

## **Commission Position 14 - Broker Buying Property**

(Recodification adoption June 7, 2022: CP-23 Commission Position on Use of “Licensee Buyout Addendum” and CP-35 Commission Position on Brokers as Principals recodified to CP 14 - Broker Buying Property)

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Brokers act in the capacity of a principal when buying or selling real property for their own personal use or investment. Brokers should exercise care when acting as a principal in a transaction, both when buying or selling real property on their own account and when entering a contract to purchase a property where the Broker is the Broker on a Listing Contract working with the seller.

### Brokers as Principals:

Even though a Broker acting as a principal in negotiating the sale or purchase of real estate for their own personal use or investment may not include providing Real Estate Brokerage Services, the Broker is under the jurisdiction of the Commission and must conduct their activity in conformance with the license law and Commission Rules. The Commission commonly receives complaints against Brokers who are acting as principals transactions, alleging the Broker failed to disclose an adverse material fact; failed to disclose Brokerage Relationships; failed to ensure that the contract documents and/or settlement statement were accurate; filed a document that unlawfully clouds the title to the property; failed to disclose the Broker’s License status; mismanaged Money Belonging to Others; or falsified information used for the purpose of obtaining financing (including their intent to occupy the property as a primary residence or not).

The Commission’s jurisdiction to discipline a Broker who violates the license law while acting in the capacity of a principal in a real estate transaction. was determined by the Colorado Court of Appeals in *Seibel v. Colorado Real Estate Commission*, 530 P.2d 1290 (1974). The Colorado Court of Appeals’ decision affirmed that Brokers are subject to the license law and Commission Rules when they participate in real estate matters as principals. In such transactions, Brokers must disclose in writing that they are licensed Brokers as set forth in Rule 6.17.B. and should give the appropriate Commission-Approved Brokerage Disclosure and check the box indicating that the Broker will treat the buyer or seller as a Customer.

### Brokers Purchasing Own Listing and Discontinuing the Marketing of the Property:

Sometimes, a Broker may enter into a Listing Contract with a seller and, after marketing the property, decide that the Broker wants to purchase the property for their own personal use or investment. This creates the potential for a conflict of interest because the Broker likely has confidential information about the seller, and now the Broker will also be a principal contrary to the seller’s interest. While the Commission strongly discourages Brokers from purchasing property under these circumstances, Brokers who choose to do so should do the following:

1. Either terminate the Listing Contract or amend the Listing Contract to designate another Broker in the Brokerage Firm to represent the seller;
2. Disclose in writing to the seller that the Broker will be acting as a principal and that the seller understands that the Broker previously had access to confidential information about the seller;
3. Disclose in the contract that the Broker is a licensed Real Estate Broker in the state of Colorado; and

4. Include in the contract an option for the seller to terminate the contract at any time before or on the day of closing. A Broker who purchases the property of a client may lose inspection, appraisal, or other fees if the seller chooses to exercise their right to terminate the contract.

Broker Purchasing Own Listing and Continuing the Marketing of the Property (Licensee Buy-Out Addendum):

A Broker or Brokerage Firm may offer a guaranteed buyout or sale program to a seller who is contemplating entering a Listing Contract with the Brokerage Firm. Examples include:

1. When a Broker enters into a contract to purchase a property concurrent with the listing of such property.
2. When a Broker enters into a contract to purchase a property as an inducement or to facilitate the property owner's purchase of another property, the purchase or sale of which will generate a commission or fee to the Broker.
3. When a Broker enters into a contract to purchase a property from an owner but continues to market that property on behalf of the owner under an existing Listing Contract.

These circumstances are generally different than when a Broker is purchasing a property they previously had listed. A Broker engaging in a guaranteed buyout or sale program with Consumers should first review their Brokerage Firm's Office Policy Manual to see if it is permissible. Additionally, the Broker should ensure their funding sources are in order and, if they are financing the transaction, get prequalified as most lenders will consider this a non-owner-occupied purchase which usually entails a greater down payment, a higher credit rating, and proof of a stable income stream.

Additionally, a Broker must use a Commission-Approved Form when such form exists and is appropriate for the transaction as set forth in Rule 7.1.A. In circumstances where the Broker is offering a guaranteed buyout or sale program to the seller, the Broker must use the Commission-Approved Licensee Buy-Out Addendum to Contract to Buy and Sell Real Estate. Brokers should be aware that the Commission-Approved Licensee Buy-Out Addendum to Contract to Buy and Sell Real Estate requires the Broker to continue to market the property as "active" in the MLS or other advertising.