

## Commission Position 22 - Conflicts of Interest

(Recodification adoption June 7, 2022: CP-38 Commission Position on Disclosure of Affiliated Business Arrangements and Conflicts of Interest recodified to CP 22 - Conflicts of Interest)

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A conflict of interest is where a Broker has private interests (i.e., self-serving) that could improperly influence, or be seen to influence, their actions in the performance of their Real Estate Brokerage Services.

Conflicts of interest should be properly disclosed and managed appropriately. The management of risk associated with conflicts of interest is fundamental to ensuring a high level of integrity and public trust. The Commission takes the disclosure and management of conflicts of interest seriously.

As set forth in Rule 6.17., Brokers have a continuing obligation to disclose conflicts of interest. Rule 6.17. applies to all Brokers and encompasses many different areas where conflicts of interest may arise. Examples provided below illustrate some circumstances when written disclosure is required and are not an exhaustive list.

1. A Broker who performs Property Management and has an ownership, financial, or familial interest in other businesses or vendors that provide services during the course of the Property Management must disclose their ownership, financial, or familial interest. The Commission strongly recommends that written disclosure be provided early in the business relationship (i.e., in the Property Management Agreement, prior to signing the Property Management Agreement or prior to utilizing such services) and that the owner has the choice to “opt out” of using such services.
2. The Broker or Brokerage Firm has an Affiliated Business Arrangement. (*see* Rule 6.18.).
3. The Broker is the principal or an owner of a principal in a real estate transaction. (*see* CP 16 – Acting a Transaction-Broker in Particular Types of Transactions and CP 14 – Broker Buying Property).
4. The Broker is acting as a Transaction-Broker for both parties to a transaction but has a relationship (e.g., personal, financial, business, familial, or romantic) with one of the parties that might make remaining neutral in the transaction difficult. (*see* CP 16 - Acting as a Transaction-Broker in Particular Types of Transactions).
5. The Broker receives a fee or other Thing of Value (whether monetary or otherwise) for recommending a non-settlement service provider (e.g., security system, cable, internet providers, moving companies, contractors, etc.) (*see* CP 3 – RESPA and Referral Fees).
6. The Broker receives a fee or other Thing of Value (whether monetary or otherwise) for referring a settlement service provider in connection with a non-federally related residential mortgage loan. NOTE: Brokers and Brokerage Firms are advised to seek legal counsel specializing in RESPA before receiving any referral payments. (*see* Rule 6.21.B.2. and CP 3 – RESPA and Referral Fees).

The duty to disclose a conflict of interest is only the duty of the Broker or the Brokerage Firm that has the actual conflict. Additionally, there are other instances that do not create a conflict of interest so disclosure

*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.*

would not be required, as illustrated in the examples provided below. However, Brokers should err on the side of voluntary disclosure where there may only be a perception and not an actual conflict of interest.

1. An Employing Broker would not have an independent duty to disclose if an Associate Broker was the spouse of the buyer while acting as a Transaction-Broker for both the buyer and the seller. However, the Associate Broker would have a duty to disclose. (*see* CP 16 - Acting as a Transaction Broker in Particular Types of Transactions).
2. A Brokerage Firm does not have an independent duty to disclose conflicting Single Agent relationships within the same Brokerage Firm. That is, if the buyer is represented as a Single Agent by an Associate Broker and the seller is also represented as a Single Agent by an Associate Broker in the same Brokerage Firm, this does not create a conflict of interest, nor does it require disclosure.
3. A Broker representing a family member, personal friend, business associate, or a repeat or regular customer as a Single Agent in a transaction has no duty to disclose the relationship because an agency relationship requires the duties of advocacy, fidelity, loyalty, and other fiduciary duties of a Single Agent.