

# Chapter 2:

## Real Estate Broker Rules and Regulations

An \* in the left margin indicates a change in the statute, rule, or text since the last publication of the manual.

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

2. Rules & Regs. for Brokers

#### \* RULES REGARDING REAL ESTATE BROKERS<sup>1</sup>

##### Chapter 1: Definitions

- 1.1. Active: A current, valid License that allows a person, firm, partnership, limited liability company, association, or corporation to engage in Real Estate Brokerage Services.
- 1.2. Advertise or Advertising: The promotion, solicitation, or representation of Real Estate Brokerage Services requiring a License. Advertising may include, but is not limited to, business cards, brochures, websites, signage, property flyers, mailings (paper or electronic), social media, letterhead, email signatures, and contract documents. A uniform resource locator (URL) and an email address are not considered Advertising for purposes of Rule 6.10 so long as they are not directly used to promote or solicit Real Estate Brokerage Services.
- 1.3. Affiliated Business Arrangement: Has the same meaning pursuant to section 12-10-218(1), C.R.S.
- 1.4. Anniversary Year Cycle: The three-year licensing period commencing on a Broker's initial date of licensure (anniversary date) and expiring three (3) years later on the same date. The anniversary date may be any day of the calendar year.
- 1.5. Applicant: A person or entity seeking a License from the Commission to perform the duties pursuant to section 12-10-201(6)(a), C.R.S.
- 1.6. Associate Broker: A Broker who holds an Associate Broker level license and works under the supervision of an Employing Broker. Associate Brokers may have an Independent Broker or Employing Broker level license even if they are still acting as an Associate Broker under the supervision of an Employing Broker.
- 1.7. Broker: Any person licensed by the Commission to perform Real Estate Brokerage Services regardless of if the Broker is licensed as an Associate Broker, Independent Broker, or Employing Broker.
- 1.8. Brokerage Firm: Any sole proprietor, partnership, limited liability company, corporation, or any other authorized entity licensed by the Commission to employ or engage Brokers to perform Real Estate Brokerage Services. All Brokerage Firms that employ or engage Associate Brokers must have an Active Employing Broker.
- 1.9. Brokerage Relationship: Has the same meaning pursuant to section 12-10-304(2)(b)(I), C.R.S.

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<sup>1</sup> The Rules Regarding Real Estate Brokers are subject to change through the rulemaking process. Check the Division website for updates.

- 1.10. Calendar Year Cycle: This is the three-year licensing period commencing on January 1 of year one and expiring on December 31 of year three. All Brokers will eventually be on a Calendar Year Cycle for their License renewal.
- 1.11. Commercial Real Estate: Any real property other than real property containing one to four residential units, single-family or multi-family residential units including condominiums, townhouses, or homes in a subdivision when such real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real property containing more than four residential units as defined pursuant to section 38-22.5-102(2), C.R.S.
- 1.12. Commission: The Colorado Real Estate Commission as defined pursuant to section 12-10-201(1), C.R.S.
- 1.13. Conflict of Interest: When a Broker has a real or apparent competing professional or personal interest which may influence their actions in the performance of their Real Estate Brokerage Services, including, but not limited to, hindering their ability to fulfill duties on behalf of their client.
- 1.14. Consumer: A member of the public that has sought or is seeking to engage Real Estate Brokerage Services provided by a Broker. A Consumer is a buyer, seller, tenant, or landlord, as applicable.
- 1.15. Customer: Has the same meaning pursuant to section 12-10-402(2), C.R.S.
- 1.16. Deemed Complete: An Applicant has submitted a complete and satisfactory application in compliance with sections 12-10-202 and 12-10-203, C.R.S. that includes the Fee and the accompanying required documentation as set forth in Chapters 2 and 3 of these Rules.
- 1.17. Designated Broker: Has the same meaning pursuant to section 12-10-402(3), C.R.S.
- 1.18. Director: The Director of the Division as defined pursuant to section 12-10-101(1), C.R.S.
- 1.19. Distance Learning: Any education process based on the geographical separation of student and instructor. Components of distance education include synchronous, asynchronous, and hybrid.
- 1.20. Division: The Division of Real Estate as defined pursuant to section 12-10-101(2), C.R.S.
- 1.21. Duplicate: A legible photocopy, carbon copy, facsimile, or electronic copies which contain a digital or electronic signature as defined pursuant to section 24-71-101(1), C.R.S.
- 1.22. Electronic Media: The method of communicating information that are in an electronic format rather than a paper format. Electronic Media may include, but is not limited to, websites, electronic mailings, social media such as Twitter and Facebook, banner advertisements, virtual tours, and YouTube.
- 1.23. Electronic Record: A record generated, communicated, received, or stored by electronic means as defined to pursuant to section 24-71.3-102(7), C.R.S.
- 1.24. Employing Broker: Has the same meaning pursuant to section 12-10-201(2), C.R.S.
- 1.25. Expired: A License that was not renewed prior to the last day of the license cycle and is no longer valid for a person or entity to perform any Real Estate Brokerage Services. Such persons cannot hold themselves out to the public as Brokers and such entities cannot Advertise as Brokerage Firms.
- 1.26. Fee: The prescribed non-refundable fee as set by the Division.
- 1.27. Initial License or Initial Licensure: The first license granted by the Commission to an Applicant pursuant to sections 12-10-202 and 12-10-203, C.R.S.
- 1.28. Inactive: A Broker who holds a valid License shown in the Commission's records as being Inactive is not permitted to engage in Real Estate Brokerage Services. To maintain licensure on Inactive status, a Broker must continue to renew their License as set forth in Chapter 3 of these Rules.

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- 1.29. Independent Broker: A Broker either holding an Independent Broker level license or Employing Broker level license acting as their own Brokerage Firm or sole proprietor and not employing or supervising any Associate Brokers.
- 1.30. Invalid Payment: If the Fees accompanying any application including Fees for the recovery fund, renewals and transfers made to the Division are paid for by check and the check is not immediately paid upon presentment to the bank upon which the check was drawn, or if payment is submitted in any other manner, and payment is denied, rescinded or returned as invalid, the application will be immediately canceled. The application will only be reinstated if the Division has received valid payment of all application Fees together with any fees incurred by the Division including the fee required by state fiscal rules for clerical services necessary for reinstatement.
- 1.31. Jurisdiction: For purposes of Chapter 2 of these Rules, all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.
- 1.32. License: A Broker's or Brokerage Firm's license issued by the Commission pursuant to section 12-10-203, C.R.S.
- 1.33. Listing Contract: An agreement between a Brokerage Firm and a Consumer in which a Broker licensed with the Brokerage Firm is designated to provide Real Estate Brokerage Services to the Consumer. Listing Agreements include: Exclusive Tenant Contract, Exclusive Right to Sell, Exclusive Right to Lease, Exclusive Right to Buy, and Management Agreements.
- 1.34. Management Agreement: An agreement between a Brokerage Firm and an owner of a property in which a Broker licensed with the Brokerage Firm is designated to provide Property Management Services on behalf of the owner.
- 1.35. Money Belonging to Others: Money Belonging to Others which is accepted by the Broker or Brokerage Firm for deposit in the Broker's or Brokerage Firm's Trust or Escrow Account that includes, but is not limited to, money received in connection with Management Agreements, partnerships, limited liability companies, syndications, lease agreements, advance fee contracts, guest deposits for short term rentals, rental receipts, security deposits, earnest money deposits, or Money Belonging to Others received for any other purpose.
- 1.36. New Associate Broker: An Associate Broker with less than two (2) years of accumulative Active experience.
- 1.37. Office Policy Manual: The Manual required for all Employing Brokers or the Employing Broker's Brokerage Firm, which contains certain policies and procedures.
- 1.38. Personal Identifying Information: as defined in section 6-1-713(2)(b), C.R.S.: a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in section 6-1-716(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in section 18-5-701(3), C.R.S.
- 1.39. Petitioner: For the purposes of implementing the provisions of Chapter 8 of these Rules, any person who has filed with the Commission a petition or has been granted leave to intervene by the Commission for a declaratory order pursuant to section 24-4-105(11), C.R.S. and as set forth in Chapter 8 of these Rules.
- 1.40. Property Management: An on-going relationship between a Brokerage Firm and an owner of a property in which the Brokerage Firm is designated to provide Property Management Services.
- 1.41. Property Management Services: The activities performed in leasing and subsequent management of a property on behalf of an owner that are pursuant to section 12-10-201(6), C.R.S. and further described in the Management Agreement.
- 1.42. Real Estate Brokerage Services: Any of the activities pursuant to section 12-10-201(6)(a), C.R.S. when performed on behalf of a Consumer.

- 1.43. Real Estate Licensing Examination: An examination that consists of two (2) parts; a national part and a Colorado part as set forth in Rule 2.2.
- 1.44. Real Estate School: Has the same meaning pursuant to section 23-64-103(20), C.R.S.
- 1.45. RESPA – The Real Estate Settlement Procedures Act of 1974, set forth in 12 U.S.C. 2601, et. seq. (Act), effective June 1, 2018, incorporated by reference in compliance with section 24-4-103(12.5), C.R.S. and does not include any later amendments or editions to the Act. A certified copy of the Act is readily available for public inspection at the Office of the Colorado Real Estate Commission at 1560 Broadway, Suite 925, Denver, Colorado. The Act may also be examined at the internet website of the Consumer Bureau of Financial Protection (CFPB) at [www.consumerfinance.gov](http://www.consumerfinance.gov). The CFPB may also be contacted at 1700 G. Street, NW, Washington, D.C. 20552 or by telephone at (202) 435-7000.
- 1.46. Recognized Depository: Any bank, savings and loan association, or credit union that accepts deposits or shares insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) respectively.
- 1.47. Reinstatement or Reinstating or Reinstate: Has the same meaning pursuant to section 12-10-212(4)(a)(III), C.R.S.
- 1.48. Safe and Secure Manner: Reasonable measures are taken to minimize the risk of loss, damage, or theft of electronic information and documents, including, but not limited to, Personal Identifying Information.
- 1.49. Single Agent: Has the same meaning pursuant to section 12-10-402(6), C.R.S.
- 1.50. Standard Form: Has the meaning pursuant to section 12-10-403(4), C.R.S. and also as set forth in Rule 7.1.
- 1.51. Supervisory Broker: A Broker, such as a managing broker, team lead, office manager, etc., who has been delegated in writing by an Employing Broker to assume some of the Employing Broker's duties and responsibilities as set forth in Rule 6.3.
- 1.52. Team: Two (2) or more Brokers within a Brokerage Firm that cooperate on an on-going basis to conduct a substantial portion of their Real Estate Brokerage Services together.
- 1.53. Temporary License: Has the same meaning pursuant to section 12-10-203(6)(c), C.R.S.
- 1.54. Things of Value: Monetary considerations as well as the exchange of tangible, non-monetary assets.
- 1.55. Trademark: Any logo, service mark, or other identifying mark used in conjunction with a Brokerage Firm's legal name or Trade Name. Trademarks may be registered with the Colorado Secretary of State pursuant to section 7-70-102, C.R.S. As an example, the brokerage "A Better Choice Real Estate" uses a logo bearing the initials "ABC". The logo is used to identify the Brokerage Firm and the Real Estate Brokerage Services that it provides to Consumers; therefore, it would be the trademark for the Brokerage Firm.
- 1.56. Trade Name: The name under which a Brokerage Firm does business other than the Brokerage Firm's legal name. Any Trade Name used by a Brokerage Firm must be on file with the Commission and must be filed with the Colorado Secretary of State pursuant to section 7-71-101, C.R.S. For example, a Brokerage Firm is licensed with the Commission under its legal name of "Colorado Real Estate Group LLC". However, the Brokerage is also a franchise of "International Realty" and does business under the Trade Name "International Realty of Colorado".
- 1.57. Transaction-Broker: Has the same meaning pursuant to section 12-10-402(8), C.R.S.
- 1.58. Transition Period: The two-year licensing period plus a partial year commencing on the anniversary date when a Broker's license expires in the years of 2018, 2019, or 2020 and expiring two (2) years plus the remaining days in the third year to reach December 31. The

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length of the Transition Period is dependent on the anniversary date and could be as long as three (3) years or as short as two (2) years and one day.

- 1.59. Trust or Escrow Account: Any checking, demand, passbook or statement account, which has, at a minimum, the following elements:
  - A. The account is separate and contains only Money Belonging to Others;
  - B. The account is custodial and fiduciary;
  - C. All funds are available on demand; and
  - D. The account is held with a Recognized Depository.
- 1.60. Trust or Escrow Accounting Equation: The reconciled trust or escrow bank account cash balance must equal the sum total of the individual ledger balance for each owner at any given point in time.
- 1.61. Unlicensed On-Site Manager: An unlicensed person who fills in blanks, as a scrivener, on lease forms, shows prospective tenants available units, quotes rental prices established by the owner or Broker, arranges for maintenance, and collects monies, including security deposits and rents. A Brokerage Firm which employs an Unlicensed On-Site Manager must do so either as a regularly salaried employee or as an independent contractor, and pay the Unlicensed On-Site Manager through the Brokerage Firm. The salary may include rent value or other non-commission income.
- 1.62. Viewable Page: A page that may or may not scroll beyond the border of the screen and includes the use of frame pages.

### **Chapter 2: Licensure Requirements**

#### **2.1. Educational Requirements**

##### **A. Associate Broker Level License**

In order to obtain an Associate Broker level license, the Applicant must successfully complete the educational requirements pursuant to section 12-10-203(4)(a), C.R.S.:

1. A degree from an accredited college or university with a major course of study in real estate; or
2. Proof of completion of one hundred sixty-eight (168) hours of classroom instruction or equivalent Distance Learning hours from any accredited college or university, or any Real Estate School for the following courses:
  - a. Real Estate Law and Real Estate Practice: 48 hours;
  - b. Colorado Real Estate Contracts: 48 hours;
  - c. Real Estate Closings: not less than 24 hours;
  - d. Trust Accounts and Record Keeping: not less than 8 hours;
  - e. Current Legal Issues: not less than 8 hours; and
  - f. Practical Application: not less than 32 hours.

##### **B. Employing Broker Level License**

An Applicant desiring an Employing Broker level license must successfully complete the twenty-four (24) hours of classroom instruction or equivalent Distance Learning hours in Brokerage Administration pursuant to section 12-10-203(5)(c)(II), C.R.S.

##### **C. Educational Principles**

Completion of courses of study approved by the Commission as set forth in subsections A.2. and B. of this Rule, whether through classroom or Distance Learning, must be based upon educational principles acceptable to the Commission.

D. Course Audits

The Commission may audit courses set forth in subsection A.2. and B. of this Rule at any time and at no cost. The Commission may request all instructional materials and student attendance records from each accredited college or university, or Real Estate School for any approved course of study. The purpose of the audit is to ensure adherence to the approved course of study by verifying the course material and instruction are consistent with acceptable educational principles; and that instruction is provided in a manner that the desired learning objectives are met. Failure to comply with statutes and these Rules may result in the removal of the course provider, instructor, and/or the course from the approved provider list.

2.2. Examination Requirements

A. Real Estate Licensing Examination

The Real Estate Licensing Examination is administered and developed by a third party testing service and consists of two (2) parts, which include:

1. a national part; and
2. a Colorado part.

B. Test Administration Standards

Examinees must comply with the standards of test administration established by the Commission and the testing service provider.

C. Educational Requirements Completed Prior to Real Estate Licensing Examination

Educational requirements as set forth in Rule 2.1.A. must be completed and proof filed in a manner as prescribed by the Commission prior to taking the Real Estate Licensing Examination and applying for an Associate Broker level license.

D. Duly Qualified Applicants

The Real Estate Licensing Examination will be given to duly qualified Applicants; however, one (1) instructor from each accredited college or university or Real Estate School may take the examination one (1) time during any twelve (12) month period to conduct research for course content.

E. Retake Failed Parts of Real Estate Licensing Examination

If an Applicant fails one or both parts of the Real Estate Licensing Examination, the Applicant may retake the failed part(s) at a subsequent time.

F. Valid Testing Scores

A passing score for either part of the Real Estate Licensing Examination is valid for one (1) year. Failure to submit a complete application within one (1) year will result in the examination grade being invalid.

G. No Certification of Examination Results until Licensed

The Commission will not certify to any person, state, or agency any information concerning the results of any examination as it pertains to any person who has taken the Real Estate Licensing Examination unless such person is or has been licensed as a Broker.

2.3. Criminal Background Check Requirements

Pursuant to section 12-10-203(1)(b)(I), C.R.S., an Applicant must submit a set of fingerprints to the Colorado Bureau of Investigation for the purpose of conducting a state and national criminal history record check prior to submitting an application to the Division. Fingerprints must be submitted to the Colorado Bureau of Investigation for processing in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of



Investigation. The Commission may, however, acquire a name-based criminal history record check for an Applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

2.4. Certified License History Requirements

An Applicant who has held a real estate license (e.g. real estate salesperson or broker) in any other Jurisdiction must file a certification of licensing history issued by each Jurisdiction where the Applicant is currently or was previously licensed to practice real estate with their application. The certificate must bear a date of not more than ninety (90) days prior to the submission date of the application.

2.5. Experience Requirements

A. Associate Broker Level License

Pursuant to section 12-10-203, C.R.S., there are no prescribed experience requirements to apply for a Colorado Associate Broker level license.

B. Independent Broker Level License

Pursuant to section 12-10-203(5)(c)(I), C.R.S., each Applicant for a Colorado Independent Broker level license must have held an Associate Broker level license on Active status for at least two (2) years preceding the date of application.

C. Employing Broker Level License

1. Held a Real Estate Broker License on December 31, 1996

Pursuant to section 12-10-203(5)(c), C.R.S., a Broker that held a current and valid Colorado Real Estate Broker's license on December 31, 1996 does not need to demonstrate additional experience and knowledge to act as an Employing Broker.

2. Issued an Employing Broker Level License prior to January 1, 2018 but after December 31, 1996

Pursuant to section 12-10-203(5)(c)(III), C.R.S., an Applicant that was issued an Employing Broker level license prior to January 1, 2018 but after December 31, 1996 must demonstrate additional experience and knowledge by satisfying one of the following requirements:

- a. The Applicant must have held an Active Employing Broker level license for at least two (2) years within the five (5) year period immediately preceding January 1, 2019;
- b. Proof of completion of classroom instruction or equivalent Distance Learning hours for the Employing Broker Refresher Course; or
- c. The Applicant meets the experience requirements as set forth in subsection C.3. of this Rule.

3. Applying for an Employing Broker Level License on or after January 1, 2018

Pursuant to section 12-10-203(5)(c)(III), C.R.S., each Applicant for an Employing Broker level license who applies on or after January 1, 2018 must submit evidence satisfactory to the Commission that the Applicant has practiced as an Active Broker, as appropriate to the Broker's area of supervision, for at least two (2) years within the five (5) year period immediately preceding the date of application.

- a. The evidence must qualify the Applicant for a total of at least fifty (50) points having accumulated within the five (5) year period immediately preceding the date of application, based on the following point system:
  - i. Each full year that the Applicant has practiced as an Employing Broker is worth ten (10) points.

- ii. Each full year that the Applicant was delegated supervisory authority from an Employing Broker that included responsibility for ensuring compliance with the Commission statutes and these Rules, and that ensured responsibility for the Brokerage Firm (excluding any mentorship) is worth five (5) points. A copy of the detailed executed delegation of authority must be included.
- iii. Each hour of an approved and designated continuing education course in the Broker's area of expertise completed after January 1, 2018, is worth one (1) point. This educational point category cannot exceed twenty (20) points.
- iv. Each completed or closed residential sales transaction is worth three (3) points.
- v. Each completed or closed commercial sales transaction is worth six (6) points.
- vi. Each completed or closed vacant land sales transaction is worth six (6) points.
- vii. Each administered commercial property management transaction is worth four (4) points.
- viii. Each administered residential property management transaction is worth two (2) points.
- ix. Each completed or closed commercial lease transaction is worth two (2) points.
- x. Each completed or closed residential lease transaction is worth one (1) point.
- xi. Each completed or closed time share sales transaction is worth two (2) points.
- b. Each Applicant must complete and submit the prescribed worksheet or form developed by the Commission and supporting documents with the application for an Employing Broker level license.

2.6. Associate Broker Level License Requirements

Applicants applying for an Associate Broker level license must satisfy the licensure requirements as set forth in one of the following:

A. New License

Pursuant to section 12-10-203(4)(a), C.R.S., an Applicant who has never held a real estate license in Colorado or any other Jurisdiction must complete the following requirements:

- 1. Proof of completion of the educational requirements as set forth in Rule 2.1.A.;
- 2. Successful completion of the Real Estate Licensing Examination as set forth in Rule 2.2.A.; and
- 3. Submission of fingerprints as set forth in Rule 2.3.

B. Licensed Attorney

Pursuant to section 12-10-203(10), C.R.S., an Applicant who is a licensed attorney in Colorado or any other Jurisdiction must complete the following requirements:

- 1. Proof of completion of twelve (12) hours of classroom instruction or equivalent Distance Learning hours for the following courses:
  - a. Real Estate Closings as set forth in Rule 2.1.A.2.c.; and
  - b. Trust Accounts and Record Keeping as set forth in Rule 2.1.A.2.d.
- 2. Successful completion of the Real Estate Licensing Examination as set forth in Rule 2.2.A.;
- 3. Submission of fingerprints as set forth in Rule 2.3.; and



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4. Proof of law license.
- C. Expired or Less than Two Years as a Real Estate Salesperson from Another Jurisdiction
- Pursuant to section 12-10-203(4)(c), C.R.S., an Applicant holding a real estate salesperson license from another Jurisdiction that is either expired or held for less than two (2) years must complete the following requirements:
1. Proof of completion of classroom instruction or equivalent Distance Learning hours for the following courses:
    - a. Colorado Real Estate Contracts as set forth in Rule 2.1.A.2.b.;
    - b. Real Estate Closings as set forth in Rule 2.1.A.2.c.;
    - c. Trust Accounts and Record Keeping as set forth in Rule 2.1.A.2.d.;
    - d. Current Legal Issues as set forth in Rule 2.1.A.2.e.; and
    - e. Practical Application as set forth in Rule 2.1.A.2.f.
  2. Successful completion of the Real Estate Licensing Examination as set forth in Rule 2.2.A.;
  3. Submission of fingerprints as required in Rule 2.3.; and
  4. Submission of certified license history as set forth in Rule 2.4.
- D. Expired or Less than Two Years as a Real Estate Broker from another Jurisdiction
- Pursuant to section 12-10-203(4)(b), C.R.S., an Applicant holding a real estate broker license from another Jurisdiction that is either expired or held for less than two (2) years must complete the following requirements:
1. Proof of completion of classroom instruction or equivalent Distance Learning hours for the following courses:
    - a. Colorado Real Estate Contracts as set forth in Rule 2.1.A.2.b.; and
    - b. Real Estate Closings as set forth in Rule 2.1.A.2.c.
  2. Successful completion of the Real Estate Licensing Examination as set forth in Rule 2.2.A.;
  3. Submission of fingerprints as required in Rule 2.3.; and
  4. Submission of certified license history as set forth in Rule 2.4.
- E. Current Real Estate License from Another Jurisdiction Held for Two or More Years
- Pursuant to section 12-10-203(5)(b), C.R.S., an Applicant holding a real estate license (e.g. real estate salesperson or broker), whether on Active or Inactive status, for two (2) or more years from another Jurisdiction must complete the following requirements:
1. There are no prescribed educational requirements;
  2. Successful completion of the Real Estate Licensing Examination as set forth in Rule 2.2.A.2.;
  3. Submission of fingerprints as set forth in Rule 2.3.; and
  4. Submission of certified license history as set forth in Rule 2.4.
- F. Expired Colorado Associate Broker Level License Issued After January 1, 1997
- Pursuant to section 12-10-203, C.R.S., an Applicant who was issued a Colorado Associate Broker level license on or after January 1, 1997 that is expired beyond the three-year right to reinstate must complete the following requirements:
1. Verification by the Commission that the Associate Broker level license was issued by the Commission on or after January 1, 1997 to confirm prior completion of the educational requirements as set forth in Rule 2.1.A.;

2. Successful completion of the Real Estate Licensing Examination as set forth in Rule 2.2.A.; and
    3. Submission of fingerprints as set forth in Rule 2.3.
  - G. Expired Colorado Salesperson License Issued on or before December 31, 1996  
Pursuant to section 12-10-203, C.R.S., an Applicant who was issued a Colorado real estate salesperson license on or before December 31, 1996 that is expired beyond the three-year right to reinstate must complete the following requirements:
    1. Proof of completion of classroom instruction or equivalent Distance Learning hours for the following courses:
      - a. Colorado Real Estate Contracts as set forth in Rule 2.1.A.2.b.;
      - b. Real Estate Closings as set forth in Rule 2.1.A.2.c.;
      - c. Trust Accounts and Record Keeping as set forth in Rule 2.1.A.2.d.;
      - d. Current Legal Issues as set forth in Rule 2.1.A.2.e.; and
      - e. Practical Application as set forth in Rule 2.1.A.2.f.
    2. Successful completion of the Real Estate Licensing Examination as set forth in Rule 2.2.A.; and
    3. Submission of fingerprints as set forth in Rule 2.3.
  - H. Expired Colorado Real Estate Broker License Issued on or before December 31, 1996  
Pursuant to section 12-10-203, C.R.S., an Applicant who was issued a Colorado real estate broker license on or before December 31, 1996 that is expired beyond the three-year right to reinstate must complete the following requirements:
    1. Proof of completion of classroom instruction or equivalent Distance Learning hours for the following courses:
      - a. Colorado Real Estate Contracts as set forth in Rule 2.1.A.2.b.; and
      - b. Real Estate Closings as set forth in Rule 2.1.A.2.c.
    2. Successful completion of the Real Estate Licensing Examination as set forth in Rule 2.2.A.; and
    3. Submission of fingerprints as set forth in Rule 2.3.
- 2.7. Independent Broker Level License Requirements
  - A. Initial Licensure as an Independent Broker Level License  
An Applicant with at least two (2) years of Active licensure as a Broker in either Colorado or another Jurisdiction preceding the date of application may apply for an Independent Broker level license by completing the applicable licensure requirements as set forth in Rule 2.6.
  - B. Upgrade to an Independent Broker Level License  
Pursuant to section 12-10-203(5)(c)(I), C.R.S, an Applicant may apply to upgrade to an Independent Broker level license as set forth in Rule 2.5.B.
- 2.8. Employing Broker Level License Requirements on or after January 1, 2018
  - A. Initial Licensure as an Employing Broker Level License  
An Applicant with at least two (2) years of Active licensure as a Broker in either Colorado or another Jurisdiction preceding the date of application may apply for an Employing Broker level license by completing the applicable licensure requirements as set forth in Rule 2.6. and subsection B. of this Rule.

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### **B. Upgrade to an Employing Broker Level License**

Pursuant to section 12-10-203(5)(c), C.R.S., an Applicant who applies to upgrade to an Employing Broker level license on or after January 1, 2018 must complete the following requirements:

#### **1. Educational Requirement**

Proof of completion of classroom instruction or equivalent Distance Learning hours for Brokerage Administration as set forth in Rule 2.1.B.

#### **2. Experience Requirement**

Submission of evidence as set forth in Rule 2.5.C. that the Applicant has practiced as an Active Broker, as appropriate to the Broker's area of supervision, for at least two (2) years within the five (5) year period immediately preceding the date of application.

#### **3. Criminal Background Check Requirement**

Submission of fingerprints as set forth in Rule 2.3. for any Applicants who did not submit fingerprints with their Initial License.

#### **4. Certified License History**

For Applicants licensed in another Jurisdiction, submission of certified license history as set forth in Rule 2.4.

### **2.9. Broker Qualifications for Sole Proprietors**

#### **A. The Broker must have either an Independent Broker or Employing Broker level license.**

#### **B. A Broker licensed as a sole proprietorship must not adopt a trade name which includes the following words: corporation, partnership, limited liability company, limited, incorporated, or the abbreviations thereof.**

C. A Broker licensed as a sole proprietorship or as a sole proprietorship doing business under a trade name must be the sole owner of the Brokerage Firm. Otherwise, the Brokerage Firm will be considered as a partnership and the partnership must apply for a Broker's License pursuant to section 12-10-203(6), C.R.S. and as set forth in Rule 2.10.

### **2.10. Broker Qualifications for Partnerships, Corporations, or Limited Liability Companies**

#### **A. When an Independent Broker or Employing Broker submits an application to qualify a partnership, corporation, or limited liability company as a Brokerage Firm, the Applicant must certify:**

1. The partnership, corporation, or limited liability company has been properly registered with the Colorado Secretary of State and is in good standing, proof of which must be included with the application;
2. If an assumed or trade name is to be used, it has been properly filed with and accepted by the Colorado Secretary of State, proof of which must be included with the application; and
3. The Independent Broker or Employing Broker has been appointed as the Independent Broker or Employing Broker by the appropriate authority of the applicable Brokerage Firm.

#### **B. Notice of Termination of the Employing Broker**

The Employing Broker of a licensed corporation, partnership, or limited liability company must immediately notify the Commission in a manner acceptable to the Commission, of the Employing Broker's termination of employment with such licensed corporation, partnership, or limited liability company, or upon the Employing Broker's failure to continue to comply with section 12-10-203, C.R.S. and these Rules. Upon such

notification, the Employing Broker and all Associate Brokers will be placed on Inactive status.

C. Temporary Employing Broker Level License

A Temporary License may be issued to a corporation, partnership or limited liability company to prevent hardship. No application for a Temporary License will be approved unless the designated person satisfies the licensure requirements of an Employing Broker. A Temporary License is valid for up to ninety (90) days. No more than two (2) Temporary Licenses may be issued to any corporation, partnership, or limited liability company, whether consecutive or not, during any eighteen (18) month period.

2.11. Portability of Professional Licenses of Servicemembers and their Spouses

When a servicemember or spouse relocates their residency to Colorado because of military orders for military service, and the servicemember or spouse possesses a valid Broker's license, or its equivalent, issued by another Jurisdiction, the Commission will grant the servicemember or spouse the authority to practice in Colorado conditional on the following terms being met:

- A. The Commission must receive a copy of the military orders indicating that the new residency will be in Colorado;
- B. The servicemember or spouse must remain in good standing with the licensing authority that issued the Broker's license, or equivalent;
- C. The servicemember or spouse must have been actively licensed during the two years immediately preceding the relocation to Colorado; and
- D. The servicemember or spouse must submit to the authority of the Commission for purposes of standards of practice, disciplinary procedures, and fulfillment of any continuing education requirements.

The ability to practice in Colorado will be at the Associate Broker or Independent Broker license level and is valid only as long as the military orders are in effect.

**Chapter 3: Licensure, Renewal, License Status, and Insurance**

3.1. Application Requirements

A. Applying for an Initial License

- 1. An Applicant must successfully complete the requisite educational requirements as set forth in Chapter 2 of these Rules;
- 2. An Applicant must take and successfully pass the appropriate part(s) of the Real Estate Licensing Examination as set forth in Chapter 2 of these Rules;
- 3. An Applicant must submit a set of fingerprints to the Colorado Bureau of Investigation as set forth in Rule 2.3.;
- 4. An Applicant must acquire errors and omissions insurance as set forth in Rule 3.9. prior to obtaining an Active License;
- 5. An Applicant must complete the appropriate Commission created application and submit the required documentation, such as course completion certificates or college transcripts, certified license history, and proof of errors and omissions insurance; and
- 6. An Applicant must pay the Fee.

B. Upgrading a License Level

- 1. An Applicant must successfully complete the educational and experience requirements as set forth in Chapter 2 of these Rules;
- 2. An Applicant must complete the appropriate Commission created application and submit any relevant required documentation, such as course completion certificates and experience requirements, as set forth in Chapter 2 of these Rules; and

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### 3. An Applicant must pay the Fee.

#### 3.2. Invalid Payment

If the Fees accompanying any application made to the Commission are paid for by check and the check is not immediately paid upon presentment to the bank upon which the check was drawn, or if payment is submitted in any other manner and payment is denied, rescinded, or returned as invalid, the application will not be deemed complete and will be canceled. The application, renewal, or transfer may be reinstated only at the discretion of the Commission and upon full payment of any Fees together with payment of the fee required by state fiscal rules for the clerical services necessary for reinstatement within thirty (30) days of the Division's notification of an incomplete application.

#### 3.3. Review of Application Completeness

All applications will be reviewed by the Division for completeness of all required documentation and Fee. If the application is deemed incomplete by the Division, the Applicant will be notified in writing of the deficiencies identified within the application and will have thirty (30) days to provide the documentation; otherwise, the application will be canceled and the Fee will be forfeited.

#### 3.4. Applicants with Prior or Pending Criminal Record

Pursuant to sections 12-10-203, and 24-5-101, C.R.S., Applicants who have at any time in the past been convicted of, entered a plea of guilty to, entered a plea of nolo contendere, received a deferred judgment and sentence to a misdemeanor (excluding misdemeanor traffic violations) or a felony or any like municipal code violation, or has such charges pending must submit with their application the required documentation as listed below. If the required documentation is no longer available, the Applicant must provide written confirmation by the appropriate authority that such documentation is no longer available. For any charges or convictions which have been dismissed, expunged, or sealed, the Applicant must include court document(s) evidencing the dismissal, expungement, or sealing of the criminal case(s). Failure to provide the required documentation within the time frame as set forth in Rule 3.3. will result in the cancellation of the application and forfeiture of the Fee. In addition to the required documentation, Applicants may submit supplemental documentation as listed below to demonstrate their rehabilitation, truthfulness, honesty, and good moral character for consideration by the Commission.

##### A. Required Documentation includes:

1. Court case disposition, registry of action, or a case action summary, which must include the following information:
  - a. Offense(s) convicted of;
  - b. Statute(s) or municipal code(s) violated;
  - c. Classification(s) of offense(s) (i.e. felony or misdemeanor);
  - d. Date of conviction;
  - e. Date of sentencing;
  - f. Sentencing terms; and
  - g. Status of case.
    - i. If the sentencing and probation terms have been completed, the status of case should show as closed or dismissed.
    - ii. If the sentencing and probation terms have not been completed, documentation must be submitted that shows current compliance with the sentencing and probation terms. Proof of current compliance should include a letter from the parole or probation officer and, if applicable, a payment history from the court showing a current account balance of payment.

2. Police Officer's report(s), arrest report(s), or incident report(s);
  3. A signed written explanation of the circumstances surrounding each violation and, including the statement attesting that "I have no other criminal violations either past or pending, other than those I have stated on the application";
  4. If applying for an Active License, a signed written statement from the Employing Broker that indicates their understanding of the nature of the Applicant's violation(s) and willingness to supervise the Applicant if the License is granted by the Commission. The statement must also include the level of supervision, either a Reasonable or a High-Level of Supervision, that the Employing Broker feels is appropriate based upon the Applicant's violation(s). The Employing Broker may include additional comments relating to the Applicant's rehabilitation, truthfulness, honesty, and good moral character for the Commission's consideration; and
  5. Any other information or documentation that the Commission deems necessary.
- B. Supplemental Documentation includes:
1. Employment history for the preceding five (5) years;
  2. Letter(s) of recommendation; and
  3. A personal written statement that demonstrates and evidences the Applicant's rehabilitation, truthfulness, honesty, and good moral character.
- 3.5. Applicants with Past or Pending Professional Disciplinary Action(s)
- Pursuant to sections 12-10-202 and 12-10-203(3), C.R.S., an Applicant who has any past or pending disciplinary actions of a real estate license or any other professional license from Colorado or any other jurisdiction must submit with their application any of the following information and documentation as listed below that is relevant and available to the Applicant. If the required documentation is no longer available or accessible, the Applicant must provide written confirmation by the appropriate authority that such documentation is no longer available or the reasons why the document is not accessible. Failure to provide the required documentation within the time frame as set forth in Rule 3.3. will result in the cancellation of the application and forfeiture of the Fee.
- A. Any final agency order(s);
  - B. Any consent order(s);
  - C. Any stipulation(s);
  - D. Any investigative report(s); and
  - E. A signed written explanation of the circumstances surrounding each disciplinary action.
- 3.6. Issuance of a License
- A. Submission of an application does not guarantee issuance of a License. Applicants must not represent themselves as a Broker until a License has been issued by the Commission.
  - B. Once an application is deemed complete and not subject to further review as set forth in Rules 3.4. and 3.5., the Commission will issue a License within ten (10) business days after review of satisfactory results from the fingerprint-based criminal history record check, if applicable.
  - C. Each Applicant who has successfully satisfied the licensure requirements as set forth in Chapter 2 of these Rules will be issued an Initial License expiring December 31 of the year of issuance.
  - D. A License may be issued on an Inactive status.
  - E. The License of a Broker whose application has been approved by the Commission subject to the receipt of errors and omission insurance and/or the identification of an



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Employing Broker for supervision will be issued on an Inactive status if such proof is not submitted within thirty (30) days after written notification by the Commission.

- F. The Commission may refuse to issue a License to a partnership, limited liability company, or corporation if the name of said corporation, partnership, or limited liability company is the same as that of any person or entity whose License has been suspended or revoked or is so similar as to be easily confused with that of the suspended or revoked person or entity by members of the general public.
- G. An Independent Broker or Employing Broker may adopt a Trade Name according to Colorado law and such Trade Name will respectively appear in the records of the Commission relating to the Independent Broker or Employing Broker. If an Employing Broker adopts a Trade Name, both the legal name and Trade Name will appear in the records of the Commission for the Associate Brokers.
- H. No License will be issued to an Independent or Employing Broker under a Trade Name, corporate name, partnership name, or limited liability company name which is identical to another licensed Independent Broker's or Employing Broker's Trade Name, corporate, partnership, or limited liability company name.

### 3.7. Denial of a License

- A. The Commission may deny an application for licensure pursuant to section 12-10-203(3), C.R.S.
- B. If an Applicant for licensure is denied by the Commission for any reason, the Applicant will be informed of the denial and the reasons for the denial in writing.

### 3.8. Preliminary Advisory Opinions

Prior to an application for licensure, a person may request that the Commission issue a preliminary advisory opinion regarding the potential effect that previous professional conduct, criminal conviction(s), plea(s) of guilt or nolo contendere, deferred judgment(s) and sentence for criminal offense(s), or violation(s) of the real estate license law may have on a future formal application for licensure. A person requesting such an opinion is not an Applicant for licensure. The Commission may, at its sole discretion, issue an opinion which will not be binding on the Commission; is not appealable; and will not limit the authority of the Commission to investigate a future application for licensure. However, if the Commission issues a favorable advisory opinion, the Commission may elect to adopt such advisory opinion as the final decision of the Commission without further investigation or hearing. The issuance of a negative or unfavorable opinion will not prohibit a person from submitting an application for licensure. A person requesting an opinion must do so in a form prescribed by the Commission. Such form must be supported and documented by, without limitation, the following:

- A. Pending or Past Criminal Record  
The required and supplemental documentation as set forth in Rule 3.4. for any pending or past criminal record.
- B. Pending or Past Professional Disciplinary Action(s)  
The documentation as set forth in Rule 3.5. for any pending or past professional conduct.

### 3.9. Errors and Omissions Insurance

Pursuant to section 12-10-204, C.R.S., every Active Broker, including Brokerage Firms with more than one (1) Broker, must have in effect a policy of errors and omissions insurance to cover all acts requiring a License.

- A. The Division must enter into a contract with a qualified insurance carrier to make available a group policy of insurance ("Commission Insurance Policy") under the following terms and conditions:

1. The insurance carrier is licensed or authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this State.
  2. The insurance carrier maintains an A.M. Best rating of "A-" or better.
  3. The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the Commission on a timely basis and at no expense to the Division.
  4. The insurance carrier has been selected through a competitive bidding process.
  5. The contract and policy are in conformance with this Rule and all relevant Colorado statutory requirements.
- B. The Commission Insurance Policy must provide, at a minimum, the following terms of coverage:
1. Coverage for all acts for which a License is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage.
  2. That the coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event a Broker or Brokerage Firm becomes Inactive or is revoked or an Applicant is denied a License.
  3. Pro-ration of premiums for coverage which is purchased during the course of a calendar year but with no provision for refunds of unused premiums.
  4. Not less than one hundred thousand dollars (\$100,000) coverage for each licensed person and entity per covered claim regardless of the number of Brokers or Brokerage Firms to which a settlement or claim may apply, not including costs of investigation and defense.
  5. An annual aggregate limit of not less than three hundred thousand dollars (\$300,000) per licensed Broker or Brokerage Firm, not including costs of investigation and defense.
  6. Coverage for investigation and defense must be provided in addition to policy coverage limits.
  7. A deductible amount for each occurrence of not more than one thousand dollars (\$1,000) for claims and no deductible for legal expenses and defense.
  8. The obligation of the insurance carrier to defend all covered claims and the ability of the insured Broker or Brokerage Firm to select counsel of choice subject to the written permission of the carrier, which must not be unreasonably withheld.
  9. Coverage of a Broker's use of lock boxes, which coverage must not be less than twenty-five thousand dollars (\$25,000) per occurrence.
  10. The ability of a Broker or Brokerage Firm, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the state carrier as may be determined by the carrier.
  11. That coverage is individual and license specific and will cover the Broker or Brokerage Firm regardless of changes in Employing Broker.
  12. The ability of a Broker or Brokerage Firm, upon payment of an additional premium to obtain an extended reporting period of not less than three hundred sixty-five (365) days.
  13. A conformity endorsement allowing a Colorado resident Broker to meet the errors and omissions insurance requirement for a real estate license in another group mandated jurisdiction without the need to purchase separate coverage in that jurisdiction.

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14. Prior acts coverage will be offered to Brokers or Brokerage Firms with continuous past coverage.
- C. Brokers, Brokerage Firms, or Applicants may obtain errors and omissions coverage independent of the Commission Insurance Policy from any insurance carrier subject to the following terms and conditions:
1. For both individual and entity/group policies, the insurance carrier is in compliance with all applicable statutes and rules set forth by the Colorado Division of Insurance and is licensed or authorized to write policies of errors and omissions insurance in this State.
  2. The insurance provider maintains an A.M. Best rating of “A-” or better.
  3. Individual policies must, at a minimum, comply with the following conditions and the insurance carrier must certify compliance in an affidavit issued to the insured Broker, Brokerage Firm, or Applicant in a form specified by the Commission. Insurance carrier agrees to immediately notify the Commission of any cancellation or lapse in coverage. Independent individual coverage must provide, at a minimum, the following:
    - a. The contract and policy are in conformance with all relevant Colorado statutory requirements.
    - b. Coverage includes all acts for which a License is required, except those illegal, fraudulent, or other acts that are normally excluded from such coverage.
    - c. Coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event a Broker or Brokerage Firm becomes Inactive or is revoked or an Applicant is denied a License. Cancellation notice must be provided in a manner that complies with section 10-4-109.7(1), C.R.S.
    - d. Coverage is for not less than one hundred thousand dollars (\$100,000) for each licensed Broker and Brokerage Firm per covered claim, with an annual aggregate limit of not less than three hundred thousand dollars (\$300,000) per licensed person and entity, not including costs of investigation and defense. Coverage for investigation and defense must be provided in addition to policy coverage limits.
    - e. A deductible amount for each occurrence of not more than one thousand dollars (\$1,000) for claims and the insurance carrier must look to the insured for payment of any deductible.
    - f. Payment of defense costs by the insurance carrier must be on a first dollar basis. That is, the insured is not required to pay anything towards the cost of defense of any claim or complaint.
    - g. The ability of a Broker or Brokerage Firm, upon payment of an additional premium, to obtain an extended reporting period of not less than three hundred sixty-five (365) days within sixty (60) days of the initial coverage ending.
    - h. Coverage of a Broker’s use of lock boxes, which coverage must not be less than twenty-five thousand dollars (\$25,000) per occurrence.
    - i. The obligation of the insurance carrier to defend all covered claims and the ability of the insured Broker or Brokerage Firm to select counsel of choice subject to the written permission of the carrier, which must not be unreasonably withheld.
    - j. Prior acts coverage must be offered to Brokers or Brokerage Firms with continuous past coverage.
    - k. Upon request, insurance carrier will execute an affidavit in a form and manner specified by the Commission attesting that the independent policy is in force and,

at a minimum, complies with all relevant conditions set forth in this Rule and that the insurance carrier will immediately notify the Commission in writing of any cancellation or lapse in coverage of any independent policy.

4. For Brokerage Firms with independently carried firm coverage, all the requirements as set forth in subsection C.3. of this Rule will apply except subsections C.3.d. through e. and j. of this Rule, will be replaced with the following:
  - a. The per claim limit must be not less than a million dollars (\$1,000,000).
  - b. The aggregate limit must be not less than a million dollars (\$1,000,000).
  - c. The maximum deductible amount for each occurrence must not exceed ten thousand dollars (\$10,000) and the insurance carrier must look to the insured for payment of any deductible.
- D. Applicants for licensure, activation, renewal, and Reinstatement must certify compliance with this Rule and section 12-10-204, C.R.S. in a manner prescribed by the Commission. Any Active Broker or Brokerage Firm who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either through the state carrier or directly to the Commission, will be placed on Inactive status:
  1. Immediately, if certification of current insurance coverage is not provided to the Commission; or
  2. Immediately upon the expiration of any current insurance when certification of continued coverage is not provided.

### 3.10. Office

Every Independent Broker or Employing Broker residing in Colorado must maintain a place of business in this State, except for Associate Brokers or Brokers registered as Inactive.

### 3.11. Renewal

- A. No Renewal Requirement for Brokerage Firms  
Brokerage Firms are not required to renew their License; however, the Independent Broker or Employing Broker associated with the Brokerage Firm must renew as set forth in Rule 3.11.B.
- B. Renewal Requirements for Brokers
  1. Licensing Cycle for Renewal (Renewal Periods)  
Brokers will renew a License on a Calendar Year Cycle commencing on January 1 of year one and expiring on December 31 of year three.
  2. Notification of Renewal  
Notification that a License will expire, unless renewed, will be sent to the electronic mail address on file with the Commission.
  3. Renewal Application
    - a. All Brokers, whether on Active or Inactive status, may renew their License beginning forty-five (45) days prior to the expiration date of their License by use of the renewal application form provided by the Commission.
    - b. Pay the renewal Fee.
    - c. Any Broker who has not submitted fingerprints to the Colorado Bureau of Investigation to be used to complete a one-time only criminal history record check must do so prior to renewal of an Active License. Fingerprints must be submitted to the Colorado Bureau of Investigation for processing in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of Investigation. The Commission may, however, acquire

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a name-based criminal history record check for an Applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The renewed License will remain on Inactive status until the Commission has received and reviewed the results of a criminal record check.

### 3.12. Inactivation of License

- A. A Broker may request that the Commission records show their License as Inactive until proper request for reactivation has been made.
- B. It is the joint duty of both the Employing Broker and the Associate Broker to immediately notify the Commission when the employment of the Associate Broker terminates with the Brokerage Firm. Either party may give notice in a manner acceptable to the Commission. The party giving notice must notify the other party in person or in writing of the termination of employment.
- C. A Broker whose License is on Inactive status must apply for renewal of such Inactive License and pay the renewal Fee.
- D. A Broker whose License is on Inactive status may be compensated directly by a former Employing Broker for commissions earned during the term of employment when the Broker's License was on Active status.

### 3.13. Change in License Status

No changes in License status, whether Active or Inactive, will be made except in the manner acceptable to the Commission to affect such change and upon payment of the Fee for such change request.

### 3.14. Transfers

- A. When an Associate Broker transfers to a different Brokerage Firm, the License must be transferred to the subsequent Employing Broker in the manner acceptable to the Commission to affect such transfer and upon payment of the Fee for such transfer request.
- B. When a License has been transferred to a subsequent Employing Broker, an Associate Broker may be compensated directly by the former Employing Broker for commissions earned during that term of employment.

### 3.15. License Reinstatement

Brokers who failed to renew a License as set forth in Rule 3.11.B.3. may Reinstatement the Expired License as follows :

- A. If a proper application is made within thirty-one (31) days after the date of expiration of a License, by payment of the renewal Fee, the License will be issued as set forth in Rule 3.11.B.3.
- B. If a proper application is made more than thirty-one (31) days but within one (1) year after the date of expiration of a License, by payment of the renewal Fee and payment of a reinstatement Fee equal to one-half (1/2) the renewal Fee, the reinstated License will be issued with an expiration date of three (3) years beginning from the expiration date of the prior expired License.
- C. If a proper application is made more than one (1) year but within three (3) years after the date of expiration of a License, by payment of the renewal Fee and payment of a reinstatement Fee equal to the renewal Fee, the reinstated License will be issued with an expiration date of three (3) years beginning from the expiration date of the prior expired License.

## **Chapter 4: Continuing Education Requirement**

### **4.1. Continuing Education Requirement**

- A. Brokers must satisfy the continuing education requirement for a licensing cycle prior to applying to renew an Active License, to activate an Inactive License, or to Reinstate an Expired License to Active status. The licensing cycles include: Anniversary Year, Calendar Year, and Transition Period.
- B. Pursuant to section 12-10-213(4), C.R.S., Brokers applying for renewal of a License which expires on December 31 of the year in which it was first issued are not subject to the continuing education requirement pursuant to section 12-10-213(1)(a), C.R.S.

### **4.2. Methods for Satisfying Continuing Education**

- A. Brokers must satisfy the continuing education requirement for a licensing cycle through one (1) of the following options:
  - 1. Brokers may complete the twelve (12) credit hours of continuing education pursuant to section 12-10-213(1)(a), C.R.S. and as set forth in subsection A.1. of this Rule in annual 4-hour increments developed by the Commission, the “Annual Commission Update”. Brokers must also complete an additional twelve (12) credit hours of electives to meet the total 24-hour continuing education requirement during the licensing cycle in subject areas pursuant to section 12-10-213(3), C.R.S. and as set forth in Rule 4.4.B.1. A Broker may not take the same version of the Annual Commission Update more than once.
  - 2. During the Transition Period licensing cycle, Brokers may complete two (2) different versions of the Annual Commission Update for eight (8) credit hours of continuing education pursuant to section 12-10-213(1)(b), C.R.S. Brokers must also complete an additional sixteen (16) credit hours of electives to meet the total 24-hour continuing education requirement during the Transition Period in subject areas pursuant to section 12-10-213(3), C.R.S. and as set forth in Rule 4.4.B.1.
  - 3. Brokers may complete the Commission approved 24-hour “Broker Reactivation Course”. This option is only available to Brokers under one (1) of the following conditions:
    - a. The Broker is currently Active and did not use the Broker Reactivation Course to satisfy the continuing education requirement in the previous licensing cycle; or
    - b. The Broker is Inactive or Expired for an accumulative time period of up to thirty-six (36) months prior to activating an Inactive License or Reinstating an Expired License to Active status and unable to comply with the continuing education requirement as set forth in subsections A.1. or A.2. of this Rule.
  - 4. Pass the Colorado portion of the Real Estate Licensing Examination as set forth in Rule 2.2.A.2.
  - 5. Complete seventy-two (72) total hours of the educational requirements as set forth in Rules 2.1.A.2.b. and 2.1.A.2.c.
- B. If a Broker cannot satisfy the continuing education requirement as set forth in subsections A.1. through A.3. of this Rule, the Broker must comply with the continuing education requirement as set forth in subsections A.4. or A.5. of this Rule prior to activating an Inactive License or Reinstating an Expired License to Active status.

### **4.3. Annual Commission Update Course Standards**

- A. Pursuant to section 12-10-213(2), C.R.S. and as set forth in Rule 4.2.A., the Annual Commission Update will be developed, presented by the Division, and furnished only to approved course providers. The course will be presented without any additional content by the course provider and/or instructor.



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- B. All course providers must apply annually for approval to offer the Annual Commission Update as set forth in Rule 4.6.B., except that the course outline as set forth in Rule 4.6.B.1. and course exam as set forth in Rule 4.6.B.2. will be furnished by the Commission.
  - C. Each Broker must complete the Annual Commission Update by achieving a passing score of seventy percent (70%) on a written or on-line course examination developed by the Commission. The Commission will provide an alternate examination for successive use by Brokers failing the end-of-course examination.
- 4.4. Standards for Continuing Education Courses
- Courses approved for continuing education must meet the following standards:
- A. Course Content
    - 1. The course content must have been developed by persons qualified in the subject matter;
    - 2. The content of the course must be current;
    - 3. The course must maintain and improve a Broker's skill, knowledge, and competency in the real estate practice; and
    - 4. The course must be at least one (1) hour increment in length, containing at least fifty (50) instructional minutes per one (1) hour increment.
  - B. Topics for Continuing Education Courses
    - 1. Eligible Topics for Continuing Education Courses

Pursuant to section 12-10-213(3), C.R.S., courses approved for continuing education must include one (1) or more of the following topics:

      - a. Real Estate Law;
      - b. Property Exchanges;
      - c. Real Estate Contracts;
      - d. Real Estate Finance;
      - e. Real Estate Appraisal;
      - f. Real Estate Closing;
      - g. Real Estate Ethics;
      - h. Condominiums and Cooperatives;
      - i. Real Estate Time-Sharing;
      - j. Real Estate Marketing Principles;
      - k. Real Estate Construction;
      - l. Land Development;
      - m. Real Estate Energy Concerns;
      - n. Real Estate Geology;
      - o. Water and Waste Management;
      - p. Commercial Real Estate;
      - q. Real Estate Securities and Syndications;
      - r. Property Management;
      - s. Real Estate Computer Principles;
      - t. Brokerage Administration and Management;
      - u. Agency; and
      - v. Any other subject matter as approved by the Commission.

2. Ineligible Topics for Continuing Education Courses

The following types of courses will not qualify and will not be approved for continuing education:

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

C. Course Format

All continuing education courses may be offered and completed by classroom or Distance Learning.

4.5. Continuing Education Credit Requirements

- A. A maximum of eight (8) hours of credit may be earned per day.
- B. No course may be repeated for credit in the same calendar year.
- C. Hours in excess of twenty-four (24) in a given licensing cycle may not be carried forward to satisfy the continuing education requirements of a subsequent licensing cycle.
- D. Education stipulated to between a Broker and the Commission as part of a disciplinary action or alternative to disciplinary action will not be accepted to fulfill a Broker's continuing education requirement.
- E. All continuing education must be taken from course providers either approved by the Commission or exempt as set forth in Rule 4.6.A.2.
- F. Brokers must complete an entire course to receive any continuing education credit. Brokers will not be awarded partial credit for partial or incomplete attendance.
- G. Instructors may receive continuing education credit for teaching an approved course; however, credit will be awarded for only one (1) course taught per calendar year.
- H. The Commission will award two (2) hours of continuing education credit for Brokers who attend a Commission's public meeting under the following conditions:
  - 1. The meeting must be open to the public and must be a minimum of two (2) hours in length;
  - 2. The Broker must be present for at least a two (2) hour segment of the meeting to be eligible for elective credit; and
  - 3. Elective credit will be awarded for a single Commission meeting per calendar year.
- I. Each Broker is responsible for securing from the course provider proof of course completion in the form of an affidavit, certificate, or official transcript of the course as set forth in Rule 4.7.A.
- J. Brokers must retain proof of continuing education completion certificates for four (4) years from the date of the Broker's most current renewal or, if newly licensed, from Initial Licensure.
- K. The act of submitting an application for renewal, activation, or Reinstatement of a License means that the Broker attests to compliance with the continuing education requirement pursuant to section 12-10-213, C.R.S. However, if a Broker did not comply with the continuing education requirement, the Broker must provide written notification to the Division prior to submitting an application for renewal, activation, or Reinstatement of a License.

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- L. Upon written notification from the Commission, Brokers must provide proof of completion of the continuing education requirement in a manner that is acceptable to the Commission. Failure to provide said proof within the prescribed time set by the Commission in its notification will be grounds for disciplinary action unless the Commission has granted an extension.

### 4.6. Process for Course Approval

#### A. Course Providers

Continuing education must be taken from course providers either approved by the Commission or course providers which are exempt as set forth in subsection A.2. of this Rule.

##### 1. Approval of Course Providers

All course providers must receive approval from the Commission prior to any course offering except for the course providers specifically exempted as set forth in subsection A.2. of this Rule.

##### 2. Course Providers Exempt from Commission Approval

The following course providers may provide course offerings for elective continuing education credit without Commission pre-approval only if the courses are within the topic areas pursuant to section 12-10-213(3), C.R.S. and as set forth in Rule 4.4.B.1. and comply with all other provisions of Chapter 4 of these Rules.

- a. Courses offered by accredited colleges, universities, community or junior colleges, public or parochial schools, or government agencies.
- b. Courses developed and offered by quasi-governmental agencies.
- c. Courses approved by and taken in satisfaction of another occupational licensing authority's education requirements.
- d. Courses in real property law by a provider approved by the Colorado Board of Continuing Legal and Judicial Education.

#### B. Course providers must, as set forth in Chapter 4 of these Rules, submit an application form prescribed by the Commission, along with the following information at least thirty (30) days prior to the initial proposed course date(s):

- 1. Detailed course outline or syllabus, including the intended learning outcomes, the course objectives, and the approximate time allocated for each topic.
  - 2. A copy of the course exam(s) and instructor answer sheet, if applicable.
  - 3. Copy of the instructor's teaching credential; if none, a resume showing education and experience which evidence a mastery of the material to be presented.
  - 4. Upon Commission request, a copy of any advertising or promotional material used to announce the offering.
  - 5. Upon Commission request, a copy of any textbook, manual, audio or videotapes, or other instructional material.
  - 6. Course providers of continuing education offered through Distance Learning must submit evidence in a form prescribed by the Commission that the method of delivery and course structure is consistent with acceptable educational principles assuring that the desired learning objectives are met. The Commission will approve methods of delivery certified by the Association of Real Estate License Law Officials (ARELLO), or by a substantially equivalent authority and method.
  - 7. Repealed.
- C. Course approval certification will be for a period of three (3) years, except that an annual, or otherwise periodic, or one-time seminar or conference offering may be approved for a

shorter period of time to ensure the content of the course is current, as set forth in Rule 4.4.A.2.

**4.7. Course Provider Requirements**

- A. Course providers must provide to each student who successfully completes an approved course for continuing education credit with an affidavit, certificate, or official transcript, which must include the following information:
  - 1. Name of the course provider;
  - 2. Course title, which must describe the topical content;
  - 3. Repealed.
  - 4. Number of continuing education hours/credits;
  - 5. Course date(s);
  - 6. Name of the student;
  - 7. Authentication by the course provider; and
  - 8. Course approval number as issued by the Division, if applicable.
- B. A course provider may not waive, excuse completion of, or award partial credit for the full number of course hours.
- C. Each course provider must retain copies of course outlines or syllabi and complete records of attendance for a period of four (4) years from the date of the course and provide the records to the Commission upon request.
- D. By offering continuing education, each course provider agrees to comply with relevant Commission statutes and these Rules and to permit Commission audit of said courses at any time and at no cost. Failure to comply with the standards and requirements as set forth in Chapter 4 of these Rules may result in the invalidation of the course provider, instructor, and/or the course.

**Chapter 5: Separate Accounts and Accounting**

**5.1. Establishment of Internal Accounting Controls**

Any Brokerage Firm or Broker who receives Money Belonging to Others must establish written accounting control policies and procedures, which must include adequate checks and balances over the financial activities of the Broker, Brokerage Firm, and unlicensed persons, as well as manage the risk of fraud or illegal acts.

**5.2. Trust or Escrow Accounts**

All Money Belonging to Others accepted by a Broker or Brokerage Firm must be kept separate from other money belonging to the Broker or Brokerage Firm and must be deposited into one or more of the Broker's or Brokerage Firm's Trust or Escrow Accounts. The Broker or Brokerage Firm must identify the fiduciary nature of each separate Trust or Escrow Account in deposit agreements with a Recognized Depository by the use of the word "trust" or "escrow" and a label identifying the purpose of such account, such as "sales escrow", "rental escrow", "security deposit escrow", or other abbreviated form defined in the deposit agreement. The Broker or Brokerage Firm must retain a copy of each executed Trust or Escrow Account deposit agreement for inspection by the Commission.

**5.3. Accounts in the Name of the Brokerage Firm or Broker**

- A. Brokerage Firms acting in the name of the Employing Broker or Independent Broker as a sole- proprietor must maintain separate Trust or Escrow Accounts in the name of the Employing Broker or Independent Broker.

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- B. Brokerage Firms licensed as a partnership, corporation, or limited liability company must maintain separate Trust or Escrow Accounts in the name of the licensed partnership, corporation, or limited liability company.
  - C. The Employing Broker or Independent Broker are responsible for, must maintain and be able to withdraw money from each separate account, but may authorize other licensed or unlicensed cosigners. However, such authorization will not relieve the Employing Broker or Independent Broker of any responsibility under the Commission statutes and these Rules.
- 5.4. Number of Separate Trust or Escrow Accounts may vary from Zero to Unlimited
- A Brokerage Firm is not limited as to the number of separate accounts, which may be maintained for Money Belonging to Others. If the Brokerage Firm is not in possession of Money Belonging to Others, there is no obligation to maintain a separate Trust or Escrow Account.
- 5.5. Separate Trust or Escrow Accounts Required for Rental Receipts and Security Deposits
- A Brokerage Firm who engages in Property Management must deposit rental receipts and security deposits and disburse money collected for such purposes in separate Trust or Escrow Accounts, a minimum of one for rental receipts and a minimum of one for security deposits.
- 5.6. Trust or Escrow Funds must be Available Immediately without Penalty
- Unless otherwise agreed to in writing by the parties, Money Belonging to Others must not be invested in any type of account, security, or certificate of deposit that has a fixed term for maturity or imposes any fee or penalty for withdrawal prior to maturity.
- 5.7. Time Limits for Deposit of Money Belonging to Others
- A. All Money Belonging to Others received by a Brokerage Firm for Property Management must be deposited in the Brokerage Firm's appropriate Trust or Escrow Account no later than five (5) business days following receipt of funds or mutual execution of a lease, whichever is later.
  - B. All other Money Belonging to Others which is received by a Brokerage Firm must be deposited in the Brokerage Firm's Trust or Escrow Account no later than three (3) business days following receipt of funds or mutual execution of contract, whichever is later.
- 5.8. Transfer of Security Deposits
- A. Owner-Held

A Brokerage Firm receipting for security deposits will not deliver such security deposits to an owner without the tenant's written authorization in a lease or unless written notice has been given to the tenant. Such notice must be given in a manner so the tenant will know who is holding the security deposit and the specific requirements for the procedure in which the tenant may request return of the security deposit. If a security deposit is delivered to the owner, the Management Agreement should place financial responsibility on the owner for its return, and in the event of a dispute over ownership of the security deposit, must authorize disclosure to the tenant of the owner's true name and current mailing address.
  - B. New Property Management Company

A Brokerage Firm which begins management of a property most recently managed by another Brokerage Firm must disclose to the owner and the current tenant, in writing, and within thirty (30) days after execution or assignment of a Management Agreement, the status of any security deposit held by the previous Brokerage Firm. The previous Brokerage Firm must transfer the security deposit within sixty (60) days after the execution or assignment of a management agreement to the new Brokerage firm and

confirm to the owner and the tenant the amount of the funds transferred to the new Brokerage Firm. The new Brokerage Firm must verify that each security deposit transferred to them matches the amount listed in the current lease and disclose any discrepancy to the owner and current tenant. The Brokerage Firm must inform the tenant, in writing, if the owner is holding the security deposit.

5.9. Diversion and Conversion Prohibited

Money Belonging to Others belonging to one beneficiary must not be used for the benefit of another beneficiary. Money Belonging to Others must not be used for the benefit of the Brokerage Firm or Broker.

5.10. Commingling Prohibited

A Broker's or Brokerage Firm's personal or business operating funds must not be commingled with Money Belonging to Others. One or more separate Trust or Escrow Accounts may be maintained by a Brokerage Firm pursuant to the following duties and limitations:

- A. Money held in a Trust or Escrow Account which becomes due and payable to the Brokerage Firm must be withdrawn monthly.
- B. Money advanced by a Brokerage Firm for the benefit of another may be placed in the Trust or Escrow Account and identified as an advance but may be withdrawn by the Brokerage Firm only on behalf of such person. Any amount advanced to a Trust or Escrow Account must be identified and recorded in the journal and the ledger and disclosed in accounting to the beneficiary as set forth in Rule 5.15.
- C. In the absence of a specific written agreement to the contrary, commissions, fees, and other charges collected by a Brokerage Firm for performing any service on behalf of another are considered "earned" and available for use by the Brokerage Firm only after all contracted services have been performed and there is no remaining right of recall by others for such money. The Brokerage Firm must identify and record all commissions, fees, or other charges withdrawn from a Trust or Escrow Account on the account journal and individual ledgers of those against whom the fees or commissions are charged. If a single disbursement of fees or commissions includes more than one (1) transaction, rental period or occupancy or includes withdrawals from the account of more than one (1) Trust or Escrow Account beneficiary, the Brokerage Firm, upon request, must produce for inspection by the Commission a schedule which details:
  - 1. The individual components of all amounts included in the sum of such disbursement; and
  - 2. Specifically identifies the affected beneficiary or property ledgers as set forth in Rule 5.14.B.
- D. Rental proceeds received for managing a Broker's property through a Brokerage Firm with which the Broker is not licensed must be deposited in a Trust or Escrow Account that is maintained for Money Belonging to Others. A Broker's property includes any Broker's properties held in partnership with others, joint ventures, or syndications provided the Broker's ownership in the entity or property is more than the 20% threshold pursuant to section 12-10-201(6)(b)(VII), C.R.S. Such funds are subject to Trust or Escrow Accounts and record keeping requirements as set forth in Rules 5.2. and 5.14.
- E. Rental proceeds received by a Broker for managing properties through the Broker's Brokerage Firm that are owned by a Broker that is licensed with the Broker's Brokerage Firm must be deposited into one or more Trust or Escrow Accounts that are separate from any other Trust or Escrow Accounts containing Money Belonging to Others but that may contain rental proceeds belonging to other Brokers licensed with the Brokerage Firm whose own properties are also managed through the Brokerage Firm. A property owned by a Broker includes any Broker's properties held in partnership with others, joint



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ventures, or syndications, provided the Broker's ownership in the entity or property is more than the 20% threshold pursuant to section 12-10-201(6)(b)(VII), C.R.S. Such rental proceeds are subject to Trust or Escrow Accounts and record keeping requirements as set forth in Rule 5.2 and 5.14.

### 5.11. Money Belonging to Others for deposit by a Broker for Non-Real Estate Brokerage Services

- A. Money Belonging to Others which is accepted for deposit in connection with activities not involving Real Estate Brokerage Services must be deposited into Broker's or Brokerage Firm's Trust or Escrow Account(s). Such activities not involving Real Estate Brokerage Services include:
  - 1. Guest deposits for short term rentals;
  - 2. Security deposits for Broker's own rental properties including any Broker owned properties held in a partnership, or other entity with others, any joint ventures, or syndications provided the Broker's ownership in the entity or property is more than the 20% threshold pursuant to section 12-10-201(6)(b)(VII), C.R.S. ;
  - 3. Deposits from a buyer when the Broker is acting as a builder; or
  - 4. Any other non-Real Estate Brokerage Service purposes.
- B. If a Broker accepts Money Belonging to Others for deposit into Broker's or Brokerage Firm's Trust or Escrow Account as set forth in subsection A. of this Rule for activities not involving Real Estate Brokerage Services, the Broker must:
  - 1. If required by the Broker's Brokerage Firm's Office Policy Manual, deposit the funds in the Broker's Brokerage Firm's Trust or Escrow Accounts as set forth in Chapter 5 of these Rules; or
  - 2. Deposit the funds into Broker's own Trust or Escrow Accounts as set forth in Rule 5.2. and must also comply with the following Chapter 5 Rules:
    - i. Rule 5.6. Trust or Escrow Funds must be Available Immediately without Penalty;
    - ii. Rule 5.9. Diversion and Conversion Prohibited;
    - iii. Rule 5.10. Commingling Prohibited;
    - iv. Maintain a "journal" as set forth in Rule 5.14.A. and perform a two-way reconciliation monthly to show that on the date of reconciliation the cash balance shown in the journal and the reconciled bank balance are the same; and;
    - v. Rule 5.21. Production of Documents and Records;

### 5.12. Earnest Money

- A. Any Broker receiving earnest money must deliver such earnest money to the earnest money holder to be deposited in accordance with the contract. The Broker must obtain a dated and signed receipt from the person or entity to whom the Broker has been instructed to deliver the deposit.
- B. If the Brokerage Firm will be holding the earnest money in a transaction, the earnest money must be deposited as set forth in Rule 5.7.B. The Brokerage Firm may transfer the earnest money from the Brokerage Firm's Trust or Escrow Account to a lawyer or a closing entity closing the transaction. The Brokerage Firm delivering the earnest money deposit to a lawyer or a closing entity providing settlement services must obtain a dated and signed receipt from the person or entity providing settlement services.

### 5.13. Promissory Note for Earnest Money

If a promissory note is received as earnest money pursuant to an executed contract, the seller must be informed of the date such promissory note becomes due. If payment is not made by the

due date of the promissory note, the Broker must promptly notify the seller and deliver the original promissory note.

5.14. Recordkeeping Requirements

An Employing Broker or Independent Broker must maintain, at the Brokerage Firm's licensed place of business, a record keeping system as set forth in Rule 5.16., consisting of at least the following elements for each required Trust or Escrow Account:

- A. A "journal" or an equivalent accounting system which records, in chronological order, all Money Belonging to Others which is received or disbursed by the Brokerage Firm.
  - 1. For funds received, each journal record must include:
    - a. The date of receipt and deposit;
    - b. The name of the person who is giving the money;
    - c. The name of the person and property for which the money was received;
    - d. The purpose of the receipt;
    - e. The amount; and
    - f. A resulting cash balance for the account.
  - 2. For funds disbursed, each journal record must include:
    - a. The date of payment;
    - b. The check number or electronic transfer record;
    - c. The name of the payee;
    - d. A reference to vendor documentation or other physical records verifying purpose for payment;
    - e. The amount paid; and
    - f. Resulting cash balance for the account.
- B. A "ledger" or an equivalent component of an accounting system which records, in chronological order, all money which is received or disbursed by the Broker on behalf of each particular beneficiary of a Trust or Escrow Account. The ledger record must show the monetary transactions affecting each individual beneficiary and must segregate such transactions from those pertaining to other beneficiaries of the Trust or Escrow Account. The ledger record for each beneficiary must contain the same transactional information as set forth in subsection A of this Rule. No ledger may ever be allowed to have a negative cash balance. The sum of all ledger balances must agree at all times with the corresponding journal after each transaction has been posted.
- C. Three-way reconciliation must be performed monthly to show that on the same date the cash balance shown in the journal, the sum of the cash balances for all ledgers, and the reconciled bank balance are the same. A three-way reconciliation report must be completed and maintained monthly to show such three-way reconciliation. The Broker is not required to maintain records or reconcile any Trust or Escrow Account when such account does not contain Money Belonging to Others.
- D. A Brokerage Firm may deposit personal funds as may be required to pay any bank charges incurred in connection with maintaining a Trust or Escrow Account without violating Rule 5.10. An entry showing such money must be made in the journal and on the ledger as set forth in subsections A and B of this Rule.
- E. The three-way reconciliation reports, ledgers, journals, and bank account statements may be kept electronically.

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### 5.15. Maintenance and Production of Reports to Beneficiaries

- A. Brokerage Firms holding Money Belonging to Others must provide detailed reports to each beneficiary. Any accounting report furnished to beneficiaries must be prepared and delivered according to the terms of the Management Agreement. In the absence of a provision in the Management Agreement to the contrary, Brokerage Firms must deliver these reports within thirty (30) days after the end of the month in which funds were either received or disbursed.
- B. The Brokerage Firm must maintain supporting records, which accurately detail all cash received and disbursed under the terms of any Management Agreement.
  - 1. All deposits of funds into a Trust or Escrow Account must identify each person tendering funds, the amount of funds tendered, types of funds received from each person, and the property address affected.
  - 2. All disbursements of funds from a Trust or Escrow Account must be supported by documents such as bids, invoices, contracts, etc. Ledger and journal records must identify the payees, property addresses affected and amount of funds transferred for each property.

### 5.16. Method of Accounting

In the absence of a written agreement to the contrary, the “cash basis” of accounting must be used for maintaining all required Trust or Escrow Accounts and corresponding records. A Brokerage Firm may use another method of accounting if it is agreed upon in writing by the Brokerage Firm and the beneficiary. The Brokerage Firm must maintain separate Trust and Escrow Accounts and corresponding records for each beneficiary using a different accounting method.

### 5.17. Mark-Ups

Pursuant to sections 12-10-217(1)(d) and (t) and 6-1-105, C.R.S., the Broker and Brokerage Firm must obtain prior written consent from the Consumer they represent to assess and receive mark-ups and/or other compensation for services performed, regardless if for the benefit of the Broker or another third party. The Broker and Brokerage Firm must also disclose all mark-ups and/or other compensation for services performed that are paid for by any Customer. The Broker and Brokerage Firm must retain accurate on-going records, which verify disclosure and consent and which fully account for the amounts or percentages of compensation assessed or received.

### 5.18. Items in Lieu of Cash

Any instrument, equity, or Thing of Value taken in lieu of cash must be held by the Brokerage Firm, except as otherwise agreed.

### 5.19. Branch Office Trust or Escrow Accounts Require Branch Office Recordkeeping

In the event a branch office of a Brokerage Firm maintains a Trust or Escrow Account separate from the Trust or Escrow Account(s) maintained by the Brokerage Firm’s main office, a separate record keeping system must be maintained in the branch office. The responsibility of maintaining separate record keeping systems will be the responsibility of the Employing Broker.

### 5.20. Money Collected by Brokerage Firm

- A. When money is collected by a Brokerage Firm for the performance of specific services or for the expenses of performing such services, or for any other expense, and such money is collected before the services have been performed, the Brokerage Firm must deposit such money in a Trust or Escrow Account pursuant to section 12-10-217(1)(i), C.R.S. No money may be withdrawn from the Trust or Escrow Account, except for authorized expenses for performing such services. A full and itemized accounting must be furnished as set forth in Rule 5.15.

- B. Nothing in this Rule will prohibit a Brokerage Firm from taking a non-refundable retainer that need not be deposited into a Trust or Escrow Account provided this be specifically agreed to in writing between the Brokerage Firm and the person paying the retainer.

5.21. Production of Documents and Records

A Broker and Brokerage Firm must produce for inspection by the Commission any document or record as may be reasonably necessary for investigation or audit in the enforcement of the Commission statutes and these Rules. Failure to submit such documents or records within the time set by the Commission in its notification will be grounds for disciplinary action unless the Commission has granted an extension of time for such production.

5.22. Responsibility of the Employing Broker or Independent Broker for Brokerage Firm's Compliance

The Employing Broker or Independent Broker are held jointly responsible with the Brokerage Firm in complying with Chapter 5 of these Rules.

**Chapter 6: Practice Standards**

6.1. Real Estate License

- A. A License is nontransferable.
- B. Neither a Broker nor Brokerage Firm may lend their name or License for the benefit of another person, partnership, limited liability company, or corporation.
- C. Associate Brokers must not present or hold themselves out to the public as an Employing Broker or Independent Broker.
- D. An Employing Broker must not knowingly permit Associate Brokers to present or hold themselves out to the public as an Employing Broker or Independent Broker.
- E. A Broker must not procure or attempt to procure a License by fraud, misrepresentation, deceit, or by making a material misstatement of fact in an application for such License pursuant to section 12-10-217(1)(s), C.R.S.

6.2. Competency

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

6.3. Employing Broker's Responsibilities and Supervision

- A. Employing Broker Exercises Authority, Direction, and Supervision
  - 1. Employing Brokers must exercise authority, direction, and supervision over any Associate Brokers shown in the records of the Commission as supervised by the Employing Broker to ensure conformance to the Commission statutes and these Rules in the performance of the Associate Broker's activities pursuant to sections 12-10-203(5)(c)(I), 12-10-217(1)(r), and 12-10-222, C.R.S., and these Rules. Whenever

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a complaint is filed with the Commission against an Associate Broker, the Commission may investigate whether there have been violations of section 12-10-217(1)(r), C.R.S. by the Employing Broker.

2. Employing Brokers must also supervise, pursuant to section 12-10-222, C.R.S., all unlicensed employees, including, but not limited to, Unlicensed On-Site Managers, secretaries, bookkeepers, and personal assistants of Associate Brokers.

**B. Employing Broker's Responsibilities**

Employing Brokers must:

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

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

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

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

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

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

1. Providing specific training in office policies and procedures;
2. Being reasonably available for consultation;
3. Providing assistance in preparing contracts;
4. Monitoring transactions from contracting to closing;
5. Reviewing documents in preparation for closing; and
6. Ensuring that the Employing Broker or an experienced Associate Broker with more than two (2) years' Active licensure attends closings with a New Associate Broker or is available for assistance.

E. Supervision of Unlicensed On-Site Manager

Employing Brokers must:

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

F. Delegation of Supervision

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

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

G. Repealed.

6.4. Brokerage Firm’s Policies

A. Brokerage Firm’s Brokerage Relationship Policy

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

B. Office Policy Manual

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

1. Applies to all Associate Brokers in the Brokerage Firm.
2. Be given to and signed by each Associate Broker.



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3. Identifies the procedures for the designation of Brokers who are to work with Consumers pursuant to section 12-10-403(6), C.R.S. and as set forth in subsection A. of this Rule.
  4. Identifies and provides adequate means and procedures for the maintenance and protection of confidential information that:
    - a. The seller or landlord is willing to accept less;
    - b. The buyer or tenant is willing to pay more;
    - c. Information regarding motivating factors for the parties;
    - d. Information that a party will agree to other financing terms;
    - e. Material information about a party not required by law to be disclosed;
    - f. Facts or suspicions which may psychologically impact or stigmatize a property; and
    - g. All information required to be kept confidential pursuant to sections 12-10-404(2), 12-10-405(2) and 12-10-407(3), C.R.S.
  5. Permits an Employing Broker to supervise a transaction and to participate in the same transaction as a Designated Broker.
- C. Policy on the Destruction or Disposal of Personal Identifying Information
- An Employing Broker or Independent Broker must develop and implement a written policy for the destruction or proper disposal of paper and electronic documents containing Personal Identifying Information that satisfies the requirements of section 6-1-713, C.R.S.
- 6.5. Brokerage Relationships Disclosures in Writing
- A. Written disclosures pursuant to section 12-10-408, C.R.S. must be made to a Consumer prior to eliciting or discussing confidential information from a Consumer for Real Estate Brokerage Services.
  - B. Such activities do not include preliminary conversations or “small talk” concerning price range, location and property styles, or responding to general factual questions from a potential Consumer concerning properties which have been Advertised for sale or lease.
- 6.6. Brokerage Relationships
- A. Listing Contract by Individual Associate Broker: An Associate Broker may enter into a Listing Contract as the Designated Broker for a particular Consumer in a particular transaction as either a Single Agent or Transaction-Broker.
  - B. Listing Contract by Members of a Team: The individual team member(s) must all be the Designated Broker for a particular Consumer in a particular transaction as either Single Agents or Transaction-Brokers. The names of all the members of the Team must be disclosed in the Listing Contract.
  - C. Transaction-Broker: A written disclosure that a Broker working with a Consumer as a Transaction-Broker is the Designated Broker for that Consumer.
  - D. Substitute or Additional Designated Brokers: The Employing Broker may substitute or add other Designated Brokers, as appropriate, which must be disclosed to the Consumer.
- 6.7. Brokers or Teams working with Consumers on Both Sides of the Same Transaction
- Neither Brokers nor Teams may enter into a Brokerage Relationship with one Consumer as a Single Agent and the other Consumer as a Single Agent or Transaction-Broker in the same transaction. If properly disclosed, in writing (e.g. Listing Contracts), the Broker or Team that works with both Consumers in the same real estate transaction may do so as:
- A. A Transaction-Broker for both Consumers to the transaction;

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

6.8. Ministerial Tasks

When a Broker is engaged as a Single Agent or a Transaction-Broker for one party and treating the other party as a Customer, the Broker may assist the Customer by performing ministerial tasks following proper disclosure. Ministerial tasks include: showing a property, preparing as a scrivener, and conveying written offers and counteroffers, making known the different types of financing alternatives, and providing information related to professional, governmental, and community services which will contribute to completion of the transaction. Performing ministerial tasks will not of themselves violate the terms of any relationship between the Broker and the Consumer with which the Broker has a Brokerage Relationship and will not create an agency or Transaction-Broker relationship with the Customer being assisted.

6.9. Change of Status Disclosure in Writing

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

6.10. Advertising

A. Names

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

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7. No Brokerage Firm will use more than one (1) Trade Name; however, upon written request and with the consent of a representative of the Commission, a Brokerage Firm may use more than one (1) Trademark. Use of the Trademark(s) is only acceptable if the Brokerage Firm has obtained permission of the registrant of such Trademark.
  8. No Broker may use a professional designation in Advertising unless the Broker is in good standing and the designation is easily verifiable by the public and the Commission. A Broker that Advertises an award, membership, or achievement must be able to provide verification of the validity of such claims upon request from any member of the public or Commission.
- B. Teams
1. Brokers who form a Team must not Advertise in a manner that misleads the public as to the identity of the Team's Brokerage Firm. Teams are prohibited from using the following terms in the Team's name:
    - a. Realty,
    - b. Real estate,
    - c. Realtors,
    - d. Company,
    - e. Corporation,
    - f. Corp.,
    - g. Inc.,
    - h. LLC,
    - i. LP or LLP, or
    - j. Any other term that would imply a separate entity from the Brokerage Firm with which the Team Brokers are licensed.
  2. All Team Advertising must clearly and conspicuously include and be in conjunction with the legal name or Trade Name of the Brokerage Firm.
  3. If requested by a Consumer, the Commission, another Brokerage Firm or Broker, the Brokerage Firm will provide the names of the Brokers that belong to any Team licensed with the Brokerage Firm.
  4. Brokers may not allow the use of the Team's name by other Brokers outside the Team's Brokerage Firm.
- C. Brokerage Firms and Brokers are responsible for ensuring that all Advertising is accurate and complies with copyright laws and other applicable laws and regulations. This includes, but is not limited to, the accuracy of information entered into Multiple Listing Services regarding property data, sales information, and the identification of Brokers who participated in the listing and sale of the property. The Broker does not have a duty to investigate the information provided to the broker by the seller or obtained from a third party source (e.g. assessor records, building plans).
- D. Electronic Media
1. When a Broker owns or controls Electronic Media, each Viewable Page must include the Broker's Brokerage Firm's name. Any expired listings must be removed from the Broker's Electronic Media within three (3) days of a Listing Contract expiring.
  2. If a Broker authorizes a third party for the Broker's Electronic Media Advertising, the Broker is responsible for ensuring that the information provided to such third party is accurate, including, but not limited to, the accuracy of information entered into Multiple Listing Services regarding property data, sales information, and the

identification of Brokers who participated in the listing and sale of the property. The Broker does not have a duty to investigate the information provided to the broker by the seller or obtained from a third party source (e.g. assessor records, building plans). The Broker must submit a written request to any third party syndicators to have all expired listings removed from Electronic Media within three (3) days of a Listing Contract expiring.

3. A Broker who communicates through email, chat, instant messages, newsgroups, discussion lists, bulletin boards, blogs, or other similar means for purposes of Advertising the Broker's Real Estate Brokerage Services must use the Broker's Brokerage Firm's name. However, once a Broker has disclosed the Broker's Brokerage Firm to a specific Consumer, the Broker is not required to continue to make the same disclosure to the specific Consumer.
4. When it is not reasonable for a Broker to disclose the Broker's Brokerage Firm's name in an Electronic Media because space is limited, the Broker will disclose the Broker's Brokerage Firm's name clearly and conspicuously within the first click of the mouse.

E. Past Sales Data Advertising

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

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

F. Authority to Advertise Available and Under Contract Properties

Brokers may not Advertise the availability or price of a property whether for sale or lease without authority from the owner or the owner's Broker.. If such authority is requested, an owner's Broker may not withhold the authority to advertise said property unless such authority is contradictory to instructions from the owner as memorialized in the Listing Contract or other writing. A Broker who has received written permission to disseminate another Broker's Advertising or an owner's Advertising who is not represented by a Brokerage Firm (For Sale by Owner) may do so as set forth in subsections F.1. and F.2. of this Rule.

1. A Broker may disseminate another Broker's Advertising in the following manner:
  - a. A Broker must have the owner's Broker's written permission to disseminate the Advertising;
  - b. The Broker discloses, in a conspicuous manner, the owner's Brokerage Firm;
  - c. The Advertising is accurate and not misleading to Consumers; and
  - d. The Advertising complies with subsection C. of this Rule.
2. A Broker may disseminate an owner's Advertising who is not represented by a Brokerage Firm in the following manner:
  - a. The Broker must have the owner's written permission to disseminate the Advertising;
  - b. The Broker discloses, in a conspicuous manner, that the owner is not represented by a Broker;
  - c. The Advertising is accurate and not misleading to Consumers; and

- d. The dissemination of an owner's Advertising does not include submitting the information into a property exchange or multiple listing service.

G. Price Set by Owner

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

6.11. Square Footage Disclosure

When a Broker Advertises the square footage of a residential property, including for submission to a multiple listing service, the Broker must disclose the source of the square footage of the floor space of the living area of the residence to Consumers on the Commission-Approved Form.

A. Broker Measurement

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

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

B. Other Sources of Square Footage

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

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

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

6.13. Offers must be Presented to Other Broker

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

6.14. Contracts

A. Document Preparation and Duplicates

1. Contracting instruments prepared by a Broker performing Real Estate Brokerage Services for all real estate or business opportunity transactions must accurately reflect the financial terms of the transaction by itemizing Things of Value paid or received and identifying the party or parties conveying, receiving and/or ultimately benefitting from such Things of Value. All such terms made subsequent to the original contract must be disclosed in an amendment to the contract.
2. A Broker must deliver Duplicates of all documents prepared by the Broker to all Consumers or their representatives at the time such document was prepared by the Broker.

B. No Fees to Brokers for Legal Document Preparation

Brokers are not obligated to prepare any legal documents as part of a real estate transaction. If the Broker or the Broker's designee prepares any legal document, the Broker or the Broker's designee may not charge a separate fee for preparation of such legal documents. The Broker is not responsible for fees charged for the preparation of legal documents where they are prepared by an attorney representing the Consumer. Costs of closing not related to preparation of legal documents may be paid by the Broker or by any other person. A Broker who closes transactions and charges separately for costs of closing not related to the preparation of legal documents must specify the costs and obtain the written consent of the parties to be charged.

C. Listing must be in Writing

Regardless of the Brokerage Relationship, all seller Listing Contracts and landlord Listing Contracts must be in writing prior to performing any Real Estate Brokerage Services.

D. Listings must have Termination Date

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

E. Holdover Agreement

When a Listing Contract or other written agreement contains a provision entitling a Brokerage Firm to a commission made after the expiration of the agreement, such provision must refer only to those persons or properties with whom or on which the Broker negotiated during the term of the agreement, and whose names or addresses were submitted in writing to the Consumer during the term of the agreement, including any extension thereof.

F. Brokers must recommend title exam and legal counsel

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

G. Review of Deeds

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

6.15. Sign Crossing

- A. Brokers will not negotiate a Listing Contract directly with a Consumer if such Broker knows the Consumer has an unexpired Listing Contract with another Brokerage Firm granting said Brokerage Firm an exclusive contract.



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- B. However, if a Broker is contacted by a Consumer who is currently subject to an exclusive Listing Contract, and the Broker has not initiated the discussion, the Broker may negotiate the terms upon which to take a future Listing Contract or, alternatively, may take a Listing Contract to become effective upon expiration or termination of any existing Exclusive Listing.
  - C. The Broker must ask the Consumer if there is an unexpired listing contract in effect, The Broker must ask for written confirmation from the Consumer that the listing contract is expired or has been terminated.
  - D. If there is an unexpired listing contract in effect that the Consumer wishes to terminate or cancel, the Broker must advise the Consumer to seek guidance from a licensed attorney.
- 6.16. Access Information for a Property
- A. Broker who is not the owner's Broker is prohibited from sharing access information to a property with any third party, such as an assistant, home inspector, contractor, or a Consumer without prior authorization from the owner's Broker. A Broker is prohibited from using access information for a property to access the property outside of the authorized showing window.
- 6.17. Duty to Disclose Conflict of Interest and License Status
- A. Brokerage Firms and Brokers have a continuing duty to disclose, in writing, any known Conflict of Interest that may arise in the course of any real estate transaction.
  - B. If a Broker sells, buys, or leases real property on the Broker's own account, such Broker must disclose in the contracting instrument, or in a separate concurrent writing, that they are a licensed Broker.
  - C. A Brokerage Firm or Broker engaged in Property Management Services has a duty to disclose, in writing, any known Conflict of Interest that may arise in the selection or use of a business or vendor that provides services applicable to lease transactions, including property maintenance. The Brokerage Firm or Broker is required to disclose any ownership, financial, or familial interest associated with the selection or use of a particular business or vendor.
- 6.18. Affiliated Business Arrangement Disclosures
- Pursuant to section 12-10-218(2)(b), C.R.S., an Employing Broker and/or a Broker must make the following disclosures in writing:
- A. The existence of an Affiliated Business Arrangement to the Consumer they are referring at or prior to the time the referral is made. The disclosure must comply with RESPA.
  - B. Prior to or at the time the Contract to Buy and Sell is executed by the Consumers, the existence of an Affiliated Business Arrangement with the Brokerage Firm or Broker must be disclosed in writing to all parties to the transaction.
  - C. A Broker is required to make the following disclosures to the Commission.
    - 1. At the time a Broker enters into or changes an Affiliated Business Arrangement, the Broker must disclose the names of all Affiliated Business Arrangements to which the Broker is a party. The written disclosure must include the physical location of the affiliated businesses.
    - 2. On an annual basis, each Employing Broker must disclose the names of all Affiliated Business Arrangements to which the Employing Broker or Brokerage Firm is a party. The written disclosure must include the physical location of the affiliated businesses.
  - D. Written disclosures to the Commission must be made through the Colorado Affiliated Business Online Services database, which is accessible through the Division's website.

6.19. Closing Responsibility

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

6.20. Transaction File Requirements

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

6.21. Referral Fees and RESPA

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

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

### **2. Transaction Not Involving a Federally related Residential Mortgage**

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

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

1. The brokerage firm or broker licensed in another Jurisdiction or country actually referred a client to the Broker or Brokerage Firm.
2. The brokerage firm or broker licensed in the other Jurisdiction or country must reside and maintain an office in the other Jurisdiction or country. Subsection C. of this Rule applies to payment made to citizens or residents of a country which does not license real estate brokers if the payee represents that they are in the business of selling real estate in that country.
3. All Advertising, negotiations, contracting, and conveyancing regarding the Colorado property must be performed by a Broker licensed in Colorado.
4. All money collected from the parties to the transaction prior to closing must be deposited in the name of the Brokerage Firm licensed in Colorado as set forth in Chapter 5 of these Rules.

### **6.22. Prohibited Remedies for Compensation**

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

section 38-22.5-104, C.R.S., a Brokerage Firm or Broker may not file a lien for a commission that is due as the result of a lease renewal.

6.23. Immediate Notification of Conviction, Plea or Violation Required

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

- A. A plea of guilty, a plea of nolo contendere, or a conviction of any crime as pursuant to section 12-10-217(1)(n), C.R.S.;
- B. A violation or aiding and abetting in the violation of the Colorado or federal fair housing laws;
- C. Any disciplinary action taken against a Broker in any other Jurisdiction, if the Broker's action(s) would constitute a violation of Commission statutes and these Rules; and
- D. A suspension or revocation of a license, registration, or certification by Colorado or another Jurisdiction, within the last five (5) years, for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty that denied the Broker the authorization to practice as a mortgage loan originator, a real estate broker or salesperson, a real estate appraiser, an insurance producer, an attorney, a securities broker-dealer, a securities sales representative, an investment advisor, or an investment advisor representative.

6.24. Electronic Records and Production of Records

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

6.25. Investigations or Audits by Commission

- A. Notification of a Complaint that has been Assigned for Investigations or an Audit
  - 1. A Broker or Brokerage Firm will receive written notification from the Commission regarding the following:
    - a. A complaint has been filed and an investigation has been initiated. A copy of the complaint that has been filed against the Broker or Brokerage Firm will be provided; or
    - b. A complaint has been initiated on the Commission's own motion. A summary of the complaint against the Broker or Brokerage Firm will be provided; or
    - c. The Broker or Brokerage Firm has been selected for an audit.
  - 2. Upon receipt of the Commission's notification, a Broker or Brokerage Firm must submit a written response to the Commission. Failure to submit a written response within the time set by the Commission in its notification will be grounds for disciplinary action regardless of the question of whether the underlying complaint or audit warrants further investigation or subsequent action by the Commission. The written response must contain the following:
    - a. A complete and specific answer to the factual recitations, allegations, or averments made in the complaint filed against the Broker or Brokerage Firm, whether made by a member of the public, on the Commission's own motion, or by an authorized representative of the Commission.
    - b. A complete and specific response to any additional questions, allegations, or averments presented in the notification letter.
    - c. A complete transaction file and any documents or records requested in the notification letter.

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- d. Any further information relative to the complaint or audit that the Broker or Brokerage Firm believes to be relevant or material to the matters addressed in the notification letter.
  - B. Extension to Respond  
Upon request, the Commission will grant extensions of time for Brokers or Brokerage Firms to respond to any complaint or audit provided such request is reasonable.
  - C. Produce Records for Investigation or Audit  
Brokers and Brokerage Firms must retain and produce for inspection by the Commission any document or record as may be reasonably necessary for investigation or audit in the enforcement of Commission statutes and these Rules. Failure to submit such documents or records within the time set by the Commission in its notification will be grounds for disciplinary action unless the Commission has granted an extension of time for such production.
- 6.26. Actions when License is Suspended, Revoked, Expired or Inactive
- Upon suspension, revocation, expiration, or transfer to Inactive Status of a License, the Broker or Brokerage Firm is responsible for immediate compliance with the following:
- A. If an Associate Broker:
    - 1. Cease any activities requiring a License.
    - 2. Inform the Employing Broker of the change in license status.
    - 3. Cease all Advertising, including, but not limited to, use of office signs, yard signs, billboards, newspapers, magazines, the internet, direct mailings, and multiple listing services.
    - 4. Inform all impacted Consumers within seven (7) days of the action taken and the impact that the change in license status will have on any pending transaction. It is the responsibility of the Employing Broker to ensure that another Associate Broker is designated to perform the duties requiring a License in all pending transactions, or to release the affected parties from any Listing Contract(s) with the Brokerage Firm.
  - B. If an Independent Broker:
    - 1. Cease any activities requiring a License.
    - 2. Cease all Advertising, including, but not limited to, use of office signs, yard signs, billboards, newspapers, magazines, the internet, direct mailings, and multiple listing services.
    - 3. Notify all impacted Consumers within seven (7) days of the action taken and the impact that the change in license status will have on any pending transaction.
    - 4. Release the affected parties from any active Listing Contract(s) with the Independent Broker.
    - 5. Instruct the affected parties to seek guidance from a licensed attorney or retain a new Brokerage Firm regarding any pending transactions.
    - 6. The Independent Broker is responsible for accounting for all funds, returning all Trust and Escrow Account records and making all final disbursements to the rightful beneficiaries within thirty (30) days of the change in license status. The Independent Broker is also responsible for providing the Commission with a full list of all impacted Consumers' contact information within seven (7) days and for maintaining all records for four (4) years.
  - C. If an Employing Broker:
    - 1. Cease any activities requiring a License.

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

## **Chapter 7: Use of Standard Forms**

### **7.1. Standard Forms**

Pursuant to section 12-10-403(4), C.R.S., a Broker is authorized to complete Standard Forms for use in a real estate transaction, including Standard Forms intended to convey personal property as part of the real estate transaction, when a Broker is performing the activities for which a License is required and the Broker is acting as either a Single Agent or Transaction-Broker. The Broker's use of Standard Forms must be appropriate for the transaction and the circumstances in which they are used. The Broker must advise the parties that Standard Forms have important legal consequences and that the parties should consult legal counsel before signing such forms. A Standard Form is:

#### **A. Commission-Approved Form**

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

#### **B. Attorney Form**

An "Attorney Form" is a form drafted by a licensed Colorado attorney representing the Broker, the Employing Broker, or the Brokerage Firm. A Broker may only use an



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

### C. Client Form

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

### D. Government/ Lender Form

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

### E. Colorado Bar Association Form

A “Colorado Bar Association Form” is a form used with the written approval of the Colorado Bar Association, or its successor organization, and specifically designated for use by Brokers in Colorado. Brokers may only use the form when a Commission-Approved Form does not exist or is not appropriate for the transaction. A Broker must use the form within any guidelines or conditions specified by the Colorado Bar Association or its successor organization. The form may not be altered by the Broker other than by completing any blank spaces in the form. A Broker may not use any forms published or distributed by the Colorado Bar Association unless such form contains the following language that says: “This form has been approved by the Colorado Bar Association for use by Real Estate Brokers in Colorado in accordance with the guidelines provided with this form”. The Broker may advise the parties as to the effects thereof.

### F. Disclosure Form

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

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

### G. Title Company Form

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

### H. Letter of Intent

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

- 7.2. Permitted and Prohibited Modifications and Form Reproduction of Commission-Approved Forms as set forth in Rule 7.1.A.
- A. A Broker or Brokerage Firm may add the Brokerage Firm's name, Trade Name, address, telephone, email, Trademark or other identifying information on a Commission-Approved Form.
  - B. A Broker or Brokerage Firm may add initial lines at the bottom of a page of any Commission-Approved Form.
  - C. Any deletion or modification to the printed body of a Commission-Approved Form must result from negotiations or the instruction(s) of a party to the transaction. Any deletion must be made directly on the printed body of the form by striking through the deleted portion in a legible manner that does not obscure the deletion that has been made.
  - D. Blank spaces on a Commission-Approved Form may be lengthened or shortened to accommodate the relevant data or information.
  - E. Provisions that are inserted into blank spaces must be printed in a font style or type that clearly differentiates such insertions from the font style or type used for the Commission-Approved Form language.
  - F. A Broker may delete part or all of the following provisions of the Commission-Approved "Contract to Buy and Sell Real Estate" Forms (even if the provision has since been changed to a different section number) or corresponding provisions in other Commission-Approved Forms, if such provisions do not apply to the transaction. In the event any provision is deleted, the provision's caption or heading must remain unaltered on the form followed by the words "omitted-not applicable".
    - 1. Section 2.5. Inclusions
    - 2. Section 2.6. Exclusions
    - 3. Section 2.7. Water Rights/Well Rights
    - 4. Section 4.2. Seller Concession
    - 5. Section 4.5. New Loan
    - 6. Section 4.6. Assumption
    - 7. Section 4.7. Seller or Private Financing
    - 8. Section 5. Financing Conditions and Obligations
    - 9. Section 6. Appraisal Provisions
    - 10. Section 7. Owners' Association
    - 11. Section 8.6. Third Party Right to Purchase/Approve
    - 12. Section 9. New ILC, New Survey
    - 13. Section 10.6. Due Diligence
    - 14. Section 10.8. Source of Potable Water (CBS1, CBS2, CBS4, CBSF1)
    - 15. Section 10.9. Existing Leases; Modification of Existing Leases; New Leases (CBS2, CBS3, CBS4)
    - 16. Section 11. Tenant Estoppel Statements (CBS2, CBS3, CBS4)
    - 17. Section 15.3. Association Fees and Required Disbursements
    - 18. Section 15.4. Local Transfer Tax
    - 19. Section 15.5. Sales and Use Tax
    - 20. Section 15.6. Private Transfer Fee
    - 21. Section 16.1. Rents
    - 22. Section 16.2. Association Assessments

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- G. A Broker may delete part or all of the following provisions of the “Counterproposal” and the “Agreement to Amend/Extend Contract” if such provisions do not apply to the transaction. In the event any provision is deleted, the provision’s caption or heading must remain unaltered on the form followed by the words “omitted-not applicable”.
    - 1. Section 3. Dates and Deadlines Table
    - 2. Section 4. Purchase Price and Terms [in the Counterproposal only]
  - H. A Broker or Brokerage Firm may add signature lines and identifying labels for the parties’ signatures on a Commission-Approved Form.
  - I. A Broker or Brokerage Firm may modify, strike, or delete such language on a Commission-Approved Form as the Commission may from time to time authorize the language to be modified, stricken, or deleted.
  - J. A Broker must explain all permitted modifications, deletions, omissions, insertions, additional provisions, and addenda to the principal party and must recommend that the parties obtain expert advice as to the material matters that are beyond the expertise of the Broker.
  - K. Commission-Approved Forms used by a Broker, including permitted modifications made by a Broker, must be legible.
  - L. Brokers or Brokerage Firms generating Commission-Approved Forms in an electronic format must ensure that the forms are protected so as to prevent inadvertent changes or prohibited modifications of Commission-Approved Forms by the Broker or recipient.
- 7.3. Additional Provisions
- A. Any “Additional Provision” which by its terms serves to delete or modify portions of a Standard Form as set forth in Rule 7.1. must result from negotiations or the instruction(s) of a party to the transaction.
  - B. A Broker who uses a transaction-specific clause or clauses drafted by the Broker’s, Employing Broker’s, or Brokerage Firm’s licensed Colorado attorney must ensure that the Broker understands the clause, and the clause is used and completed appropriately. The Broker must retain the clause(s) prepared by the Broker’s, Employing Broker’s, or Brokerage Firm’s licensed Colorado attorney for four (4) years from the date that the clause was last used by the Broker. The Broker must provide those clause(s) and the name of the licensed Colorado attorney or law firm that prepared the clause(s) upon request by the Commission.
- 7.4. Prohibited Provisions
- A. No contract provision, including modifications or additional provisions permitted as set forth in Rules 7.2. and 7.3., will relieve a Broker, Employing Broker, or Brokerage Firm from compliance with section 12-10-201, C.R.S., et seq., or these Rules.
  - B. A Broker who is not a principal party to the contract may not have personal provisions, personal disclaimers, or exculpatory language in favor of the Broker, Employing Broker, or Brokerage Firm inserted into a Standard Form. A Broker may, at the direction of a principal party, include language regarding the payment of the Broker’s or Brokerage Firm’s commission if this is a negotiated term between the principal parties of the Commission-Approved “Contract to Buy and Sell Real Estate” Form.

## **Chapter 8: Declaratory Orders**

### **8.1. Petition for a Declaratory Order**

Pursuant to section 24-4-105(11), C.R.S., a Petitioner may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability of any statutory provision, rule, or order of the Commission as it would apply to the Petitioner.

8.2. Parties to the Proceedings

The parties to any proceeding as set forth in Chapter 8 of these Rules will be the Commission and the Petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding. Permission to intervene will be granted at the sole discretion of the Commission. A petition to intervene will set forth the same matters as set forth in Rule 8.3.

8.3. Petition Contents

Any petition filed as set forth in Chapter 8 of these Rules will state the following:

- A. The name and address of the Petitioner;
- B. The statute, rule, or order to which the petition relates;
- C. A concise statement of all the facts and law necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the Petitioner; and
- D. The Petitioner may submit a concise statement of the declaratory order sought.

8.4. Commission's Considerations Whether or Not to Rule

The Commission may determine, in its sole discretion and without prior notice to the Petitioner, whether or not to rule upon a petition. In determining whether or not to rule upon a petition filed as set forth in Chapter 8 of these Rules, the Commission may consider the following matters, among others:

- A. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the Petitioner of any statutory provision, rule, or order of the Commission.
- B. Whether the petition involves any subject, question, or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the Petitioners.
- C. Whether the petition involves any subject, question, or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court not involving the Petitioner.
- D. Whether the petition seeks a ruling on a hypothetical question.
- E. Whether the Petitioner has some other adequate legal remedy, other than an action for declaratory order which will terminate the controversy or remove any uncertainty as to the applicability to the Petitioner of the statute, rule, or order in question.

8.5. Commission Determines Not to Rule

If the Commission determines it will not rule on a petition, the Commission will issue its written decision disposing of the petition, stating the reasons for declining to rule upon the petition. A copy of the decision will be provided to the Petitioner. A decision not to rule on a petition for a declaratory order is not final agency action subject to judicial review.

8.6. Commission Determines to Rule

If the Commission determines that it will rule on the petition:

- A. The Commission may order the Petitioner to file an additional written brief, memorandum, statement of position, or request the Petitioner to submit additional facts or arguments in writing.
- B. The Commission may take administrative notice of facts pursuant to the Administrative Procedure Act, section 24-4-105(8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge when ruling on the petition.
- C. The Commission may set the petition, upon due notice to the Petitioner, for a non-evidentiary hearing.

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- D. The Commission may, upon due notice to the Petitioner, set the petition for hearing for the purpose of obtaining additional facts or information, or to determine the truth of any facts set forth in the petition, or to hear oral arguments on the petition. Notice to the Petitioner setting such formal hearing will set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. The Petitioner will have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the Petitioner and any other facts the Petitioner desires the Commission to consider.
  - E. Any ruling by the Commission may be based solely on the matters set forth in the petition or may be based on any amendments to the petition, any information gathered by the Commission through a non-evidentiary hearing, formal hearing or otherwise, or any facts the Commission may take administrative notice of. Upon ruling on a petition, the Commission will issue its written order stating its basis for the order. A copy of the order will be provided to the Petitioner.
- 8.7. Declaratory Orders Subject to Judicial Review
- Any declaratory order of a petition as set forth in Chapter 8 of these Rules will constitute agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

### **Chapter 9: Commission Review of Initial Decisions and Exceptions**

#### 9.1. Written Form, Filing Requirements, and Service

- A. All pleadings must be in written form.
- B. Pleadings may be filed with the Commission by mail or email.
- C. All pleadings must be filed with the Commission on or before the date the filing is due. Computation of time for the filing timelines for Chapter 9 of these rules is pursuant to section 24-4-108, C.R.S. A pleading is considered filed upon receipt by the Commission. Chapter 9 of these rules does not provide for any additional time for service by mail.
- D. All pleadings must be filed with the Commission and not with the Office of Administrative Courts. Any pleadings filed in error with the Office of Administrative Courts will not be considered.
- E. All pleadings must be served on the opposing party on the date which the pleading is filed with the Commission. Electronic service between the parties is encouraged. All pleadings must contain a certificate of service that notes the date and manner of service on all parties.

#### 9.2. Initial Decision

Upon receipt of the initial decision prepared and filed by the Administrative Law Judge from the Office of Administrative Courts, the Division will timely mail a copy of the initial decision to the parties at their respective addresses of record with the Commission pursuant to section 24-4-105(16)(a), C.R.S.

#### 9.3. Commission's Authority to Review the Initial Decision

Pursuant to section 24-4-105(14)(a)(II), C.R.S., the Commission may initiate a review of an initial decision on its own motion within thirty (30) days of the date on which the Division mails the initial decision to the parties. A letter from the Division initiating the review of the initial decision constitutes a motion within the meaning of section 24-4-105(14)(a)(II), C.R.S.

9.4. Appeal of the Initial Decision by the Parties

- A. Any party wishing to reverse or modify an initial decision of an Administrative Law Judge must file written exceptions with the Commission in accordance with the procedures and time frames as set forth in Rule 9.5.
- B. If neither party appeals the initial decision by filing exceptions, the initial decision will become the final order of the Commission after thirty (30) days from the date on which the Division mails the initial decision pursuant to section 24-4-105(14)(b)(III), C.R.S. Failure to file exceptions will result in a waiver of the right to judicial review of the final order of the Commission unless the portion of the final order subject to review differs from the contents of the initial decision pursuant to section 24-4-105(14)(c), C.R.S.

9.5. Filing of Exceptions

- A. Pursuant to section 24-4-105(15)(a), C.R.S., any party seeking to file exceptions must initially file with the Commission a designation of the relevant parts of the record and of parts of the transcript of the hearing within twenty (20) days of the date on which the Division mails the initial decision to the parties.

B. Transcripts:

Any party may designate the entire transcript, or may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript. However, no transcript is required if the Commission's review is limited to pure questions of law. The deadline for filing exceptions depends on whether either of the parties designates a portion of the transcript.

- 1. If the parties do not designate parts of the transcript, exceptions are due within thirty (30) days from the date on which the Division mails the initial decision to the parties. Both parties' exceptions are due on the same day.
- 2. Any party wishing to designate all, or any part, of the transcript must adhere to the following procedures:
  - a. Transcripts will not be deemed part of a designation unless specifically identified and ordered.
  - b. If one party designates a portion of the transcript, the other party may file a supplemental designation in which that party may designate additional portions of the transcript. The supplemental designation must be filed with the Commission and served on the other party within ten (10) days after the date on which the original designation was filed.
  - c. Any party who designates a transcript must order the transcript by the date on which they file their designation with the Commission whether they are filing an original or supplemental designation.
  - d. The party ordering a transcript must direct the court reporter or transcribing service to complete and file with the Commission the original transcript and one (1) copy within thirty (30) days of their order.
  - e. The party that designates a transcript must pay for such transcripts.
  - f. Transcripts that are ordered and not filed with the Commission in a timely manner due to non-payment, insufficient payment, or failure to direct as set forth above may not be considered by the Commission.
  - g. Upon receipt of transcripts identified in all designations and supplemental designations, the Commission will mail a notification to the parties stating that the transcripts have been received by the Commission.



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- h. Exceptions are due within thirty (30) days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.
  - C. A party's exceptions must include specific objections to the initial decision.
  - D. Either party may file a response to the other party's exceptions. All responses must be filed within ten (10) days of the date on which the exceptions were filed with the Commission. Subsequent replies will not be considered except for good cause shown.
  - E. The Commission may in its sole discretion grant an extension of time to file exceptions or responses, or may delegate the discretion to grant such an extension of time to the Commission's designee.
- 9.6. Request for Oral Arguments
- A. All requests for oral argument must be in writing and included with a party's exceptions or response.
  - B. The Commission or its authorized representative may grant or deny a request for oral argument. If an oral argument is granted, each party will have ten (10) minutes to present their argument. Questioning by members of the Commission will not count against the allocated ten (10) minutes.
  - C. The Commission or its designee may extend the time for oral arguments upon good cause shown.
- 9.7. Final Orders
- A. The Commission may deliberate and vote on exceptions immediately following oral arguments or the Commission may take the matter under advisement.
  - B. When the Commission votes on exceptions, whether after oral arguments or at a subsequent Commission meeting, the ruling of the Commission will not be considered final until a written order is issued.
  - C. The date of the Commission's final order is the date on which the written order is signed, irrespective of any motions for reconsideration that are filed.