclose in ________________ that the broker will continue to be the agent for the seller and have no brokerage relationship, or representation, with this "buyer customer."

d) The reverse situation could occur if the broker was an agent for the buyer and the buyer wanted to buy from an unrepresented seller (FSBO—for sale by owner). The broker would need to use the Brokerage Disclosure to Seller (For Sale By Owner) form.

e) The single agent broker may do anything for a customer that does not compromise the agency agreement with the principal.

f) The duties licensees owe to a customer are (DAH)

(1) disclosure of material facts,

(2) accounting for money and property entrusted to the broker, and

(3) honesty.

C. Disclosing an existing relationship with a seller to a buyer

1. Receiving a fee from someone does not establish agency or any other relationship. The written agreement, disclosure, or, at times, your actions determine the brokerage relationship.

2. Definitions of Working Relationships disclosure form

a) Purpose: This disclosure form is a primary tool used to educate the public about the brokerage relationships available under Colorado law.

b) The form is not required for most transactions but provides a good introduction to the different relationships that are available.

c) A broker who has a written, signed exclusive representation agreement to act as an agent or transaction-broker does not need this form unless the brokerage firm requires it to be part of the final transaction file.

d) Colorado law recognizes two brokerage relationships for a broker to ________________ a member of the public: __________________ and ___________________________.

e) The employing broker’s _______________ details what the brokerage firm offers: either relationship (agency and transaction brokerage) or only certain choices.

(1) For example, the brokerage firm could choose to only offer transaction-broker relationships so no brokers in that firm could be an agent for a member of the public.

■ Dual agency and subagency are not recognized real estate brokerage relationships in Colorado

3. Brokerage Disclosure to Buyer form

a) Purpose: This form, like the Definitions of Working Relationships form, provides the Real Estate Commission definitions for the relationships brokers can have with sellers or buyers.

b) This form is used to define the transaction-brokerage relationship when the buyer wants the default position with no signed agreement, no obligation to pay a commission, and no agency relationship.

c) It is also used to make a buyer an unrepresented customer.

(1) Buyers should be informed that they can accept the disclosed relationship or seek an exclusive relationship with the licensee or another broker.

d) This form is also used to make the buyer a _______________ when the broker is an agent to the seller and wants to double-end the transaction.

e) This disclosure is _______________ if the broker has an existing representation relationship with a seller. The broker must disclose that relationship (agency or transaction-broker) to any unrepresented buyer who inquires about the seller’s property.

f) Remember that under a disclosed relationship (with no signed exclusive representation agreement), a buyer could leave at any time and seek the services of another broker with no obligation to this broker.

g) The broker checks the appropriate box on the form to disclose the type of brokerage firm (multiple-person or one-person firm) that the broker works for.

h) If the broker has a representation relationship with the seller, the terms of the listing with the seller will dictate options the broker may offer the buyer (transaction brokerage or the buyer as a customer).

i) The form makes it clear that the relationship the broker is disclosing is only for a particular property showing or for a property type.

j) Customer: This box is checked if the buyer will always be a customer.

(1) The broker plans to show an agency listing(s) to this buyer.

(2) The seller has requested in the listing that the broker remain the seller’s agent for showings.

(3) The broker will have no agreement to receive a fee from this buyer.

(4) The broker may assist the customer in any way that does not _______________ the agency relationship with the seller.
k) Customer for Broker’s Listings – Transaction Brokerage for Other Properties: This second box is checked when the buyer may be a customer or the broker may represent the buyer as a transaction-broker, depending on the property being shown to the buyer.

(1) The broker will be a seller’s agent for that broker’s listings and a transaction-broker for all other properties the broker shows the buyer.

l) Transaction Brokerage Only: The third check box is used when the following apply:

(1) The broker will be a transaction-broker for all showings of any property whether or not it is one of the broker’s listings.

(2) It would create the default representation role without a signed exclusive agreement.

(3) The buyer is informed that the cost and quality of settlement services can vary between different providers, attorneys, lenders, inspectors, and title companies.

D. Double-ending transactions in Colorado

Figure 1.7

Double-Ending a Transaction

1. The agency listing agreements (these will be reviewed later) provide the broker and the principal two options they may negotiate if the broker gets the opportunity to double-end the transaction (when the broker works with both the buyer and seller in the same transaction).

a) The broker remains an agent for either the buyer or seller. In this case, the broker must treat the other party as a customer to work both sides of the transaction.

b) The broker can, with permission from a principal or principals (if working as an agent for both the seller and buyer), automatically change to a transaction-broker to work both sides of the transaction. This permission is given in the agency agreement.

2. The law requires that if a broker has a brokerage relationship with both sides, the broker must treat both parties equally and cannot be an agent to one party and a transaction-broker to the other.

a) The broker must change status to a transaction-broker when working with both sides.

3. The other option is to resign one relationship, treat that party as a customer, and keep the other agency relationship.
E. Disclosure of brokerage relationships and Rule E-35 requirements

1. The law, implemented by ____________________________, requires that ____________________________ the types of relationships they may provide to the public:
   a) Representation (agent or transaction-broker)
   b) Nonrepresentation (customer)
2. Brokers must also disclose any existing representation relationship they have to an unrepresented consumer.
3. Disclosure is required before eliciting any ____________________________.
4. Disclosure ____________________________ be in writing at the first physical contact.
5. Disclosure ____________________________ start orally in a phone conversation.
6. Brokers must use one of two approved forms to meet the requirement of giving written disclosure (Brokerage Disclosure to Buyer or Brokerage Disclosure to Seller [FSBO]).
7. The broker is not required to have the written disclosure form ____________________________ with Rule E-35. If the member of the public declines to sign, the broker should note the person’s name and date on the file copy and give a second copy with the broker’s signature to the member of the public.
8. Rule E-35 requires brokers to disclose to a buyer the broker’s representation relationship with a seller. The license law also requires disclosing to an unrepresented seller that the broker has a representation relationship with a buyer.
9. Don’t confuse ____________________________; Rule E-35 states that the broker must give a written disclosure, not that the member of the public has to ____________________________.

F. Designated brokerage

1. Under Colorado designated brokerage law, the brokerage firm acting through the firm’s brokers agrees to provide a set of services to a seller, buyer, landlord, or tenant.
2. The brokerage firm ____________________________ and elects to provide services by designating a broker.
3. The ____________________________ of the firm designates an individual broker (or a team) within the firm to enter into the brokerage relationship and represent a particular seller or buyer (or landlord or tenant).
4. In designated brokerage, the ____________________________ stops with the ____________________________ and does not extend to the rest of the brokerage firm or the employing broker.
5. The agency or transaction-broker relationship and its duties exist only between the seller or buyer and the designated broker.
6. The designation ____________________________; typically this is done in the brokerage firm’s written office policy.
7. If necessary, the brokerage firm can replace a designated broker or add another designated broker.
8. The brokerage firm and the designated broker have no duty to investigate the property or another party for the benefit of any seller or buyer.

9. Colorado-designated broker provisions allow a designated broker to seek the advice of an employing broker and share information about a client with the employing broker without compromising the duty of confidentiality and without creating any brokerage relationship between the employing broker and the party the designated broker represents.

10. Designated brokers must not provide information (actual knowledge) within the firm that violates confidentiality rules.

G. In-company transactions under designated brokerage

1. An in-company transaction is when two brokers from the same firm represent both parties to a single transaction.
   a) For example: One broker works as the listing broker and another broker from the same firm works as the buyer’s broker for the listed property. Each broker has a separate brokerage relationship with the party the broker represents.
   b) Because there is no transfer of confidential information, no brokerage relationship or conflict arises.

2. In-company: multiple brokers—no conflict
   a) A broker designated to work with a buyer could show a property listed by a broker from the same firm without a conflict of interest.

3. A conflict arises if a broker is designated to provide services to both buyer and seller in the same transaction (double-ending the transaction) and has an agency relationship with at least one party.
   a) As long as the single designated broker double-ending the transaction is a transaction-broker for both parties, there is no conflict of interest.
   b) Remember that a broker may not be an agent for one party and a transaction-broker for the other.
   c) The broker can change from agency status to transaction-broker status and resolve such a conflict in order to double-end the transaction. The principal(s) must give written permission for the change of status.

4. In-company: one broker (agent for at least one)—conflict
   a) A single broker designated to work with both buyer and seller has a conflict of interest unless both relationships are transaction-broker.

5. Example 1: A broker has an agency listing and another broker in the firm shows the property to a buyer and writes an offer. There is no conflict of interest because Colorado law provides that the other broker does not automatically have imputed knowledge of the seller’s confidential information.
6. Example 2: The broker has an agency listing, and a buyer the broker represents wants to see the listing.
   a) Both parties may agree to allow the broker to double-end the transaction and work with both parties as a transaction-broker. The broker may then earn the commissions for both the listing and selling sides of the transaction.
   b) The broker could also resign the agency with one party by having an employing broker designate a different broker from the firm to work with that party. In this case, the broker would not double-end the transaction, and the other broker would earn part of the commission (but the original broker could ask for and receive a referral fee).
   c) The approved listing agreements have a provision for the seller and broker to agree in advance how this situation will be handled.

7. Remember, the duties brokers owe depends on the type of relationship:
   a) Agent—OLD CAR
   b) Transaction-broker—DCAR
   c) Brokers owe customers—DAH (honesty)

II. BROKER’S LIMITED RIGHT-TO-PRACTICE LAW

A. Conway-Bogue Supreme Court decision

1. Colorado brokers have the right to fill in real estate contracts and explain their meaning to clients. The Colorado Supreme Court affirmed this right in the landmark decision of Conway-Bogue Realty Investment Company v. Denver Bar Association.

2. The court found that brokers may perform this limited practice of law under certain conditions, including the following:
   a) The brokerage firm must be connected to the transaction through a brokerage relationship.
      (1) Brokers may not prepare documents for parties with whom they do not have a brokerage relationship. They must be acting as an agent or transaction-broker. Agents may assist a customer with the forms in their role as an agent for a seller or buyer.
   b) There must be no fee for preparing the documents other than the normal real estate commission.
      (1) Part of the fee structure of a commission is the preparation of appropriate documents for that transaction; charging additional fees to prepare legal documents such as deeds and bills of sale is not acceptable.
   c) The documents must be prepared on commonly used printed standard or approved forms.
      (1) Real estate brokers must recommend the use of attorneys to their clients and customers in real estate transactions. Buyers and sellers are not required to use an attorney, but brokers must make it clear that they are not experts in certain areas, so the buyer or seller may wish to consult with a lawyer.
      (2) Title insurance companies often assist brokers, sellers, and buyers in preparing closings. They may prepare settlement sheets and other non-legal documents but are not
authorized to complete legal forms, deeds, bills of sale, or deeds of trust without an attorney or broker.

(3) Brokers appoint title companies as their _________________ to complete these legal documents. It is the responsibility of the _________________ _________________. Sellers and buyers may not be charged for these documents. Usually it is the seller’s listing broker who orders and pays for the documents.

(4) A real estate licensee must also recommend, prior to the closing of a real estate transaction, that an attorney examine the title (Rule E-14, CREM).

B. Standard and approved forms—Rule F

1. In 1971, the Colorado Real Estate Commission developed and approved a wide variety of forms to _________________ in complying with the Conway-Bogue decision.

2. Rule F keeps brokers in ________________ with the Conway-Bogue decision by describing the forms and requiring that brokers use the approved forms when applicable.

3. As stated in the CREM, Rule F-1 determines the “permitted and prohibited form modifications.”

   a) Brokers may not alter the standard language as approved.

      (1) Brokers may add information identifying the brokerage firm when the forms are printed.

      (2) If any approved provision of a form is deleted or struck out as directed by a party to the contract, it must be crossed out so the deleted words remain legible. For example:

         (a) Acceptable: This strikethrough is acceptable.

         (b) Not acceptable: This strikethrough is not acceptable.

   (3) Key: The reader should be able to determine what was removed.

   (4) Language added in blank spaces must be in italics or in ____________________________ or font than the preprinted language so the reader can tell the difference between the language added to the blanks and the approved language.

4. By rule, certain specific provisions may be omitted from the approved form when it is printed (e.g., financing terms) if the provisions do not apply to a particular transaction. In this case, the caption or heading must be retained and the word “OMITTED” must be added next to it.

   a) For example, to omit the Assumption subsection: 4.6. Assumption. OMITTED

5. Approved forms must have a statement of Commission approval on the first page: “The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission (insert form number).”

6. The “differentiated additions” refers to the words filled in the blanks in a different type style.

7. Rule F-2 requires that the Additional Provisions section of any form must include only transaction-specific agreements _____________________________ between the parties.

   a) The section must be labeled: “The following additional provisions have not been approved by the Colorado Real Estate Commission.”
8. A broker who is not a party to the contract ________________ add personal provisions, personal disclaimers, or exculpatory language in an addendum.

9. Exculpatory clauses are used to try to limit the broker’s liability in a transaction. These would, however, be acceptable in an employment (representation) agreement where the broker is a party.

10. Rule F-3 Addenda

a) If a broker uses a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form, and the addendum ________________ of the parties, then such an addendum must be prepared by one of the following:

   (1) An attorney representing the broker or brokerage firm
   (2) A principal to the transaction
   (3) An attorney representing a principal party

b) Such addenda may not be prepared by the ____________________ for the parties.

c) The broker must retain the addendum for four years from the last date the addendum was used.

d) The broker must be able to provide the Commission with the name of the attorney or law firm that prepared the addendum upon request.

11. Computer-generated contract forms may be used:

a) Several excellent software programs are available to complete and generate the approved forms.

b) These software programs must reproduce the Commission language ________________ as approved.

c) The software program must have a security feature to prevent the user from altering the approved language or deleting part of the form.

12. The Commission does not have approved forms for every possible type of transaction.

a) For example, there are no approved lease forms or forms for the various types of conveyance deeds.

b) Brokers may use standard forms available from office supply stores and legal printing companies.

13. Contract forms may not be filled out prior to ________________ with the party.

14. Brokers must use the proper form.

15. Rule F does not apply to the following:

a) Contracts for ____________________________

b) Contracts prepared by a subdivision developer
16. An installment land contract form has not been approved by the Commission, so it is recommended that brokers have it drafted by an attorney.

17. Attorneys do not fall under these rules and may prepare contracts for any party in the transaction or for the brokerage firm in a specific transaction.

   a) A brokerage firm is not allowed to have its attorney prepare contracts for ____________ in the firm. All real estate licensees must use Commission-approved forms.

18. A party to the transaction may also prepare a contract or an addendum.

   ▪ **Note:** Rule F is often tested, so reviewing all the sections of the rule in the CREM is recommended prior to taking the exam.

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**UNIT 1 KEY CONCEPTS**

- Levels of broker authority
  - Associate broker
  - Independent broker
  - Employing broker

- Brokerage relationships
  - Colorado limited agency
  - Colorado transaction-broker
  - Coach/referee comparison

- Definitions of Working Relationships form

- Brokerage Disclosure to Buyer form

- Brokerage Disclosure to Seller form

- Designated brokerage
  - Employing broker designates in writing
    - May be by written policy
  - Relationship is between designated broker and the public
  - No duty to investigate
  - No brokerage relationship
  - In-company transactions
    - In-company: multiple brokers
    - In-company: one broker

- Broker's limited right-to-practice law
  - *Conway-Bogue* Supreme Court decision
  - Title guaranty decision

- Rule F: Standard or approved forms
  - Deletions/omissions
  - Use of additional provisions and addenda
UNIT 1 REVIEW EXAM

This exam is not graded. Please complete it before studying Unit 2.

1. Signatures are acknowledged to show that the document
   a. was accepted and recorded.
   b. is now valid.
   c. was signed under duress.
   d. is signed properly.

2. The Supreme Court decision in the Conway-Bogue case relating to the practice of law by real estate brokers stated that
   a. only attorneys may complete standard forms.
   b. Colorado licensees may complete standard or approved forms in a real estate transaction.
   c. Colorado licensees may draft any forms needed for a real estate transaction.
   d. attorneys are not trained to review real estate transactions.

3. The purpose of Commission Rule F relating to approved forms is to
   a. help ensure the broker's compliance with the Conway-Bogue decision of the Colorado Supreme Court.
   b. assist attorneys in handling real estate transactions.
   c. require that all real estate transactions be completed using the same form.
   d. prohibit the use of addenda to add material to standard forms.

4. A transaction-broker is MOST like a(n)
   a. advocate.
   b. fiduciary.
   c. professional coordinator.
   d. coach.

5. The listing broker has requested that the title company complete a deed and bill of sale for closing. The responsibility to pay for these documents belongs to the
   a. buyer's broker.
   b. no one; the title company provides them as part of the closing.
   c. lender.
   d. seller's listing broker.

6. A broker is representing both parties in the transaction. Her relationship with the parties is MOST likely
   a. a transaction-broker for both parties.
   b. an agent for the seller and a subagent for the buyer.
   c. treating both as disclosed customers.
   d. a dual agent.

7. All of the following are essential elements of every contract EXCEPT
   a. mutual agreement.
   b. competent grantor.
   c. lawful objective.
   d. consideration.

8. Which of the following would constitute steering?
   a. Showing only areas the buyer has requested
   b. Showing areas the buyer can afford
   c. Showing a buyer with children areas that only have children
   d. Showing a senior housing for those over 55 years of age
9. Associate brokers are required to
   a. work for an employing broker for two years before becoming eligible to be an independent broker.
   b. work for an employing broker for two years, then change their license to independent or employing broker.
   c. have an active or inactive license for two years and then become an independent broker.
   d. work under an employing broker or independent broker who has had a license for at least four years.

10. A broker is asked to complete just the Contract to Buy and Sell for his neighbors, who tell him that they will complete all the other tasks for closing. The broker should
   a. first establish a set fee for the document preparation.
   b. tell the buyer and the seller they must first engage him as a scrivener.
   c. draft the contract and ask for a fee equal to a percentage of the sales price.
   d. complete a representation agreement or disclosure before completing the paperwork.

11. When a Colorado licensee completes the blanks in a Commission-approved form, this
   a. is the practice of law and must be done by attorneys.
   b. is not the practice of law.
   c. must be done entirely with preapproved standard clauses.
   d. is the practice of law but is specifically permitted by Colorado law.

12. Independent brokers are authorized to do which of the following under Colorado law?
   a. May only work independently, not in the employ of another broker
   b. May work in the employ of another broker, work independently, or hire and supervise no more than five other licensees
   c. May work independently without the supervision of another broker
   d. May act as a broker for a corporate brokerage as long as there is a qualified employing broker available for supervision and training of associated licensees

13. A designated broker representing a seller
   a. has vicarious liability for acts of the principal.
   b. has a duty to investigate the condition of the property.
   c. is the only broker in the company with a brokerage relationship with the seller.
   d. has a brokerage relationship with the principal and the employing broker.

14. In an in-company transaction where the employing broker has designated one broker to work with the buyer and another to work with the seller, the brokerage relationship will be between
   a. each designated broker and the party they represent, not the employing broker.
   b. both brokers because they must be transaction-brokers.
   c. the brokers and the employing broker who must supervise them.
   d. the designated broker and the employing broker only if there is a need for supervision.

15. A buyer in a transaction may be a customer if the buyer
   a. actually buys the home.
   b. is not represented by any broker.
   c. has no written agreement.
   d. wishes to see a property listed with the firm.

16. An employing broker supervising broker associates must
   a. provide classes to promote competency.
   b. require that they join a board of REALTORS®.
   c. provide mentors to attend their closings.
   d. have them agree to and sign the office policy.

17. Rule F of the Real Estate Commission establishes standard or approved forms to help a broker comply with the
   a. statute of frauds.
   b. Conway-Bogue decision.
   c. statute of limitations.
   d. REALTOR® Code of Ethics.
18. The employing broker for a brokerage firm designates an associate broker to perform services for a buyer. The brokerage relationship will be with
   a. the employing broker.
   b. the employing and designated broker.
   c. only the designated broker.
   d. all the brokers in the office.

19. A broker using a form generated by a computer program must
   a. use a program approved by the Real Estate Commission.
   b. scan a form into a word processing program.
   c. use a program with security that will not allow the form to be changed inadvertently or intentionally.
   d. retrieve the form from the Commission Web site.

20. Colorado does not recognize dual agency, but one broker may work with both the seller and the buyer in a transaction if the broker is a(n)
   a. agent.
   b. customer.
   c. transaction-broker.
   d. agent, dual agent, or facilitator.
The exam answers and rationales are provided as a study aid to use after responding to the questions. Please complete the exam before referring to the answers.

1. **d** Acknowledging a signature before a notary public shows that the signature is valid and was provided willingly.
2. **b** This court decision is the basis for the way real estate business is done in Colorado.
3. **a** The Commission created this rule and the mandatory, approved forms to assist licensees.
4. **c** A transaction-broker coordinates from a neutral position and is not an advocate or a fiduciary to either party.
5. **d** The broker who requested the documents must pay for them and may not charge the seller or the buyer.
6. **a** Colorado law permits a broker to have a brokerage relationship with both parties as a transaction-broker. Dual agency is not permitted and a broker may not be agent for one party and transaction-broker for another in the same transaction.
7. **b** A grantor is a party to a deed and is not a party to “every” contract, such as a lease.
8. **c** Restricting a buyer's selection of properties based on the fact that the buyer has children would violate federal fair housing law because familial status is a protected class.
9. **a** Once licensed, a new associate broker must work under the supervision of an employing broker for at least two years before becoming eligible for independent broker status.
10. **d** Per Conway-Bogue, the brokerage firm must be connected with the transaction through a brokerage relationship. This means brokers may not prepare documents for parties with whom they do not have a brokerage relationship. They must be acting as an agent or transaction-broker. Agents may assist a customer with the forms in their role as an agent for a seller or a buyer.
11. **d** The landmark Conway-Bogue decision of the Colorado Supreme Court stated that filling out standard or approved forms is the authorized practice of law by real estate brokers.
12. **c** A qualified independent broker may work independently but is not limited to that status.
13. **c** As a designated agent, the broker has the duty of full disclosure to the principal. The brokerage relationship is only between the designated broker and the seller. The employing broker has no brokerage relationship.
14. **a** In this in-company transaction with two brokers, the employing broker has no conflict of interest because each broker is the sole holder of the confidential information within the relationship. There is no transfer of confidential information to the employing broker or other brokers in the firm.
15. **b** The buyer may be a customer if the buyer is not represented by any broker. A broker working with this buyer must disclose in writing the fact that the buyer has not hired a broker and is a customer.
16. **d** Employing brokers must have all associates, regardless of experience, agree to and sign the office policy.
17. **b** The decision authorizes brokers to complete standard or approved forms in real estate transactions.
18. **c** Colorado law specifies that the employing broker must appoint a designated broker to perform services on behalf of the firm and hold the brokerage relationship with the seller, the buyer, the landlord, or the tenant.
19. **c** Computer-generated form programs must contain security to prevent the user from changing the standard wording of the form.
20. **c** A transaction-broker may work with both parties in a single transaction without a conflict of interest.
The Seller and Buyer Relationship

Focus on Understanding
- Duties and responsibilities of agency or transaction-brokerage
- Forms related to representation

Study Plan
**Before Class:**
- Complete the Unit 1 Review Exam and check your answers
- Read this unit
- Review the chapters in the CREM listed in the Course Reading Guide
- Use the Colorado Contracts and Forms Supplement to review the forms discussed in this unit because they will be covered in class

**After Class:**
- Review Unit 2 and the contract forms
- Complete the Unit 2 Review Exam and then check your answers. The exam is not graded, but it will be discussed at the beginning of Unit 3.
- Prepare for Unit 3
OVERVIEW OF REPRESENTATION AGREEMENTS

When a brokerage firm and its licensees are hired to represent a consumer, the firm uses personal representation or employment contracts. These agreements are typically called listings, with the most common type being an exclusive right-to-sell or exclusive right-to-lease agreement. For buyer or tenant representation, the firm typically uses an exclusive right-to-buy or a tenant representation agreement. Most states have a requirement that firms and real estate professionals use standard or approved forms and allow licensees to fill in the forms but not create or draft them. Colorado brokers may use four approved representation forms and two approved addendums (exclusive agency or open listing).

These representation agreements establish the brokerage relationship (agency or transaction brokerage) and spell out the obligations and duties of each of the parties. Because these are personal service or employment contracts, they can be terminated by either side if one party fails to perform. It is important to note that agency agreements belong to the firm, not the individual broker who found the employer (e.g., seller or buyer). This means that the employing broker can replace the original broker who brought in the listing with another of the firm’s associates. It also means that the death of an individual broker will not terminate the agreement. “Death” of the firm or, in some cases, employing broker or seller/buyer will terminate the agreement.

Required Elements of Representation Contracts

Representation contracts need to have the essential elements of competent parties, meeting of the minds, acceptance, a lawful objective, and consideration to be valid and enforceable. Because these documents are not being used to transfer real property, there is no statute of frauds requirement for them to be in writing like there is with a long-term lease, purchase contract, or any other contract used to transfer real property. In most states, including Colorado, if oral representation agreements are used, they are not enforceable in court. Therefore, most brokerage firms will require licensees to use written listing contracts (express written agreements).

Due to the expense of marketing property, a broker or firm would rarely take an oral listing. However, real estate professionals often work with buyers with no written agreement. This means that if the buyer buys a property from another firm, the first broker has no recourse to seek payment. A written representation agreement is the best protection for real estate professionals anytime they are working with a consumer.

Typically, the representation contract starts with a heading section that sets the date of the agreement. This is the reference date, for example June 3, 20--. No matter what date is on the signature line when the contract is signed by the parties, the first date in the document is how the contract is referred to going forward. In essence, it creates this form’s name to separate it from other forms. If the contract needed to be modified, the amendment would state “re: listing contract dated June 3, 20--” so all parties could be clear on what document and form are being modified. After the date section, the parties to the agreement are named and assumed to be competent. Remember, it is the broker’s job to make sure only
competent (18, sane, and sober) parties sign the agreement. It is important that all owners with an ownership interest be named and sign the listing agreement. Without this, the firm would only be able to sell the interest of the person listed, not the full property. This is also true for buyer representation agreements; all buyers who must make the buying decision should be listed.

The name of the brokerage firm and the firm's representative who will be signing the representation agreement are listed (this is usually the broker who will be selling the property). Often the seller and the buyer are asked to verify that this listing or buyer representation is exclusive to the firm and the seller or the buyer has no other concurrent listing. One of the main functions of the agreement is to establish the form of brokerage relationship the firm will offer to the seller or the buyer. In Colorado, the firm can work with the seller or the buyer by being an agent, transaction-broker, or an agent with the ability to become a transaction-broker if double-ending the transaction. The role the firm and its associates may have is first established by the firm's written office policy and then within the agreement. For example, if the firm offers only single agency, the brokerage and broker who listed a property could not work as a transaction-broker representing a buyer in the sale of the listing.

The price of the listing or the amount the buyer is willing to pay is listed along with the duration or term of the agreement. All representation agreements must have a definite termination date; in most states, including Colorado, it is not acceptable to use an automatic extension. If the broker has not been successful by the end of the term of the agreement, the seller or the buyer must be asked to extend the term of the agreement in writing.

Compensation is established through negotiation with the seller or the buyer and stated in the listing agreement. In the seller listing, the seller may agree to allow the firm to offer cooperative compensation to other firms through a multiple listing service (MLS) system. This means that the listing broker may give up a significant portion of the commission to pay to another broker who brings a buyer for the property. For example, if the listing fee is 6 percent and the brokerage offers a 3 percent co-op fee, then the commission will be split in half if a cooperating broker brings the buyer. It is the cooperation fee that is typically used to pay the buyer's broker fee. Depending on the agreement, the buyer's broker will often seek payment from the seller and the listing broker before asking the buyer to pay.

The agreement lists the duties required from the firm to earn the commission, as well as the obligations of the client. One duty is to maintain confidentiality. Associates must take care not to disclose any confidential information about the party they represent.

Real estate professionals are allowed a certain amount of “puffing” but should be very careful that puffing does not become fraud or misrepresentation. Stating that “this house has the best views in town and I think you are going to love it” is clearly an example of puffing that most parties would recognize is not fact but opinion. But stating that “all the students in this neighborhood are in the top percentile and we have the best schools” is clearly a researchable fact and should be stated only if the broker has proof it is true.
Brokers must be careful in their dealings not to misrepresent or omit facts that are pertinent to the property or parties. In particular, the brokerage firm and its associates must disclose all known material facts about the property to all parties. Licensees are held to a higher standard and expected to be knowledgeable about basic real estate facts. A broker would be expected to notice and disclose that there might be structural damage or other issues that a physical inspection of the property would uncover. Typically, the firm and its associates are not required to have the property professionally inspected and may depend on the seller's disclosure to uncover latent (hidden) material defects. For example, a broker completing a visual inspection of the property notes that the deck rails are loose and the foundation has a crack. The broker also asks the seller whether there are any issues with the electrical, water, or sewer systems. The seller states that the systems are fine and, in the property disclosure, lists some other minor items. After closing, the buyer rescinds the contract after discovering that the home's sewer system has not been functioning for months, a fact the seller clearly knew. In this case, the broker would not be liable because the failed system was a latent defect and the seller did not disclose it in the property disclosure or when asked.

Most agreements also include a broker protection clause that begins and continues for a set period after expiration of the listing. The clause states that upon expiration of the listing, if the seller sells the property to any interested buyer to whom the firm had shown the property and notified the seller of the showing, then the seller agrees to pay the firm a commission. This clause is typically eliminated if the seller lists the property with another firm. A similar protection agreement is used in the buyer representation contract.

Mediation of disputes is part of Colorado law and a section is used to describe the parties' rights under mediation. It also covers the rights of the parties if mediation does not solve the issue.

One of the last sections contains a statement defining the agreement as the total and final agreement between the parties, alerting the parties to verify that all oral agreements have been put in writing and are contained within the contract. Signature lines and dates complete the agreement.

Three main agreements are used in Colorado to create agency relationships. The Exclusive Right-to-Sell Listing Contract is used to list property for sale. The Exclusive Right-to-Buy Listing Contract is used to represent the buyer in a purchase (an Exclusive Right-to-Lease Listing Contract would be used with a tenant). A property management agreement is also used by the brokerage firm and the property owner to establish the agency relationship for the firm’s management of the owner's property. There is no approved property management agreement, however, because each property and the duties of the manager are considered unique. This course will review seller and buyer agreements.
SELLER REPRESENTATION AGREEMENTS

Brokerage firms can work with sellers using an exclusive right-to-sell agreement, which means that no matter who sells the property (e.g., broker, seller, or seller’s neighbor), the brokerage firm will be paid the agreed-upon commission. Exclusive agency agreements allow the broker to offer the property in cooperation with other brokerage firms and still get paid. However, if the seller personally sells the property, the firm would not be paid. In an open listing, the seller agrees to pay any firm that procures (i.e., finds and provides) a buyer and brings an acceptable offer. All the agreements are similar in that once the firm (through the broker) has obtained a ready, willing, and able buyer who has made an acceptable offer to the seller and the seller has accepted the offer, the firm has earned the commission. Typically the commission is paid when the sale closes. If the listing firm brought the seller a full-price offer that met all the criteria of the seller for terms, timing, and so on and the seller turns it down, the listing firm would still earn a commission. It is important to note that the firm could choose to sue the seller for this compensation. This rarely happens but is an important concept to understand when working with real estate employment agreements.

Within the listing agreement, the property to be sold is clearly defined. In a typical listing, the street address, informal description, and formal legal description are inserted. In a listing and purchase contract, the property is typically defined as the real property described in the legal description, along with all appurtenances, improvements, rights, and fixtures currently attached to the property. Any personal property to be conveyed is listed separately. Remember that two documents are required to transfer these two different types of property: a deed and bill of sale. The deed will use the legal description from the listing and purchase contract, unless an error is found in the title work. The bill of sale must list all personal property items being conveyed; therefore, it is important for the listing broker to make sure the seller understands the difference between a fixture and personal property. Fixtures must be excluded by contract if the seller is not going to convey them. Personal property must be included in the contracts (listing and purchase) to be sold even if the items are listed in the listing contract, MLS, and other marketing materials. Unless these items are also excluded or included in the purchase contract, they will or will not convey at closing. The purchase contract is the final statement for exclusions and inclusions in the sale and is used to create the closing documents.

Brokers, as part of their due diligence, should inspect the property and look for material defects needing disclosure, as well as any items that the seller might not understand (under law) run with and will convey with title to the property. Upon seeing an installed (attached) hot tub, the listing broker should ask the seller whether it is the seller’s intention to convey the fixture with the property or exclude the item. The listing agreement has a place to list all exclusions of fixtures or other real property items the seller is not going to convey. If the seller does not exclude the item and then removes it after closing, the seller will be in breach of contract. All personal property the seller is going to include should also be listed. For the most part, this list of exclusions and inclusions should be reflected in the purchase offer. The buyer, of course, has the right to negotiate to buy any items excluded and can refuse to take possession of those the seller wants to include.
For example, the seller excluded the hot tub but included the washer and dryer in the listing. The buyer owns a better washer and dryer so she did not list the appliances as part of the offer in the purchase contract; however, the buyer wants the hot tub to convey as part of the sale and has made that request in the offer. These items will now be negotiated between seller and buyer until a final agreement is reached.

Stigmatized property is not considered a material fact under Colorado law and so disclosure is not required. Stigmatized property refers to property that may have a bad reputation because of events that happened there, such as a suicide, murder, or crime. These may be psychological “defects,” but they are not physical defects in the property. A stigmatized property can only be disclosed with the seller’s permission; therefore, a broker is not held liable by the Real Estate Commission if it is not disclosed. A broker representing a seller or a buyer as an agent or transaction-broker must have written permission to disclose the seller’s or the buyer’s position regarding price, motivations, or financing options. The broker should not disclose any personal information about the party being represented, unless the information has a material impact on the transaction (e.g., if a buyer had poor credit).

The agreement typically defines the duties of the brokerage firm and its brokers, including marketing activities the firm agrees to provide. If the firm or broker fails to meet these obligations, the seller may terminate the listing. The seller can choose whether to allow the firm to notify others that current offers are being reviewed through a statement in the agreement. Also, the agreement should clearly establish whether the seller allows disclosure of any terms in regard to the seller’s confidential information (price, terms, motivation). If the seller says to the broker, “I am motivated and will look at all offers,” the broker should verify in writing that the firm may use this language in advertising. The broker would be in breach without the seller’s informed consent (typically written permission) if the broker advertised “seller willing to take all offers.”

The agreement defines the seller’s duties and obligations for showings and supplying needed documents and disclosures. Most often, the listing requires the seller to complete separate disclosure documents to cover the requirement to disclose all material facts about the property and lead-based paint if required. The seller, brokerage firm, and firm’s associates also agree not to discriminate in the sale of the property based on classes protected under federal, state, and local fair housing laws. The most stringent fair housing law prevails; therefore, if the city law is more protective, it is the law all parties must follow.

**BUYER REPRESENTATION AGREEMENTS**

These agreements have very similar elements to the listing agreement: naming of the parties, establishing what the contract is for and how payment will be earned, the duties of each party, and what type of brokerage relationship will exist between the buyer and the seller. While the property is clearly known and can be defined in the listing agreement, the buyer agreement uses a general description of what the buyer is seeking. For example: “Single family homes below $200,000 in Smithville.” As discussed earlier, the firm typically receives a success fee as part of the cooperative MLS agreement and is paid by the listing brokerage at closing. The
buyer can agree to pay or not pay the brokerage fee if this type of compensation is not available (i.e., the property is a for-sale-by-owner listing with no offered commission). Buyers are also given an option not to pay the firm. Just as with a listing, buyers can also have a nonexclusive or buyer agency listing that would allow them to find and buy a property on their own without owing the buyer’s agent a fee. Buyers also sign to agree to abide by fair housing law.

**FORMING BROKERAGE RELATIONSHIPS**

- Brokers normally get paid a commission for assisting a seller or a buyer in a real estate transaction.
- Brokers may be hired by a seller, a buyer, a landlord, or a tenant.
- Brokers may be hired as an agent or a transaction-broker by any of these parties.
- Brokers in a brokerage relationship owe their obligations to the party that employs them, not the party that pays them.

**FIGURE 2.1**

Brokerage Relationships

<table>
<thead>
<tr>
<th>BROKERAGE RELATIONSHIPS</th>
<th>The brokerage firm may offer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent to Principal</td>
<td>who is the:</td>
</tr>
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<td></td>
<td>Seller</td>
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<td></td>
<td>Buyer</td>
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<tr>
<td></td>
<td>Landlord</td>
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<td></td>
<td>Tenant</td>
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<tr>
<td>Transaction-Broker</td>
<td>to the:</td>
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<tr>
<td></td>
<td>Seller</td>
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<td></td>
<td>Buyer</td>
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<td></td>
<td>Landlord</td>
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<td></td>
<td>Tenant</td>
</tr>
<tr>
<td>Duties of – DCAR</td>
<td></td>
</tr>
<tr>
<td>Loyalty to the party that employs, not the party that pays.</td>
<td></td>
</tr>
<tr>
<td>Duties of – OLDCAR</td>
<td>May represent only one party at a time in the same transaction.</td>
</tr>
<tr>
<td>Duties of – DCAR</td>
<td>May represent both sides in the same transaction.</td>
</tr>
</tbody>
</table>

**Representation Relationships**

- Colorado brokers may represent an owner or a buyer as an agent or transaction-broker in the sale, purchase, or lease of property.
- Brokers must use the proper form to establish the relationship, as determined with the seller, the buyer, the landlord, or the tenant, and according to their employing broker’s written office policy.
Representation forms

- Seller representation can be created using the approved listing form called the Exclusive-Right-to-Sell Listing Contract. It has two approved addenda—one is used to create an exclusive agency listing and the other is for an open listing.
- Buyer representation can be created using an Exclusive Right-to-Buy Listing Contract.
  - These two forms will be covered in this unit. The forms are in the *Colorado Contracts and Forms Supplement*.

Leasing forms

- Exclusive Right-to-Lease Listing Contract
- Exclusive Tenant Listing Contract
  - These two forms can be found on the Commission Web site at [www.dora.colorado.gov/dre](http://www.dora.colorado.gov/dre).
UNIT 2 LECTURE OUTLINE

I. UNDERSTANDING THE EXCLUSIVE RIGHT-TO-SELL AND EXCLUSIVE RIGHT-TO-BUY LISTING CONTRACTS

A. Headings

1. Purpose: The disclosures at the top of the form should always be reviewed with the buyer or seller.
   a) While these are standard to brokers, they are new to most buyers and sellers.
      (1) Additionally, they keep the licensee in compliance with the law and provide full disclosure to the parties.
   b) The employment or representation relationship (agent or transaction-broker) will be decided between the designated broker and the seller or buyer.
      (1) All employment relationships are based on what employing brokers allow their designated brokers to supply to the public.
      (2) The process for designation and what types of representation the firm offers must be in writing and are typically found in the firm’s office policy.

2. The disclaimers keep brokers in compliance with Rule E-14 (CREM).

3. Commission approval and the form number appear on the first page of each approved form.
   a) The phrase “except differentiated additions” refers to items filled in on a form by the broker or other parties. Per Rule F, the additions must be in a different type style.
   b) The Binding Contract section informs the parties that they are entering into a contract and advises them to seek legal or tax advice from an expert.
   c) In small print, the form confirms that compensation to brokerage firms is established by each brokerage firm. This confirms that brokers are complying with federal antitrust laws by not engaging in price-fixing between brokers.
   d) The check box will determine how the broker will represent the seller or buyer, either in an _______________ relationship.
      (1) The broker and seller or buyer choose their relationship, first based on what the brokerage firm offers, and then through negotiation.
   e) The date on page 1 is the date the form is being filled out. It may or may not be the same date that the broker and seller or buyer actually sign the form. It will, however, be the contract reference date for this document.

B. Agreement

1. Purpose: This section is used in contracts to define who the agreement is between and establish what the contract is for.
2. It informs sellers or buyers that they are entering into a binding contract with the brokerage firm.
   a) “Exclusive” means the sellers or buyers agree to work through this brokerage firm during the
term of the listing.
   b) “Irrevocable” means that even if the sellers stop marketing their property (withdraw the list-
ing) or the buyers decide not to buy a property that meets the agreed upon description, the
sellers or buyers may still owe a ________________ or the reimbursement of broker
expenses.

C. Broker and brokerage firm

1. Purpose: This section sets up and creates designated brokerage, which only applies to multiple-
person firms. In a multiple-person firm, the employing broker will designate a broker or team to
represent the seller or buyer. Typically, the person named as broker in the next section will be
designated by the employing broker to represent the seller or buyer as the designated broker.

2. Brokerage firms are either multiple-person firms or one-person firms. The firm type will deter-
mine which box is checked.

3. Multiple-person firm
   a) In a multiple-person firm, the brokerage firm designates one or more individuals to represent
the seller. The individual(s) is(are) now identified as “Broker(s).”
   b) The designated brokerage relationship only exists with this broker and not with the broker-
age firm or other associates of the brokerage firm.

4. One-person firm
   a) In a one-person firm, the broker ____________________________ and the firm (one per-
son) is either a single agent or transaction-broker for the seller.

5. For the first two years, a new licensee can only choose box a. because new brokers must be part of
a multiple-person firm.

D. Defined terms

1. Purpose: This section will be seen in most contracts. The seller or buyer, brokerage firm, and
broker are defined once and only once in this section. The parties can simply be referred to by
their designated title, eliminating the need to restate the actual names of each party throughout
the agreement.

2. Every contract will have a different group of defined terms, and the licensee is expected to be
able to define and fill them in for all approved forms.

3. Seller or buyer
   a) The full legal names of all recorded property owners or each buyer being represented is filled
in.
   b) All persons listed ________________ the agreement.
   c) In the buyer listing, the term “buyer” expands to include any other person or entity that the
named buyer may be representing.
4. Brokerage firm
   a) Without exception, a brokerage firm and its associates conduct any real estate business in the name of the firm as registered and licensed with the Colorado Real Estate Commission.
   b) The listing contract belongs to and not the individual broker completing the form.

5. Broker
   a) The associates who will provide service to the client.
   b) Company policy will usually designate the associate completing the listing to be the designated broker for this transaction.
   c) The broker could also be a team of two or more licensees working together.

6. Property
   a) In the seller listing, what is being sold is defined and described and the rights and interests (appurtenances) that the seller will convey are listed.
      (1) Remember, a legal description describes the land only, but the sale includes all the improvements upon that land.
   b) In the buyer listing, the broker would briefly describe the property that the buyer is seeking.
      (1) It is used to define the basic type of property and a general location that the buyer is looking for.
      (2) “Substantially meets” allows the buyer to purchase something similar but not exactly as described. A commission would then be owed if the buyer purchases the property.

7. Seller listing—sale of the property
   a) Must be a transfer (alienation) by the seller

8. Buyer listing—purchase or lease of the property
   a) Any transaction meeting the definition of a purchase the buyer to pay the negotiated commission.
   b) The definition is quite broad and includes acquiring any interest or the right to acquire any interest.
   c) This would protect the broker if the buyer decided to lease a property rather than purchase it.
   d) The broker and buyer can also define the terms of any leasing arrangement.

9. Seller listing—listing period
   a) This sets the beginning and end of the listing period.
   b) Rule E-11 requires a for termination of a listing (CREM).
10. Buyer listing—term
   a) The buyer and broker agree to the specific dates that the contract will begin and end.
   b) The broker agrees to assist the buyer through the completion of a transaction if the broker
       will be earning a success fee.
   c) In both contracts, this section makes it clear that completion of the assignment by the bro-
       ker, by the closing, will satisfy the agreement.

11. Applicability of terms
   a) Most of the blanks in a form are _________________ items, and all of them must be
       addressed.
   b) This section describes the effect of checking any box.
   c) It also defines the meaning of the abbreviation “N/A” (not applicable) when it is used in the
       contract.
   d) The abbreviation “MEC” (mutual execution of contract) means the latest date that both
       parties have signed. The date or deadline is effective when the last party signs.

12. Day; computation of period of days, deadline
   a) Defines days and how deadlines are to be determined

E. Brokerage relationship

   1. Purpose: This section defines what will happen if the brokerage firm designates brokers to repre-
       sent both the seller and buyer. The relationship that was chosen on page 1 will determine which
       of the sections apply.

   2. This section will allow the designated broker acting as an agent to move to the middle and
       represent both the seller and buyer if the appropriate box is checked. There is no need for the
       transaction-broker to move because the transaction-broker is already acting as a facilitator.

   3. If the seller or buyer agency box or transaction-brokerage box is checked—this states how
       the broker will represent the seller or buyer based on the box checked on page 1 of the listing
       contract.

   4. In-company transactions—different brokers
      a) Designated brokerage eliminates a conflict of interest if different brokers within the same
         firm work with both the buyer and seller.
      b) The brokers can each represent their party as an agent with no conflict to the other party.

   5. In-company transactions—one broker
      a) The broker has different responsibilities depending on whether the broker is representing a
         seller or buyer as an agent or transaction-broker.
      b) Seller’s or buyer’s agent
         (1) Through discussion and negotiation with the seller, one choice is made.
(2) Seller or buyer agency only

(a) This choice requires the broker to remain an agent for the seller or buyer and not enter into a brokerage relationship with any buyer or seller for this listing.

(b) The broker would disclose that the broker is the seller's agent and would have to treat the buyer as a customer, or the broker would disclose that the broker is the buyer's agent and the seller would be a customer if the broker double-ends the transaction.

(c) The broker would use the Brokerage Disclosure to Buyer form to make the buyer a customer. The Brokerage Disclosure to Seller (FSBO) would be used to make the seller a customer.

(3) Seller or buyer agency unless brokerage relationship with both

(a) This option is used when a broker is already working with a buyer and wants to show the broker's listing to that buyer. In this situation, the seller is agreeing to allow the broker to become a transaction-broker.

   i) If the broker also has an agency listing with the buyer, the buyer must have also agreed to let the broker become a transaction-broker.

(b) This section also allows the broker to establish a new relationship with a buyer or seller and act as transaction-broker for both sides.

(c) Brokers have two ways to change their status to transaction-broker.

   i) Use the Change of Status form (discussed later) at the time a change in brokerage relationship happens.

      ■ This form notifies the principal in an agency agreement that the relationship will be transaction-broker only for this potential transaction.

   ii) Use the boxes at the end of the Contract to Buy and Sell Real Estate to make the change for that transaction.

   c) Transaction-broker

(1) If the transaction-brokerage box is checked on page 1, the broker, if working with both the seller and buyer on the same property, must continue to act as a transaction-broker. The broker will not be an advocate or agent for either party.

(2) There is no conflict created, and the broker can represent both parties at the same time. There is no reason to notify anyone of a change of status because there hasn’t been one.

F. Brokerage duties

1. Purpose: This section defines the uniform duties that the brokerage firm, acting through the designated broker, owes the seller or buyer in this agreement.

2. Since this section outlines what is expected of the broker, it in essence creates the job description. Licensees should fully understand all the obligations they are agreeing to in this section.
3. The brokerage firm, acting through the broker, must provide uniform duties to the seller that will apply to either the agent or transaction-broker relationship.

   a) Failure to carry out these uniform duties is a ________________ of the listing contract and could provide cause for cancellation of the listing.

   b) The broker shall exercise reasonable skill and care for the seller or buyer, including:

      (1) Perform all terms of the agreement.

      (2) Present all offers received before closing even if the property is under contract.

         (a) Seller listing: All offers must be presented to the seller, and multiple offers received by the broker must be presented to the seller ________________ so the seller can decide which to accept or counter.

      (3) Disclose to the buyer adverse ________________ actually known by the broker.

         (a) Facts are considered material if a party might decide differently once the facts are known.

      (4) Advise the seller or buyer to seek expert advice on items beyond the broker’s expertise.

         (a) A broker potentially reduces the seller’s or buyer’s risk by recommending that the seller or buyer seek advice from experts on any matters beyond the scope of real estate brokerage.

      (5) Account for all money and property received.

      (6) Keep all parties fully ________________ regarding all matters related to the transaction.

   c) The broker will not disclose without ________________ for the following:

      (1) The seller’s or buyer’s negotiation position regarding price, motivations, or financing options (remember P.T.M.)

      (2) Any personal information about the seller or buyer, unless the information has a material impact on the transaction

         (a) The buyer’s inability to get financing is a material fact that must be disclosed.

   d) Stigmatized property laws are created by each ________________, not at the federal level.

      (1) Stigmatized property may have a bad reputation because of events that happened there. These may be psychological defects, but they are not physical defects in the property.

      (2) The fact that the property was the site of a homicide, other felony, or a suicide does not require disclosure.

      (3) The law does not prohibit disclosure. A broker could disclose this information with the seller’s written permission.

      (4) The Commission will not investigate a broker’s failure to disclose stigmatizing information.
Rule E-45 allows an associate broker to share confidential information with a supervising broker.

(1) The seller or buyer must give ________________, which this section provides.

(2) The information may not be used to the detriment of the seller or buyer.

(3) This does not give the employing broker a brokerage relationship, which is between the designated broker and the party the broker has been designated to represent.

f) Seller listing—states that the broker and brokerage firm may have other listings provided they do not present any conflict of interest with this listing.

g) Buyer listing—states that the broker may show the same property to other buyers without a conflict of interest.

(1) It would not benefit the broker to start a bidding war between the buyers.

h) The broker is not obligated to seek additional offers to purchase once the broker has an accepted contract for sale. Nor would the broker continue searching for other properties for the buyer.

4. There is no duty for the broker to investigate.

a) Colorado law specifically limits the broker’s responsibility for investigating either the property or the parties to the transaction.

b) A broker who knows of a material defect is required to disclose it.

c) A broker who suspects a problem should strongly recommend specific professional investigation by an expert.

d) The broker has no obligation to __________________________ of the statements made by a party (unless the broker believes the party is lying).

5. Potential liability to the seller or buyer is limited to situations where the seller or buyer approves, directs, or ratifies actions by the broker.

6. Seller listing—the seller can choose whether to allow the broker to disclose if there is already an offer on the property.

a) If allowed to disclose, the broker is also allowed to tell which firm made the offer. The broker is __________________________ the amount of any offers.

G. Additional duties of seller’s and buyer’s agents

1. Purpose: This section adds three additional obligations of a seller’s or buyer’s agent, increasing the duties the agent owes to a seller and buyer over those owed by a transaction-broker (the difference between OLD CAR and DCAR).

2. If the Agency box is checked, the broker is a limited (special) agent of the seller or buyer (principal) with the following additional duties:

a) Promote the principals’ interest with the utmost good faith, loyalty, and fidelity
b) Seek price and terms as set forth in the listing contract

c) Counsel the principal about any material benefits or risks of a transaction based on the broker's professional knowledge and experience

H. Compensation to brokerage firm; compensation to cooperative broker

1. Purpose: This section determines what the brokerage firm will receive as payment if it sells the property or assists a buyer in finding a property. It also establishes what the broker and brokerage firm must do to earn the commission and when it is due and payable.

2. Compensation in the seller listing contract

   a) Designated brokers (and all licensees) may receive compensation only from ________________, not directly from the buyer or seller.

   b) Amount

      (1) Sale commission

         (a) Commission amounts are set by each brokerage firm’s office policy.

      (2) Lease and lease option commissions

         (a) If the seller has agreed to pay a commission for a lease, specify how and when the commission is paid.

   c) When earned

      (1) The brokerage firm earns a commission by getting a sale during the listing period or by finding a ready, willing, and able buyer even if the seller chooses not to sign the Contract to Buy and Sell Real Estate or if the seller is unable or unwilling to close.

3. Compensation in the buyer listing contract

   a) If the listing contract is for a purchase, the broker will check the appropriate compensation arrangements.

   b) Success fee—the brokerage firm earns a success fee when the buyer finds a satisfactory property and buys it.

      (1) Amount

         (a) The fee is normally a percentage of the purchase price but could be a flat dollar amount.

      (2) Adjusted amount

         (a) If the broker is rebating or adjusting the commission, check this box and clarify the adjustment in Additional Provisions. If the fee will be calculated some other way or will not be money, write the terms of the payment carefully in the Other section.

      (3) Earned

         (a) If a transaction fails and the buyer is not at fault, the fee is waived.

         (b) If the buyer’s actions cause the transaction to fail, the success fee is payable immediately.
c) Hourly fee—some assignments may be very specific and require a lot of time (e.g., research) that ultimately ends without a purchase by the buyer.

(1) For an hourly fee, the licensee must document time just like any other professional paid hourly.

d) Retainer fee—some brokerage firms have a policy of collecting a retainer to assure that the buyer is serious.

(1) These fees must have a standard policy that is uniformly applied to all similar situations to avoid any hint of discriminatory (disparate) treatment.

(2) If the listing contract is being used for leasing, the terms of how the brokerage fee is determined and when the fee is earned is defined.

e) Who will pay brokerage firms’ fees

(1) Listing brokerage firm or seller may pay. Buyer is obligated to pay.

(a) Check this box if the broker will request payment from the listing broker or seller, but the buyer will be responsible for any amounts not covered by the listing broker or seller.

(2) Buyer will pay.

(a) Check this box if the buyer is obligated to pay the full commission.

(3) Listing brokerage firm or seller may pay. Buyer is not obligated to pay.

(a) By default, the contract obligates the buyer to pay the broker's commission.

(b) Checking this option removes the buyer's obligation and requires the broker to receive full commission from the listing broker or seller.

(c) The buyer is then not obligated to pay any compensation. This may create issues for the obligation of the broker to find and show all properties to the buyer.

(d) The broker may want to list any limitations on what will be shown in Additional Provisions.

i) Example: The buyer agrees that the broker does not have any obligation to show any properties that the seller or listing broker does not agree to pay a co-op fee to the brokerage firm of at least X percent of the sale price.

(e) If no box is checked, then the Buyer Shall Pay section will apply and the buyer is responsible for the broker's commission.

4. Holdover period—

a) The holdover period is a time period between the parties.

b) The broker must submit the potential buyers’ names or properties shown in writing during the listing period.

c) If the box “shall not owe” is checked, or an exclusive listing with another broker following expiration or termination of the listing (but within the holdover period) occurs, then the
holdover provision will end. In this situation, the seller or buyer would not owe the broker a commission.

5. When applicable and payable
   a) Seller listing—payment is due at closing or whenever the broker finds a ready, willing, and able buyer (during the term of the listing) and the seller defeats or declines to close the sale.
   b) Buyer listing—payment is due at closing or whenever the broker finds a property that meets the buyer’s criteria and the buyer declines to close the sale.

6. Other compensation
   a) If the brokerage firm will receive any other form of compensation, describe it precisely.
   b) The Real Estate Commission has a position statement allowing a broker to “__________________” part of a commission to either the seller or the buyer as a ______________________ of the commission (CP-12).

7. Seller listing—cooperative broker compensation
   a) The brokerage firm must seek assistance from and offer compensation to other brokerage firms.
   b) Determines the amount paid to a buyer’s agent or transaction-broker working for the buyer.

I. Limitation on third-party compensation
   1. Purpose: This section requires that if the broker is to receive a referral or other similar payment from a source affiliated with the sale of the property (e.g., a lender, home warranty company), the broker must first get the seller’s or buyer’s __________________________.
   2. The broker may not receive a fee from a __________________________ and must make sure any payments are not in violation of the Real Estate Settlement Procedures Act (RESPA).

J. Seller’s and buyer’s obligations to broker; disclosures and consent
   1. Seller listing contract (Seller’s Obligations to Broker; Disclosures and Consent)
      a) Purpose: Defines the duties the seller will owe the broker in this agreement. This section has four different obligations that the seller is agreeing to, as well as disclosure of the Colorado Foreclosure Act.
      b) Obligation 1: Negotiations and communication
         (1) This makes the seller’s agreement __________________________ with the brokerage firm.
         (2) The seller agrees not to negotiate with others and to refer any communication about the property to the brokerage firm and broker. Other brokers may only communicate with the seller through the listing broker.
      c) Obligation 2: Advertising
         (1) The seller agrees not to advertise without the broker’s approval.
d) Obligation 3: No existing listing agreement
   (1) The seller states if the seller has a listing agreement on this property with any other broker.

e) Obligation 4: Ownership of material and consent
   (1) The seller agrees that any materials given to the broker, including photographs, drawings, and so on can be used by the brokerage firm, the broker, or on the MLS to market the property.

f) Colorado Foreclosure Protection Act
   (1) The act applies if the property is residential, if the seller has been in default for more than 30 days or is in foreclosure, and if the property will be non-owner-occupied after closing (this will be covered in more detail later).

2. Buyer listing contract (Buyer’s Obligations to Broker)
   a) Purpose: Defines the buyer’s duties to the broker.
   b) The buyer agrees to work “exclusively” through the broker.
      (1) Brokers should make sure the buyer understands what this means.
   c) The buyer represents that the buyer is not a party to another representation agreement with another broker.

K. Disclosure of settlement service costs
   1. Purpose: This section notifies the seller or buyer that the costs and quality of settlement services and providers (e.g., attorneys, lenders, inspectors, and title companies) will vary.

L. Nondiscrimination
   1. Purpose: All parties agree to follow federal, state, and local fair housing requirements. The seller or buyer is agreeing not to discriminate against any of the protected groups listed.
   2. Seller listing contract—The seller agrees not to discriminate against a buyer based on the protected classes listed.
      a) This section adds the state’s protected classes of sexual orientation and marital status.
      b) Colorado exemptions from fair housing allow fewer exemptions than the federal law.
      c) Colorado fair housing law covers the sale (or lease) of commercial and residential property.
   3. Buyer listing contract—a buyer might request that the broker find a property based on fair housing protected class characteristics.
      a) Brokers who assist in searching for such a property would be violating fair housing laws.
      b) This problem is even more difficult if the buyer seems to be seeking a “positive” outcome. It is still a violation if the buyers say something like, “We want our kids to grow up in a racially diverse neighborhood. Please find us one.”
      c) Disparate treatment may result in illegal discrimination. This is whenever two people are treated differently because of a protected class characteristic.
M. Recommendation of legal and tax counsel

1. Purpose: As part of the Conway-Bogue decision and Rule E-14 (CREM), brokers are obligated to advise consumers that all contracts are important legal documents, and if the seller or buyer does not fully understand them, they should seek legal, tax, or other counsel.

2. This recommendation is the broker's legal duty.

3. The seller's or buyer's signature on the contract is acknowledgment that the broker fulfilled the obligation.

N. Mediation

1. Purpose: All Commission-approved contracts require that the parties (seller or buyer and brokerage firm) agree to mediate before going to court to arbitrate or litigate a dispute they cannot resolve.

2. Mediation involves a neutral third party that helps the parties find a mutually agreeable solution.

3. The parties select a mediator and __________________. This is true of all Colorado Commission-approved contracts and is __________________.

4. The parties __________________ for up to 30 days.

5. If no solution is agreed upon within 30 days, the dispute remains unresolved.

   a) No solution is forced on either party (mediation is not binding).

6. If the parties agree on a resolution, that agreement is binding on the parties.

7. If mediation is unsuccessful, either party may seek arbitration or a lawsuit.

O. Attorney fees

1. Purpose: This section contains standard language used in all approved contracts.

2. If there is a lawsuit or arbitration, costs of the lawsuit and the winner's legal fees must be paid by the unsuccessful party.

P. Additional provisions

1. Purpose: Rule F states that the Additional Provisions section of all approved contracts must contain only those items that have been negotiated between the parties, which in this case are the seller or buyer and the brokerage firm. All other items should be in an addendum.

2. The Additional Provisions section contains transaction-specific agreements that are not covered by the printed form.

   a) Additional provisions must be __________________. Add other items as attachments or addenda.

      (1) Example: A statement that the seller is providing a home warranty for the buyer

3. The Real Estate Commission places specific limits on “exculpatory provisions” in contracts.

   a) They must be in an addendum or separate disclosure to be agreed to by the buyer or seller (in a listing contract).
Q. Attachments

1. Purpose: Often items are on separate pieces of paper that need to become part of the contract. Standard in all contracts is an attachment section that gives space to note all items to be attached and made part of the contract.

2. The items listed in the Attachments section become part of the legal agreement, such as the lead-based paint sales disclosure.

3. A lengthy legal description could be marked as “Exhibit A” and attached rather than trying to copy the long and complicated description.

R. Notice, delivery, and choice of law

1. Purpose: This section, which is standard in all contracts, sets up how delivery of items in the contract will be handled, by either physical or electronic delivery or a combination of the two as indicated by the check box. It also states that the contract will be interpreted under Colorado law and not another state’s law.

2. This section states that all notices must be in writing and describes the methods that are acceptable for official notice between the parties.
   a) Physical delivery
      (1) Delivery of official notice by one party to the other shall be by physical delivery except as allowed in the next section.
   b) Electronic delivery
      (1) The buyer chooses whether to accept notice by facsimile, Internet, or e-mail. Any party may request documents with original signatures at any time.
   c) Choice of law
      (1) Colorado law applies to any dispute or interpretation of this contract.

Under Colorado law, an electronic signature is “any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the person using it to have the same force and effect as the use of a manual signature.” (24-71-101 C.R.S.)

S. Modification of this listing contract

1. Purpose: Standard language in all contracts states that to modify (amend) the document, all modifications must be in writing and signed. Once the amendment is signed by all the parties, the contract has been modified and the modification is binding and enforceable.

2. The broker would use the Amend/Extend Contract with ________________ form to modify this contract.

T. Counterparts

1. Purpose: This section, standard in all contracts, allows for separate signatures by the parties on different copies. Once all the copies are signed, they will be considered a complete agreement.

2. If there are multiple sellers or buyers in different locations, this allows them to sign a separate, identical copy to form a complete agreement.
U. Entire agreement

1. Purpose: In all contracts, this section simply states that the entire agreement has been put in writing and is contained in the contract.

2. There is nothing that has been left out or is part of an unenforceable oral agreement.

V. Copy of contract

1. Purpose: Keeps brokers in compliance with Rule E-4, which requires brokers to give every party who signs a document a duplicate copy immediately. This can be accomplished in a variety of ways as outlined in the rule.

2. All parties signing the listing must receive copies _________________.

   a) A married couple receives two copies, not one.

   b) Photocopies, fax copies, or electronic copies can complete this requirement.

   ▪ Rule E-4. Document preparation and duplicates
   “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.” (for the complete rule, see CREM, Chapter 2)

W. Contract signature section

1. The broker will sign for the brokerage firm (in a single-person firm, the individual broker will, of course, sign for herself).

   ▪ Application Note: Designated brokers sign on the line next to the date and print their name and address below, followed by the brokerage firm’s name and address.

II. ITEMS SPECIFIC TO THE BUYER LISTING CONTRACT

A. Costs of services or products obtained from outside sources

1. Purpose: Defines who will be responsible for costs outside of this agreement. The buyer and broker also agree that the broker will obtain the buyer’s written permission before ordering or paying for services for the buyer, and the buyer is obligated to reimburse the firm.

2. This section protects both the buyer and the broker.

B. Brokerage services: showing premises (properties)

1. Purpose: Discusses with the buyer any limitations the broker may have in regards to getting access to properties. This section also describes what access the broker has to properties.

2. Brokerage services

   a) The broker and buyer can list additional brokerage services here.

3. Showing properties

   a) Not all brokers have access to properties using electronic lock boxes. The broker should disclose any limitations to the buyer and discuss how the broker will arrange for access to these properties.
4. Not all brokerage firms have access to the same multiple listing services and other information services.
   a) The broker should disclose the services available through the brokerage firm.

5. Refer to Commission Position Statement CP-28 (CREM, Chapter 3) for further understanding of this section.

C. Disclosure of buyer’s identity

1. Purpose: To keep the buyer’s identity confidential.
   a) If buyers, such as celebrities or high-profile business people, do not want their names used during negotiations, they can check this box.
   b) A separate legal document will be required to give the licensee the legal right to carry out this request.
   c) The brokerage firm’s legal counsel should assist with a separate appropriate confidentiality agreement.

D. Megan’s Law

1. Purpose: This section informs the buyer that if any concerns about registered sex offenders are raised, local law enforcement should be contacted. Real Estate Commission Position Statement CP-29 helps brokers define and work within the context of this federal law.

III. ITEMS SPECIFIC TO THE SELLER LISTING CONTRACT

A. Other brokers’ assistance, multiple listing services, and marketing

1. Purpose: The broker is fully informing the seller of the different methods available to market the property. The broker should fully understand and be able to describe the advantages, disadvantages, and any dangers or limitations created by the different methods. After discussion, the seller chooses the appropriate boxes.

2. MLS/information exchange
   a) Cooperating brokers use information from a multiple listing service or other information exchange to sell most residential properties.
   b) The seller may give or deny permission for the broker to submit the property to such services.
   c) The multiple listing service is usually local and provides for the sharing of commissions.
   d) National and regional information exchanges are often available via the Internet. Realtor.com gathers listing information from most of the local multiple listing services onto a national Web site.
   e) Many brokers have personal and company Web sites and may participate in centralized sites through a franchise or other cooperative marketing effort.

3. Property access
   a) If other brokers are to cooperate and show the property to their clients, they need to arrange access.
b) Lock boxes are convenient access tools, but there is some risk of unauthorized access (by stealing combination codes and keys) or inconvenience when a broker doesn't set a showing appointment with the seller.

c) The seller may specify other methods for gaining access to market the property.

d) Brokers are expected to follow the seller's instructions, especially if the directions are to protect other parties from hazards.

(1) Example: The seller may specify that the dog must be in the yard and brokers must speak with the seller prior to showings. The listing broker must follow these instructions or the broker will be held liable for injuries.

4. Broker marketing

   a) The broker lists specific tasks to be performed by the broker to market the property.

B. Price and terms

1. Purpose: This section defines the listing price and any terms acceptable to the seller, such as seller-carry, discount points, or other concessions the seller will offer as an incentive to help sell the property. Brokers should be aware of current trends and be able to advise the seller on all items.

2. Price

   a) This contains the seller's marketing price, which is usually the result of a competitive market analysis (CMA) provided by the broker and approved by the seller.

3. Terms

   a) The seller may agree to offer terms based on relevant market conditions.

4. Loan discount points and buyer’s closing costs (FHA/VA)

   a) The amount a seller is willing to give in concessions, such as paying for the buyer’s points or closing costs are listed here.

5. Earnest money

   a) Earnest money is the seller’s ___________________________ when the seller takes the property off the market while the buyer seeks financing and prepares for closing.

      (1) Often in the form of cash, personal check, or earnest money promissory note

      (2) Can be anything the seller will accept, such as personal property

6. Seller proceeds

   a) The seller has an opportunity to specify how the seller wants to receive the ____________ ____________ at closing.

   b) The Closing Instructions form will further define this once the property is under contract with a buyer.

   ■ Application Note: Net proceeds are normally given as a check from the title insurance company or the closing broker. The seller may need “good funds” to close on the seller’s next home.
7. Advisory—tax withholding
   a) In Colorado, closing companies may be required to withhold for potential Colorado __________________ if a seller lives out of state.
   b) This rule will be studied in the Closings course.

C. Deposits
   1. Purpose: Authorizes the brokerage firm to accept and hold earnest money deposits for the seller.
   2. Earnest money must be held in an escrow or trust account, typically by the listing brokerage firm.
   3. An employing broker must deposit the earnest money into a proper account no later than the third business day following notice of acceptance of the offer (Rule E-1(o)).
   4. The funds can also be given directly to the closing company who will then have the same obligations and rights for keeping the funds as the listing broker.

D. Inclusions and exclusions
   1. Purpose: Defines what is to be included in the sale of the property. The seller and buyer typically do not understand the difference between a fixture (attached items conveyed in the deed) and personal property, which may be a part of the sale but will be conveyed by a bill of sale. This section will define and list what the sale will include or exclude.
   2. The broker, in a walk-through before listing, should ask the seller if items such as the ceiling fan or draperies will be included.
   3. Inclusions—the purchase price includes:
      a) Fixtures
         (1) Lists items that will be included in the sale, if they are attached at the date of this listing contract, or if they are not specifically __________________________ the Exclusions subsection.
      b) Personal property
         (1) These items are not considered fixtures, but often might be included if they exist.
         (2) The items in bold print preceded by boxes (i.e., water softeners) may look like fixtures, but could be leased by the seller rather than owned.
            (a) The listing broker should research the terms of such a lease for use at the time of sale.
         (3) The blank after the last box provides additional space to add personal property items the seller wishes to include in the sale, such as appliances or yard maintenance tools.
         (4) Personal property will be transferred free and clear of encumbrances.
         (5) A __________________________ conveys personal property.
      c) Trade fixtures
         (1) Any trade fixtures to be conveyed are listed here and conveyed by a bill of sale.
d) Parking and storage facilities
   (1) A condominium or other common interest community property may include parking or storage facilities not physically connected to the unit.
   (2) Check if the parking is for use or ownership, and note the storage facilities that will be conveyed with the property.

e) Water rights
   (1) If the sale will include water rights, the legal description of those rights belongs here.
   (2) The properties that most likely include water rights are ________________ and tied to ________________.
   (3) The ownership and transfer of water rights in Colorado is very complex. Advise the seller to seek experienced legal counsel.
   (4) Water rights are conveyed by a ________________.
   (5) Many rural properties depend on a well for water.
   (6) Any well permit must be transferred to the new owner with a report to the state engineer.

f) Growing crops
   (1) Any crops (emblements) to be conveyed are listed here.

4. Exclusions
   a) List any items (e.g., fixtures, personal property) that the seller does not want to sell with the real property.

E. Title and encumbrances

1. Purpose: The sellers are stating that the property is in their name and agree to disclose to the broker anything affecting title to the property. The sellers also agree to give the broker any documents that are relevant to the property, such as surveys or ILCs, leases, easements, and so on. This section also discusses the type of deed the property will be conveyed by and gives the broker permission to contact the lender to obtain current loan information.

2. The seller(s) is(are) agreeing to the following:
   a) The property is in seller’s name (there are no other owners).
   b) The sellers will provide any information and documents they have to the broker.
   c) The seller will transfer (convey, alienate) with the type of conveyance deed listed in this section.
      (1) A residential property is presumed to be conveyed by a ________________ deed unless the seller specifies otherwise.
   d) The seller agrees to pay any taxes except the taxes that will be due for the year of closing (those will be prorated between the seller and buyer at closing).
The seller agrees to pay off all monetary encumbrances unless the buyer specifically agrees to assume them.

f) Special improvement liens must be paid off unless the buyer agrees to the obligation.

g) The broker should list the known encumbrances, even if they will be paid off. This section will give the broker permission to get current loan information regarding lien amounts and the balance owed.

If there are any leases or tenancies, a buyer would take title subject to those leases.

F. Evidence of title

1. Purpose: The agrees to furnish and pay for the buyer's title insurance policy. If the seller prefers to use an abstract (not typical in Colorado), that box would be checked.

2. The policy is paid for at closing (it will be a debit to the seller). The policy will be delivered at closing or shortly after the property closes.

G. Association assessments

1. Purpose: If the property is in a common interest community with mandatory assessment power, the seller gives the broker information about the amount of monthly assessments and any other pertinent financial information that should be verified.

2. The seller should give the broker the information to
   a) list the amount and frequency of regular assessments,
   b) state the current status of payments, and
   c) list any special assessments that are outstanding.

3. The seller agrees to get a statement from the association verifying the status of assessments.

H. Possession

1. Purpose: Indicates how and when the seller will deliver possession of the property.

2. This can become a problem if the seller stays after the agreed possession date (this will be discussed further in the Contract to Buy and Sell Real Estate).

I. Material defects, disclosures, and inspection

1. Purpose: Explains material facts to the seller and informs them of the broker's obligation to disclose any known material facts to potential buyers. It further sets up the seller's obligations in regards to the Seller's Property Disclosure and Lead-Based Paint Disclosure forms.

2. Broker's obligations
   a) Informs the seller that the broker is obligated to disclose to any prospective buyer.
   b) The seller agrees that any buyer may have various inspections performed.
3. Seller’s obligations
   
a) Seller’s Property Disclosure form
      
(1) This approved form is not required by state law as a part of the real estate transaction.

(2) The Contract to Buy and Sell Real Estate requires the form, unless the seller removes the requirement in a counteroffer.

(3) Disclosure of known material latent (hidden) defects is required by law.

(4) The broker should inform the seller that the ____________ will most likely expect to have the form.

(5) If sellers want to sell “as is,” then they
    
   (a) must still disclose material defects both obvious and latent, and
   
   (b) are stating that they will not repair any defects either disclosed or identified by a buyer’s inspection.

(6) If the broker suspects that the sellers are trying to hide a material fact, the broker should confront them and be prepared to resign or not take the listing if they refuse to disclose.

   (a) Example: After heavy rains, the seller’s basement occasionally floods. In the ten years the seller has owned the home, it has flooded three times. This would be considered a material latent defect that the seller needs to disclose. If the seller does not disclose the defect and the buyer discovers the defect after the sale, the buyer could sue the seller to cure (fix) the defect.

b) Lead-based paint

(1) Federal law requires that the _________________ for disclosing possible, potential, or known lead-based paint hazards or any other known lead hazards.

   (a) Applies to residential dwellings with a _________________ prior to January 1, 1978.

(2) Commission rules provide the following:

   (a) An approved form is provided for the seller’s use.

   (b) The Contract to Buy and Sell Real Estate _________________ unless the seller provides the required disclosure to the buyer prior to signing the contract.

c) Carbon monoxide alarms

(1) Notifies the seller of the obligation to ensure that there are operational carbon monoxide alarms installed within 15 feet of all bedrooms, or in locations per building codes, prior to the sale or lease of the property.

(2) Applies to all properties with combustion heaters or appliances (e.g., gas forced air furnace, wood stoves, gas clothes dryers) or attached garages.
4. Right of broker to terminate
   a) Gives the broker the right to terminate the listing if the physical condition of the property or outside elements is not satisfactory to the broker

J. Forfeiture of payments
   1. Purpose: The seller and broker agree to split any earnest money given by a buyer who defaults, but the brokerage firm may not receive more than the agreed commission amount.
   2. If the buyer defaults, the brokerage firm and the seller will split the earnest money.
      a) The broker will not get more than the commission.
      b) This money doesn’t reduce any commission earned from another sale that closes.

K. Cost of services and reimbursement
   1. Purpose: Establishes that the brokerage firm will bear the expense of marketing the property. The seller and broker also agree that the broker will get the seller’s written permission to order or pay for services, and the seller will be obligated to reimburse the firm.
   2. The parties will not order or expect the other to pay for anything that would be their obligation.
      a) The brokerage firm will not order anything the seller would be responsible to pay for without written permission from the seller.
      b) The seller will not order anything the brokerage firm would be responsible to pay for without permission from the brokerage firm.

L. Maintenance of the property
   1. Purpose: Reminds sellers that they are still responsible for maintaining the property during the listing period. It explains that the brokerage firm and broker will not be held liable for any damages unless the damage is caused by the negligence or intentional misconduct of the broker or brokerage firm.

M. No other party or intended beneficiaries
   1. Purpose: States clearly that obligations of the contract are between the seller, broker, and brokerage firm and do not apply to any other persons.
   2. The contract is not intended to benefit anyone besides the parties that are signing it.

IV. OTHER ISSUES WHEN WORKING WITH THE SELLER
A. Sign crossing (Rule E-13 and Commission Position Statement 3)
   1. Purpose: Any broker who obtains an Exclusive Right-to-Sell Listing Contract is protected from other brokers trying to take the listing during the listing period.
2. Brokers must not “cross the sign” of another broker. This means that they may not approach the seller for any reason while the property is listed (has a sign in the yard).
   a) All __________________ must be handled through the listing broker.
      (1) The only exception is when the __________________ approaches a broker who is not the listing broker. This broker may negotiate and sign a new listing with the seller as long as the new contract beginning date is after the __________________.

B. Single-party listings (Commission Position Statement 13)

1. Purpose: Protects for sale by owners when they agree to pay a commission to a broker for bringing a buyer.

2. There might be occasions where a broker may wish to list a property with the seller for only one buyer as a means of protecting the broker’s commission.
   a) Example: A designated broker working under an Exclusive Right-to-Buy Listing Contract has a buyer who wishes to buy an FSBO property (the seller is selling the property himself without using a brokerage firm). The broker has approached the seller, and he has agreed to pay the broker’s commission if this buyer purchases the property. The broker might have the seller sign a single-party listing specifying that if this buyer purchases the property, the agreed-upon commission will be paid. This prevents the seller from secretly selling to the buyer without the broker.
   b) To protect the seller, when using the Exclusive Right-to-Sell Listing Contract, the broker should add the following to the Additional Provisions section:
      (1) The provisions of this listing contract shall apply only in the event a sale is made to: (buyer’s name).
      (2) The termination date shall not be extended by the __________________ of this listing contract.
      (3) In the event a sale is made by the owner or the owner’s broker to any party other than the above-named, this listing contract is void.

C. Brokerage duties disclosure to seller (REO and Non-CREC-approved listing agreements)

1. Purpose: This disclosure form is used when a broker lists a property with a bank or other seller that is not using the Commission’s approved Exclusive Right-to-Sell Listing Contract.

V. CHANGE OF STATUS FORM

A. Purpose

1. Gives notice to all parties who have a current agency listing that the broker, as agreed, is becoming a transaction-broker for the current transaction.

B. Key points

1. If a broker is designated as an agent broker for a buyer or seller (or both) and double-ends the transaction (works with both parties), then the broker __________________ from agent broker (single agent) to a transaction-broker or resign one of the designated assignments.
2. If the broker has a brokerage relationship with either or both parties, the broker changes to a transaction-broker.

3. The party or parties have agreed to this change in the listing or buyer representation agreement by checking the appropriate box.

4. The broker must notify the parties whose relationship will change. If both the buyer and seller had agency agreements with the broker, both should be notified.

5. This form is used to disclose a change in relationship from agency to transaction-broker at the time the change takes place.

6. It states that the change is for this transaction only. The relationship between the broker, buyer, and seller will remain the same for any other transactions or if this one fails.

7. The broker checks the box for the contracts the broker has with the parties. One form is designed for both sides in one transaction.

8. This is ________________ or new agreement. The parties already agreed to make this change in listing and buyer representation contracts.
   a) This form is notification that the change has occurred and the broker is no longer an agent for this potential transaction only.

9. The change of status can also be done by checking the appropriate box at the end of the Contract to Buy and Sell.
   a) The Commission recommends that a broker complete both this form and the section at the end of the Contract to Buy and Sell to make sure that the buyer and seller are fully informed of the change of representation.
UNIT 2 REVIEW EXAM

This is an open-book, non-graded exam that will be reviewed at the beginning of Unit 3.

1. In Colorado, real estate compensation is established by
   a. law.
   b. the Real Estate Commission.
   c. local groups of brokers.
   d. each brokerage firm.

2. The listing broker brings the seller a customer’s offer that meets all the requirements of the listing, but the seller decides not to sell. This means that the
   a. broker can sue the seller for specific performance.
   b. broker has earned the commission.
   c. buyer can sue the seller for specific performance.
   d. seller has the right to discharge the listing with no penalty because it is just an employment agreement.

3. In Colorado, a consumer can become a customer by
   a. default, if the person has not signed an agreement.
   b. signing a written disclosure.
   c. the principal requiring that the broker remains a transaction-broker and treats the other party as a customer.
   d. automatically upon attending an open house where the listing broker is an agent for the seller.

4. All of the following are essential elements of a deed EXCEPT
   a. competent grantor.
   b. competent grantee.
   c. in writing.
   d. legal description.

5. Five years ago, Unit 5B in a condominium community was the site of a brutal and highly publicized murder. An elderly woman bought the unit. She later contracted the AIDS virus from a blood transfusion and died in the unit. The agent for the woman’s estate has which disclosure responsibilities to prospective purchasers of Unit 5B?
   a. The agent must disclose both the murder and the AIDS-related death.
   b. The agent is prohibited by law from disclosing either event.
   c. The agent is specifically relieved of liability for nondisclosure of either event by the Colorado stigmatized property disclosure law.
   d. The agent does not need to disclose the murder but must disclose the AIDS-related death.

6. Rule E-35 requires a listing broker who is going to discuss confidential information with a buyer to do all of the following EXCEPT
   a. disclose the broker’s relationship orally before accepting any information about motivation.
   b. have the buyer sign the Brokerage Disclosure to Buyer form.
   c. disclose before accepting any confidential information.
   d. give the written disclosure at first physical contact.

7. Legal title to real estate is conveyed by a
   a. bill of sale.
   b. conveyance deed.
   c. deed of trust.
   d. Contract to Buy and Sell Real Estate.

8. Every listing must have a(n)
   a. list of all confidential items.
   b. description of all exclusions.
   c. attached Seller’s Property Disclosure.
   d. definite termination date.
9. Based on the exclusive right-to-sell contract, the listing broker must disclose to any potential buyer
   a. facts about the seller actually known by the broker.
   b. material facts about the property actually known by the broker.
   c. all facts about the transaction actually known by the broker.
   d. the motivations of the seller, if requested by the buyer.

10. According to the exclusive right-to-sell contract, fixtures listed on the approved form will be included
    a. unless they are crossed out on the form.
    b. if they are on the property at the time of the purchase.
    c. if they are attached as of the date of the listing unless specifically excluded by the seller.
    d. in every case.

11. A single agent representing a principal could do which of the following for an unrepresented customer?
    a. Nothing, except have the customer sign a Definitions of Working Relationships disclosure
    b. Complete the Contract to Buy and Sell Real Estate but not explain it
    c. Disclose both benefits and risks of the transaction
    d. Anything that does not compromise the agency relationship

12. Legal descriptions describe the
    a. property and all appurtenances.
    b. land.
    c. land and all improvements.
    d. property and rights conveyed.

13. The employing broker has designated a broker associate to represent a seller. Who is the brokerage relationship between?
    a. The designated broker and seller, unless the employing broker has to supervise, which would add the employing broker to the relationship
    b. Only the designated broker and the seller
    c. The seller, employing broker who owns the contract, and designated broker
    d. The seller, designated broker who owns the contract, and the other brokers in the company

14. The exclusive right-to-sell contract provides choices for an agent-broker to handle an in-company transaction. Which of the following is TRUE?
    a. The seller only determines which of the two choices apply to the listing.
    b. The broker determines which of the two choices apply to the listing.
    c. Colorado law requires an addendum chosen by the seller.
    d. The seller and broker negotiate the most appropriate choice based on company policy and the seller's desires.

15. An agent owes the seller or buyer all of the following EXCEPT
    a. consideration.
    b. reasonable skill.
    c. accounting.
    d. loyalty.

16. Based on the language of the exclusive right-to-sell contract, if a defaulting buyer forfeits an earnest money deposit, then
    a. the broker and seller would split the funds but the amount may not exceed the agreed-upon commission.
    b. the broker would receive the funds.
    c. the seller may keep the funds.
    d. the broker and seller would submit the funds for mediation.
17. A buyer asks to see a broker's agency listing. The broker must
   a. seek the seller’s permission to show the property.
   b. have an exclusive agency relationship with the buyer.
   c. disclose to the buyer the broker’s relationship with the seller.
   d. provide a Seller's Property Disclosure.

18. The contract that provides maximum protection for the brokerage firm is the
   a. first right of refusal.
   b. open listing.
   c. exclusive agency.
   d. exclusive right to sell.

19. An exclusive agency listing
   a. allows only the agent bringing the buyer to get paid.
   b. pays the listing broker only if the listing broker procures the buyer.
   c. allows the seller to sell without paying a commission.
   d. must be signed by the buyer's agent.

20. Addenda that are not negotiated between the parties may be drafted by all of the following EXCEPT
   a. a party to the transaction.
   b. the brokers representing the parties.
   c. an attorney for one of the parties.
   d. an attorney for the brokerage firm.

21. The Brokerage Disclosure to Buyer form is used for all of the following EXCEPT
   a. giving notice to a customer.
   b. meeting the default requirement for disclosure, if the broker is a transaction-broker.
   c. keeping brokers in compliance with Rule E-35.
   d. establishing a brokerage relationship as an agent.

22. The listing broker has done a visual inspection of the property and found no issues. The Seller's Property Disclosure shows no material defects. When is the broker NOT responsible for the seller’s misrepresentation of the property?
   a. The broker will always be responsible for disclosing all defects.
   b. When the broker learns of a defect after the listing is signed.
   c. If the material defect is latent and the broker has no way of knowing it.
   d. Brokers are never liable for a seller’s actions.

23. According to the exclusive right-to-sell contract, the designated broker is responsible for all of the following EXCEPT
   a. disclosing latent material defects listed by the seller.
   b. advising the seller to seek outside advice on material matters beyond the broker’s expertise.
   c. following the seller’s instructions for showing the property.
   d. verifying the accuracy or completeness of the seller’s statements.

24. To modify an executory contract, a broker uses which form?
   a. Addendum
   b. Attachment
   c. Agreement
   d. Amendment

25. Rights and benefits that transfer with land are
   a. accretion.
   b. emblements.
   c. appurtenances.
   d. encumbrances.
1. Broker's fees are determined by each brokerage firm. If groups of brokers agreed on a standard commission, they would violate the federal Sherman antitrust law.

2. The wording in the listing contract states that the contract is irrevocable. The seller may not unilaterally remove the obligation to pay a commission for a sale during the term of the listing. The seller can remove the broker's authority to market the property. Even though the seller did not accept the offer, the broker has met the requirements of the listing agreement and is due a commission.

3. Customer is the term for an unrepresented party who has not hired a broker. The broker is obligated to disclose this status in writing; it is not automatic. The disclosure form has a place for the buyer to acknowledge receipt of the form. If the buyer declines to sign, the disclosure is still effective and the buyer will be an unrepresented customer.

4. A deed does not require a competent grantee. Property can be conveyed to a minor. The other elements are required for a valid deed.

5. The stigmatized property law states that psychological stigma are not material facts and do not require disclosure.

6. The purpose of the disclosure requirement is to warn people not to give confidential information to the other party unless that party agrees to it. Thus, the real timing issue is to ensure disclosure prior to the receipt of confidential information. The broker is required to give the written disclosure and if the member of the public refuses to sign it, the broker simply makes note of the name and date on the broker copy (which is filed). There is no requirement in Rule E-35 for signatures.

7. Basic concept review: A deed conveys real property. Conveyance is an adjective describing the function and not a legal type of deed, such as a general warranty deed.

8. Commission Rule E-11 requires a definite termination date on all listings.

9. Brokers always have an obligation to disclose known material facts to all parties.

10. Fixtures are automatically included if attached at the time of the listing, but they may be specifically excluded by the seller. This answer is more complete than B, which addresses the sales contract.

11. A broker is allowed to do anything for a customer that does not compromise the agency relationship the broker has with the other party.

12. The legal description is the land. All the improvements and fixtures are included in any conveyance of the land.

13. The brokerage relationship is only between the designated broker and the person represented. The employing broker has no brokerage relationship even if the employing broker learns confidential information as part of supervisory duties.

14. The brokerage relationship is created through negotiation based on what the broker's office policy allows. Resolution for the potential conflict of interest is negotiated between the seller and the broker but must be consistent with company policy.

15. Basic concept review: These are fiduciary duties (OLD CAR). Consideration is required to form a contract but is not the “C” in OLD CAR; the “C” is confidentiality.

16. The Exclusive Right-to-Sell Listing Contract provides this right to the broker.

17. Commission Rule E-35 requires disclosure before eliciting or receiving confidential information.

18. Basic concept review: The Exclusive-Right-to-Sell Listing Contract provides a commission to the broker if the property sells during the listing period. The other arrangements are less secure.
19. **c** Basic concept review: An exclusive agency listing allows the seller to sell without paying a commission.

20. **b** Rule F-3 states that brokers may not draft an addendum that was not negotiated between the seller and the buyer to the Contract to Buy and Sell Real Estate.

21. **d** An exclusive right-to-sell or right-to-buy listing contract must be used to create an agency relationship. The Brokerage Disclosure to Buyer does not meet the requirement that agency agreements be in writing. The disclosure form does meet the disclosure requirements for customers and default transaction-brokers, and is used to keep brokers in compliance with Rule E-35.

22. **c** Real estate licensees are not responsible for inspecting and finding latent (hidden) defects. If the broker did a visual inspection and the seller stated that there were no problems, then the seller would be guilty of fraud.

23. **d** The listing contract states that the broker has no duty to conduct an independent inspection or to verify the completeness and accuracy of statements made by the seller.

24. **d** With an amendment, both parties agree to change (amend) an existing executory contract.

25. **c** Basic concept review: Rights and benefits that run (transfer) with the land are appurtenances. Accretion is not a right or a benefit, encumbrances are limitations on the rights transferred, and emblements are growing crops and personal property.
Colorado Contract to Buy and Sell Real Estate

Focus on Understanding
- The Contract to Buy and Sell Real Estate

Study Plan
Before Class:
- Read this unit.
- Review the chapters in the CREM that are listed in the Course Reading Guide.
- Use the Colorado Contracts and Forms Supplement to review the forms discussed in this unit because they will be covered in class.

After Class:
- Review Unit 3 and the contract forms.


## OVERVIEW OF CONTRACTS

Real estate professionals are involved in contracts in various ways. A typical broker has an independent contractor’s agreement and often an employment/commission agreement with the brokerage firm. On a daily basis, brokers should work to establish a working relationship representing a seller, a buyer, a landlord, or a tenant, and these representation roles are created through contracts. Brokers will assist the party or parties they represent in negotiating a variety of contracts, such as options, purchase agreements, and leases. It is imperative that all licensees understand the requirements of valid contracts and what makes them void or voidable. Real estate professionals also must know the rules and requirements of these documents, which typically come from common law or state law.

### Basic Contract Law

There are some basic assumptions that can be made about contract formation, and one is that all parties who sign the document have read and understood it. The presumption is that if the document was not understood, the party would not sign it. The types of people that brokers deal with varies for each transaction, and some parties are very careful, ask numerous questions, and do not move on until everything is clear to them. This conservative type also tends to have an attorney review documents prior to signing. At the other extreme are those who believe that the real estate professional is knowledgeable and looking out for their best interest, so they trust that the broker is taking care of them and sign without reading the documents. An important part of a real estate professional’s job is to make sure that everyone signing the documents has a full understanding of them, including the obligations a signature creates. All parties should be advised to seek legal, tax, or other counsel prior to signing.

All real estate professionals should be able to clearly explain all documents that they present to parties they represent. Brokers must never give legal or tax advice about documents, but should make sure that all parties signing fully understand the repercussions of a signature.

Under the common laws of contracts that were previously covered, we learned that the essential elements of valid contracts are competent parties, offer and acceptance or a meeting of the minds, consideration, and a lawful purpose. For contracts involving the transfer of real property rights, the statute of frauds requires the contract to be in writing (the fifth essential element), with the exception being certain shorter-term leases. If the contract has all of these elements, it is considered valid and enforceable in court. If the contract lacks one of these elements, it is void and does not exist in the eyes of the law. Contracts entered into by minors and parties under the temporary influence of drugs or alcohol, or under duress, fraud, or misrepresentation are voidable by the minor or the party who has been put at the disadvantage. For example, Jane enters into a contract to buy a property based on the fraudulent claims made by Sal. The contract will be voidable by Jane who can proceed to closing or rescind the contract depending on her wishes. Sal would have no recourse, having been the perpetrator of the fraud.
The essential element of competent parties requires that all parties to the contract meet the condition of competency, which requires them to be sane, sober, and of legal age (18 years old). (A valid deed requires only the grantor or grantors to be competent.) If these criteria are met, the first requirement of a valid contract has been established. If a party is not competent, the contract can be void or voidable, depending on whether the mental competency is considered permanent or temporary. For example, if a person adjudicated as incompetent by a court signs a contract, the contract is automatically void. A contract signed by an inebriated party is voidable by that party once the party has regained a state of sobriety. Minors signing or entering into a contract will always make the contract voidable. Under law, minors have limited contractual abilities. For example, minors can enter into an employment contract, but they cannot buy, sell, or lease property and, if allowed to do so by an adult, the document the minor signs will be voidable by the minor. It is incumbent upon the adult to verify that the party signing the document is not a minor. Minors who have entered into contracts may rescind the contract at any time; however, the minor must reach the age of majority to affirm a contract. The minor is given a reasonable period after reaching majority to either disaffirm or affirm a contract. For example, a minor legally inherits a property at age 17 and then enters into a contract to sell the property to an adult. The contract and sale would be voidable by the minor. If, after turning 18, the minor realizes it was a mistake to sell the property, the minor could take action to rescind the sale.

Offer and acceptance is the period during which the negotiations on contract terms are being completed. This can be confusing because often the purchase agreement is called a contract; however, it is an offer until both parties reach a meeting of the minds and communication of acceptance has been made. Brokers should correctly refer to this document by using statements such as “I am helping the buyer write an offer (on the contract form)”; “we are negotiating an offer”; “congratulations, your offer has been accepted and we are under contract”; “I am working to get the contract to closing.” Typically, in this stage, the buyer makes an offer and the seller may either accept the offer or make a counteroffer, which is a termination/rejection of the original offer. The back-and-forth negotiation process is continued until there either is a meeting of the minds or the offer fails.

The final step in moving from an offer to contract is the offeree’s communication of acceptance to the offeror. The offeror may either be the buyer or the seller depending on which party extended the last offer (if the seller makes a counter, the seller becomes the offeror and the buyer the offeree). Once communication of acceptance is completed, the offer becomes an executory contract. Often the listing and/or purchase agreement will contain a provision stating that once the broker who represents the party has received notice of acceptance, that party is considered to have received notice and the offer moves to contract. For example, Kim is the designated buyer’s broker and Joe, who works for the same firm, is the designated seller’s broker. Offers and counteroffers have been made over a period of days, and Joe just called Kim to tell her that the seller accepted the most recent offer. With this notice, the property is under contract even though the buyer has yet to be personally notified. Kim’s next step should be to call and notify the buyer. It is critical that licensees understand the concept of notice because all parties have the right to terminate an offer anytime prior to receipt of the acceptance
notification when the offer becomes a contract. Oral notification of acceptance is acceptable if all parties have actually signed the offer, and it should be followed by timely receipt of the signed contract by all parties.

Consideration is something of value used to entice one party to enter into a contract. Consideration can be promises of specified actions, money, or anything of value. In a purchase contract, it is typically the mutual promise of the buyer to buy and the seller to sell. Consideration is critical because it is used to differentiate a contract from a gift. For example, Bill tells Michele that he will give her a car. Michele accepts Bill's offer, but later Bill decides not to give Michele the car. Michele would have no recourse against Bill because she gave no consideration in exchange for the car; it was a gift. On the other hand, Michele asks Bill if he will sell her his car. Bill agrees—if Michele will pay him $1,000. Michele and Bill write a contract stating the terms with Michele agreeing to pay in full the next week. The promise of Michele to buy at a specified price and Bill to sell has created the consideration for the contract. Earnest money is not consideration and is not required to create a valid contract. If used, earnest money is deemed liquidated damages that the seller will receive if the buyer defaults.

Lawful objective is a requirement that all contracts be for legal purposes. If the contract does not meet this requirement, it is void. The absurdity of asking a court to uphold a contract for illegal purposes is obvious.

The statute of frauds requires that contracts for the transfer of any interest in real estate be in writing with the exception of certain leases. For example, Ned and his neighbor Rose verbally agree that Ned will buy Rose's property. Two weeks later, Ned discovers that Rose has sold her property to another party. Ned does not have recourse because a verbal contract is not enforceable. Some states allow representation or employment contracts to be verbal but the commission agreement is not enforceable in court. In real estate, the best practice is to put everything in writing, especially contracts.

Purchase Agreements

Because the purchase agreement is a document between the buyer and the seller, it is inappropriate to include any items that apply to the brokerage firm. For example, do not list the brokerage commission amount within a purchase agreement. This should be in either the agency agreement or a separate commission agreement.

A typical purchase contract has a heading, a body, and a signature area. The heading defines and names the type of agreement, sets up the promises of each party, usually defines who the parties are, and describes the property using the street address, if appropriate, and the legal description. The body further establishes the obligations of the parties, including what is included or excluded from the sale, the terms and conditions, and any contingencies for due diligence, inspections, appraisal, or financing. The final segment is the signature area where the parties sign. Typically, real estate professionals help buyers complete offers by filling in blank spaces in approved forms, but they are not allowed to draft contract language for others. Colorado uses forms created and approved by the Real Estate Commission. An attorney may also draft contracts for either party.
In the process of helping to write or present an offer, real estate professionals should be able to fully explain what each section of the contract means and its impact on the party. For example, a seller asks what would happen if he decides he does not want to sell after the purchase agreement has been signed, so the agent helps him review the section of the purchase agreement that addresses a breach by the seller. Another example is a buyer who requests that the seller leave the refrigerator, but after reviewing the inclusions section, the buyer does not see the refrigerator listed so she asks the broker if it has been included elsewhere. The broker realizes his mistake and adds the refrigerator to the inclusion section. If this fix had not been made, the buyer might have requested that the broker pay for a new refrigerator because it was his mistake for not completing the form as requested. Reviewing the forms with buyers and sellers every time will help avoid these types of errors. Additionally, because the offer and contract are binding legal documents, all parties should fully understand the obligations they are assuming. Any broker who feels that a party does not understand these obligations should recommend that the party seek legal advice. Most states require the broker to recommend that the parties consult legal, tax, or other counsel prior to signing documents.

**COLORADO CONTRACT TO BUY AND SELL REAL ESTATE**

- The Real Estate Commission has approved five forms for the Contract to Buy and Sell Real Estate. The forms are the following:
  1. Residential—used for all non-income residential sales
  2. Income-Residential—used for all residential income sales
     - Broker will note if the property is one-to-four units or larger. This difference has an impact on loans the buyer may obtain. This form is used for the sale of any residential income property.
  3. Colorado Residential Foreclosure Act—used if the Colorado Foreclosure Protection Act applies
     - The act applies if the property is residential, the seller is in default for more than 30 days or in foreclosure, and the property will be non-owner-occupied. This form meets the requirements of the act.
  4. Commercial—used for all commercial property sales
   - This contract cannot be used for any type of residential property.
  5. Land—used for vacant land sales
     - If residential property is to be conveyed, this contract requires a residential addendum.

- The contract contains eight segments: (1) heading; (2) agreement; (3) transaction provisions; (4) disclosure, inspection, and due diligence; (5) closing provisions; (6) general provisions; (7) additional provisions and attachments; and (8) signatures.
  - The agreement segment defines the parties, property, and what is being agreed to in the contract. In this case, the buyer is agreeing to buy and the seller is agreeing to sell. Any exclusion of fixtures and inclusions of personal property are listed. Water or well rights, if any, are described and what is being conveyed and how it is are determined. The dates and deadlines for all contingencies in the contract are listed in one chart in this section, which allows the reader to easily find all dates. The purchase price and how it is to be paid (e.g. cash, loan, and so on) are the last items in this section.
The transaction provisions segment further defines the loan terms and contingencies, such as an appraisal. Title issues are also described and who is responsible for payments is determined.

In the disclosure, inspection, and due diligence segment, the Seller's Property Disclosure is requested and the buyer's right to a property inspection is established. The buyer is given the opportunity to request documents such as leases and the right to object to any of the documents. Time frames are set in the Dates and Deadlines table. Per the inspection contingency, the buyer may terminate the contract for any reason prior to the inspection objection deadline. If the buyer is making a request of the seller, the buyer and the seller will have until the inspection resolution deadline to negotiate the terms of request, and if no resolution is found, the contract will terminate at midnight on the inspection objection deadline. The buyer is given notice of other items such as source of water for the property, carbon monoxide alarms, lead paint, and methamphetamine labs.

The closing provisions segment is used to determine the closing and possession dates as well as to determine the closing instructions, transfer of title, and how items will be prorated between the buyer and the seller.

The general provisions segment defines how any damage or loss of the property during the executory phase will be handled. The choices are to make the contract default, pay liquidated damages, or use specific performance. Along with creating the agreement to mediate, this segment determines who will pay legal fees if the contract goes to litigation and how notice and delivery of documents will be given. Finally, this segment reminds the parties to work in good faith to complete the transaction.

The last two segments of additional provisions and attachments and signatures advise on what is being added to the contract either in additional provisions or as an attachment, and the parties are given a place to sign the document.

The residential Contract to Buy and Sell Real Estate is included in the Colorado Contracts and Forms Supplement. The other contract forms can be found online at www.dora.colorado.gov/dre.
UNIT 3 LECTURE OUTLINE

I. UNDERSTANDING THE CONTRACT TO BUY AND SELL REAL ESTATE FORMS

A. The Real Estate Commission has approved five forms of the Contract to Buy and Sell Real Estate.

1. Residential—used for all non-income residential sales
2. Income-Residential—used for all residential income sales
   a) The broker will note if the property is one to four units or larger. This difference has an impact on loans the buyer may obtain for the sale of any residential income property.
3. Colorado Residential Foreclosure Act—used if the Colorado Foreclosure Protection Act applies
   a) The act applies if the property is residential, the seller is in default for more than 30 days, or the property is in foreclosure and will be non-owner-occupied. This form meets the requirements of the act.
4. Commercial—used for all commercial property sales (cannot be used for any type of residential property)
5. Land—used for vacant land sales
   a) If residential property is to be conveyed with the land, this contract requires a residential addendum.

B. Note

1. Unless stated, all references to the Contract to Buy and Sell Real Estate in Units 3 and 4 are to the residential version.

II. CONTRACT TO BUY AND SELL REAL ESTATE

A. The Contract to Buy and Sell Real Estate is divided into eight segments.

1. Heading—establishes the form’s name and date and gives the Commission-required disclaimer and form number
2. Agreement—defines the terms __________________________ and the dates and deadlines for the contract
3. Transaction provisions—used to define financing, title work, and termination terms
4. Disclosure, inspection, and due diligence—defines the rights and obligations of each party
5. Closing provisions—sets up all terms and items need for closing the property
6. General provisions—defines standard items, such as default options and earnest money
7. Additional provisions and attachments—used for property specific items and documents that are attached to the offer
8. Signatures—used for signatures of the parties and broker acknowledgments
B. Heading

1. Purpose: This section gives the required notice of “legal consequences,” the form number, and the date, which is often mandatory.

2. Brokers are obligated to use the proper and current approved form for all transactions.

3. Date
   a) Typically the date entered is when the buyer signs the offer and communicates it to the seller.
   b) The date will be used as a reference, if needed, by citing the “contract dated.”
   c) Most often, the offer does not become an executory contract until a later date.

III. AGREEMENT

A. Purpose

1. This section of the contract creates a bilateral agreement and is used to define the parties and the property.
   a) The agreement sets up the consideration for the contract, which is the buyer promising to buy and the seller promising to sell.
   b) Once the offer is accepted and the property is under contract (executory period), it can only be modified by written agreement from all the parties (using the Agreement to Amend/Extend Contract form).

B. Parties and property

1. Purpose: This section defines the party’s buyer and seller, the property, and what will be included or excluded in the sale.

2. Buyer—defines the buyer(s) by name so the term can be used throughout the contract.
   a) Use every buyer’s full legal name.
      (1) The buyers indicate how they wish to hold title, which could be as joint tenants, tenants in common, or some other tenancy.
      (2) Colorado recognizes concurrent tenancies of tenants in common and joint tenancy.
      (3) Colorado does not have tenancy by theentireties or community property.
      (4) Remember, brokers may describe these but should not recommend any particular tenancy.

3. Assignability and inurement—determines if the contract will be assignable and binding to the heirs.
   a) If the contract is assignable, the buyer will ____________________________ to assign the contract to another party.
   b) This clause also makes this contract ________________ on the heirs if either party dies or is incapacitated.
4. Seller—defines the seller or sellers by legal name.
   a) Full legal name(s) of all of the current owner(s) is inserted here.
   b) The signatures of all sellers need to be on the deed to convey the property.

5. Property—identifies and defines the property.
   a) The property is described by the legal description and the _________________.
      (1) While a legal description describes only land, the property includes any and all fixtures, improvements, and appurtenances, except those specifically excluded.

6. Inclusions—defines fixtures, personal property, trade fixtures, water rights, and other items to be conveyed.
   a) Fixtures—describes items of personal property now attached to the real property
      (1) These items of real property will be included in the sale, unless specifically ________________ under the Exclusions section.
      (2) The fixtures will transfer with the rest of the real property in the _________________.
   b) Personal property—identifies personal property items that are often included or any that the buyer and seller agree in writing will be part of the sale
      (1) These items will convey unless they are excluded from the offer.
      (2) The items in bold print with a check box may be leased or owned.
      (3) If _________________, such as a water softener, check the box and describe the lease in the Additional Provisions section.
      (4) Space is provided to add any other personal property items that will be ________________ (e.g., stove and refrigerator).
      (5) Typically, personal property is conveyed free and clear, but any encumbrances against the personal property are listed here.
      (6) Personal property will transfer by a _________________.

7. Parking and storage—defines if there are parking or storage spaces; typically used for common interest community properties.
   a) The parking and storage may be owned with the unit or may be for use only.

8. Water rights, water and sewer taps—lists any water rights to be transferred with the property.
   a) Water rights will have their own separate legal description.
      (1) The water rights will be conveyed by ________________ or other applicable legal instrument.
      (2) If well rights are being transferred, the seller agrees to supply the buyer with the necessary well permit information.
      (3) The buyer must submit, prior to or at closing, the required Change in Ownership form to the state engineer’s office.
(4) If the well is not registered, the buyer must complete the registration form and pay the fees.

(5) If no broker, attorney, or title company is providing a closing service, the buyer must file the Change of Ownership form with the Division of Water Resources within 60 days.

b) The buyer is advised to obtain confirmation of amounts owed and restrictions on use or transfer of water and sewer taps.

9. Exclusions—lists all items that the seller is excluding from the sale.
   a) Fixtures, unless listed here, will be ____________________________.

C. Dates and deadlines

1. Purpose: Defines and lists all the dates and deadlines for the document.

2. This is the ____________________________ dates appear in the contract.

3. The broker will enter dates in this table, for each “referenced” section in the contract.
   a) Note: The reference column is where the corresponding event can be found.

4. Applicability of terms—defines the legal effect of checking a box in this contract. Any item with a check box is considered negotiable.
   a) It also defines the meaning of “N/A” (not applicable) and “MEC” (mutual execution of contract), which means the latest date on which both parties have signed.

5. In the Dates or Deadlines column, each blank should have a specific date, “MEC,” or “N/A.” No date or deadline should be left blank.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Reference</th>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
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</thead>
<tbody>
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<td></td>
</tr>
<tr>
<td>2</td>
<td>§ 4.2</td>
<td>Earnest Money</td>
<td>$5,000.00</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>§ 4.5</td>
<td>New Loan</td>
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<td></td>
</tr>
<tr>
<td>4</td>
<td>§ 4.6</td>
<td>Assumption Balance</td>
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</tr>
<tr>
<td>5</td>
<td>§ 4.7</td>
<td>Seller or Private Financing</td>
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<td>6</td>
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</tr>
<tr>
<td>8</td>
<td>§ 4.3</td>
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</tr>
<tr>
<td>9</td>
<td></td>
<td>TOTAL</td>
<td>$300,000.00</td>
<td>$300,000.00</td>
</tr>
</tbody>
</table>

D. Purchase price and terms

1. Purpose: Defines the purchase price, earnest money, financing terms, and loans being used by the buyer.

2. Price and terms—a table is used to show how the purchase price will be paid at closing.
   a) Each unshaded box has a dollar amount, a zero, or “N/A.” Shaded boxes do not have amounts entered.
b) The Cash at Closing line does not include the buyer’s closing costs, such as loan fees. The buyer should expect that the final cost will be higher than this figure.

c) The total line shows that the sources of financing add up to the amount of the purchase price.

3. Seller concession—these are most likely to occur in ___________________ transactions (e.g., giving the buyer money toward the down payment). Other types of concessions would be noted in Additional Provisions.

a) This section lists the amount of money the seller is going to contribute to the buyer’s down payment and closing costs.

b) The different types of fees and costs that the seller has agreed to pay on behalf of the buyer are listed in this section.

c) The buyer may have asked the seller to pay other costs elsewhere in the contract.

d) Often the sale price will be increased so that the seller can give the buyer the concession without impacting the amount the seller gets from the sale. If the property appraises for the higher value, this is legal. However, the appraiser must be made aware of all concessions.

e) If the total seller-paid costs in the contract exceed what is allowed by the lender, the seller will not have to pay more than the total allowed costs.

f) If the seller offers concessions to the buyer, it affects the overall sales price and value and must be noted in the ________________ after closing.

g) The brokers should recommend that the buyer and seller talk to a tax advisor about any tax ramifications.

4. Earnest money—defines the type of earnest money being used and who will hold the funds.

a) The earnest money amount goes in the second box.

   (1) Record the form of payment for the earnest money here.

   (2) The type of payment can be anything acceptable to the seller.

   (3) __________________________ are the most common, provided there is time for the check to clear through the bank before closing.

   (4) An earnest money promissory note may also be acceptable. It must be clearly ___________________________ in the contract.

      (a) The note should be collected prior to closing. There is no set time for the collection as long as the broker can bring good funds to closing.

      (b) If received, both brokers sign a receipt for this money at the bottom of the contract. The listing broker has three business days after notice of ________________ to deposit the earnest money in the listing brokerage firm’s trust (escrow) account.

   (5) The buyer’s broker is obligated to deliver the earnest money to the listing broker/ firm __________________________ upon acceptance of the offer.
(6) This section gives express authority to the listing brokerage firm to hold the earnest money until closing or defeat of the ________________.

(7) If someone other than the listing brokerage firm is to hold the earnest money, the Closing Instructions must be completed before and delivered with the earnest money.

(8) If the earnest money is not attached and part of the offer but will be delivered at a later date, the alternate date is listed in the Dates and Deadlines section.

(a) Note: This is the first item and date to be listed in the section.

(9) This also establishes a process and time frames for the buyer’s earnest money to be returned.

(a) The seller agrees to sign and return an Earnest Money Release form within three days, if requested.

(b) The return of earnest money is conditioned upon there being no dispute.

5. Form of funds; time of payment; funds available—defines the type of funds required for closing and gives notice if the buyer has the funds at the time of the offer.

a) Colorado law requires that the buyer pay the balance of the purchase price in good funds at closing, which includes the forms of payment listed in this subsection.

b) The buyer represents that the buyer does or does not have the cash available now.

(1) This reminds the parties that all funds must be brought to closing or the party will be in default.

(2) The buyer is informed that any loan costs and other closing costs may increase the amount the buyer will have to bring to closing.

6. New loan—This section indicates the types of new loans proposed by the buyer.

a) The buyer agrees to pay loan costs, except those asked for under Seller Concessions.

b) The buyer is given notice that the buyer may select appropriate financing as long as it meets the terms of the loan limitations and any additional requirements stated in Additional Provisions.

c) A preapplication conference with a lender may influence the buyer’s choices.

d) The buyer is advised to review the terms, conditions, and costs of any new loan carefully.

e) The buyer is notified that in most cases the lender must supply a good-faith estimate within three days after loan application.

f) If the buyer is not satisfied with the new loan terms, the buyer may terminate the contract no later than the loan objection deadline, listed in Dates and Deadlines.
7. Assumption—establishes the loan terms and conditions for a buyer assuming the seller's current loan.
   a) The buyer must know the terms of the existing loan being assumed; typically, the listing broker gives this information.
   b) On an assumed loan, the buyer will pay any loan transfer fee.
8. Seller or private financing—establishes the loan terms and conditions for a buyer using seller financing.
   a) A seller or some other private party may provide partial or complete financing of the purchase.
   b) A broker who prepares the documents for this financing must use standard approved forms for the note and deed of trust.
   c) If the private financing is a large amount, it may be appropriate to request that the buyer supply the seller with a mortgagee's title insurance policy similar to those required by traditional lenders.
   d) The broker should make sure the seller understands that unless the buyer waives homestead rights, _________________ of the equity will be protected under any foreclosure action that the seller may need to take.
   e) Homestead rights apply only to the _________________. Standard rights are $60,000 but increase to $90,000 if the owner is disabled or over 60 years old.

IV. TRANSACTION PROVISIONS

A. Purpose

1. This segment of the Contract to Buy and Sell Real Estate establishes and defines buyer and seller agreements about financing, appraisal, title work, title matters, and surveys.

B. Financing conditions and obligations

1. Purpose: This section creates and clarifies the obligations of the buyer in regard to the deadlines and actions that need to be taken to obtain financing. The buyer is expected to act diligently within the time frames to make sure financing is completed by closing.

2. Loan application—establishes the obligations of the buyer to complete a loan application and set the dates and deadlines for the buyer to complete it.
   a) The buyer agrees to make a verifiable application by the loan application deadline.
   b) The application is used for a new loan or for a loan assumption with lender qualification of the buyer.
   c) The buyer agrees to exercise reasonable efforts to obtain the loan or loan approval.

3. Loan objection—gives the buyer the subjective discretion to approve the availability, terms, conditions, and costs for a new loan.
   a) The buyer will have until the loan objection deadline to give notice to the seller if the loan conditions are unsatisfactory.
b) The buyer is warned that if the seller does not receive timely written notice to terminate before the deadline, the buyer's earnest money will be nonrefundable.

c) The loan objection deadline should be set so that it is after the appraisal deadline.

d) This is a negative consent provision (as are most contingencies in the contract). If the buyer does not respond by the loan objection deadline, the buyer waives the condition and accepts the risk of losing the earnest money deposit if the buyer cannot get a loan.

   (1) A negative consent provision means that one party has a right to object to something or even terminate the contract with written notice to the other party.

   (2) If the party does nothing, the party waives the right to object or terminate under the provision. The contingency is terminated, not the contract.

4. Credit information and buyer's new senior loan—this section is applicable for seller-carry financing of all or part of the purchase price or for assumption of seller's existing loan without release of seller's liability.

   a) This establishes the deadlines for the buyer's submittal of buyer's credit and the seller's disapproval. The buyer must pay for the credit report and other information.

   b) Credit approval is “at seller's subjective discretion.”

   c) The seller ________________ the buyer's credit information with others.

   d) Disapproval by the seller ________________ the contract and must be done on or before the disapproval of buyer's credit information deadline.

5. Existing loan review—this section sets deadlines related to the buyer's completing a loan assumption.

   a) The seller (usually through the listing broker) must supply loan documents for the buyer to review by the existing loan document deadline.

   b) If the seller is to be released from liability or have VA eligibility reinstated, those must be included in the approval, or the seller has the option of terminating the contract.

   c) The buyer has an opportunity to review the documents and terminate the contract if the terms are unsatisfactory, as long as the buyer responds by the existing loan document objection deadline.

   d) The buyer must also obtain the lender's approval for loan assumption by the loan transfer approval deadline or the contract will terminate.

C. Appraisal provisions

1. Purpose: This section is used to create or eliminate the appraisal contingency. It also determines who will pay for the appraisal.

2. Lender property requirement—allows the seller to terminate the contract if the lender imposes requirements or repairs beyond what the seller is willing to pay for.

   a) The seller, with written notice to the buyer, may terminate the contract if the lender requirements are not acceptable to the seller.
b) The parties may also enter into a different agreement, the seller can do the repairs, or the buyer can waive the repairs (with the lender's permission).

3. Appraisal condition—creates the appraisal contingency based on the type of loan the buyer is using. Cash buyers who want an appraisal will use the Conventional/Other section.

   a) Conventional/other—used for a buyer seeking a conventional, non-FHA or VA, or other loan, or for cash buyers.

      (1) If the appraisal is ________________ the contract price, the buyer can terminate the contract without forfeiting the earnest money.

      (2) Either a notice from the lender that the appraisal was low or a copy of the appraisal must accompany the notice of termination.

      (3) The ____________________ must be on or before the appraisal objection deadline listed in Dates and Deadlines or the right is waived.

   b) FHA and VA requirements—used to meet the specific provisions required by the FHA and VA to have an escape clause if the property does not appraise for the contract price.

      (1) The escape clause allows the buyer to terminate the contract.

4. Cost of appraisal—determines who will pay for the appraisal.

   a) The parties ________________ who will pay for an appraisal obtained after the contract date.

   b) Notice is given that the cost of the appraisal may include any or all fees paid to the appraiser, appraisal management company, lender's agent, or all three.

D. Evidence of title and association documents

1. Purpose: This section deals with title issues and establishes that the seller is providing title insurance. The type of policy or abstract is also determined. If the property is in a common interest community that has a homeowners' association (HOA), disclosure is given to the buyer and how the HOA documents will be delivered is established.

2. Evidence of title and copies of exceptions—sets the type of owner's policy and determines who will select and pay for it.

   a) A check box determines if the seller or buyer will choose the title company and pay for the title insurance.

   b) It gives the buyer the right to request documents listed as exceptions in the title commitment.

   c) The buyer may request an owner's extended coverage (OEC) policy, which would include insurance coverage for the six items listed.

      (1) Once again, check boxes will determine who will pay for the extended coverage.

   d) RESPA requires that if the buyer pays for all or any portion of the title insurance, the buyer may then choose the title company.
e) The title commitment is delivered by the record title deadline and is an ______________ to insure the title.

   (1) The title commitment is delivered prior to closing, but the actual policy is delivered after closing.

f) The buyer has a ______________ to review various title documents and exceptions listed in the title commitment.

3. Homeowners’ association disclosure and documents—if the property is in an HOA, also known as a common interest community, the buyer is made aware that such communities are governed by bylaws, rules, and regulations.

   a) A common interest community is any community with a ______________ for the maintenance of common facilities (common elements).

   b) The Colorado Common Interest Ownership Act provides homeowners’ associations with statutory lien power for unpaid assessments. This means the association has the right to foreclose if the assessments are not paid.

   c) Common interest community disclosure—printed in all capital letters and bold, the section warns the buyer about many of the issues involved with common interest communities.

      (1) The buyer should fully understand all of these issues and know that they have an obligation to

          (a) follow the rules and regulations;

          (b) pay all assessments, both monthly and special (if required), along with any other financial obligations; and

          (c) abide by the requirements on exterior changes.

      (2) This section allows for the review of documents governing common interest community properties. The buyer is warned to read and understand all of them.

          (a) These documents include the bylaws, rules, and regulations, minutes for association meetings, and the community's annual documents such as the balance sheet, income, expenditures, and budget.

          (b) It is determined by whom and how the documents will be delivered to the buyer. The date of delivery is set in the Dates and Deadlines section.

          (c) It creates the opportunity for buyer review and a negative consent responsibility to object by the association documents objection deadline or ______________.

          (d) If the buyer does not receive the documents until after the title deadline, the buyer will have ten days to terminate the contract.

          (e) No matter when the buyer receives the documents, the buyer has _____________

               ________________ to terminate the contract.
E. Record title and off-record title matters

1. Purpose: This section sets the dates and requirements for the review of the title and survey. The buyer will have time to review all the documents and object to any that are not acceptable. The seller will be given until closing to cure title issues.

2. The buyer or buyer’s attorney has until the title objection deadline to report any title defect believed to make the title unmerchantable or if the form or content of the title commitment is unsatisfactory.
   a) The buyer will have the right to terminate if unsatisfactory title issues are found.
   b) If a later endorsement from the title insurance company adds any exclusions, the buyer will have five days after receipt to object.
   c) The seller may be aware of items such as leases or recent easement agreements that are not shown in the public record.
      (1) The seller must provide copies by the off-record title deadline.
      (2) The buyer has until the off-record title objection deadline to object in writing.
   d) The dates for the buyer to object to title issues, the seller to resolve them, and the right to terminate the contract if the issues cannot be settled are defined here and entered in the Dates and Deadlines section.

3. Special taxing districts—gives the buyer notice that special taxing districts may represent a substantial risk to a buyer, so the buyer should investigate the district.
   a) Both title documents and the county certificate of taxes due will normally list such taxing districts.
   b) Financial information about the district is available from the State of Colorado.
   c) The buyer has a right to terminate the contract if the property is in a special taxing district and written notice of termination is received by the seller on or before the off-record matters objection deadline.

4. Right of first refusal or approval—a few common interest communities have a right of first refusal to acquire a property with priority over a potential new buyer or a right to approve sales.
   a) If such a right exists, the seller is responsible to either get an approval or waiver by this deadline.

5. Title advisory—warns the buyer about the seriousness of title matters. In particular, it explains that mineral and water rights may not be part of the sale.
   a) A third-party owner of the mineral or other rights may have the right to __________________________. The third-party owner must restore the surface of the property.
   b) The buyer should consult legal counsel if there is any question about the items.
F. **Current survey review**

1. **Purpose:** This section requests a current survey, improvement location certificate (ILC), or other document to determine the property's boundaries.

2. If a survey or an ILC is required for extended title insurance or for a lender, this section specifies who will order and pay for it.

3. Dates for the delivery of the documents and the rights to objection are put in the Dates and Deadlines section.
Colorado Contract to Buy and Sell Real Estate, continued

Focus on Understanding
- The remaining contents and layout of the Contract to Buy and Sell Real Estate

Study Plan
Before Class:
- Use the *Colorado Contracts and Forms Supplement* to review the forms discussed in this unit because they will be covered in class.

After Class:
- Review Unit 4.
- Complete the Unit 4 Midterm Exam before starting Unit 5. The exam will be reviewed at the beginning of Unit 5.
UNIT 4 LECTURE OUTLINE

I. DISCLOSURE, INSPECTION, AND DUE DILIGENCE

A. Property disclosure, inspection, indemnity, insurability, due diligence, buyer disclosure, and source of water

1. Purpose: Establishes various items tied to the disclosure of defects and the buyer’s right to have a property inspection.

2. Seller’s property disclosure deadline—establishes if the seller will agree to give the buyer a Seller’s Property Disclosure by the deadline listed.

   a) The seller agrees by contract to provide the most current version of the Real Estate Commission–approved Seller’s Property Disclosure form before this deadline.

      (1) The seller completes the form to “the seller’s _________________________,” current as of the date of this contract.

      (2) The seller still has the right to sell the property in “as is” condition.

   b) State law does not require this disclosure form to be a part of the real estate transaction, but the approved listing agreement and the Contract to Buy and Sell Real Estate requests that the seller provide it.

      (1) If the seller chooses not to provide the disclosure, the seller must state this in the listing agreement. The seller would also need to counter the offer to remove this provision from the Contract to Buy and Sell Real Estate.

3. Inspection objection and resolution—gives the buyer permission for an inspection and other tests, and sets time frames for the buyer to complete the property inspection and then terminate the contract or request repairs from the seller.

   a) The buyer is given notice that the property is being sold in an “as is” condition “where is” and “with all faults.”

   b) The seller agrees to give written disclosure of all known latent defects.

   c) The buyer has the right to have the property, inclusions, and surrounding areas inspected by an inspector of the buyer’s choice and at the buyer’s expense.

   d) After the inspection, the buyer has three choices before the inspection objection deadline:

      (1) Do not give notice before the deadline and let the contingency expire (waive the right to object)

      (2) Terminate the contract

      (3) Use the Inspection Objection form to give the seller a written list of items that are unsatisfactory and must be corrected

         (a) If the buyer and seller cannot reach a written agreement by the resolution deadline on what will be corrected and how, the contract will terminate ________________.
4. Damage, liens, and indemnity—the buyer agrees to indemnify (protect) the seller from any claims and liens for the buyer's failure to pay for the work.
   a) The buyer is responsible for any damage done to the property during the inspection or testing.
   b) The buyer will pay for the inspector and any other work that was done and agrees that no claims or liens can be placed against the property as a result of the buyer's failure to pay for the work.
   c) Even if the buyer ____________________________, the buyer remains responsible for repairing the damage.

5. Insurability—the buyer is given a contingency to find satisfactory insurance by the deadline.
   a) The buyer may shop for property insurance, and if unable to get satisfactory insurance by the property insurance objection deadline, the buyer may terminate the contract by written notice.

6. Due diligence, documents, and deadlines—establishes due diligence requirements.
   a) This gives the buyer the option to inspect the physical components of the property (i.e., roof, structure, mechanical systems, and so on.).
   b) In the income, commercial, and land versions of the Contract to Buy and Sell Real Estate, a standard list of requested documents is incorporated in this section.
   c) The buyer has this space to request documents from the seller, and the seller agrees to provide the documents, if in the seller's possession, by the due diligence document delivery deadline.
   d) The buyer is given notice and deadlines for terminating the contract, if the buyer is not satisfied with the due diligence documents, survey, or leases as applicable.

7. Conditional upon sale of property—the buyer notifies the seller if the buyer must sell a current property in order to close on the property on which the buyer is making an offer.
   a) If the buyer needs to sell another property, this section will create the contingency for the sale and deadline for completion.

8. Source of potable water (residential land and residential improvements only)—the buyer is given notice to confirm the source of water.
   a) The buyer acknowledges if the buyer has received the Seller's Property Disclosure or the Source of Water Addendum, which discloses the source of potable water for the property.
   b) The buyer will verify if the buyer has received a copy of the current well permit, or if there is no well on the property.
   c) The buyer is once again notified to investigate the long-term sufficiency of the water supply.
9. Carbon monoxide alarms—alerts the buyer and seller to the statutory requirements for carbon monoxide alarms.
   a) The parties acknowledge that if the property has combustion heaters, appliances (e.g. gas forced air furnace, wood stove, or gas clothes dryer), or an attached garage, there must be operational carbon monoxide alarms installed per statute or building code.

10. Lead-based paint—used to make sure all parties are in compliance with the lead-based paint law.
   a) The lead-based paint disclosure is mandatory for a residential improvement with a ________________ prior to January 1, 1978.
   b) The contract is ________________ unless the required disclosure is made by the seller before the offer is accepted.
   c) This is the ________________________ alone. The broker's duty is to help the seller meet the seller's obligation.
   d) Upon signing the offer, the buyer is stating that the buyer has ________________ a copy of the disclosure signed by the seller and the real estate licensees.
   e) If the buyer has not received the form, the buyer's broker should cross out the section stating the buyer's receipt and request the disclosure prior to acceptance of the contract.
   f) The seller must give the buyer the disclosure, or the contract will be void.

11. Methamphetamine disclosure—alerts the buyer when and if the seller will have disclosure requirements.
   a) The seller is required to disclose if the seller knows whether methamphetamine has ever been manufactured, processed, cooked, disposed of, used, or stored at the property.
      (1) If any of the above criteria apply and the property has been cleaned to state standards and certified by a hygienist, the seller does not have to disclose the methamphetamine use.
   b) The buyer has the right to have the property inspected.
      (1) If the buyer finds that the property has been used as a methamphetamine laboratory and has not been properly remediated to state standards, the buyer has the right to terminate the contract by promptly giving the seller written notice.

B. Colorado Foreclosure Protection Act

1. Purpose: The seller and buyer are notified that if the property is in foreclosure, and if the property will be non-owner-occupied, the parties must either use the Foreclosure Property Addendum or a contract prepared by an attorney.

2. If the property is subject to the Colorado Foreclosure Protection Act, the proper forms must be used.

3. This section notes if the buyer will or will not occupy the property.
   a) The contract may be void if the requirements of the act are not followed.
II. CLOSING PROVISIONS

A. Closing documents, instructions, and closing

1. Purpose

   a) The buyer and seller negotiate who will be responsible for the payment of various closing costs and fees. All funds brought to the closing will be in the form of good funds. The section also states who will be responsible for setting the time and place where all the parties will meet to close.

2. Closing documents and closing information

   a) Closing instructions, closing, and disclosure of settlement costs—the buyer and seller agree to furnish any additional information or documents needed by the closing company and negotiate who will pay various fees related to the transfer of ownership.

      (1) A check box states if the closing instructions are being executed with this contract.

      (2) If the instructions are not part of this agreement, either the seller or buyer is chosen to deliver the instructions to the closing company.

         (a) Closing is defined as delivery of deed from the seller to the buyer.

      (3) The offeror (normally the buyer) proposes a date for closing (settlement) and the buyer and seller agree on a negotiated date.

      (4) This section sets the date in section 3 and designates who will specify the time and location of closing.

         (a) The seller and buyer are given notice that the costs for settlement service providers and services vary.

B. Transfer of title

1. Purpose: The seller agrees to convey title to the property free and clear of encumbrances and which type of deed will be used to convey the title.

2. The seller commits to provide a specific type of deed, usually a general warranty deed, at closing.

3. The seller agrees to deliver title free and clear of liens and encumbrances, unless the buyer has assumed them. This includes special assessments.

4. There is a list of “standard” exclusions from the “free and clear” status and a place to list any other exclusions.

C. Payment of encumbrances

1. Purpose: The seller gives permission to have encumbrances, usually the loan, paid with proceeds from the sale.

2. The seller may have the closing company use the ____________________________ to pay off encumbrances.
D. Closing costs, closing fee, association fees, and taxes

1. Purpose: The buyer and seller negotiate who will be responsible for the payment of various closing costs and fees. All funds brought to the closing will be in the form of good funds.

2. How the fees for the closing service will be paid is __________________________ here.

3. A Colorado documentary fee of __________________________ is payable by the person recording a conveyance deed. This fee is typically paid by the buyer.

4. Payment for a homeowners’ association status letter and any outstanding assessments as part of the transfer from the seller to the buyer are negotiated.

5. Water transfer fees, if any, are listed here.

6. Local transfer taxes are usually treated like a sales tax and paid by the buyer.

7. Colorado use tax is primarily for personal property used in a business. It is the legal responsibility of the __________________________ since it is like a sales tax.

E. Prorations

1. Purpose: This section will describe and define how property taxes, rents association fees, and any other items will be prorated at closing between the seller and buyer. It also defines how all items will be prorated at the final settlement.

2. Colorado practice is to __________________________: the seller’s last day of responsibility is the day before closing; the buyer is responsible the entire day of closing.

3. General real estate taxes are prorated as indicated by the box checked, either by using the previous year’s taxes or the most recent mill levy.

4. If the property is subject to a lease, the rent will be __________________________ as indicated.
   a) Security deposits are not prorated; they will be credited to the buyer.
   b) The seller agrees to notify the tenants of the transfer and the name and address of the new buyer who is holding the deposit.

5. If the property is part of an HOA, this section determines how the charges will be prorated.
   a) The Colorado Common Interest Ownership Act authorizes homeowners’ associations to place a __________________________ lien on owners who fail to pay association dues.
   b) Regular association assessments and dues will be prorated. Any other special assessments are the responsibility of the party indicated.
   c) The seller represents the current regular assessment amount and period and states that these assessments are current.
   d) Association reserve funds will be ignored unless association documents require something different.
   e) The buyer acknowledges the buyer may be requested to pay, at closing, additional amounts for association reserves or working capital.
f) Any special assessment for improvements installed before the date of the contract is the seller's responsibility.

g) The seller agrees to request a status letter from the association and to deliver it to the buyer before the closing date.

6. Sometimes a buyer or seller will protest a proration if the final bill, such as a tax bill, comes in higher or lower than the assumed and prorated amount.

7. This provision says the proration is final.

F. Possession

1. Purpose: This section will determine the date and time for the seller to turn over possession to the buyer.

2. The best time for possession is at the closing, after the deed has been delivered and the buyer's payment has been received.

3. If the seller is to remain after closing, there may be issues involving insurance and the seller leaving in a timely fashion.

   a) If the seller stays after closing, then a post-closing occupancy agreement should be completed. This section states that the seller could be subject to eviction, and there is a space to charge the seller a daily fee if possession is not delivered as agreed.

4. Possession date and possession time are two more items in the Dates and Deadlines table.

5. The buyer's occupancy intentions are important for the type of financing the buyer is requesting.

6. The property insurance coverage should be verified.

III. GENERAL PROVISIONS

This segment is used to define the general terms and conditions of the Contract to Buy and Sell Real Estate.

A. Day; computation of period of days, deadline

1. Purpose: This section establishes how days will be computed and if deadlines can be extended following a weekend or holiday.

2. Day is defined as a full day ending at 11:59 pm mountain time.

B. Causes of loss, insurance; condition of, damage to property and inclusions and walkthrough

1. Purpose: This section defines what will happen if the property is damaged during the executory period, along with the seller's obligations if one of the inclusions fails. The buyer is also given other rights to verify the property's condition.

2. The seller is obligated to deliver the property and inclusions as they were represented in the Seller's Property Disclosure or as provided in the contract.
3. Cause of loss, insurance—explains what happens if the property is damaged by fire or other casualty
   a) The remedies are different if the damage is more or less than ________________ of the purchase price.
      (1) If there is 10 percent or less damage, the seller will repair the property.
      (2) If the damage is over 10 percent, the buyer may terminate or collect insurance proceeds for the real property damage.

4. Damage, inclusions, and services—if an inclusion fails between the contract date and closing, the seller must repair it or replace it with “a unit of similar size, age, and quality.” The parties might also agree to an equivalent credit at closing.
   a) If the seller does not replace the inclusion, the buyer may terminate or receive a credit.
   b) The contract also reminds a buyer that a pre-owned home warranty may be available

5. Condemnation—in the event the property is condemned, this section sets up remedies for the buyer
   a) The buyer may
      (1) terminate the contract, or
      (2) proceed and collect the funds from the condemnation.

6. Walk-through and verification of condition—the buyer is given the right, with notice to the seller, to walk through the property prior to closing to verify the physical condition of the property and the inclusions.
   a) The buyer must be aware that this walk-through is not another ________________ clause but an opportunity to make sure that agreed corrections and conditions are satisfactory.

C. Recommendation of legal and tax counsel
   1. Purpose: As in all approved contracts, this section confirms that the brokers recommend that all parties seek legal and tax counsel prior to signing.
      a) This confirms that the broker carried out duties under Rule E-14.

D. Time of essence, default, and remedies
   1. Purpose: The buyer and seller are agreeing to the remedy if the other party is in default. Specific performance is an option available to either party, with the seller having the additional choice of liquidated damages.
      a) Makes every relevant date and deadline strictly mandatory to avoid default.
      b) Payments must be made on time, and checks and notes must be paid to avoid being in default.
      c) The remedies for the party not in default are listed.
2. If buyer is in default—creates the choices the buyer can make if the buyer defaults on the contract
   a) Unless the box is checked for specific performance, liquidated damages is automatically chosen.
   b) Specific performance allows the seller to cancel the contract, keep the earnest money, and sue the buyer for damages, or take the buyer to court to force the buyer to perform the purchase terms and sue for additional damages.
   c) Liquidated damages (the default if no box is checked) provides that the seller may only keep the earnest money.
3. If seller is in default—gives the buyer notice of the buyer’s only remedy if the seller defaults on the contract.
   a) The buyer has remedies parallel to the ____________________________ remedies described under buyer default.
   b) Note: The only remedy available to both parties in approved contracts is __________

E. Legal fees, cost, and expenses

1. Purpose: This section sets up who will be responsible for legal fees.

2. If the parties end up in binding arbitration or a suit in court, the losing side may be ordered to pay the expenses, including attorney fees, for the prevailing side.

F. Mediation

1. Purpose: The buyer and seller are agreeing to first mediate any dispute. After mediation, they may choose to go to arbitration or litigation.

2. The contract requires that the buyer and seller attempt nonbinding mediation to settle any dispute.

3. The parties agree to mediate for ______________ and will split the cost of any mediation.

4. Any resolution reached and signed by the parties will be binding on the parties.

5. If mediation does not settle the situation, either party may take the matter to arbitration or litigation (lawsuit).

6. The right to mediation is standard in every approved contract and is not negotiable.

G. Earnest money dispute

1. Purpose: If the parties are in dispute and the earnest money is in contention, this section defines the brokerage firm’s options.

2. When a contract is terminated according to one of its provisions, the earnest money must be returned immediately unless there is a specific dispute.
   a) This section protects ____________________________ in case of an earnest money dispute.
b) The buyer and seller still mediate the dispute, but the broker is not under pressure to disburse the funds.

c) The brokerage may do one of the following with the earnest money:

1. Take no action and hold the funds pending a resolution, which is typically at least through the mediation process.

2. Interplead the parties in a civil action to determine the disposition.
   a) Interpleading is a process where the broker deposits the funds in court and starts a legal action for the court to decide how the money will be disbursed.
   b) The broker may recover the costs of setting up this court action.

3. Notify the buyer and seller to send any lawsuit information or the money will be returned to the __________________________ of notice being sent.

4. Disburse the money per the court order or as directed in writing by the buyer and seller.

H. Termination

1. Purpose: If the buyer or seller terminate the contract as agreed, by giving the other party written notice prior to a deadline or as otherwise defined, the buyer's earnest money will be returned.

2. Defines termination for all the times in the contract when one party may terminate the contract.

3. If the contract is terminated as agreed, the parties will be relieved of any contract obligations other than those defined in the inspection mediation and earnest money dispute sections.

I. Entire agreement, modification, survival

1. Purpose: The parties are agreeing that everything that has been negotiated, both written and verbal, is contained in this agreement.

2. This clause confirms that there are no side agreements and all parties acknowledge that this is the entire agreement.

3. Modifications after the contract is executed must be made in writing and signed by both parties.

J. Notice, delivery, and choice of law

1. Purpose: This section will determine how delivery of items is to be handled.

2. The parties have two choices for delivery of documents:

   a) Physical delivery
      1. Any required notice between the parties may be physically delivered to the party or the broker working with that party and is effective when received by either the party or the broker.

      2. Once the buyer or the buyer's representative has received the notice, it is presumed that the buyer has as well.
b) Electronic delivery

(1) The parties may check one or more boxes to permit or not permit electronic delivery of notice.

(2) Either party may request copies of documents with ________________ signatures at any time.

3. Choice of law

a) This gives notice to the parties that any legal issue with the contract will be enforced and interpreted under Colorado law.

K. Notice of acceptance, counterparts

1. Purpose: Determines the deadline for acceptance of the offer. The offer will expire if not responded to in the time frame outlined.

2. This section creates the date and time for acceptance of the offer

   a) The acceptance deadline should normally be as short as is reasonable for the seller to review the offer and respond.

   b) The acceptance deadline time should be a clock time that is reasonably convenient for the parties—normally not midnight.

   c) The buyer may ________________ the offer at any time until the buyer or the buyer’s representative learns of acceptance of the offer.

L. Good faith

1. Purpose: The seller and buyer acknowledge their obligations to act in good faith to meet all the requirements of the contract.

   a) This includes, but is not limited to, those outlined in the financing, property disclosure, inspection, indemnity, insurability, and buyer disclosure and source of water sections.

IV. ADDITIONAL PROVISIONS AND ATTACHMENTS

a) Purpose: This section defined the additional items added to or attached to the offer.

A. Additional provisions

1. Purpose: As in all approved Colorado contracts, this section is used for transaction-specific items negotiated between the parties.

   ■ Example: If the buyer would like the seller to leave the firewood, then the buyer would make that request in this section.

2. Transaction-specific agreements negotiated between the buyer and seller are proper in this area. Most other items belong in an addendum.

3. Commission Rule F-2 specifically limits the contents of Additional Provisions and Rule F-3 extends the limitation to addenda in the Contract to Buy and Sell Real Estate.
4. “A broker who is not a principal party to the contract may not insert personal provisions, personal disclaimers, or exculpatory language (Rule F (3) (c)) in favor of the broker in the Additional Provisions section of a Commission-approved form.”

- No broker exculpatory language is permitted in the Contract to Buy and Sell Real Estate.

B. Attachments

1. Purpose: This section is used to list additional documents that are being attached to the contract, such as addenda with a lengthy legal description, the Lead-Based Paint Disclosure, or the Seller’s Property Disclosure.

2. Some attachments are part of the legal agreement, and others may be for information only, such as a Square Footage Disclosure form or Seller’s Property Disclosure form.

3. This section is not for items included in or excluded from the sale of the property (these are listed in section 2 of the contract).

V. SIGNATURES

- Purpose: To be legally binding, the contract must be signed by all buyers and sellers.

A. Buyer and seller signatures

1. The buyer signs when making the offer.

   a) The buyer’s broker should complete the buyer information.

2. The seller would sign if accepting the offer “as is.”

   a) The listing broker should make sure the seller information is complete and correct.

B. Counter; rejection

1. Purpose: This section is used if the offer is being countered or rejected.

2. If the seller is ________________ the offer as proposed, mark the appropriate box and initial the short line ________________ the offer.

3. A similar notice is given on the Counterproposal form and directs the seller not to sign this document if the seller is rejecting the offer or making a counterproposal.

4. The seller signs if accepting the offer as proposed.

C. End of contract

1. Purpose: Informs all parties that additional information below this point is not part of the agreement between the buyer and seller.

D. Broker’s acknowledgments and compensation disclosure

1. Purpose: Defines the brokerage relationships and if the brokers are holding the earnest money.
2. When they sign, both brokers **are** have the earnest money listed in section 4 of the contract.
   a) Brokers are agreeing that if the brokerage is holding the earnest money and receives a request for return of the funds, the brokerage will return the earnest money to the buyer within five days of receiving the request due to timely termination.

3. The brokers also acknowledge their relationship in the transaction.
   a) The brokers may also notify the parties of their **are** by checking the box.

4. Each company completes the relevant parts.

5. Each firm confirms the source of its commission.

6. The brokers should provide complete information to speed up communication.
1. If a property sale includes leased appliances, the broker must
   a. have the seller cancel the lease.
   b. exclude these items, since the lease cannot be transferred to a buyer.
   c. check the appropriate box or boxes in the Personal Property section of the Contract to Buy and Sell Real Estate.
   d. have the seller remove the items prior to marketing the property.

2. The buyer must receive a Lead-Based Paint Disclosure if the
   a. property improvements were completed prior to January 1, 1978.
   b. fixtures were attached prior to January 1, 1978.
   c. building permit was issued prior to January 1, 1978.
   d. certificate of occupancy was issued prior to January 1, 1978.

3. What form(s) may earnest money take?
   a. Cash or good funds only
   b. Cash or check only
   c. Cash, check, or promissory note
   d. Any form the seller will accept

4. In the residential Contract to Buy and Sell Real Estate, which is TRUE regarding the financing language?
   a. A broker may omit the financing terms and leave a space for licensees to draft the terms that fit.
   b. All financing provisions must be printed in every contract.
   c. The form may not be computer generated because it would be too easy to change.
   d. A broker may print forms with only the financing terms needed for the transaction.

5. According to the approved residential Contract to Buy and Sell Real Estate, if a buyer is receiving seller financing and has provided the seller with the buyer's credit information,
   a. this information can be shared with other parties the seller knows.
   b. the seller must not share the information with others.
   c. only a lender can review this information for the seller.
   d. the seller must request that the buyer update the information annually.

6. Which of the following terminates a purchase offer and constitutes a new offer?
   a. Seller's Property Disclosure
   b. Counterproposal
   c. Inspection Resolution
   d. Agreement to Amend/Extend contract

7. The seller declines at listing to complete the Seller's Property Disclosure. The listing broker should
   a. tell the seller that the buyer will request the form.
   b. complete the form for the seller.
   c. tell the seller that disclosure of material facts is optional.
   d. resign the listing, since the seller won’t complete the form.

8. The approved residential Contract to Buy and Sell Real Estate calls for general property taxes to be prorated between the
   a. seller and buyer based on the taxes for the preceding calendar year.
   b. seller and buyer based on the assessed value and mill levy.
   c. seller and broker based on the taxes for the preceding calendar year.
   d. seller and buyer as indicated by checking the appropriate box.
9. A Colorado well permit
   a. guarantees a minimum amount of water.
   b. is issued by the Real Estate Commission to provide water.
   c. is real property, but not an appurtenance.
   d. provides permission to drill and maintain a well.

10. Adjudicated water rights may be taken from an owner involuntarily for public use by
    a. severance.
    b. suit for partition.
    c. condemnation.
    d. water court decree.

11. In the approved Contract to Buy and Sell Real Estate, dates and deadlines are
    a. listed in each relevant section.
    b. listed and summarized in each relevant section.
    c. listed only in the section as a checklist for compliance.
    d. approximate, and reasonable compliance is acceptable.

12. If a property is in a special taxing district, the approved residential Contract to Buy and Sell Real Estate provides that the
    a. seller must pay off the present and future obligations to the district.
    b. buyer may terminate the contract upon learning of the district.
    c. buyer has 30 days after closing to rescind the contract.
    d. buyer must be informed but has no recourse.

13. Per the Loan Objection section of the residential Contract to Buy and Sell Real Estate, all of the following are true EXCEPT
    a. in subjective opinion, the buyer may decide if the loan terms are acceptable.
    b. if the buyer does not send the seller written notice of acceptance of terms, the contract terminates.
    c. the buyer has until the loan objection deadline to decide if the loan terms are acceptable.
    d. the seller could keep the buyer’s earnest money if the terms of this section are not followed.

14. Which statement is TRUE regarding an owner’s policy of title insurance?
    a. It is issued prior to closing and paid for after the closing.
    b. It covers title defects found after closing.
    c. It covers defects and exceptions listed in the title commitment.
    d. It protects the lender against superior claims.

15. According to Rule F, all of the following would be acceptable as a substitute for the Contract to Buy and Sell Real Estate EXCEPT
    a. a contract drafted by the buyer’s attorney.
    b. a contract drafted by the brokerage firm’s attorney for general use by all brokers in the firm.
    c. a contract drafted by the seller’s attorney
    d. a new home sales contract with builder warranties.

16. A Colorado broker has a brokerage relationship with both the buyer and seller in a single transaction. The brokerage relationship must be
    a. single agency.
    b. dual agency.
    c. transaction-broker.
    d. customer.

17. Which is TRUE about association documents in the residential Contract to Buy and Sell Real Estate?
    a. The seller will have until four days prior to closing to resolve the buyer’s issues.
    b. The association must deliver the documents to the buyer no later than the association documents deadline.
    c. The association and seller will have until the association documents deadline to resolve the buyer’s issues.
    d. If the buyer finds unsatisfactory issues, the buyer may terminate the contract.
18. A listing broker holding an open house is informed by the buyer that the buyer has signed a buyer representation agreement with another broker. The listing broker should
   a. not show the house to the buyer.
   b. show the buyer the house and have the buyer sign an Exclusive Right-to-Buy Listing Contract with the listing broker.
   c. have the buyer call the broker and have the other broker show the house.
   d. show the buyer the house.

19. In a transaction with a listing broker and a buyer's agent, who usually holds the earnest money deposit?
   a. Listing broker
   b. Buyer's broker
   c. Must be in a neutral escrow company
   d. The brokers establish a joint trust account

20. When and how must you inform a for-sale-by-owner (unrepresented) seller that you are an agent for a buyer who wants to see the house?
   a. Orally when you meet the seller
   b. Orally when you first call the seller
   c. In writing when you first call the seller
   d. In writing at the first physical contact

21. According to the approved residential Contract to Buy and Sell Real Estate, if a built-in dishwasher fails between contract and closing dates and before occupancy by the buyer, the
   a. seller must replace it with a new appliance.
   b. buyer is at risk during this time.
   c. seller may repair or replace it with a similarly used appliance.
   d. buyer may repair it after closing and charge the seller.

22. If a buyer is submitting an offer on an approved Contract to Buy and Sell Real Estate in which the seller has requested liquidated damages if the buyer is in default,
   a. the proper language must be inserted in Additional Provisions.
   b. this is the contract default, and the buyer and seller do not need to do anything.
   c. the seller will check the appropriate box after accepting the offer.
   d. this may be specified by marking the correct box in the Remedies section.

23. What is the purpose of the broker's signature on the sales agreement?
   a. It provides a receipt for the earnest money and confirms the brokerage relationship.
   b. The brokers are fiduciaries and, therefore, parties to the agreement who must sign.
   c. It confirms the commission split between cooperating brokers.
   d. It confirms the brokers are witnessing this important legal document for the buyer and seller.

24. During the executory period, the
   a. seller must buy title insurance.
   b. vendee has legal title.
   c. grantor is the offeror.
   d. buyer has equitable title.

25. The earnest money must be deposited within three business days after
   a. receipt of the money from the buyer.
   b. offer, acceptance, and communication of acceptance.
   c. the offer is made.
   d. acceptance of the offer by the buyer.
Additional Transaction Documents and Regulations

Focus on Understanding
- The additional forms used to complete many transactions
- Additional laws related to real estate brokerage

Study Plan
Before Class:
- Read this unit.
- Review the chapters in the CREM listed in the Course Reading Guide.
- Use the Colorado Contracts and Forms Supplement to review the forms discussed in this unit because they will be covered in class.

After Class:
- Review Unit 5 and contract forms.
UNIT 5 OVERVIEW

Additional Forms Used with the Approved Contract Forms

- Lead-Based Paint Disclosure
- Square Footage Disclosure
- Seller’s Property Disclosure (all types of properties)
- Source of Water Addendum
- Closing Instructions
- Counterproposal
- Post-Closing Occupancy Agreement
- Inspection Objection
- Inspection Resolution
- Agreement to Amend/Extend Contract (used with Contract to Buy and Sell Real Estate only)
- Agreement to Amend/Extend Contract with Broker (used with listing or buyer representation agreements)
- Notice to Terminate
- Licensee Buyout Addendum to Contract to Buy and Sell Real Estate
- Short Sale Addendum
- Statutory Power of Attorney
- Property Transfer Declaration (TD-1000 used at closing)

Colorado Regulations

- Water rights
- Well permits
- Deeds of trust law and foreclosure in Colorado
- Colorado Foreclosure Act
- Equity skimming
- Uniform Consumer Credit Code
- Dual contracting
- Adverse possession and prescription in Colorado
- Taxation of real property

Colorado Real Estate License Rules

- Subdivision registration
- Errors and omissions insurance
- Employing broker supervision
- Employee and independent contractor status
- Real estate assistants

Additional Documents

The additional documents illustrated and explained in this unit are frequently part of the negotiation, contracting, and closing parts of a real estate transaction. Licensees are responsible for knowing they exist and using the proper approved form throughout their real estate careers. The forms are organized in roughly the same order as they might be used in an actual transaction.
Additional Regulations

The additional Colorado regulations and real estate commission rules are also an important part of any proper real estate practice. Brokers should know that the rules exist and how to access them.

ADDITIONAL FORMS

In addition to approved contract forms, the Colorado Real Estate Commission has approved other forms for brokers to use. This unit will review these forms and regulations that impact Colorado real estate professionals.

Lead-Based Paint Disclosures

Federal law places the responsibility on the seller or the landlord to disclose lead-based paint. Even an unrepresented seller (for sale by owner) must disclose. Three forms for disclosing lead-based paint have been approved for use by brokers. The first form is the Lead-Based Paint Obligations of Seller, which is used to inform the seller or the landlord of the federal requirements to disclose to buyers or tenants. The second and third required forms are the Lead-Based Paint Disclosure (Sales) and Lead-Based Paint Disclosure (Rentals). Property owners and brokers must use these forms for all properties with building permits prior to January 1, 1978. Note that the federal law only states properties built before January 1, 1978, but Colorado law clarifies that it applies to properties with building permits prior to January 1, 1978.

The lead-based paint disclosure forms have five sections. The first is a description of lead-based paint and lead-based paint hazards. The second discloses whether or not the landlord or the seller has any knowledge regarding lead-based paint on the property. Also, the section has an area to note whether or not the landlord or the seller has reports in regard to lead-based paint. The tenant or the buyer uses the third section to acknowledge receipt of the disclosure and the federal pamphlet Protect Your Family from Lead in Your Home. The sales-specific form gives buyers further notice of their right to have ten days to have the property inspected for lead-based paint. If the buyer chooses to have the property inspected, the amount of time will be determined by the inspection section of the Contract to Buy and Sell Real Estate, which may or may not be ten days. The form also gives the buyer the choice to waive any assessment or inspection of the property. The fourth section gives notice and acknowledgment of the real estate licensee's obligation to both inform the owner of the owner's obligation to disclose and the licensee's responsibility to ensure compliance with the disclosure of all parties. The fifth and final section records the signatures of the buyer, the seller, and the licensees representing them.

In the sale of a property that requires a lead-based paint disclosure, the Contract to Buy and Sell Real Estate calls for the buyer to receive the disclosure before the seller accepts the offer, or the contract will be void. To make sure that the buyer receives the form, the listing broker should complete it at the listing appointment. When an offer is being written, the seller and the listing broker sign the form and then send it to the buyer's broker. The buyer's broker presents and reviews the form with the buyer, who signs the form. Typically, the last signature belongs to
the buyer's broker who, in order to provide compliance, attaches the completed Lead-Based Paint Disclosure form to the Contract to Buy and Sell Real Estate when presenting the offer to the seller.

The seller or the landlord are not required to test or remove lead-based paint. They must make sure all buyers and tenants receive the pamphlet and disclosure form so they can make an informed choice about the property they are buying or leasing.

**Square Footage Disclosure**

The listing broker of residential property uses the Square Footage Disclosure to comply with Rule E-43. This rule requires any broker who lists and markets residential property to disclose the source of the square-footage measurement. The form gives the listing broker two options for square footage disclosure: (1) the licensee's measurements, or (2) an outside source of measurement. If using the first section “Licensee Measurement,” the broker checks the appropriate box to note that either the broker measured the property or someone else measured the property. The licensee uses this section to describe which standard of measurement was used. The broker can choose to use exterior measurement, FHA, ANSI (American National Standards Institute), local standards, or other. The broker checks which standard was used for measurement, the date of measurement, and the square footage. Most often an exterior measurement of heated spaces determines the square footage. The local MLS system often defines local standards for what should be included in the square-footage measurement.

The listing broker may choose to use the second section, which lists “other source of measurement.” This section gives a list of typical choices for how the measurements were obtained: appraisals, building plans, assessor's records, or other. The broker checks the source of measurement that was used, and lists the date of the document and the square footage. This form allows a buyer to know how the square footage of the property was determined.

The Square Footage Disclosure form further states that the square footage amount is to be used only for marketing and not for loan valuation or other purposes. It also notifies the buyer that if there is a question or concern about the square footage, the buyer should have the property measured. The buyer has until the inspection objection deadline to complete any investigations or measurements. If the buyer fails to notify the seller before this deadline, any contingency over square footage will be dropped.

Brokers should notice any obvious mistake or mismeasurements and notify all of the parties.

**Seller's Property Disclosure**

The seller may use two approved forms for disclosure: one for residential property only and the other for all types of property. The Seller's Property Disclosure form lists most of the issues that might be of concern on the property and gives the seller four options: yes, no, do not know, or N/A (not applicable) and a place to comment if needed. The seller is disclosing any known material defects in the property to all parties, including the listing broker, through this form. The broker
should not complete the form for the seller but may review the form’s expectations with the seller.

By law, sellers are not required to complete the form but must provide a written disclosure of all the property’s material defects. The seller does not have to use the Seller’s Property Disclosure form to provide this written disclosure. However, the Contract to Buy and Sell Real Estate requests this disclosure form and gives the seller a deadline for supplying it to the buyer, if the seller or listing broker has not already provided the form. This means that if the seller is not going to provide the form, then the Contract to Buy and Sell Real Estate will need to be countered to remove the request.

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

The seller of residential property must list the source of potable (drinkable) water for the property. The seller may use either the Seller’s Property Disclosure and/or the Source of Water Addendum to meet this requirement. The purpose of the form is to give the buyer notice that an important part of due diligence for the purchase of residential property is to verify that the property has a long-term source of water. The form lists the source of potable (drinking water) by checking the box for a well (along with the well’s permit number) or the water provider. If neither is checked, then the source of water for the property is described in the space provided. This information helps the buyer determine whether there is a long-term source of water. The seller is obligated to disclose the source of water, not to verify that the source of water is sufficient.

Closing Instructions

The Closing Instructions form appoints a closing company to conduct the closing. It is a three-party agreement between the seller, the buyer, and the closing company, which is typically part of the title insurance company. The closing company agrees to prepare the closing documents, including settlement statements, except any “legal” documents. The broker is responsible for any legal documents, which is addressed later in the form. The form establishes how the seller will receive the net proceeds, the fee charged for closing, and other items the company will provide. If the closing company is holding the earnest money, the form spells out obligations for returning the funds or settling disputes regarding earnest money.

The second part of the form is almost like a separate form. It appoints the closing company to act as a scrivener for the listing broker to prepare the legal documents, which are typically the deed and the bill of sale. The law holds the broker responsible for the accuracy of the forms and payment to the closing company.

Counterproposal

A party, typically the seller, who wants to respond to an offer with different terms or requirements uses the Counterproposal form. Any counterproposal terminates the original offer and creates a new one. When the counterproposal is attached to the Contract to Buy and Sell Real Estate, the seller signs the counterproposal instead of the contract. The form can use both the dates and deadlines and purchase price and terms tables from the Contract to Buy and Sell Real Estate, or
delete them if they are not needed. This deletion follows Rule F, so the heading of the table would note “Omitted” next to it.

The seller gives the buyer a new acceptance date and time. If the buyer agrees to the suggested changes and signs the Counterproposal, then the property will have moved from the offer to contract stage upon notice to the seller of the acceptance. In many instances, because the parties continue to negotiate, it is incumbent upon both brokers to ensure that the final agreement is in writing and clear to all parties. Often it is easier to incorporate the changes into a new Contract to Buy and Sell Real Estate to ensure that all the agreed-upon items have been accounted for.

Post-Closing Occupancy Agreement

When the seller is staying in the property for 30 days or less after closing, this document establishes responsibility for repairs, utilities, and maintaining insurance coverage (both property and renters). It determines the buyer’s right to enter the property after closing while the seller is a tenant. The agreement also sets the rent rate, security deposit, and what happens if the seller fails to vacate as agreed. Brokers should recommend the use of this agreement anytime the seller will occupy the property after closing, so both the seller and the buyer are covered, in case the seller damages or fails to vacate the property.

Inspection Objection and Resolution forms

Upon completion of the property inspection, buyers have three choices: terminate the contract, ask the seller to make repairs, or remove the inspection contingency. The buyer is not required to have the property inspected in order to terminate under this contingency. Per the Contract to Buy and Sell Real Estate, the buyer may “in buyer’s sole subjective discretion” decide to terminate anytime prior to the inspection objection deadline. If the buyer finds unsatisfactory conditions, the buyer and the buyer’s broker use the Inspection Objection form to ask the seller to satisfy the conditions. Often, finding a final resolution to inspection issues requires back-and-forth negotiations. Once the buyer and the seller reach a final agreement, they use the Inspection Resolution form to document in writing what they decided. The Inspection Objection and Inspection Resolution deadlines in the Contract to Buy and Sell Real Estate are the dates by which the buyer and the seller must reach resolution. If the buyer does nothing before the objection deadline, the contingency terminates and the contract moves forward. Typically, the buyer has an inspection conducted and asks for the seller to correct any issues that are found prior to the inspection objection deadline using the Inspection Objection form. The parties have until the resolution deadline to reach an agreement. If an agreement is not reached and the buyer does not withdraw the request, then the contract terminates at midnight on the resolution deadline.

Agreement to Amend/Extend Contract

Once the property enters the executory phase (under contract), any changes to the purchase agreement must be approved by both the seller and the buyer, put into writing, and signed. In Colorado, the Agreement to Amend/Extend Contract is the approved form to modify the Contract to Buy and Sell Real Estate. The dates and deadlines table is reproduced and may be omitted if not needed per Rule F (as it is in the Counterproposal).
The form only modifies certain items, such as the closing date. Other dates not noted or changed will remain the same. Most of the contingencies in the Contract to Buy and Sell Real Estate are negative consent, which means that the contingency will terminate if a written response is not received prior to the contingency deadline. It is important for the broker to complete the Agreement to Amend/Extend Contract before the date needs an extension, or the buyer (or in some cases, the seller) risks breaching the contract.

**Agreement to Amend/Extend Contract with Broker**

This approved form modifies the broker's employment agreements with the seller, the buyer, the landlord, or the tenant. The broker checks which form is being modified within the Agreement to Amend/Extend Contract with Broker and lists the changes. This form is frequently used to extend the contract termination date or change the sale price.

**Notice to Terminate**

If the Contract to Buy and Sell Real Estate needs to be terminated, this approved form meets the requirement for written notice as defined in the contract. Both the buyer and the seller have a list of standard items typical in a termination (e.g., the buyer's inability to obtain a loan or the seller not approving of the buyer's credit on a seller-carry loan). This form must be used anytime a contract is being terminated.

**Licensee Buy-Out Addendum to Contract to Buy and Sell Real Estate**

When a property being purchased is listed by a brokerage firm or broker, the broker or brokerage firm has an advantage over the unlicensed seller. The purpose of the Licensee Buy-Out Addendum to the Contract to Buy and Sell Real Estate form is to remove some of these advantages. The form is used with the Contract to Buy and Sell Real Estate, and the broker or firm typically also has an exclusive right-to-sell listing.

The buy-out form requires licensees to confirm that they are licensed and have enough resources to complete the transaction. In addition, they must notify the seller that the broker or firm may make a profit on resale but would also be obligated to pay any loss or expense after closing. The seller will have no obligations for expenses or losses to the brokerage firm or broker after the closing. The seller pays no commission if the buyout closes. Additionally, the form removes the appraisal provision because the broker or brokerage is responsible for valuation. The addendum also creates a specific performance contract if the buyer defaults, and because the buyer is the broker, the requirement for notice is removed. The seller may terminate the purchase agreement at any time by written notice to the broker or brokerage firm. The seller would reimburse out-of-pocket expenses to the firm or broker upon termination. Finally, the broker must present all offers until closing, and the seller may accept any of them. Commission Position Statement CP-23 further describes the use of the Licensee Buy-Out Addendum.
**Short Sale Addendum**

Short sales use the two addenda that go with the Exclusive Right-to-Sell Listing Contract and the Contract to Buy and Sell Real Estate. These addenda are used when the seller's debt against the property (i.e., mortgage liens) is greater than the market value of the property. The listing contract informs the seller that foreclosure assistance is available and that a short sale may not be the seller's best option. Also, it states that even if the lender allows the sale, the lender may still have the right to collect any deficiency. The form also gives the seller the required warnings regarding mortgage assistance.

When the addendum is used with the Contract to Buy and Sell Real Estate, typically a broker has listed the property. Once the seller/broker receives an offer, the bank must agree to its terms as well, because the purchase price will not clear any liens against the property. This addendum makes sure both the buyer and the seller are fully aware of the issues in this type of sale.

**Statutory Power of Attorney**

If a licensee is becoming an attorney-in-fact for a member of the public, the licensee must use the approved Colorado Statutory Power of Attorney for Property form.

**The Real Property Transfer Declaration (TD-1000)**

The Real Property Transfer Declaration (TD-1000) is a state-required form that informs the county assessor of what occurred when a property was sold and to “help ensure fair and uniform assessments for all property for property tax purposes.” It is typically completed at the closing table. The form is required for a recorded deed that has a documentary fee. The form does not transfer real or personal property; it simply lists the values of each at the time title is transferred.
In Colorado, several regulations impact how real estate brokers practice and how property can be bought and sold. Water rights, foreclosure of deeds of trust, and property taxes are among the issues brokers must understand to help sell or buy real estate. The Commission's requirements and rules on the supervision of broker associates, maintenance of errors and omissions (E&O) insurance, and the use of unlicensed assistants are all issues that practicing broker's must understand.

**COLORADO WATER RIGHTS**

Colorado water rights are complex. Colorado bases its water rights on the doctrine of prior appropriation, which gives the first person who uses water for beneficial use priority of use over other owners. Water rights in Colorado are also adjudicated,
or processed through the water courts, which administer and further define the right of priority. In addition, because states downstream from the headwaters of Colorado’s mountains also own water rights, the water law grows more complex each year. Often, water rights issues involve irrigation rights in agricultural transactions. Furthermore, as water becomes scarce, it can cause problems in residential housing developments. Consequently, sellers of residential property must disclose the source of their water to potential buyers, who are then given notice to verify that the home has a long-term source of water. Wells are a right of use and are regulated by the state engineer. Well permit numbers should be registered, and any notice of well transfer must be sent to the office of the state engineer.

**Deeds of Trust Law and Foreclosure in Colorado**

Most real estate loans in Colorado use a deed of trust to create the lien. Deeds of trust require three parties: the borrower or trustor, the lender or beneficiary, and the government office of public trustee. For financing, brokers and others (i.e., sellers for seller financing) can use three approved forms. (Large lenders typically do not use the approved form and instead use a deed of trust drafted by company attorneys.) The first is the Due on Transfer – Strict form, which has a due on sale (alienation) clause that requires payment in full when the property is sold. This deed of trust is similar to those used in conventional loans. The second form is the Due on Transfer – Creditworthy form, which has a creditworthy restriction that provides for a buyer to assume the loan with credit approval by the lender. If the buyer’s credit is refused, the loan is due on transfer. This deed of trust is similar to an FHA or VA assumption. The final deed of trust is the Assumable – Not Due on Transfer form, which allows any future buyer to assume the loan without the lender’s (seller’s) approval of credit.

When a deed of trust is in default, it is the responsibility of the public trustee to enforce the lien for the beneficiary/lender. If the borrower is in default, the lender will notify the public trustee, who in turn will file and send a Notice for Election and Demand to the borrower, which begins the foreclosure process. In Colorado, the public trustee is the only entity with the nonjudicial right to foreclose. This means that the foreclosure procedure does not go through the courts but through the public trustee’s office. Upon notice by the lender, the public trustee then sends all legal notices, advertises per the law, and holds the foreclosure sale. Colorado’s law is unique in that there is no statutory redemption period that gives the borrower a time period after the foreclosure sale to pay the full payment of principal, interest, and fees to redeem the property. The state’s law requires the borrower to bring back payments and fees to stop the foreclosure prior to the sale in order to redeem the property. Agricultural property owners have 215 to 230 days to stop foreclosure, and all other property owners have 110 to 115 days. The date the trustee schedules the foreclosure sale determines the range of time. Once the foreclosure sale is completed, the winning bidder receives a certificate of purchase and possession rights to the property.

A private trustee could be an attorney, family member, and so on. In Colorado, the disadvantage of using a private trustee is that the private trustee does not have nonjudicial foreclosure rights, which means that the deed of trust will be treated like a mortgage, and any foreclosure must be completed through the courts. Any
seller considering using a private trustee instead of the public trustee should seek the advice of an attorney.

A broker who is helping a seller with a seller-carry loan should recommend that the seller speak to an attorney. The seller may also want to obtain a mortgagee's title policy and, depending on the amount of the lien, may want to have the buyer waive any homestead rights.

A broker selling residential property may need to meet the requirements of the Colorado Foreclosure Act. The act applies if the seller is in default and the property will be non-owner-occupied for at least one year after closing. When the act applies, brokers must use special forms. Most (but not all) of these forms are identical to the original versions of these forms, but they are in bold print. The forms include Contract to Buy and Sell Real Estate – Foreclosure, Notice of Cancellation, Seller’s Authorization, Seller Warning, and Homeowner Warning Notice. The broker may find several issues in making sure all parties comply with the act and use the proper forms. Once again, brokers should recommend that all parties to the transaction seek the advice of an attorney, or obtain tax or other counsel.

Equity skimming is when a non-owner occupant takes over a foreclosed property and collects rent but does not make payments. Equity skimming is a serious crime recognized as a felony in Colorado.

**Uniform Consumer Credit Code (UCCC) and Usury**

The UCCC protects the public in consumer credit transactions by setting maximum permissible interest rates a lender may charge. A lender who charges a higher rate commits usury, which is against the law. Colorado has two rates—one for a creditor who regularly lends money (i.e., a bank), and the other for a non-creditor (i.e., a seller providing financing). The creditor rate allows up to 21 percent (0.21) interest on loans over $1,000 and up to 36 percent on loans for $1,000 or less. A non-creditor may charge up to 45 percent (0.45) interest.

**Dual Contracting (Dual Purchase Agreements)**

Dual contracting is a form of loan fraud in which the buyer and the seller illegally agree to write two different purchase contracts, the first with the true terms of the sale for an actual closing and the second contract with a higher purchase price to obtain a higher loan amount from the lender. If the property appraises at the higher contract price, the lender is defrauded into making a higher than normal loan based on the actual purchase price. This is a criminal act that may result in license discipline and criminal prosecution.

**Adverse Possession and Prescription in Colorado**

By common law, adverse possession and easement by prescription require that the possession or use of the property must be open (visible), continuous, exclusive (distinct), actual, and notorious (hostile) (use the mnemonic OCEAN to remember these requirements). Each state then sets the requirement for how long the possession or use must be in order for the party to seek ownership or rights of use in the property. In Colorado, the party seeking ownership or rights of use must use or occupy the property for 18 years. The period is reduced to seven years if the
possession is “under color of title” (i.e., the party has reason to believe they own the property, such as a fraudulent deed) or the party pays the general property taxes for seven years.

**Taxation of Real Property in Colorado**

Each county levies and collects real property taxes to cover the costs for a variety of services to the property. In Colorado, general property taxes are paid in arrears. Property taxes become a lien on the property (with priority ahead of all other liens) on January 1 of the year in which they are payable. Taxes may be paid either with a payment of one-half on or before the last day of February and the remaining half payable no later than June 15, or with one payment of the entire amount by April 30.

All property taxes are delinquent by June 16. Each county treasurer holds a public auction to sell the property to satisfy the tax lien on or before the second Monday in December. The property is sold for the amount of the delinquent taxes plus interest and fees at the time of sale plus any premium a bidder chooses to offer. The property owner may redeem the property within three years of the sale by paying the taxes plus interest and fees through the time of redemption. The successful bidder receives a certificate of purchase showing the bidder’s rights. If the property is not redeemed within three years, the certificate holder may apply for a treasurer's deed and receive the legal title to the property.

## COLORADO REAL ESTATE LICENSE RULES

### Subdivision Developer Registration

Colorado defines a subdivision as 20 or more lots or interests sold for residential use. If a development meets this definition, the developer may need to register with the Colorado Real Estate Commission. Registration is not the same as licensing; this is a separate responsibility of the Real Estate Commission. The purpose of the registration is to make sure that consumers with complaints against a development are able to find the proper person to file a complaint against. A subdivision, development, or planned unit development (PUD) that has been approved by a regional, county, or municipal planning authority is excluded from registration because it should be easier for consumers to find the responsible party through these entities.

A developer who is converting apartments into condominiums, time-shares, or cooperatives is a subdivision. A conversion of more than 20 units requires registration. The registration act excludes campsites and campgrounds.

### Errors and Omissions (E&O) Insurance

E&O insurance pays legal defense and judgments (up to policy limits) for professional mistakes and negligence. It protects the broker and the public and is required for all active brokers and brokerage firms, licensed corporations, and limited liability companies (LLCs). Brokers can obtain the insurance from any Commission-approved, state-contracted plan, or private carrier. Any claims by brokers are not reported to the Real Estate Commission. However, if the broker does not meet the required renewal each year on or before December 31, it is reported to
the Commission. This reporting is done to make sure all brokers and firms are in compliance with Rule D-14, which covers the requirement for E&O insurance.

**Employing Broker Supervision**

Employing brokers must provide supervision for all broker associates in the firm. The supervision requirements vary depending on how many years the broker associate has been licensed. Employed brokers with two or more years of active experience require a reasonable level of supervision. Employing brokers must provide them with a company policy manual and assure that all licensees read and sign it. Employing brokers also must review all contracts to ensure they are correctly prepared.

Brokers with less than two years of experience should receive a high level of supervision, which should include, but is not limited to, assistance with closings, preparation of contracts, and training programs. The employing broker could direct other qualified brokers to attend closings with inexperienced brokers and be available to answer questions depending on the needs and experience of the employed broker.

**Employee and Independent Contractor Status**

Under the supervision of an employing broker, a broker associate may be either an independent contractor or an employee. This status does not affect the supervision of the broker, only the tax withholding status. Broker associates who are independent contractors must have written agreements stating their employing broker will not withhold income tax, Social Security, or Medicare taxes. Independent contractors pay for these individually.

If a broker associate is an employee of the company, the employing broker must withhold taxes and Social Security contributions. Other employee benefits, such as health insurance, paid vacation, and a fixed work schedule, are possible but not mandatory.

**Real Estate Assistants**

Licensed assistants are covered by license law and rules. Brokers who use unlicensed assistants must make sure that the assistant does not do anything requiring a real estate license including negotiating, listing, or selling; drafting contracts or filling in legal documents; or offering opinions, advice, or interpretations. Unlicensed assistants may, under the broker’s supervision, provide access to properties, distribute listing information prepared by a broker, deliver paperwork to other brokers, hold an open house, deliver paperwork to sellers or buyers (if it has been reviewed by a broker), prepare market analyses (but the broker must submit and identify the preparer), measure a property for a square-footage disclosure, and sign checks on a trust account, if authorized by the employing broker. These rules apply to any unlicensed person working for a real estate broker, such as an office manager or receptionist. Review Commission Position Statement CP-20 for more information on real estate assistants.
**UNIT 5 LECTURE OUTLINE**

I. **ADDITIONAL FORMS**

A. Lead-Based Paint Obligations of Seller and Lead-Based Paint Disclosure (Sales) forms

1. Purpose: To meet state and federal disclosure requirements of lead-based paint hazards for the sale or lease of all residential property with a building permit dated before January 1, 1978.
   a) The ____________ (or landlord) is the party that is obligated to disclose.
   b) The broker has a duty to inform the seller of the disclosure obligation but is not obligated to disclose.
   c) The approved Lead-Based Paint Obligations of Seller form explains the federal requirement for any property owner.

   **Application Note:** The obligations form itself is not mandatory. It assists brokers in their duty to inform sellers about this important seller obligation.

   d) The Lead-Based Paint Disclosure (Sales) form is a Colorado-approved form that meets the federal requirements.
   (1) _______________ a disclosure that there could be lead-based paint if the property was built prior to January 1, 1978.
       (a) Federal law places this responsibility on the seller. Even an unrepresented seller (for sale by owner) must disclose.
   e) The lead-based paint disclosure is mandatory for residential improvements with building permits issued prior to January 1, 1978.
      (1) Disclosure is not determined by when the improvements were completed.
   f) Sellers disclose to the “best of their current actual knowledge” the presence or absence of lead-based paint or any other lead hazard.
      (1) If the seller has any reports about lead contamination, they must be provided to potential buyers.
      (2) The seller does not have to test for or remove any lead paint.
   g) The buyer may ________________ by checking the box.
   h) Both brokers will sign the form to confirm that they have informed all parties.
      (1) The seller and buyer also sign the form.
   i) There is a separate agreement for landlords and tenants of residential rentals.
B. Square Footage Disclosure

1. Purpose: This disclosure is used to bring brokers listing residential property in compliance with Rule E-43, which requires that the listing licensee disclose the source of any square-footage measurement that is provided to sellers and potential buyers of property.
   a) The listing broker can measure the property and used, ________
   b) The listing broker can use information from reliable sources and list the source used.
      (1) The listing broker may not use sources that the broker believes are ________

2. Measurement is for the purpose of marketing; it may not be exact and is ________

3. Rule E-43 (c) states: “A licensee working with a buyer may rely on a representation of square footage by a listing broker; however, such licensee is responsible for indications of ________ by others.” (CREM)
   a) Broker associates are responsible for square-footage figures.

C. Seller’s Property Disclosure

1. Purpose: This disclosure is used by the seller for the required disclosure of all material defects in the property the seller has knowledge of.
   a) Two forms are available, one for residential and the other for all types of properties.
   b) They are not required by law or the listing contract.
   c) Seller may decline to provide this disclosure.
      (1) The seller must still disclose all latent and other material defects, even if selling “as is.”
      (2) If the broker feels that the seller has nothing to hide but simply does not want to complete the disclosure form, the broker should inform the seller that the Contract to Buy and Sell Real Estate will ask for the form and that most ________ expect it.
      The seller will have to use a counterproposal for all offers if they refuse to provide the disclosure form.

2. The ________, never the ________, fills out the form. It is completed to the best of the seller's current actual knowledge.

3. The seller may use this form to meet the requirement to disclose the source of water supply for residential properties.

4. The buyer is advised to verify and inspect the property for a variety of issues.
D. Source of Water Addendum to Contract to Buy and Sell Real Estate

1. Purpose: This form is used if a Seller's Property Disclosure has not been completed for a residential property. It brings the seller into compliance with the requirement to disclose the source of water to the buyer.

   a) The seller of __________________ property must list the source of potable (drinkable) water for the property. The source of potable water could be one of the following:

      (1) Well (include copy of well permit if possible)

      (2) Water provider (include name and contact info)

      (3) Other; neither a well nor a water provider. “The source of water is: (describe in detail).”

2. The buyer is warned to verify that there will be a long-term water supply for the property.

   a) The seller does not make any promises about the future supply of the water and whether it’s ample for the buyer’s needs; the seller merely provides information indicating the source of the water, regardless of how much exists.

E. Closing Instructions

1. Purpose: This form is used by the seller and buyer to appoint a closing company to handle the closing.

   a) It is a three-party agreement between the seller, buyer, and closing company, which is often a title insurance company.

2. The closing company agrees to prepare all the documents for closing except legal documents.

3. The seller may choose how to receive net proceeds and may choose to receive them in good funds.

   a) The seller will pay any fees for the good funds check or transfer.

4. The closing company agrees to provide closing statements to both the buyer and seller.

   a) The __________________ for the seller and buyer are still responsible for the accuracy and completeness of the closing.

5. This form establishes that the holder of the earnest money will return the funds to the buyer within five days after receipt of a Notice to Terminate or other written request.

   a) Defines the rights if there is a dispute and the title company is holding the earnest money

   b) Gives notice that the closing company will submit change of ownership form or registration for water wells

   (1) Remember that it is the buyer's responsibility, with the seller's assistance, to complete the notification process.
6. If the seller resides outside of Colorado, the closing entity may be required to withhold potential income tax from any profit on a sale.
   a) Per the regulation, the _______________ is responsible for collecting the tax and sending it to the state.
   b) The closing entity can be a real estate broker, an attorney, or the closing company.

7. Closing instructions (to be completed only by broker and closing company)
   a) The next section is a separate agreement with the broker printed on the same form.
   b) This agreement is below the signatures of the seller and buyer.
   c) It engages the closing company as _______________ under the broker's authority.
   d) It allows the closing company to prepare legal documents at the broker's expense.

F. Counterproposal

1. Purpose: This form is used when the offeree (usually the seller) wishes to make a qualified acceptance of the offer.

2. A counterproposal _______________ the offer and creates a new one.
   a) The parties change positions as follows:
      (1) The original offeree (seller) becomes offeror of the counterproposal.
      (2) The original offeror (buyer) becomes offeree.
   b) The dates and deadline chart from the Contract to Buy and Sell Real Estate is replicated.
      (1) This section allows the new offeror to propose different dates or deadlines as needed.
      (2) The note explains that when a line is left blank or “no change” is inserted, there is no change from the original proposal.
         (a) Example: If the seller countered the offer to change the title deadline, the only date entered on the form is that in item 2. All other dates may be left _______________ or have “no change” inserted.
      (3) If “deleted” is entered into any line, then the date or deadline referenced in the original contract is deleted.
      (4) If there are no changes in Dates and Deadlines, Rule F-1 (g) allows for the entire table to be omitted from the form as long as the section title is retained.
         (a) Example: DATES AND DEADLINES. OMITTED
   c) This section duplicates the purchase price and terms chart from the Contract to Buy and Sell Real Estate.
      (1) This is to be used for possible changes in price and earnest money from the original offer. It can be deleted if inapplicable.
3. Attachments
   a) Duplicates the section from the contract for items to be made part of the counterproposal or those that are attached but not made a part of the agreement.

4. Other changes
   a) Provides space for changes in any other terms from the original proposed offer.

5. Acceptance deadline
   a) The offeree will now have a new deadline by which to respond to the offer.
   b) The note at the bottom states that the
      (1) party making the counterproposal does not sign the original offer; and
      (2) counterproposal form must be attached to the original offer because it relies upon the terms of the original contract and simply lists changes.

G. Post-Closing Occupancy Agreement

1. Purpose: This agreement is used when the seller is going to stay in the property for 30 days or less after closing.
   a) It establishes
      (1) who is responsible for repairs and utilities;
      (2) who is responsible for maintaining insurance coverage, both property and renters; and
      (3) the buyer's right to enter the property after closing while the seller is a tenant.
   b) It also sets the rent rate, security deposit, and what is to occur if the seller fails to vacate as agreed.

2. Brokers should recommend the use of this agreement anytime the seller will occupy the property after closing.

H. Inspection Objection

1. Purpose: This form is designed to carry out the inspection provision of the Contract to Buy and Sell Real Estate.

2. The buyer's inspection must be before the inspection objection deadline in the contract.

3. If the buyer finds any unsatisfactory condition, the buyer must notify the seller in writing using the form before the _________________.
   a) A buyer who finds no problems proceeds to closing with no notice to the seller. The contingency expires.
   b) The form also allows the buyer to waive the condition and withdraw the inspection objection on or before the resolution deadline, and proceed to closing.
c) The buyer is notified that the lender should be alerted to the inspection issues, and failure to notify the lender may result in loan delays and could require further inspections and repairs.

(1) Communication with the lender should be in writing.

I. Inspection Resolution form

1. Purpose: This approved form is used to document the __________________________ between the buyer and seller over any inspection issues.
   a) It gives all the parties one final place to clearly list the resolution.

2. This form must be completed and signed on or before the inspection resolution deadline, or the contract will terminate.

3. The buyer and seller are notified that the form amends the Contract to Buy and Sell Real Estate, and a copy should be provided to the buyer’s lender.

4. If any of the corrections require action after the closing, this section allows them to survive.

J. Agreement to Amend/Extend Contract

1. Purpose: This form is approved to amend contract terms or extend dates and deadlines in the Contract to Buy and Sell Real Estate ____________________.

2. The form reproduces the Dates and Deadlines table from the contract and provides spaces for other modifications.
   a) The form is the same as the Counterproposal in that only the dates that change are entered and all of the others can be left blank or have “no change” entered.
   b) If “deleted” is entered in a line, it means the date in the corresponding provision of the contract is to be deleted.

3. This form would be used to change the __________________________ of an executory contract.

4. Amendments or extensions must always __________________________ being extended.
   a) Both parties must sign, once again, to show mutual agreement.

   ■ Notice the difference in the form title and content compared to the following Agreement to Amend/Extend Contract with Broker, which modifies a listing or buyer contract.

K. Agreement to Amend/Extend Contract with Broker

1. Purpose: This form is used for any change to a __________________________ contract when the brokerage firm is a party to the agreement.
   a) Examples of when this form is used include the following:
      (1) A change in the listing price
      (2) An extension of listing or buyer agreement termination dates
L. **Notice to Terminate**

1. **Purpose:** This approved form is used by the buyer or seller any time the Contract to Buy and Sell Real Estate is terminated per one of the contract contingencies.
   a) Meets the contract requirement for written notice

2. The document lists the different contract contingencies that require notice.
   a) The buyer or seller checks the box that applies.
   b) The other box allows for other reasons for termination to be spelled out.

M. **Licensee Buy-Out Addendum to Contract to Buy and Sell Real Estate**

1. **Purpose:** This addendum brings brokers into compliance with Commission Position CP-23 (CREM).
   a) The position statement describes the use of the Licensee Buy-Out Addendum, which is attached and made part of the Contract to Buy and Sell Real Estate.
   b) This addendum will be subject to the Foreclosure Property Addendum, if applicable.

2. Use the Licensee Buy-Out Addendum when one of the following apply:
   a) The broker/brokerage firm will continue to market the property under an existing listing while the offer is in effect.
   b) The licensee's offer is a guaranteed buy-out.
   c) The broker is buying the property to facilitate another sale in which the broker will receive a commission.

3. This addendum is used only by the
   a) ___________________________ and/or
   b) ___________________________ of the listing firm.

4. This addendum is not used by
   a) any other associate of the listing firm or by any other broker in a different firm; or
   b) when a broker makes a personal purchase of a property not listed by the broker.

5. The broker should disclose the broker's ___________________________ in buying the property prior to listing it.
   a) The addendum makes the contract very ___________________________.
   b) It requires licensees to confirm that they
      (1) are licensed and, as buyers, have enough resources to complete the transaction and will notify the seller if there is a change,
      (2) may make a profit on resale, and
      (3) will be obligated to pay any loss or expense after closing.
The addendum removes the appraisal provision (licensee is responsible for valuation).

6. This addendum creates a specific performance contract if the buyer (licensee) defaults.

7. The seller may terminate at any time by written notice to the broker or brokerage firm.
   a) The seller would reimburse out-of-pocket expenses to the licensee upon termination.

8. The seller will have __________________________ for expenses or losses after the closing.

9. The broker must present all offers until closing, and the seller may accept any of them.
   a) The seller __________________________ if the buy-out closes.

10. Because the buyer is the broker, the requirement for notice is removed.

11. The listing brokerage firm is only responsible if the company broker (employing broker) __________________________ at the bottom.

N. Short Sale Addenda

1. Purpose: These two addenda define the terms of a short sale for the seller and buyer.

2. Listing addendum
   a) This addendum describes and defines that a short sale is when the purchase price will not cover paying off the seller's full lien amount at closing.
   b) It notifies the seller that even if the lender accepts the short sale, the seller may still be held liable for the balance due to the lender.
   c) It alerts the seller of the adverse consequences of a short sale and recommends that the seller seek the counsel of attorneys, accountants, and foreclosure experts.

3. Contract to Buy and Sell Real Estate Addendum
   a) This addendum notifies the buyer of various issues of short sales and that the offer may not be accepted by the lender.
   b) It sets the conditions that both the seller and buyer agree to in the sale and sets the date and terms for submission of the offer to the lender.
   c) It reminds the parties that an Amend/Extend Contract form will be needed to change any of the terms.

O. Statutory Power of Attorney

1. This form must be used anytime a broker is becoming an attorney-in-fact.

P. Real Property Transfer Declaration (TD-1000)

1. Purpose: To bring all parties at the closing in compliance with the state statute to “help __________________________ assessments for all property for property tax purposes.”
   a) This form is required by state statute and goes to the county assessor.

2. This form does not transfer __________________________.
II. MISCELLANEOUS REGULATIONS

A. Colorado water rights

1. Water rights are a real property interest, conveyed by deed with a separate legal description.
   a) Water rights in Colorado are determined through adjudication, which means through the Colorado water court.
   b) Water rights in Colorado are ______________________—they do not automatically “run with the land”—but must be specifically transferred by deed.
   c) These rights come from the ______________________—whoever uses the water for the first ______________________ use has senior rights (priority).
   d) In Colorado, water rights are most often an issue in an agricultural transaction and often tied to ______________________.
   e) In recent years, many farmers and ranchers have sold water rights separate from their land. Water values often far exceed the value of some marginal agricultural operations.

2. The broker should recommend that the seller seek the advice of a water law attorney whenever water rights are involved.

B. Well permits

1. The ______________________ issues well permits to allow a property owner to drill or maintain a well.

2. A well permit ______________________ represent an actual water right; it is a right of use.

3. The law presumes the amount of water used by a residence does not interfere with adjudicated water rights.

4. Well permits must be transferred (by well permit number) from the seller to the buyer of the property in a report to the state engineer. The seller agrees to assist the buyer with the necessary information in the contract.

5. It is the buyer's responsibility to register and pay the fees for any well that has not previously been registered.

C. Deeds of trust law and foreclosure in Colorado

1. The majority of real estate loans in Colorado use a deed of trust to create the lien, and the public trustee to foreclose, if needed.

2. Deed of trust law
   a) The deed of trust has the following three parties:
      (1) Trustor (the borrower)
      (2) Public trustee (a government office)
      (3) Beneficiary (the lender)
b) The public trustee has the power to enforce the lien for the beneficiary/lender. The ________________ is the only entity with the ________________ right to foreclose.

c) According to Colorado law, a deed of trust to a ________________ is deemed to be a mortgage and can be foreclosed only by ________________.

d) In Colorado, if the borrower defaults on the loan, the public trustee will exercise the power of sale based on notification from the beneficiary/lender.

3. Deed of trust forms

a) Colorado has three approved deed of trust forms for use by brokers preparing financing documents. The forms are typically used for seller financing (most national lenders have their own deed of trust forms).

(1) Due on Transfer – Strict—contains a strict due on sale (alienation) clause requiring payment in full if the property is sold.

(2) Due on Transfer – Creditworthy Restriction—provides for a buyer to assume the loan if the lender approves of the buyer's creditworthiness. If the buyer's credit is refused, the loan is due on transfer.

(3) Assumable – Not Due on Transfer—contains the provision that makes the loan assumable by any buyer of the property.

b) None of the forms have an automatic increase in ________________.

c) If an attorney prepares the private financing forms, some items still should be specified when the offer is made.

d) There are blank spaces to complete regarding the proposed terms for these financing instruments and any penalties or fees the seller may want.

4. Deed of trust foreclosure

a) The steps in a foreclosure are the following:

(1) The borrower defaults.

(2) The lender files a Notice of Election and Demand with the public trustee. The public trustee ________________ the property prior to the sale.

(3) The borrower has a right to redeem prior to the foreclosure sale, which is called the ________________.

   (a) If the loan is brought current and all fees and charges are paid during this period, the loan returns to good standing and the foreclosure stops.

   (b) If the borrower fails to redeem during the right-to-cure period, the foreclosure sale occurs and the successful bidder at the sale (usually the lender) receives a certificate of purchase and a confirmation deed, depending on the redemption rights of secondary liens.
(4) The length of time given to the borrower to redeem (bring the payments current) will vary depending on the type of property.

(a) For all properties except agricultural, the sale must be scheduled no less than ________________ from the filing, but no longer than ________________.

(b) The period for agricultural property is no less than ________________ from filing, but no longer than ________________.

(c) If the property was purchased by a lender, it must be sold on the open market.

(d) If the amount received at the sale is more than the lien that was foreclosed, the balance is paid to the borrower.

(e) If the amount received is less than the lien, the lender can receive a ________________ (general lien) and pursue the borrower’s other assets to satisfy the deficiency.

**Figure 5.2**

**Right to Cure**

Back payments + interest

110 to 125 days, Agriculture 215 to 230 days

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**D. Colorado Foreclosure Act**

1. If the seller is in default, and the residential property will be non-owner-occupied for at least one year, the act ________________ apply.

2. If the broker determines that the Colorado Foreclosure Act applies, special forms must be used.
   a) Most (but not all) of these forms are identical to their nonforeclosure versions, but they are in bold print.
   b) The forms typically used only in a foreclosure transaction are as follows:
      1) Contract to Buy and Sell Real Estate—Foreclosure
         a) This is the residential form in bold print that meets the requirements of the act.
      2) Notice of Cancellation
(3) Seller's Authorization

(4) Seller Warning

(5) Homeowner Warning Notice

3. Foreclosure is a complicated process with a number of issues, so brokers should recommend that all parties to the transaction seek the advice of an attorney.

E. Equity skimming

1. A party who takes over a foreclosure and does not make payments but collects rent is guilty of equity skimming, which is a felony in Colorado.

F. Uniform Consumer Credit Code (UCCC) and usury

1. The UCCC protects the public in consumer credit transactions by setting maximum permissible interest rates a lender may charge.
   a) Charging a higher rate is ____________________.

2. A creditor who is regularly in the business of making loans may charge up to 21 percent (0.21) interest (and up to 36 percent on loans of $1,000 or less).

3. A noncreditor, such as a seller providing seller-carry financing, may charge up to 45 percent (0.45) interest.

G. Dual contracting (dual purchase agreements)

1. A form of loan fraud in which the buyer and seller illegally agree to write two different purchase contracts:
   a) One with the true terms of the sale for an actual closing
   b) One with a higher purchase price to present to the lender in order to get a higher loan amount

   (1) If the property appraises at the higher contract price, the lender is defrauded into making a higher-than-normal loan based on the actual purchase price. This is a criminal act that may result in license discipline, as well as criminal prosecution.

H. Adverse possession and prescription in Colorado

1. A party seeking to gain ownership by adverse possession must have occupied the property for at least 18 years.

2. The period is reduced to seven years if
   a) possession is “under color of title” (the party has reason to believe they own the property, such as a fraudulent deed) or
   b) the party pays the general property taxes for seven years.

3. The possession must be open, continuous, exclusive, actual, and notorious (remember the mnemonic OCEAN).

4. A party seeking to gain the right to use the property (a prescriptive easement) must use the property for 18 years and would gain a ____________________.
I. Taxation of real property in Colorado

1. Real property taxes are levied and collected by each county to pay for a variety of services to the property.

2. Tax payment schedule
   a) In Colorado, general property taxes are paid in arrears.
   b) The tax becomes a lien on the property (with priority ahead of all other liens) on January 1 of the year in which it is payable.
   c) Taxes may be paid on one of the following schedules:
      (1) Payment of one-half on or before the ____________________________ with the remaining half payable no later than ____________________
      (2) Payment of the entire tax by ____________________

3. Delinquent tax sale
   a) All taxes are delinquent as of June 16.
   b) The county treasurer holds a public auction to sell the property to satisfy the tax lien on or before the second Monday in December.
      (1) The property is sold for the amount of the delinquent taxes plus interest and fees at the time of sale plus any premium a bidder chooses to offer.
      (2) The successful bidder receives a certificate of purchase showing the bidder's rights.
   c) The property may be redeemed by the property owner within ____________________ of the sale by paying the taxes plus interest and fees at the time of redemption.
      (1) If the property is not redeemed, the certificate holder may apply for a treasurer’s deed and receive legal title to the property.

III. COLORADO REAL ESTATE LICENSE RULES

A. Subdivision developer registration

1. A subdivision is defined as ____________________________ or interests ____________________________ use.

2. Converting apartments into condominiums, time-shares, or cooperatives is a subdivision. A 20-plus unit conversion would require registration.

3. Registration is not the same as licensing—this is a separate responsibility of the Real Estate Commission.

4. ____________________________ are excluded from the registration act.

5. A planned unit development (also called a ____________________________), or any subdivision that has been approved by a regional, county, or municipal planning authority, is excluded from registration.
B. Employing broker supervision

1. Employing brokers must provide a reasonable level of supervision to employed brokers with two
or more years of active experience.
   a) A ________________ of supervision includes
      (1) providing a company policy manual and ensuring that all licensees read it and sign that
      they have read it, and
      (2) __________________________ prepared by every broker to assure that they are cor-
      rectly prepared.

2. The employing broker is also responsible for a high level of supervision for employed brokers
with less than two years of active experience.
   a) A ________________ of supervision includes the following:
      (1) Specific training on company policies
      (2) Close supervision and assistance with closings including attending closings, assigning
      other qualified brokers to attend closings with the inexperienced broker, and being avail-
      able to answer questions depending on the needs and experience of the employed broker

C. Employee and independent contractor status

1. A broker associate, under the supervision of an employing broker, may be either an independent
contractor or an employee for federal income tax purposes.
   a) This status does not affect the supervision of the broker, only the tax ________________
      ____________.

2. If a broker associate is an independent contractor, the broker associate ____________________
   __________________________ that
   a) the employing broker will not withhold income tax, Social Security taxes, or Medicare taxes.
The independent contractor will pay for these individually.

3. If a broker associate is an employee of the company,
   a) the employing broker __________________________ taxes and Social Security contributions;
   and
   b) the broker associate may receive other employee benefits, such as health insurance, paid
   vacation, and a fixed work schedule, but these are not mandatory.

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

1. E&O insurance protects the broker and the public.

2. It is required for all __________________________ and brokerage firms.

3. It is required for all __________________________ corporations or limited liability companies (LLC).

4. It is provided by any approved state-contracted plan or private carrier.

5. This insurance pays legal defense and judgments (up to policy limits) for professional mistakes
and negligence.
6. Claims by brokers are not reported to the Real Estate Commission.

7. E&O insurance must be ___________________________ on or before December 31.

**E. Real estate assistants**

1. Licensed assistants are covered by license law and rules (Commission Position Statement CP-20, CREM).

2. Unlicensed assistants may not
   a) negotiate, list, or sell;
   b) draft contracts or fill in legal documents; or
   c) offer opinions, advice, or interpretations.

3. Unlicensed assistants may
   a) provide access to properties
      (1) but may not show a property without the listing broker or seller’s permission;
   b) distribute listing information prepared by a broker;
   c) deliver paperwork to other brokers;
   d) hold an open house;
   e) deliver paperwork to sellers or buyers (if it has been reviewed by a broker);
   f) prepare market analyses (but the broker must submit and identify the preparer);
   g) measure a property for a square-footage disclosure; and
   h) ___________________________ on a trust account, if authorized by the employing broker.

4. These rules apply to any unlicensed person working for a real estate broker, such as a(n) ____________________________, receptionist, and so on.
Focus on Understanding
- Colorado fair housing law
- How real estate law applies to property management
- Leasing concepts
- License law
- Other brokerage opportunities
- Appraiser licensing

Study Plan

Before Class:
- Read this unit.
- Review the chapters in the CREM listed in the Course Reading Guide.
- Use the Colorado Contracts and Forms Supplement to review the forms discussed in this unit, as they will be covered in class.

After Class:
- Prepare for the Contracts Final Exam.
- Complete the Unit 6 Review Exam.
- Review the study guide items listed in Unit 7.
UNIT 6 OVERVIEW

Fair Housing in Colorado
- Comparison of federal and Colorado fair housing law
  — Fair housing in property management
- Prohibited actions in fair housing law

Property Management in Colorado
- Property management licensing
- Right-to-lease contracts
- The management agreement
- Americans with Disabilities Act
- Security deposits
- Record keeping
- Homeowners’ association management
- Leasing review

License Law
- Purpose of the law
- Licensing requirements
- License disclosure
- License renewal and education requirements
- Trade names
- Investigations, hearings, and penalties
- Competency
- Seller-assisted down payments
- Business opportunity brokerage
- Real estate securities
- Real estate options

Appraiser Licensing

COLORADO FAIR HOUSING LAW

Colorado fair housing law is older than the federal law. It includes residential and commercial property. In the rental or sale of property, Colorado adds protection for marital status and sexual orientation in addition to the federally-protected classes of familial status, race, sex, handicap, color, religion, and national origin (remember the mnemonic device FReSH CoRN). The Colorado exemptions are also more restrictive than the federal law.

PROPERTY MANAGEMENT

Property management is an area of specialty practice in real estate. A broker associate may not manage property without the involvement and permission of the firm’s employing broker. The employing broker must establish the trust accounts, maintain records, and sign the management agreement with the property owner.
In Colorado, the landlord must return tenants’ security deposits within 30 days, unless the lease has an extension, but in no case can the deposit be held for more than 60 days. Within this time frame, landlords must return the deposit or send notification to the tenant and list why they are holding the funds. Landlords may not withhold funds for normal wear and tear.

**COLORADO LICENSE LAW**

Colorado license law and the Colorado Real Estate Commission exist to protect the public. The Commission protects the public by recommending legislation and promulgating rules, regulations, and position statements to guide real estate brokers.

The Commission has processes for giving licenses, as well as taking them if licensees violate a law or rule. The Commission is the only entity that can revoke a license. Individuals are required to possess a real estate license to sell business opportunities if the sale includes any real property or transfer of lease rights. Selling real estate options requires a real estate license, while selling securities requires a securities license.

**Competency**

Colorado license law states that brokers are expected to practice real estate only when they are fully competent to represent the consumer in the transaction. Brokers may become competent through education, completing transactions with another competent broker or mentor, or a combination of both.

If the licensee does not have the necessary competency (i.e., experience, training, and/or knowledge) to consummate the terms of the agreement, the licensee should either decline to provide brokerage services or gain the competency prior to providing the brokerage services.

Upon receiving a real estate license, license law requires broker associates to work for two years under an employing broker to gain experience in the area of practice in which they intend to work. A broker who wishes to change from one specialty to another, such as moving from residential to commercial or from city property to farm and ranch, would be expected to gain competency prior to completing a transaction.
UNIT 6 LECTURE OUTLINE

I. FAIR HOUSING IN COLORADO

A. Colorado fair housing law

1. Colorado fair housing law is older than the federal law.

2. Under federal fair housing law, the most stringent law will apply.

3. The law includes all the federally protected classes plus marital status and sexual orientation.

4. Colorado law applies to all real estate, both residential and commercial.

5. The Colorado Civil Rights Commission enforces the law. Complaints may be filed with the Civil Rights Commission up to __________ or in state court up to __________ following the alleged discrimination.

<table>
<thead>
<tr>
<th>Property included</th>
<th>Federal</th>
<th>Colorado</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential only</td>
<td>Same and residential</td>
<td>Same and residential</td>
</tr>
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</table>

Enforced by

| HUD and federal courts | Colorado Commission and state courts |

B. Illegal practices under the fair housing law

1. The law defines unfair housing practices as illegal because they result in a protected group being treated differently from others in society.

2. This different and unfair treatment is referred to as disparate treatment. These illegal practices (federal violations) are also violations of Colorado fair housing law:

   a) Steering: A broker selects properties to show or sell based on the protected-class characteristics of a buyer.

   b) Refusal: A landlord or owner refuses to rent or sell to a protected group.

   c)堅持: A property owner refuses to allow a protected group to view a property.

   d) Misrepresentation: A landlord or owner misrepresents the status of a property.

   e) Harassment: A landlord or owner harasses a protected group.

   f) Retaliation: A landlord or owner retaliates against a protected group.

   g) Discrimination in advertising: A landlord or owner discriminates in advertising.

   h) Discrimination in rental terms: A landlord or owner discriminates in rental terms.

   i) Discrimination in ownership terms: A landlord or owner discriminates in ownership terms.

   j) Discrimination in financing: A landlord or owner discriminates in financing.

   k) Discrimination in housing services: A landlord or owner discriminates in housing services.

   l) Discrimination in utilities: A landlord or owner discriminates in utilities.

   m) Discrimination in public accommodations: A landlord or owner discriminates in public accommodations.

   n) Discrimination in housing policy: A landlord or owner discriminates in housing policy.

   o) Discrimination in housing management: A landlord or owner discriminates in housing management.

   p) Discrimination in housing brokerage: A landlord or owner discriminates in housing brokerage.

   q) Discrimination in housing construction: A landlord or owner discriminates in housing construction.

   r) Discrimination in housing repair: A landlord or owner discriminates in housing repair.

   s) Discrimination in housing maintenance: A landlord or owner discriminates in housing maintenance.

   t) Discrimination in housing inspection: A landlord or owner discriminates in housing inspection.

   u) Discrimination in housing improvement: A landlord or owner discriminates in housing improvement.

   v) Discrimination in housing preservation: A landlord or owner discriminates in housing preservation.

   w) Discrimination in housing rehabilitation: A landlord or owner discriminates in housing rehabilitation.

   x) Discrimination in housing modernization: A landlord or owner discriminates in housing modernization.

   y) Discrimination in housing development: A landlord or owner discriminates in housing development.

   z) Discrimination in housing design: A landlord or owner discriminates in housing design.

   A) Discrimination in housing ownership: A landlord or owner discriminates in housing ownership.

   B) Discrimination in housing management: A landlord or owner discriminates in housing management.

   C) Discrimination in housing brokerage: A landlord or owner discriminates in housing brokerage.

   D) Discrimination in housing construction: A landlord or owner discriminates in housing construction.

   E) Discrimination in housing repair: A landlord or owner discriminates in housing repair.

   F) Discrimination in housing maintenance: A landlord or owner discriminates in housing maintenance.

   G) Discrimination in housing inspection: A landlord or owner discriminates in housing inspection.

   H) Discrimination in housing improvement: A landlord or owner discriminates in housing improvement.

   I) Discrimination in housing preservation: A landlord or owner discriminates in housing preservation.

   J) Discrimination in housing rehabilitation: A landlord or owner discriminates in housing rehabilitation.

   K) Discrimination in housing modernization: A landlord or owner discriminates in housing modernization.

   L) Discrimination in housing development: A landlord or owner discriminates in housing development.

   M) Discrimination in housing design: A landlord or owner discriminates in housing design.

   N) Discrimination in housing ownership: A landlord or owner discriminates in housing ownership.

   O) Discrimination in housing management: A landlord or owner discriminates in housing management.

   P) Discrimination in housing brokerage: A landlord or owner discriminates in housing brokerage.

   Q) Discrimination in housing construction: A landlord or owner discriminates in housing construction.
b) **Blockbusting and panic peddling:** A broker attempts to induce owners in a neighborhood to sell by suggesting the property values are about to drop due to changes in the racial or ethnic makeup of the neighborhood.

c) **Redlining:** A lender refuses to loan to individuals in a particular area based on the crime rate, or racial, ethnic, or nationality composition of the area.

### C. Fair housing compliance and advertising

1. Brokers must comply with fair housing requirements when advertising. Ads excluding protected classes are unacceptable.

2. It is best to describe the property rather than who should live in it. Consider these examples for a studio apartment ad:

   a) Poor: “Sunny unit perfect for young adult, single professional.”

   b) Better: “Sunny unit for one, maybe two.”

   c) Best: “Sunny studio apt. close to the city.”

### D. Fair housing complaints

1. If a person believes they have been illegally discriminated against, the Colorado Fair Housing Act provides the following:

   a) They may file a complaint with the Colorado Civil Rights Commission.

   b) This complaint must be filed within one year after the alleged unfair housing practice occurs.

   c) The Civil Rights Commission will first seek to voluntarily adjust the complaint.

   (1) If a broker brings an offer to a seller who rejects it because the seller will not sell to a protected class (such as a mother with children), the broker could file a complaint against the seller and request the broker's commission as damages.

### E. Fair housing in property management

1. Colorado fair housing includes all real property, not just residential.

2. Disabled tenants are protected under the law.

   a) A disability is defined as any impairment that limits a major life activity.

   b) The property manager must allow ____________________________ without requiring the tenant to ask for permission.

   c) The tenant would be expected to pay for the modifications.

   d) Tenants may be required to remove modifications and repair damage when they leave.
e) Property managers must make “reasonable accommodations” in rules or policies to accommodate the handicapped.

   (1) The manager must also allow guide or service animals even if they have a “no pets” policy. The manager may not charge an extra damage deposit for the service animal.

   (2) An apartment complex with “first-come, first-served” parking must waive or amend its rules to permit assigned parking for a person with limited mobility.

3. Tenant application and selection processes must be universal.

4. Failure to design units first occupied as accessible after March 13, 1991 are a violation.
   a) This applies to properties with four or more units.
   b) Buildings with elevators must make all units accessible.
   c) Buildings without elevators must make ground units accessible.
   d) Common-use areas must be accessible.

II. PROPERTY MANAGEMENT IN COLORADO

A. Property management licensing

1. A real estate license is required when doing any of the following for others (12-61-101(2) C.R.S.):
   a) Negotiating leases
   b) Soliciting tenants on behalf of landlords
   c) Representing tenants seeking space to lease

2. On-site managers of apartment complexes are exempt from licensing as long as they
   a) report to the owner, or a licensed broker who reports to the owner;
   b) are salaried (rent value counts as salary); and
   c) do not negotiate the terms of leases.

B. Obligations of property managers

1. The property manager should select _____________________ tenants.

2. If managing industrial property, the manager should be concerned about any ________________________

C. The management agreement

1. No approved form exists for property management agreements; each assignment is unique.
   a) The management agreement defines the relationship between the owner and the property manager.
b) The employing broker signs the management agreement for the firm.

   (1) may not manage property unless the employing broker signs the agreement and manages any trust accounts.

2. If there is no mention of who is going to hold the security deposits, then the employing broker should hold them. If the deposits will go to the owner, the broker must notify the tenant of the transfer.

D. Americans with Disabilities Act

1. This act is not a fair housing law; it applies to all properties.

2. Under the act, places of public accommodation must be accessible to the degree that they are “readily achievable.”

3. The removal of physical barriers and provision of auxiliary aids may be the responsibility of either the landlord or tenant. This must be negotiated with the lease.

E. Security deposits

1. The landlord must return deposits after termination of the lease or surrender and acceptance of possession.

   a) The lease may specify a longer period up to 60 days.

2. The landlord must specify in writing the amounts withheld for damage to the property (within the same time period).

3. The landlord may not withhold funds for “normal wear and tear.”

   a) Normal wear and tear is the natural physical deterioration that occurs with the use of property and the passage of time. It does not include the effects of abuse or accidental damage.

4. The landlord could be liable the amount of deposits wrongfully withheld.

F. Record keeping

1. The employing broker is responsible for maintaining management and financial records.

   a) All records must be kept for a minimum of .

2. A property manager has to deposit rents (Rule E-1n.).

G. Homeowners’ association management (HOA)

1. If the management of an HOA is changed, the previous broker/manager must return all records to the association without charge (Rule E-3).

H. Leasing review: leasehold estates (tenancies)

1. Estate for years

   a) 
b) ____________________ for termination

c) Does not terminate on death of either party

2. Estate from period to period (periodic tenancy)
   a) Automatically renewing until one party gives Notice to Quit
   b) Time of notice is by state law or in the lease
   c) Month to month requires ten days’ minimum notice
   d) Does not terminate upon death of either party

3. Estate (tenancy) at will
   a) No specific term or renewal period
   b) Permission of the landlord
   c) ____________________ minimum notice to quit

4. Estate at sufferance (holdover tenancy)
   a) Tenant stays after termination
   b) Landlord has option to accept renewal
   c) No notice to quit—the tenant is here illegally

III. LICENSE LAW

A. Purpose of the law
   1. License law _________________________ of the State of Colorado (CREM 1-1).

B. Licensing requirements
   1. A real estate license is required for anyone doing any of the following for a fee for others:
      a) Selling, buying, renting, or leasing real estate
      b) Offering to buy, sell, rent, or lease real estate
      c) Negotiating the sale, rental, or exchange of real estate
      d) Listing, offering, or attempting to list real property for sale, rent, lease, or exchange
      e) Auctioning real estate for others
      f) Selling real estate options
   2. Colorado issues only broker licenses to new applicants.
      ■ Colorado is a single-license state. The state issues only broker licenses.
   3. To obtain a Colorado broker license, all of the following are required:
      a) Complete 168 hours of prelicense education
b) Pass the state exam

c) Submit a set of fingerprints

d) Submit an application to the Colorado Real Estate Commission (CREC)

4. The applicant must also be at least ____________.

C. Exemptions from licensing

1. The following are exempt from licensing:
   a) Attorneys-in-fact acting without compensation
   b) Public officials in the conduct of duties
   c) Anyone acting on their own behalf
   d) Attorneys-at-law representing clients
      (1) Must be licensed if acting as a broker

D. Applying for a real estate license

1. License exam scores are valid for one year (Rule A-8).
   a) Once the applicant has passed both the national and state portions of the exam, the one-
year period begins.

2. The Commission may require proof of an applicant’s “truthfulness, honesty, and good moral
character.”
   a) Normally, the employing broker’s statement on the application provides this proof.

3. A background check is part of the licensing process.
   a) Any applicant caught falsifying information may be fined and denied a license (Rule A-12).

E. Immigration affidavit

1. As of January 1, 2007, Colorado law requires that only persons lawfully present in the United
States may be issued a license, certificate, registration, or permit.

2. Licensees must produce valid identification when requested by the Commission.

3. Valid identification will be required when applying for and renewing a Colorado real estate
license.

4. A list of acceptable, secure, and verifiable identification documents can be found on the DORA
Web site.

F. License disclosure

1. All active brokers must disclose that they have a Colorado broker’s license. This disclosure
should be done __________________ any negotiations with consumers.
2. Any contract that brokers enter into must have the disclosure in writing, typically in Additional Provisions.
   a) Example: “Sarah Jones is an active, licensed Colorado real estate broker.”

3. Upon meeting or dealing with an unrepresented consumer, brokers should disclose their license status if they have an ownership interest in a property and are selling it or are interested in buying a property (i.e., FSBO).
   a) Example: Broker Sarah sees an FSBO open house in an area in which she is interested. Upon entering the home, Sarah should give the owner her name and disclose that she is a broker. The same would be true if Sarah were selling her own home.

G. License renewal

1. Once received, a broker’s license will expire three years after it is issued on the ________________ of issuance.

H. License renewal education requirements

1. Brokers must complete ________________ of continuing education during the three-year period prior to renewing.

2. Brokers must take three different four-hour ACU (Annual Commission Update) courses during the three-year period as part of the requirement.

3. The remaining hours of continuing education can be taken as electives (on any topic the broker chooses), but each course must comply with the topics permitted by Colorado statute and the Real Estate Commission.
   a) The NAR (National Association of REALTORS®) ethics class would be acceptable, but topics on personal marketing, company sales, orientation meetings, or exam prep are not.
   b) The broker is responsible for verifying that the provider and the course have been approved by the Commission.

   (1) The approval list is on the Commission’s Web site.

4. Licensees are responsible for keeping their certificates of completion from each course provider.

5. Alternatives to the continuing education requirement include the following:
   a) Brokers may take and ________________ of the licensing exam to satisfy the entire 24-hour continuing education requirement. The ________________ is not required.
   b) Brokers may take the 24-hour Brokerage Reactivation course; this course may only be taken every other license cycle for continuing education credit.

6. If a broker fails to pay the renewal fee on or before the expiration, there is a 31-day grace period; the broker will need to pay only the renewal fee. The broker must have met the ________________ ________________ prior to expiration.
   a) After ________________ and up to one year, the broker may reinstate a license by paying the renewal fee plus a reinstatement fee of half the renewal fee.
b) During this period, the broker's license is considered to be active, but the broker may not practice real estate until the license fee is paid.

c) After a year, but within three years, the broker can renew the license by paying the renewal fee plus a reinstatement fee equal to the renewal fee.

I. Place of business

1. All active brokers must maintain a place of business open to the public (Rule C-2).

2. Licensees working for an employing broker use the brokerage firm’s address to meet this requirement.

J. Transfer and inactive license status

1. The Real Estate Commission must be able to locate all licensees.
   a) Licensees are tracked through their employing broker. The employing broker is required to keep the Commission informed of any changes.

2. The Commission must be notified when any of the following occur:
   a) There is a change of business location by the firm

      (1) When a change takes place without notifying the Commission, it makes the brokerage firm's license along with employed broker associates.

   b) A broker associate is changing employment to a new firm

      (1) If a licensee leaves a brokerage firm, the licensee and the employing broker have joint responsibility to notify the Commission of the change.

3. Licensees may work for only one employing broker at a time.

K. Inactive license

1. Licensees may elect to place their license on inactive status with the Real Estate Commission.
   a) Inactive brokers are still responsible for paying all renewal fees.
   b) There is no requirement to complete continuing education while on inactive status.
   c) Inactive brokers are not required to maintain an office or to have

      ________________________________

   d) Inactive brokers may not perform real estate functions or earn a commission while on inactive status.

2. To reactivate an inactive license, licensees must complete 24 hours of continuing education and apply for a change of license status with the Commission.

L. Nonresident broker

1. Nonresidents of Colorado may hold an active Colorado real estate license.

2. Nonresident brokers must maintain an office in their home state but are not required to have a Colorado office.
If a nonresident broker holds money for a transaction in Colorado, the funds must be held in a Colorado bank account. With the agreement of the parties, a Colorado title insurance company or another escrow account could also hold the money.

M. Referral fees to out-of-state brokers

1. Referral fees to out-of-state brokers must also be paid only to those who have an office and an active license.

N. Trade names

1. Real estate firms use two types of trade names.
   a) First, a unique name registered with the state
      (1) For example: An independent firm wants to be called ABC Realty. The trade name must be registered with the Colorado Department of Revenue or the secretary of state before the firm may hold its license in that name.
      (2) The employing broker and all licensees can do business only under the ABC Realty name (Rule C-18).
      (3) All advertising and property signs must clearly specify the name of the as licensed with the Real Estate Commission (Rule C-19(c)).
   b) Second, a brokerage firm using a “name owned by another” such as Century 21, RE/MAX, or Metro Brokers
      (1) The brokerage firm still must use the brokerage identity “in a conspicuous and reasonable manner calculated to attract the attention of the public.”
      (2) In other words, the Commission would require not just “Century 21,” but “Century 21 – XYZ Realty.”
      (3) These brokerage firms must include wording in their advertising that clearly shows that individual offices are “independently owned and operated.”
      (4) There are for the difference between the brokerage firm and the broker’s name.

2. It should be relatively easy for a consumer to identify exactly which office and licensed broker are advertising (Rule C-19 (f), (h), (i)).

3. placed by broker associates for properties listed with the brokerage firm must include the licensed name of the brokerage firm. Broker associates can include their name and phone number, but they must identify their brokerage firm in all advertising (Rule E-8).

4. The Commission will not issue a license to an individual under a fictitious name. Licensees may not hold a license under more than one name.

O. Investigations, hearings, and penalties

1. The Colorado Real Estate Commission may investigate any licensee’s activities and, upon receiving a complaint, must investigate.
2. The Colorado Real Estate Commission will ________________ that the licensee answer the complaint and supply supporting documents.

3. Prior to requesting the response, the Colorado Real Estate Commission does not have subpoena power, nor would they file a lawsuit or just show up and take the records in question.

4. If the Commission’s investigation finds no violation, it will dismiss the complaint.

5. If the Commission investigation finds improper activities that do not call for a hearing, the Commission may dismiss the complaint or issue a letter of admonishment reminding the licensee of the provisions of the law. A letter of admonishment is the lowest level (least serious type) of ________________ the Commission can take.

6. If the investigation shows that license law may have been violated, the Commission may send the matter to a hearing before an administrative law judge.

7. If the judge finds that the “respondent” (the licensee who must respond to the complaint) has violated license law, the matter returns to the Commission to determine a penalty.
   - **Investigations** are conducted by the Division of Real Estate.
   - **Hearings** are conducted by an administrative law judge.
   - **Penalties** are assessed by the Real Estate Commission.

8. The Commission may
   a) impose an administrative fine not to exceed $2,500 for each separate offense; or
      (1) Note: This is a fine and is not related to ________________, which can only be determined by a court. Damages would be awarded to compensate an injured party; fines are penalties for breaking the law.
   b) censure a licensee, temporarily suspend, or permanently revoke a license if the licensee is found guilty.
      (1) The Commission may not impose any jail sentence or ________________.
      (2) Only the Commission may revoke a license.

<table>
<thead>
<tr>
<th><strong>FIGURE 6.2</strong> Commission Process</th>
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<tbody>
<tr>
<td><strong>No Hearing</strong></td>
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<tr>
<td>Dismiss</td>
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<tr>
<td>Letter of admonishment</td>
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9. Discipline records are available to the public and are posted on the Commission Web site.

10. The Commission may audit a broker’s escrow account and check the broker’s records for all real estate transactions at any time.
   a) Such routine audits do not necessarily suggest a complaint against or any wrongdoing by the broker.
   b) The Commission is not required to notify a broker prior to an audit.
11. License law lists some of the following as specific violations that would call for disciplinary action against that person’s license (12-61-113 C.R.S.):
   a) Fraud or misrepresentation
   b) Improper accounting for funds belonging to others
   c) Violating the Colorado Consumer Protection Act
   d) Commingling: mixing money belonging to others with personal or business funds of the broker
   e) Failure to provide the purchaser and seller with a proper closing statement
   f) Failure to adequately supervise the activities of employed licensees (in the case of an employing broker)
   g) Accepting payment for an act that requires a real estate license from anyone except the licensee’s employing broker
   h) Demonstrating unworthiness or incompetence

12. The Real Estate Commission does not have any authority over ethics in real estate practice or _____________________________ between brokers.

13. Brokers with an active license must notify the Commission if they are charged with a crime or violation that must be disclosed per the statute.

P. Competency

1. Brokers are expected to be ____________________________ when representing the public.

2. Competency can be gained through ____________________________ or by completing a similar transaction with another broker.

3. Brokers who are not competent should refuse to provide service until they gain competency.

Q. CP-30—seller-assisted down payments

1. Real estate licensees should
   a) note all seller-paid costs in all relevant documents and in the MLS after closing,
   b) advise buyers and sellers to consult legal and tax counsel for advice on tax consequences, and
   c) cooperate with appraisers and lenders.

2. Title companies and the Real Estate Commission do not require this information.

3. Seller-assisted down payments are most typical in residential properties.

R. Business opportunity brokerage

1. A real estate license is required if the sale includes
   a) any interest in real property, or
b) the transfer of lease rights.

2. Every business opportunity listing must have a _____________________________.

S. Real estate securities

1. Some real estate–related transactions are defined by law as securities transactions.
   a) A securities license (stockbroker’s license) is required to sell these types of transactions.
   b) Both federal securities laws and state securities laws (blue sky laws) apply to the sale.

2. Examples of real estate securities
   a) Shares in a real estate investment trust (e.g., a mutual fund investing in real estate instead of stocks)
   b) The sale of condominium or time-share units with a developer-sponsored ____________________________

   (1) This requires that when owners are not using their unit, they place it in a rental pool. The proceeds are then divided among all owners whose units were available, whether they were rented or not.

T. Real estate options

1. Listing and selling real estate ____________________________ for others requires a real estate license.

U. Affiliated business arrangements

1. Rule E-46 requires that any business arrangement with a title company or settlement agency be disclosed to consumers and the Real Estate Commission.

2. Brokers disclosing to consumers use a HUD-approved form.

3. Brokers disclosing to the Real Estate Commission use a state-provided form.

4. Employing brokers should supply further guidelines.

IV. APPRAISER LICENSING

A. Colorado license law for appraisers

1. Colorado has four categories of registration, licensing, and certification:
   a) Registered appraiser
   b) Licensed appraiser
   c) Certified residential appraiser
   d) Certified general appraiser
2. Rule E-42 allows brokers to prepare a comparative market analysis without an appraisal license, but requires them to disclose that they are not _________________.

   a) The rule states: “When a real estate licensee prepares a comparative market analysis 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.’” (CREM)
UNIT 6 REVIEW EXAM

This is an open-book, non-graded exam that will be reviewed at the beginning of Unit 7.

1. The Licensee Buy-Out Addendum states all of the following EXCEPT
   a. the buyer is a licensee and has the resources to purchase the property.
   b. any profit or loss after closing will belong to the buyer.
   c. the buyer may be exposed to expenses and loss.
   d. the seller will pay commissions and cover any loss to the buyer at closing.

2. If a buyer is submitting an offer on an approved Contract to Buy and Sell Real Estate in which the seller has requested liquidated damages if the buyer is in default, which of the following must occur?
   a. The proper language must be inserted in Additional Provisions.
   b. This is the contract default, so the buyer and seller do not need to do anything.
   c. The seller must check the appropriate box after accepting the offer.
   d. The correct box must be checked in the Remedies section.

3. By law, which is required for a third party to sell a business opportunity that includes the real property rights?
   a. Nothing
   b. Business opportunity sales license
   c. Real estate license
   d. Options license

4. When using the Square Footage Disclosure, the broker must do all of the following to be in compliance EXCEPT
   a. measure the property or hire someone to measure it.
   b. state that the measurements are not for loan or valuation purposes.
   c. identify the source of measurements if the measuring was not done by the broker.
   d. use sources deemed to be reliable for residential measurements.

5. A broker who wants to change the closing date in a Contract to Buy and Sell Real Estate would use all of the following EXCEPT
   a. use an Amend/Extend Contract signed by the parties.
   b. use a Counterproposal form signed by the parties.
   c. use an Amend/Extend Contract with Broker form signed by the parties.
   d. write a letter, have the parties sign it, and submit it to the title company.

6. The Inspection Objection form would be used for all of the following EXCEPT
   a. withdraw the buyer's inspection objection.
   b. extend the date of the objection deadline.
   c. alert the buyer to involve the lender.
   d. request the seller to repair the property.

7. According to the Residential Contract to Buy and Sell Real Estate, notice to the buyer's representative is effective notice to the
   a. buyer.
   b. seller.
   c. buyer only for a buyer's agent.
   d. seller only for a seller's agent.

8. Language in the Additional Provisions section of the approved Contract to Buy and Sell Real Estate can include and is limited to
   a. the broker's own exculpatory language.
   b. location-specific language.
   c. set clauses that the broker uses in all contracts.
   d. conditions and terms negotiated between the buyer and seller.

9. The buyer is getting an 80 percent LTV. The loan amount will be determined by the
   a. appraised value.
   b. sales price.
   c. higher of the sales price or appraised value.
   d. lower of the sales price or appraised value.
10. The title company is appointed as scrivener by which of the following forms?
   a. Contract to Buy and Sell Real Estate
   b. Closing Instructions
   c. Earnest Money Receipt
   d. Amend/Extend Contract

11. If a seller has granted an unrecorded easement across the property, what will happen once the property is under contract?
   a. It will be void when the property sells.
   b. The seller must provide a copy to the buyer.
   c. The seller may keep it confidential.
   d. The buyer may decide to cancel the easement.

12. How many days is the right-to-cure period for agricultural property?
   a. 95–100
   b. 110–125
   c. 215–230
   d. 6 months

13. Which transfers automatically with the title?
   a. Trade fixtures
   b. Electrical fixtures
   c. Freestanding refrigerator
   d. Emblements

14. A seller completed a counterproposal and gave it to the buyer, but then received a better offer from another buyer. What can the seller do?
   a. The seller may not cancel the offer and must wait for the first buyer to respond.
   b. The listing broker should deposit the earnest money from both offers until the dispute is settled.
   c. The buyer has until the acceptance date to respond or decline the offer and the seller may not interfere.
   d. The seller should cancel the counterproposal before accepting the new offer.

15. A lender who forecloses on a property and sells it for less than what was owed has the right to obtain a
   a. writ of condemnation.
   b. lis pendens.
   c. deficiency judgment.
   d. default judgment.

16. In the Contract to Buy and Sell Real Estate, title insurance and settlement costs are paid
   a. only by the seller.
   b. by the brokers.
   c. as part of the title insurance.
   d. as negotiated between the parties.

17. A nonresident broker must do all of the following EXCEPT
   a. keep all trust funds received in a Colorado depository.
   b. complete all Colorado license requirements for renewal and continuing education.
   c. be supervised by an active Colorado employing broker.
   d. have an office in the broker's home state.

18. The first step the Commission takes after receiving a complaint about a broker associate is to
   a. send the employing broker a suspension notice.
   b. suspend the broker's license until the issue is heard.
   c. issue a letter of admonishment.
   d. investigate and ask the broker for a response to the complaint.

19. To be in compliance with continuing education requirements, which of the following should all brokers complete during each three-year license cycle?
   a. 9 hours of ACU courses and 15 hours of electives
   b. 12 hours of ACU courses and 8 hours of electives
   c. 12 hours of ACU courses and 12 hours of electives
   d. 24 hours of any approved courses the broker chooses

20. An unlicensed assistant may do all of the following EXCEPT
   a. show a property with the listing broker's or seller's permission.
   b. sign on a trust account.
   c. make and confirm appointments for a broker.
   d. complete and present a CMA to a seller.
21. If the buyer wants to terminate the contract prior to the inspection objection deadline, which form should the buyer use?
   a. Notice to Terminate
   b. Inspection Objection
   c. Inspection Resolution
   d. Amend/Extend Contract with Broker

22. Brokers must renew their real estate licenses every
   a. four years on December 31.
   b. three years on their anniversary date.
   c. year on December 31.
   d. three years at the same time their E&O insurance is renewed.

23. The purpose of the Inspection Resolution form is to
   a. list all the items the buyer wants the seller to repair.
   b. give the buyer a list of the seller’s alternate resolution.
   c. allow the buyer to withdraw the inspection request.
   d. finalize the agreement between the buyer and seller.

24. A broker’s E&O coverage typically expires and must be renewed
   a. by June 30 of each year.
   b. every three years on the anniversary date.
   c. by December 31 of each year.
   d. by January 1 of each year.

25. The Commission could impose all of the following on a broker who is found guilty of breaking license law EXCEPT
   a. a fine and suspension of license.
   b. a $2,500 fine and censorship of license.
   c. a notice of the infraction on the Commission’s Web site.
   d. a $2,500 fine for damages and a revocation of license.
1.  d  The Licensee Buy-Out Addendum states that the seller will pay no commissions or expenses for the buyer if the contract closes.

2.  b  Liquidated damages is the contract default, which means the parties do not need to make a choice.

3.  c  A third party selling a business opportunity must have a real estate license if the sale includes any real property interests, such as the lease or sale of the real estate. The owner of the business opportunity may sell it without a license.

4.  a  The square footage disclosure does not require the listing broker to measure the property, but if the broker does, the method used must be stated.

5.  a  The Agreement to Amend/Extend Contract is the approved form for this purpose.

6.  b  The Inspection Objection form provides provisions for all of the options, except extending a deadline. The extension would require an Agreement to Amend/Extend Contract.

7.  a  The Notice section is clear that notice to the brokerage firm working with the buyer is considered notice to the buyer. The same is true for notice to the seller.

8.  d  Rule F-2 requires that additional provisions be transaction-specific and negotiated between the parties.

9.  d  Basic concept review: LTV (loan-to-value) is always based on the lower of the sales price or appraised value.

10.  b  The Closing Instructions form has a specific agreement between the listing broker and the closing company to make it a scrivener of the broker to fill in legal forms.

11.  b  The Off-Records Matter section requires the seller to provide documentation on title items “not shown by the public record.”

12.  c  The agricultural right-to-cure period is 215 to 230 days.

13.  b  Basic concept review: Fixtures such as electrical wiring and plumbing automatically transfer with the deed. Trade fixtures, freestanding appliances, and emblements are considered personal property and will be listed on the bill of sale.

14.  d  The buyer has the right to withdraw an offer until communication that the offer has been accepted is received. The seller has the right to cancel the counterproposal until notice of acceptance has been received. The seller must cancel to accept another offer or chance having two executory contracts.

15.  c  Basic concept review: The lender has a deficiency created by the loss in the foreclosure so the lender would file for a deficiency judgment, not a default judgment.

16.  d  The Evidence of Title and Closing Costs sections of the Contract to Buy and Sell Real Estate provide various options for payment of closing costs.

17.  c  Nonresident brokers have a Colorado real estate license and must meet all requirements to maintain an active license but do not require supervision by a Colorado employing broker.

18.  d  Upon receiving a complaint, the first step is for the Commission to investigate and ask the broker and any other parties to respond.

19.  c  Brokers are required to complete 12 hours of ACU courses (one each year) and 12 hours of elective courses during each three-year license cycle.

20.  d  Unlicensed assistants may not do anything that requires a real estate license, including offering opinions. The assistant may complete the CMA but should not present it to the seller because it could indicate the assistant’s opinion on the value of the property.

21.  a  The Notice to Terminate form is used anytime the Contract to Buy and Sell Real Estate is being terminated.
22. b  Brokers' licenses expire and must be renewed every three years on the broker's anniversary of licensure date.
23. d  The Inspection Resolution form is used to finalize any inspection issues between the buyer and the seller.
24. c  E&O coverage expires on December 31 of each year.
25. d  The Commission may not fine for damages. They may censure, suspend, or revoke a license and may impose a fine up to $2,500 per infraction.
Final Exam Study Guide

Focus on Understanding
■ Final comprehensive exam on Units 1 to 6

The Exam:
■ The Contracts and Regulations Final Exam consists of 60 questions.

Study Plan
Before Class:
■ Review all six units, especially the items that have been filled in during class.
■ Review items listed in the study guide on the next page.

After Class:
■ Prepare for the Practical Applications class.
STUDY GUIDE

Colorado Contracts & Regulations

The following items should be reviewed prior to taking the Contracts and Regulations Final Exam:

1. Rule F – Unit 1
2. Rule E-35 – Unit 1
3. Conway-Bogue decision – Unit 1
4. Brokerage relationships – Unit 1
5. Listing agreement – Unit 2
6. Single-party listings – Unit 2
7. Right-to-buy agreement – Unit 2
8. Rebates of commissions – Units 2
9. Review Contract to Buy and Sell Real Estate – Units 3 and 4
10. Seller concessions – Unit 4
11. Forms – Unit 5
   — Seller's Property Disclosure
   — Square Footage Disclosure
   — Agreement to Amend/Extend Contract
   — Agreement to Amend/Extend Contract with Broker
   — Closing Instructions
   — Real Property Transfer Declaration
12. Water rights – Unit 5
13. Errors and omissions insurance – Unit 5
14. Supervision by employing brokers – Unit 5
15. Foreclosure – Unit 5
16. Unlicensed assistants – Unit 5
17. Subdivision registration requirements – Unit 5
18. Fair housing – Unit 6
19. Property management – Unit 6
20. Requirements for licensing – Unit 6
21. Continuing education – Unit 6
22. Selling real estate options and securities – Unit 6
23. Inactive licenses – Unit 6
24. Advertising and trade names – Unit 6
25. Investigations and discipline of licensees by the Colorado Real Estate Commission – Unit 6
26. Dual contracts – Unit 6
27. Appraisal licensing – Unit 6
I. FUNCTIONS OF THE REAL ESTATE COMMISSION

A. Complaints and Investigation

1. The Commission must investigate all written complaints.
   
   (2) ask the broker to respond to the complaint.

   a) Until the response is received, the Commission may not

   (1) subpoena records.

2. Once the response is received, the Commission may

   b) issue the lowest form of discipline (a formal warning) called a Letter of Admonishment, or

3. After the hearing and the judge’s verdict, the matter is referred back to the Commission. The Commission has the following options:

   a) Public censure of the broker

II. CONWAY-BOGUE AND RULE F

1. Conway-Bogue and Rule F require brokers to use standard or approved forms in the practice of real estate.

2. The Colorado Real Estate Commission has approved a wide variety of forms to assist brokers in complying with Conway-Bogue.

3. Rule F requires that brokers must use approved forms when applicable.

4. Rule F keeps brokers in compliance with the Conway-Bogue decision.

5. Rule F-2 requires that the “Additional Provisions” section of any form must include only transaction-specific agreements resulting from negotiations between the parties and be labeled as follows:

   “The following additional provisions have not been approved by the Colorado Real Estate Commission.”
7. A broker who is not a party to a contract may not add personal provisions, personal disclaimers, or exculpatory language in an addendum. These would, however, be acceptable in an employment agreement where the broker is a principal party.

   a) Rule F-3 Addenda: If a broker uses a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form, and the addendum does not result from the negotiations of the parties, then such addendum must be prepared by:

       Note: Such addenda may not be prepared by the broker or brokers for the parties.

9. Computer-generated contract forms

   b) These software programs must reproduce the Commission language exactly as approved.

11. Contract forms may not be filled out prior to negotiation with the party.

12. Rule F does not apply to the following:

   a) Contracts for new homes with warranties

13. Attorneys do not fall under these rules and may prepare contracts for any party in the transaction or, if requested, for the brokerage firm in a specific transaction.

   a) A brokerage firm is not allowed to have its attorney prepare contracts for general use in the firm. The brokers would need to use Commission approved forms.

III. OTHER CURRENT LEGAL ISSUES

1. Methamphetamine laboratory (meth lab)

   (1) If the property is cleaned and certified per state regulations, the seller does not have to disclose.

2. Measuring properties

   (2) list the method used to measure the property; or

   (3) list the source of the measurement, such as an appraisal.

3. Seller’s Property Disclosure

   b) The form is filled out to the best of the seller’s current actual knowledge.

   c) The buyer signs to confirm receipt of the form.

   d) Brokers do not fill out the form.

IV. FAIR HOUSING

1. Federal fair housing protected classes:

   F familial

   R race

   e equal

   S sex
H handicap
C color
O opportunity
R religion
N national origin
Colorado adds marital status

2. A broker suggesting that someone live by a certain church, school, or in a certain area would be guilty of steering.

3. Declining to give a buyer a loan because of high crime rates in a neighborhood is an example of redlining.

4. A broker suggesting that values will go down because a different ethnic group has moved in may be guilty of blockbusting.

■ CASE STUDY OUTCOMES: COURSE 1: CURRENT LEGAL ISSUES

Case Study #1
Both brokers were disciplined. The terms are not provided, but it can be assumed that the Expedited Settlement probably included some sort of restitution to the buyer.

■ Clear case of incompetence with both brokers.
■ Failure to disclose material facts regarding water flow.
■ Listing broker was property manager so he cannot claim “no duty to independently investigate matters about the property”—he should have already known about them.
■ “Well Working” on the Seller Property Disclosure isn’t necessarily a misleading statement—the seller might not have known about the flow rate.
■ Failure to properly draft the terms of the contingency including not having a “quality” of water or flow rate requirement.
■ Broker should have recommended Buyers get their own well test instead of relying on a previous well test.
■ Virtually nothing in writing between brokers from either side.
■ No documentation of communications between Selling Broker and clients.
■ Failure to exercise reasonable skill and care.

Case Study #2
The disciplinary action taken in this case included the following:

■ Public censure and class in Contracts for the employed broker.
■ Public censure and class in Brokerage Administration for the Employing Broker.
■ Both brokers jointly and severally liable for restitution in selling the property without commission earned.
The Commission reviews “supervising” and employing broker roles as a part of all complaints.

This was an inexperienced broker who required a “high level” of supervision including close monitoring of all transactions—new broker was not properly supervised.

**Case Study #3**

Broker's license was revoked. In the criminal case, broker was allowed to make full restitution and go on probation to avoid a possible 17-year prison sentence.

Clear case of conversion of funds.

**Case Study #4**

Disciplinary action included:

- Broker Mary: Six-month suspension, public censure, $2,500 fine.
- Broker Paul: Agreed to voluntary surrender of license in lieu of suspension, censure and fine.
- What should have been done:
  - Disclose, disclose, disclose.
  - Seller Property Disclosure form asks about conditions that “now exist, or have ever existed.”
  - Broker Mary may not have been held harmless by listing property with Broker Paul.
  - Both brokers had actual knowledge of the defects.
  - The seller, not Broker Paul, should have filled out the Seller Property Disclosure form.

**COURSE 2: COLORADO CONTRACTS & REGULATIONS**

**UNIT 1 FILL-INS: REAL ESTATE BROKERAGE IN COLORADO**

**I. REAL ESTATE BROKERAGE IN COLORADO**

**A. Levels of broker authority**

1. An associate broker
   a) is a licensee with less than two years of active experience, or a licensee with two or more years of experience who has chosen not to upgrade a license to an independent or employing broker,

2. An independent broker
   c) may not hire or supervise other licensees, and

3. An employing broker
   b) is qualified to hire and supervise other licensees, and
B. Colorado brokerage relationships

1. Agent
   b) Any brokerage firm and broker acting as an agent must have a written agency agreement in Colorado. The two most common agreements are the Exclusive Right-to-Sell Listing Contract and Exclusive Right-to-Buy Listing Contract.
   c) A broker acting as an agent may only be a single agent in a single transaction, representing only one side.
   d) Under Colorado law, licensees may not act as a dual agent (they may not represent both parties as an agent in a single transaction).
   e) An agent is an advocate, promoting the interests of one party over the other. An agent acts like a coach working for only one side of the transaction.

2. Transaction-broker
   a) A transaction-broker is not an agent or advocate for either party. A transaction-broker acts like a referee.
   c) A broker may represent one party as a transaction-broker (e.g., a seller’s transaction-broker with an Exclusive Right-to-Sell contract), or a transaction-broker may assist both sides without a conflict of interest (double-end the transaction).
   d) A broker representing a consumer as a transaction-broker does not have all the fiduciary obligations that an agent has. Remember, this broker is simply acting as a referee (facilitator), keeping both parties informed.
   e) Transaction-broker is the default relationship in Colorado; it does not require a written agreement, only a written disclosure of responsibilities.
   g) Transaction-brokers are required to confirm the representation responsibilities the broker owes to the consumer.
      (1) This confirmation is done either through an exclusive agreement or a disclosure form.

3. Customer
   a) Colorado law also defines a customer in a transaction as “a party to the real estate transaction with whom the broker has no brokerage relationship or no representation, because such party has not engaged or employed any broker.”
   c) The broker must disclose in writing that the broker will continue to be the agent for the seller and have no brokerage relationship, or representation, with this “buyer customer.”

C. Disclosing an existing relationship with a seller to a buyer

2. Definitions of Working Relationships Disclosure form
   d) Colorado law recognizes two brokerage relationships for a broker to represent a member of the public: agency and transaction brokerage.
   e) The employing broker’s written office policy details what the brokerage firm offers: either relationship (agency and transaction brokerage) or only certain choices.
3. Brokerage Disclosure to Buyer form

d) This form is also used to make the buyer a customer when the broker is an agent to the seller and wants to double-end the transaction.

e) This disclosure is mandatory if the broker has an existing representation relationship with a seller. The broker must disclose that relationship (agency or transaction-broker) to any unrepresented buyer who inquires about the seller's property.

j) Customer: This box is checked if the buyer will always be a customer.

(4) The broker may assist the customer in any way that does not compromise the agency relationship with the seller.

E. Disclosure of brokerage relationships and Rule E-35 requirements

1. The law, implemented by Rule E-35, requires that brokers disclose in writing the types of relationships they may provide to the public:

3. Disclosure is required before eliciting any confidential information.

4. Disclosure must be in writing at the first physical contact.

5. Disclosure might start orally in a phone conversation.

7. The broker is not required to have the written disclosure form signed to be in compliance with Rule E-35. If the member of the public declines to sign, the broker should note the person's name and date on the file copy and give a second copy with the broker's signature to the member of the public.

9. Don't confuse in writing with signed; Rule E-35 states that the broker must give a written disclosure, not that the member of the public has to sign it.

F. Designated brokerage

2. The brokerage firm owns the listing contract and elects to provide services by designating a broker.

3. The employing broker of the firm designates an individual broker (or a team) within the firm to enter into the brokerage relationship and represent a particular seller or buyer (or landlord or tenant).

4. In designated brokerage, the brokerage relationship stops with the designated broker and does not extend to the rest of the brokerage firm or the employing broker.

II. BROKER’S LIMITED RIGHT-TO-PRACTICE LAW

A. Conway-Bogue Supreme Court decision

2. The court found that brokers may perform this limited practice of law under certain conditions including the following:

   c) The documents must be prepared on commonly used printed standard or approved forms.

   (3) Brokers appoint title companies as their scrivener to complete these legal documents. It is the responsibility of the broker to pay for any requested legal documents. Sellers and
buyers may not be charged for these documents. Usually it is the seller’s listing broker who orders and pays for the documents.

B. Standard and approved forms—Rule F

1. In 1971, the Colorado Real Estate Commission developed and approved a wide variety of forms to assist brokers in complying with the Conway-Bogue decision.

2. Rule F keeps brokers in compliance with the Conway-Bogue decision by describing the forms and requiring that brokers use the approved forms when applicable.

3. As stated in the CREM, Rule F-1 determines the “permitted and prohibited form modifications.”

   (4) Language added in blank spaces must be in italics or in different typeface or font than the preprinted language so the reader can tell the difference between the language added to the blanks and the approved language.

7. Rule F-2 requires that the Additional Provisions section of any form must include only transaction-specific agreements resulting from negotiations between the parties.

8. A broker who is not a party to the contract may not add personal provisions, personal disclaimers, or exculpatory language in an addendum.

10. Rule F-3 addenda

    a) If a broker uses a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form, and the addendum does not result from the negotiations of the parties, then such an addendum must be prepared by one of the following:

    b) Such addenda may not be prepared by the broker or brokers for the parties.

11. Computer-generated contract forms may be used:

    b) These software programs must reproduce the Commission language exactly as approved.

13. Contract forms may not be filled out prior to negotiation with the party.

15. Rule F does not apply to the following:

    a) Contracts for new homes with warranties

17. Attorneys do not fall under these rules and may prepare contracts for any party in the transaction or for the brokerage firm in a specific transaction.

    a) A brokerage firm is not allowed to have its attorney prepare contracts for general use in the firm. All real estate licensees must use Commission-approved forms.
UNIT 2 FILL-INS: THE SELLER AND BUYER RELATIONSHIP

I. UNDERSTANDING THE EXCLUSIVE RIGHT-TO-SELL AND EXCLUSIVE RIGHT-TO-BUY LISTING CONTRACTS

A. Headings

3. Commission approval and the form number appear on the first page of each approved form.
   d) The check box will determine how the broker will represent the seller or buyer, either in an agency or transaction-broker relationship.

B. Agreement

2. It informs the sellers or buyers that they are entering into a binding contract with the brokerage firm.
   b) “Irrevocable” means that even if the sellers stop marketing their property, (withdraw the listing), or the buyers decide not to buy a property that meets the agreed upon description, the sellers or buyers may still owe a commission or the reimbursement of broker expenses.

C. Broker and brokerage firm

4. One-person firm
   a) In a one-person firm, the broker cannot be designated and the firm (one person) is either a single agent or transaction-broker for the seller.

D. Defined terms

3. Seller or buyer
   b) All persons listed must sign the agreement.

4. Brokerage firm
   a) Without exception, a brokerage firm and its associates must conduct any real estate business in the name of the firm as registered and licensed with the Colorado Real Estate Commission.
   b) The listing contract belongs to the brokerage firm and not the individual broker completing the form.

7. Seller listing—sale of the property
   a) Must be a voluntary transfer (alienation) by the seller

8. Buyer listing—purchase or lease of the property
   a) Any transaction meeting the definition of a purchase obligates the buyer to pay the negotiated commission.

9. Seller listing—listing period
   b) Rule E-11 requires a definite date for termination of a listing (CREM).
11. Applicability of terms
   a) Most of the blanks in a form are negotiable items and all of them must be addressed.

F. Brokerage duties

3. The brokerage firm, acting through the broker, must provide uniform duties to the seller that will apply to either the agent or transaction-broker relationship.
   a) Failure to carry out these uniform duties is a breach of the listing contract and could provide cause for cancellation of the listing.
   b) The broker shall exercise reasonable skill and care for the seller or buyer, including:
      (a) Seller listing: All offers must be presented to the seller, and multiple offers received by the broker must be presented to the seller at the same time so the seller can decide which to accept or counter.
      (b) Keep all parties fully informed regarding all matters related to the transaction
   c) The broker will not disclose without the seller's or buyer's permission for the following:
   d) Stigmatized property laws are created by each state, not at the federal level.
   e) Rule E-45 allows an associate broker to share confidential information with a supervising broker.
      (1) The seller or buyer must give permission, which this section provides.

4. There is no duty for the broker to investigate.
   d) The broker has no obligation to verify the accuracy or completeness of the statements made by a party (unless the broker believes the party is lying).

6. Seller listing—the seller can choose whether to allow the broker to disclose if there is already an offer on the property.
   a) If allowed to disclose, the broker is also allowed to tell which firm made the offer. The broker is not allowed to disclose the amount of any offers.

H. Compensation to brokerage firm; compensation to cooperative broker

2. Compensation in the seller listing contract
   a) Designated brokers (and all licensees) may receive compensation only from their brokerage firm, not directly from the buyer or seller.

4. Holdover period—both listings
   a) The holdover period is a time period negotiated between the parties.

6. Other compensation
   b) The Real Estate Commission has a position statement allowing a broker to “rebate” part of a commission to either the seller or the buyer as a renegotiation of the commission (CP-12).
I. Limitation on third-party compensation

1. Purpose: This section requires that if the broker is to receive a referral or other similar payment from a source affiliated with the sale of the property (e.g., a lender, home warranty company), the broker must first get the seller's or buyer's written permission.

2. The broker may not receive a fee from a title company and must make sure any payments are not in violation of the Real Estate Settlement Procedures Act (RESPA).

J. Seller's and buyer's obligations to broker; disclosures and consent

1. Seller listing contract (Seller's Obligations to Broker; Disclosures and Consent)
   b) Obligation 1: Negotiations and communication
   (1) This makes the seller's agreement exclusive with the brokerage firm.

N. Mediation

3. The parties select a mediator and split the cost. This is true of all Colorado Commission-approved contracts and is not negotiable.

4. The parties can seek resolution for up to 30 days.

P. Additional provisions

2. The Additional Provisions section contains transaction-specific agreements that are not covered by the printed form.
   a) Additional provisions must be specific to this listing agreement. Add other items as attachments or addenda.

S. Modification of this listing contract

2. The broker would use the Amend/Extend Contract with Broker form to modify this contract.

V. Copy of contract

2. All parties signing the listing must receive copies immediately.

III. ITEMS SPECIFIC TO THE SELLER LISTING CONTRACT

B. Price and terms

5. Earnest money
   a) Earnest money is the seller's financial protection when the seller takes the property off the market while the buyer seeks financing and prepares for closing.

6. Seller proceeds
   a) The seller has an opportunity to specify how the seller wants to receive the net proceeds at closing.

7. Advisory—tax withholding
   a) In Colorado, closing companies may be required to withhold for potential Colorado income tax liability if a seller lives out of state.
D. Inclusions and exclusions

3. Inclusions—the purchase price includes the following:
   a) Fixtures
      (1) Lists items that will be included in the sale, if they are attached at the date of this listing contract, or if they are not specifically excluded in the Exclusions subsection.
      (5) A bill of sale conveys personal property.
   e) Water rights
      (2) The properties that most likely include water rights are agricultural and tied to irrigation.
      (4) Water rights are conveyed by a deed.

E. Title and encumbrances

2. The seller(s) is(are) agreeing to the following:
   c) The seller will transfer (convey, alienate) with the type of conveyance deed listed in this section.
      (1) A residential property is presumed to be conveyed by a general warranty deed unless the seller specifies otherwise.
   f) Special improvement liens must be paid off at or before closing unless the buyer agrees to assume the obligation.

F. Evidence of title

1. Purpose: The seller agrees to furnish and pay for the buyer’s title insurance policy. If the seller prefers to use an abstract (not typical in Colorado), that box would be checked.

I. Material defects, disclosures, and inspection

2. Broker’s obligations
   a) Informs the seller that the broker is obligated to disclose known material defects to any prospective buyer.

3. Seller’s obligations
   a) Seller’s Property Disclosure form
      (4) The broker should inform the seller that the buyer will most likely expect to have the form.
   b) Lead-based paint
      (1) Federal law requires that the seller is responsible for disclosing possible, potential, or known lead-based paint hazards or any other known lead hazards.
         (a) Applies to residential dwellings with a building permit prior to January 1, 1978
Appendix

(2) Commission rules provide the following:

(b) The Contract to Buy and Sell Real Estate will be void unless the seller provides the required disclosure to the buyer prior to signing the contract.

IV. OTHER ISSUES WHEN WORKING WITH THE SELLER

A. Sign crossing (Rule E-13 and Commission Position Statement 3)

2. Brokers must not “cross the sign” of another broker. This means that they may not approach the seller for any reason while the property is listed (has a sign in the yard).

   a) All negotiations must be handled through the listing broker.

   (1) The only exception is when the seller approaches a broker who is not the listing broker. This broker may negotiate and sign a new listing with the seller as long as the new contract beginning date is after the current listing expires.

B. Single-party listings (Commission Position Statement 13)

(2) The termination date shall not be extended by the holdover period of this listing contract.

V. CHANGE OF STATUS FORM

B. Key points

1. If a broker is designated as an agent broker for a buyer or seller (or both) and double-ends the transaction (works with both parties), then the broker must change from agent broker (single agent) to a transaction-broker or resign one of the designated assignments.

8. This is not a contract or new agreement. The parties already agreed to make this change in listing and buyer representation contracts.

UNIT 3 FILL-INS: COLORADO CONTRACT TO BUY AND SELL REAL ESTATE

II. CONTRACT TO BUY AND SELL REAL ESTATE

A. The Contract to Buy and Sell Real Estate is divided into eight segments.

2. Agreement—defines the terms inclusions and exclusions and the dates and deadlines for the contract

III. AGREEMENT

B. Parties and property

3. Assignability and inurement—determines if the contract will be assignable and binding to the heirs.

   a) If the contract is assignable, the buyer will not need the seller’s permission to assign the contract to another party.

   b) This clause also makes this contract binding on the heirs if either party dies or is incapacitated.
5. Property—identifies and defines the property.
   a) The property is described by the legal description and the address.

6. Inclusions—defines fixtures, personal property, trade fixtures, water rights, and other items to be conveyed.
   a) Fixtures—describes items of personal property now attached to the real property
      (1) These items of real property will be included in the sale, unless specifically excluded in the contract under the Exclusions section.
      (2) The fixtures will transfer with the rest of the real property in the deed.
   b) Personal property—identifies personal property items that are often included or any that the buyer and seller agree in writing will be part of the sale
      (3) If leased, such as a water softener, check the box and describe the lease in the Additional Provisions section.
      (4) Space is provided to add any other personal property items that will be included in the offer (e.g., stove and refrigerator).
      (6) Personal property will transfer by a bill of sale.

8. Water rights, water and sewer taps—lists any water rights to be transferred with the property.
   (1) The water rights will be conveyed by deed or other applicable legal instrument.

9. Exclusions—lists all items that the seller is excluding from the sale.
   a) Fixtures, unless listed here, will be conveyed with the title.

C. Dates and deadlines

2. This is the only place dates appear in the contract.

D. Purchase price and terms

3. Seller concession—these are most likely to occur in residential transactions (e.g., giving the buyer money toward the down payment). Other types of concessions would be noted in Additional Provisions.
   f) If the seller offers concessions to the buyer, it affects the overall sales price and value and must be noted in the MLS after closing.

4. Earnest money—defines the type of earnest money being used and who will hold the funds.
   a) The earnest money amount goes in the second box.
   (3) Personal checks are the most common, provided there is time for the check to clear through the bank before closing.
(4) An Earnest Money Promissory Note may also be acceptable. It must be clearly noted in the contract.

(b) If received, both brokers sign a receipt for this money at the bottom of the contract. The listing broker has three business days after notice of acceptance of the offer to deposit the earnest money in the listing brokerage firm's trust (escrow) account.

(5) The buyer's broker is obligated to deliver the earnest money to the listing broker/firm immediately upon acceptance of the offer.

(6) This section gives express authority to the listing brokerage firm to hold the earnest money until closing or defeat of the sale.

8. Seller or private financing—establishes the loan terms and conditions for a buyer using seller financing.

d) The broker should make sure the seller understands that unless the buyer waives homestead rights, $60,000 to $90,000 of the equity will be protected under any foreclosure action that the seller may need to take.

e) Homestead rights apply only to the primary residence. Standard rights are $60,000 but increase to $90,000 if the owner is disabled or over 60 years old.

IV. TRANSACTION PROVISIONS

B. Financing conditions and obligations

4. Credit information and buyer's new senior loan—this section is applicable for seller-carry financing of all or part of the purchase price or for assumption of seller's existing loan without release of seller's liability.

c) The seller may not share the buyer's credit information with others.

d) Disapproval by the seller terminates the contract and must be done on or before the Disapproval of Buyer's Credit Information Deadline.

C. Appraisal provisions

3. Appraisal condition—creates the appraisal contingency based on the type of loan the buyer is using. Cash buyers who want an appraisal will use the Conventional/Other section.

(1) If the appraisal is less than the contract price, the buyer can terminate the contract without forfeiting the earnest money.

(3) The written notice to terminate must be on or before the Appraisal Objection Deadline listed in Dates and Deadlines or the right is waived.

4. Cost of appraisal—determines who will pay for the appraisal.

a) The parties negotiate who will pay for an appraisal obtained after the contract date.
D. Evidence of title and association documents

2. Evidence of title and copies of exceptions—sets the type of owner's policy and determines who will select and pay for it.

   e) The title commitment is delivered by the record title deadline and is an obligation to insure the title.

   f) The buyer has a right to review various title documents and exceptions listed in the title commitment.

3. Homeowners’ association (HOA) disclosure and documents—if the property is in an HOA, also known as a common interest community, the buyer is made aware that such communities are governed by bylaws, rules, and regulations.

   a) A common interest community is any community with a mandatory assessment for the maintenance of common facilities (common elements).

   c) Common interest community disclosure—printed in all capital letters and bold, the section warns the buyer about many of the issues involved with common interest communities.

      (c) It creates the opportunity for buyer review and a negative consent responsibility to object by the association documents objection deadline or waive the right to object.

      (e) No matter when the buyer receives the documents, the buyer has three days prior to closing to terminate the contract.

E. Record title and off-record title matters

3. Special taxing districts—gives the buyer notice that special taxing districts may represent a substantial financial risk to a buyer, so the buyer should investigate the district.

5. Title advisory—warns the buyer about the seriousness of title matters. In particular, it explains that mineral and water rights may not be part of the sale.

   a) A third-party owner of the mineral or other rights may have the right to enter and use the property. The third-party owner must restore the surface of the property.

## UNIT 4 FILL-INS: COLORADO CONTRACT TO BUY AND SELL REAL ESTATE, CONTINUED

I. DISCLOSURE, INSPECTION, AND DUE DILIGENCE

A. Property disclosure, inspection, indemnity, insurability, due diligence, buyer disclosure and source of water

2. Seller’s property disclosure deadline—establishes if the seller will agree to give the buyer a Seller’s Property Disclosure by the deadline listed.

   (1) The seller completes the form to “the seller’s actual knowledge,” current as of the date of this contract.
3. Inspection objection and resolution—gives the buyer permission for an inspection and other tests, and sets time frames for the buyer to complete the property inspection and then terminate the contract or request repairs from the seller.

   (a) If the buyer and seller cannot reach a written agreement by the resolution deadline on what will be corrected and how, the contract will terminate on the resolution deadline listed.

4. Damage, liens, and indemnity—the buyer agrees to indemnify (protect) the seller from any claims and liens for the buyer's failure to pay for the work.

   c) Even if the buyer terminates the contract, the buyer remains responsible for repairing the damage.

10. Lead-based paint—used to make sure that all parties are in compliance with the lead-based paint law.

   a) The lead-based paint disclosure is mandatory for a residential improvement with a building permit issued prior to January 1, 1978.

   b) The contract is void unless the required disclosure is made by the seller before the offer is accepted.

   c) This is the seller's obligation alone. The broker's duty is to help the seller meet the seller's obligation.

   d) Upon signing the offer, the buyer is stating that the buyer has received a copy of the disclosure signed by the seller and the real estate licensees.

II. CLOSING PROVISIONS

C. Payment of encumbrances

2. The seller may have the closing company use the proceeds from the sale to pay off encumbrances.

D. Closing costs, closing fee, association fees, and taxes

2. How the fees for the closing service will be paid is negotiated here.

3. A Colorado documentary fee of one cent per 100 dollars (0.01 per $100) is payable by the person recording a conveyance deed. This fee is typically paid by the buyer.

7. Colorado use tax is primarily for personal property used in a business. It is the legal responsibility of the buyer since it is like a sales tax.

E. Prorations

2. Colorado practice is to prorate to the day of closing: the seller's last day of responsibility is the day before closing; the buyer is responsible the entire day of closing.

4. If the property is subject to a lease, the rent will be prorated as indicated.

5. If the property is part of an HOA, this section determines how the charges will be prorated.

   a) The Colorado Common Interest Ownership Act authorizes homeowners' associations to place a statutory lien on owners who fail to pay association dues.
III. GENERAL PROVISIONS

B. Causes of loss, insurance; condition of, damage to property and inclusions and walk-through

3. Cause of loss, insurance—explains what happens if the property is damaged by fire or other casualty
   a) The remedies are different if the damage is more or less than 10 percent of the purchase price.

6. Walk-through and verification of condition—the buyer is given the right, with notice to the seller, to walk through the property prior to closing to verify the physical condition of the property and the inclusions.
   a) The buyer must be aware that this walk-through is not another inspection clause but an opportunity to make sure that agreed corrections and conditions are satisfactory.

D. Time of essence, default, and remedies

3. If seller is in default—gives the buyer notice of the buyer’s only remedy if the seller defaults on the contract.
   a) The buyer has remedies parallel to the specific performance remedies described under buyer default.
   b) Note: The only remedy available to both parties in approved contracts is specific performance.

F. Mediation

3. The parties agree to mediate for 30 days and will split the cost of any mediation.

G. Earnest money dispute

2. When a contract is terminated according to one of its provisions, the earnest money must be returned immediately unless there is a specific dispute.
   a) This section protects the brokerage firm in case of an earnest money dispute.
   c) The brokerage may do one of the following with the earnest money:
      (3) Notify the buyer and seller to send any lawsuit information or the money will be returned to the buyer within 120 days of notice being sent.

J. Notice, delivery, and choice of law

(2) Either party may request copies of documents with original signatures at any time.

K. Notice of acceptance, counterparts

c) The buyer may withdraw the offer at any time until the buyer or the buyer’s representative learns of acceptance of the offer.
V. SIGNATURES

B. Counter; rejection

2. If the seller is not accepting the offer as proposed, mark the appropriate box and initial the short line without signing the offer.

D. Broker’s acknowledgments and compensation disclosure

2. When they sign, both brokers are stating if they have the earnest money listed in section 4 of the contract.

3. The brokers also acknowledge their relationship in the transaction.
   a) The brokers may also notify the parties of their change of status by checking the box.

UNIT 5 FILL-INS: ADDITIONAL TRANSACTION DOCUMENTS AND REGULATIONS

I. ADDITIONAL FORMS

A. Lead-Based Paint Obligations of Seller and Lead-Based Paint Disclosure (Sales) forms

1. Purpose: To meet state and federal disclosure requirements of lead-based paint hazards for the sale or lease of all residential property with a building permit dated before January 1, 1978.
   a) The seller (or landlord) is the party that is obligated to disclose.
   d) The Lead-Based Paint Disclosure (Sales) form is a Colorado-approved form that meets the federal requirements.
      (1) The seller provides a disclosure that there could be lead-based paint if the property was built prior to January 1, 1978.
   g) The buyer may waive the inspection by checking the box.

B. Square Footage Disclosure

1. Purpose: This disclosure is used to bring brokers listing residential property in compliance with Rule E-43, which requires that the listing licensee disclose the source of any square-footage measurement that is provided to sellers and potential buyers of residential property.
   a) The listing broker can measure the property and describe the method used, or
   b) the listing broker can use information from reliable sources and list the source used.
      (1) The listing broker may not use sources that the broker believes are unreliable.

2. Measurement is for the purpose of marketing; it may not be exact and is not for loan, valuation, or other purpose.

3. Rule E-43 (c) states: “A licensee working with a buyer may rely on a representation of square footage by a listing broker; however, such licensee is responsible for indications of obvious mis-measurement by others.” (CREM)
C. Seller's Property Disclosure

1. Purpose: This disclosure is used by the seller for the required disclosure of all material defects in the property the seller has knowledge of.

   (2) If the broker feels that the seller has nothing to hide but simply does not want to complete the disclosure form, the broker should inform the seller that the Contract to Buy and Sell Real Estate will ask for the form and that most buyers expect it. The seller will have to use a counterproposal for all offers if they refuse to provide the disclosure form.

2. The seller, never the broker, fills out the form. It is completed to the best of the seller's current actual knowledge.

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

a) The seller of residential property must list the source of potable (drinkable) water for the property. The source of potable water could be one of the following:

E. Closing Instructions

4. The closing company agrees to provide closing statements to both the buyer and seller.

   a) The designated brokers for the seller and buyer are still responsible for the accuracy and completeness of the closing.

6. If the seller resides outside of Colorado, the closing entity may be required to withhold potential income tax from any profit on a sale.

   a) Per the regulation, the closing entity is responsible for collecting the tax and sending it to the state.

7. Closing instructions (to be completed only by broker and closing company)

   c) It engages the closing company as scrivener under the broker's authority.

F. Counterproposal

2. A counterproposal terminates the offer and creates a new one.

   (a) Example: If the seller countered the offer to change the title deadline, the only date entered on the form is that in item 2. All other dates may be left blank or have “no change” inserted.

H. Inspection Objection

3. If the buyer finds any unsatisfactory condition, the buyer must notify the seller in writing using the form before the inspection objection deadline.

I. Inspection Resolution Form

1. Purpose: This approved form is used to document the final agreement between the buyer and seller over any inspection issues.

J. Agreement to Amend/Extend Contract

1. Purpose: This form is approved to amend contract terms or extend dates and deadlines in the Contract to Buy and Sell Real Estate only.
3. This form would be used to change the **closing date** of an executory contract.

4. Amendments or extensions must always be signed before the date being extended.

**K. Agreement to Amend/Extend Contract with Broker**

1. **Purpose:** This form is used for any change to a buyer or seller listing contract when the brokerage firm is a party to the agreement.

**M. Licensee Buy-Out Addendum to Contract to Buy and Sell Real Estate**

3. This addendum is used only by the
   a) listing designated broker and/or
   b) employing broker of the listing firm.

5. The broker should disclose the broker's **interest** in buying the property prior to listing it.
   a) The addendum makes the contract very **seller friendly**.

8. The seller will have **no obligations** for expenses or losses after the closing.

9. The broker must present all offers until closing, and the seller may accept any of them.
   a) The seller **pays no commission** if the buy-out closes.

11. The listing brokerage firm is only responsible if the company broker (employing broker) **signs on the line** at the bottom.

**P. Real Property Transfer Declaration (TD-1000)**

1. **Purpose:** To bring all parties at the closing in compliance with the state statute to “help **ensure fair and uniform** assessments for all property for property tax purposes.”

2. This form does not transfer **personal property**.

**II. MISCELLANEOUS REGULATIONS**

**A. Colorado water rights**

1. Water rights are a real property interest, conveyed by deed with a separate legal description.
   b) Water rights in Colorado are **not an appurtenance**—they do not automatically “run with the land”—but must be specifically transferred by deed.
   c) These rights come from the **doctrine of prior appropriation**—whoever uses the water for the first **beneficial** use has senior rights (priority).
   d) In Colorado, water rights are most often an issue in an agricultural transaction and often tied to **irrigation**.

**B. Well permits**

1. The **state engineer** issues well permits to allow a property owner to drill or maintain a well.

2. A well permit **does not** represent an actual water right; it is a right of use.
C. Deeds of trust law and foreclosure in Colorado

2. Deed of trust law
   b) The public trustee has the power to enforce the lien for the beneficiary/lender. The public trustee is the only entity with the nonjudicial right to foreclose.
   c) According to Colorado law, a deed of trust to a private trustee is deemed to be a mortgage and can be foreclosed only by judicial foreclosure.

3. Deed of trust forms
   b) None of the forms have an automatic increase in interest rate.

4. Deed of trust foreclosure
   a) The steps in a foreclosure are the following:
      (2) The lender files a Notice of Election and Demand with the public trustee. The public trustee advertises the property prior to the sale.
      (3) The borrower has a right to redeem prior to the foreclosure sale, which is called the right to cure.
      (4) The length of time given to the borrower to redeem (bring the payments current) will vary depending on the type of property.
         (a) For all properties except agricultural, the sale must be scheduled no less than 110 days from the filing, but no longer than 125 days.
         (b) The period for agricultural property is no less than 215 days from filing, but no longer than 230 days.
         (e) If the amount received is less than the lien, the lender can receive a deficiency judgment (general lien) and pursue the borrower's other assets to satisfy the deficiency.

D. Colorado Foreclosure Act

1. If the seller is in default, and the residential property will be non-owner-occupied for at least one year, the act may apply.

F. Uniform Consumer Credit Code (UCCC) and Usury
   a) Charging a higher rate is usury.

H. Adverse possession and prescription in Colorado

4. A party seeking to gain the right to use the property (a prescriptive easement) must use the property for 18 years and would gain a prescriptive interest.

I. Taxation of real property in Colorado

2. Tax payment schedule
   (1) Payment of one-half on or before the last day of February with the remaining half payable no later than June 15
   (2) Payment of the entire tax by April 30
3. Delinquent tax sale
   c) The property may be redeemed by the property owner within three years of the sale by paying the taxes plus interest and fees at the time of redemption.

III. COLORADO REAL ESTATE LICENSE RULES

A. Subdivision developer registration
   1. A subdivision is defined as 20 or more lots or interests sold for residential use.
   4. Campsites are excluded from the registration act.
   5. A planned unit development (also called a PUD), or any subdivision that has been approved by a regional, county, or municipal planning authority, is excluded from registration.

B. Employing broker supervision
   1. Employing brokers must provide a reasonable level of supervision to employed brokers with two or more years of active experience.
      a) A reasonable level of supervision includes
         (2) reviewing contracts prepared by every broker to assure that they are correctly prepared.
   2. The employing broker is also responsible for a high level of supervision for employed brokers with less than two years of active experience.
      a) A high level of supervision includes the following:

C. Employee and independent contractor status
   1. A broker associate, under the supervision of an employing broker, may be either an independent contractor or an employee for federal income tax purposes.
      a) This status does not affect the supervision of the broker, only the tax withholding status.
   2. If a broker associate is an independent contractor, the broker associate must have a written agreement stating that
   3. If a broker associate is an employee of the company
      a) the employing broker must withhold taxes and Social Security contributions; and

D. Errors and omissions (E&O) insurance (Rule D-14 CREM)
   2. It is required for all active brokers and brokerage firms.
   3. It is required for all licensed corporations or limited liability companies (LLC).
   7. E&O insurance must be renewed every year on or before December 31.

E. Real estate assistants
   3. Unlicensed assistants may
      h) sign checks on a trust account, if authorized by the employing broker.
4. These rules apply to any unlicensed person working for a real estate broker, such as a(n) office manager, receptionist, and so on.

**UNIT 6 FILL-INS: FAIR HOUSING, PROPERTY MANAGEMENT, LEASING, AND THE LAW**

### I. FAIR HOUSING IN COLORADO

#### A. Colorado fair housing law

2. Under federal fair housing law, the most stringent law will apply.

5. The Colorado Civil Rights Commission enforces the law. Complaints may be filed with the Civil Rights Commission up to **one year** or in state court up to **two years** following the alleged discrimination.

#### FIGURE 6.1

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| Property included | | Property included |
|-------------------|-----------------|
| Residential only  | Commercial and residential |

| Enforced by | | Enforced by |
|-------------|-----------------|
| HUD and federal courts | Colorado Civil Rights Commission and state courts |

**E. Fair housing in property management**

b) The property manager must allow *reversible modifications* without requiring the tenant to ask for permission.

**II. PROPERTY MANAGEMENT IN COLORADO**

#### A. Obligations of property managers

1. The property manager should select *high-quality* tenants.

2. If managing industrial property, the manager should be concerned about any *environmental* issues.
C. The management agreement

(1) Broker associates may not manage property unless the employing broker signs the agreement and manages any trust accounts.

E. Security deposits

1. The landlord must return deposits within one month after termination of the lease or surrender and acceptance of possession.

4. The landlord could be liable for treble (triple) the amount of deposits wrongfully withheld.

F. Record keeping

1. The employing broker is responsible for maintaining management and financial records.
   a) All records must be kept for a minimum of four years.

2. A property manager has five business days to deposit rents (Rule E-1n.).

G. Homeowners’ association management (HOA)

1. If the management of an HOA is changed, the previous broker/manager must return all original records to the association without charge (Rule E-3).

H. Leasing review: leasehold estates (tenancies)

1. Estate for years
   a) Definite termination date
   b) No notice for termination

3. Estate (tenancy) at will
   c) Three-day minimum notice to quit

III. LICENSE LAW

A. Purpose of the law

1. License law protects the public of the State of Colorado (CREM 1-1).

B. Licensing requirements

4. The applicant must also be at least 18 years old.

F. License disclosure

1. All active brokers must disclose that they have a Colorado broker's license. This disclosure should be done prior to any negotiations with consumers.

G. License renewal

1. Once received, a broker’s license will expire three years after it is issued on the anniversary date of issuance.
H. License renewal education requirements

1. Brokers must complete 24 hours of continuing education during the three-year period prior to renewing.

5. Alternatives to the continuing education requirement include the following:
   a) Brokers may take and pass the state portion of the licensing exam to satisfy the entire 24-hour continuing education requirement. The national portion is not required.

6. If a broker fails to pay the renewal fee on or before the expiration, there is a 31-day grace period; the broker will need to pay only the renewal fee. The broker must have met the continuing education requirements prior to expiration.
   a) After 32 days and up to one year, the broker may reinstate a license by paying the renewal fee plus a reinstatement fee of half the renewal fee.

J. Transfer and inactive license status

   (1) When a change takes place without notifying the Commission, it makes the brokerage firm's license inactive along with all employed broker associates.

K. Inactive license

   c) Inactive brokers are not required to maintain an office or to have errors and omissions (E&O) insurance.

N. Trade names

1. Real estate firms use two types of trade names.
   a) First, a unique name registered with the state
      (3) All advertising and property signs must clearly specify the name of the brokerage firm as licensed with the Real Estate Commission (Rule C-19(c)).
   
   b) Second, a brokerage firm using a “name owned by another” such as Century 21, RE/MAX, or Metro Brokers
      (4) There are no height or size requirements for the difference between the brokerage firm and the broker's name.

3. Advertisements placed by broker associates for properties listed with the brokerage firm must include the licensed name of the brokerage firm. Broker associates can include their name and phone number, but they must identify their brokerage firm in all advertising (Rule E-8).

O. Investigations, hearings, and penalties

1. The Colorado Real Estate Commission may investigate any licensee's activities and, upon receiving a written complaint, must investigate.

2. The Colorado Real Estate Commission will request in writing that the licensee answer the complaint and supply supporting documents.

5. If the Commission investigation finds improper activities that do not call for a hearing, the Commission may dismiss the complaint or issue a letter of admonishment reminding the licensee
of the provisions of the law. A letter of admonishment is the lowest level (least serious type) of
disciplinary action the Commission can take.

8. The Commission may
   a) impose an administrative fine not to exceed $2,500 for each separate offense; or

      (1) Note: This is a fine and is not related to damages, which can only be determined by a
court. Damages would be awarded to compensate an injured party; fines are penalties for
breaking the law.

   b) censure a licensee, temporarily suspend, or permanently revoke a license if the licensee is
found guilty.

      (1) The Commission may not impose any jail sentence or damages.

12. The Real Estate Commission does not have any authority over ethics in real estate practice or
over disputes between brokers.

P. Competency

1. Brokers are expected to be competent when representing the public.

2. Competency can be gained through education or by completing a similar transaction with
another broker.

R. Business opportunity brokerage

2. Every business opportunity listing must have a definite termination date.

S. Real estate securities

   b) The sale of condominium or time-share units with a developer-sponsored mandatory rental
pool

T. Real estate options

1. Listing and selling real estate options for others requires a real estate license.

IV. APPRAISER LICENSING

A. Colorado license law for appraisers

   2. Rule E-42 allows brokers to prepare a comparative market analysis without an appraisal license,
but requires them to disclose that they are not an appraiser.