

Commission Position 1 - Contracts provided by Principals Selling Real Property

(Recodification adoption August 02, 2022: CP-1 Commission Policy on Homebuilder's Exemption from Licensing recodified to CP 1 - Contracts provided by Principals Selling Real Property)

Unlicensed individuals or entities selling real property ("Selling Principals") such as bank owned properties (REOs), homebuilders, iBuyers (Instant Buyers) and any other individual or entity identified in section 12-10-201(6)(b), C.R.S., are exempt from being licensed and, as sellers, are not required to use Commission-Approved Forms.

Broker Representing Buyer:

Brokers representing a buyer purchasing property from Selling Principals utilizing the Selling Principals' own contract forms are permitted to help the buyer with the transaction; however, the Broker is not permitted to advise the buyer regarding the legalities and risks associated with forms and contracts that are not Commission-Approved Forms as set forth in Rule 7.1. Brokers should advise the buyer to seek legal counsel if the buyer has questions or concerns about the Selling Principals' contract or forms.

Broker Representing Selling Principals:

Many Selling Principals may require the use of their own listing contract and/or sales contract forms. While use of non-Commission-Approved Listing Contracts is permitted, Brokers must also use the Commission-Approved Brokerage Duties Disclosure to Seller (REO and Non-CREC Approved Listing Agreements). A Broker may not perform any Real Estate Brokerage Services, such as submitting information into a property exchange or multiple listing service, until they have an executed Listing Contract. Additionally, a Broker is required to perform all of the uniform, limited duties imposed by the license law and must maintain a complete transaction file as set forth in Rule 6.20. for every property in which the Broker performs Real Estate Brokerage Services on behalf of a Selling Principal.

Additionally, Brokers should advise Selling Principals that the Commission-Approved Contract to Buy and Sell Real Estate may not be appropriate to use for the sale of the Selling Principals' property. For instance, the Commission-Approved Contract to Buy and Sell Real Estate is appropriate for the purchase and sale of existing construction but should not be used when the seller is selling new, incomplete, or speculative construction. Brokers should advise Selling Principals to seek legal counsel regarding whether a contract form should be drafted specifically for the seller and/or the transaction. Brokers representing the Selling Principal may insert transaction specific information into the Client form provided the Selling Principal has given the Broker written instructions to do so as set forth in Rule 7.1.C.

Broker Acting as a Selling Principal on their own account:

Brokers acting in the capacity of a Selling Principal have a duty to disclose their License status as set forth in Rule 6.17.B. and should exercise care when buying or selling property on their own account. (*see* CP 14 – Broker Buying Property). A Broker acting as a Selling Principal outside of their Brokerage Firm may either use the Commission-Approved Forms or their own contract forms. However, a Broker acting as a Selling Principal through their Brokerage Firm must use the Commission-Approved Forms when appropriate to do so for the transaction. Brokers acting in the capacity of a Selling Principal are still under the jurisdiction of the Commission and must conduct their activity in conformance of the license law and Commission Rules. Brokers acting as a Selling Principal should also consult with their Brokerage Firm's Office Policy Manual regarding their purchase and sale of property as a principal.

All defined terms referenced in the Commission Position statements are codified in 4 CCR 725-1, Chapter 1 of the Rules regarding Real Estate Brokers.