

CP-31 Commission Position Statement on the Management of Confidential Client Information by an Employing Broker

(Adopted October 7, 2025)

The real estate practice act requires that an Employing Broker exercise reasonable supervision over the activities of licensed employees (see C.R.S. §12-10-217(1)(r)). The Commission has further defined the responsibilities of an Employing Broker, including supervisory duties by rule (see Rule 6.3). One aspect of reasonable supervision requires an Employing Broker to ensure that all executed contracts are reviewed to maintain assurance of competent preparation. When an Employing Broker is required to provide a high-level of supervision, the Commission's expectations include that the Employing Broker will also be reasonably available for consultation, aid in preparing contracts, and transaction monitoring from contracting to closing.

An Employing Broker's ability to ensure that executed contracts are reviewed, the ability to consult with brokers about the transactions in which they are representing Clients, and the preparation of contracts and the monitoring of transactions may be impeded if any of those tasks require the Designated Broker to share confidential information with the Employing Broker. Colorado has designated brokerage. C.R.S. §12-10-402(3)(a) defines a Designated Broker as an Employing Broker or employed broker who is designated in writing by an Employing Broker to serve as a single agent or transaction-broker for a seller, landlord, buyer or tenant in a real estate transaction. The Designated Broker is the Broker with whom the Client engages for the performance of licensed brokerage duties, and with whom the Client establishes a Brokerage Relationship. C.R.S. §12-10-403(6)(b) states:

"The brokerage relationship established between the seller, landlord, buyer, or tenant and a designated broker, including the duties, obligations, and responsibilities of that relationship, *shall not extend to the employing broker nor to any other broker employed or engaged by that employing broker who has not been so designated and shall not extend to the firm, partnership, limited liability company, association, corporation, or any other entity that employs the broker.*" (emphasis added)

Since the Brokerage Relationship that is established between the Designated Broker and the Client does not extend to the Employing Broker, or anyone to whom the Employing Broker delegates authority to supervise, confidential information about the Client cannot be freely shared with the Employing Broker or the designated supervisor. The following information is confidential:

§12-10-404(2), C.R.S.: The following information shall not be disclosed by a broker acting as a seller's or landlord's agent without the informed consent of the seller or landlord:

- (a) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;
- (b) What the motivating factors are for the party selling or leasing the property;
- (c) That the seller or landlord will agree to financing terms other than those offered;

- (d) Any material information about the seller or landlord unless disclosure is required by law or failure to disclose the information would constitute fraud or dishonest dealing; or
- (e) Any facts or suspicions regarding circumstances that may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101.

§12-10-405(2), C.R.S.: The following information shall not be disclosed by a broker acting as a buyer's or tenant's agent without the informed consent of the buyer or tenant:

- (a) That a buyer or tenant is willing to pay more than the purchase price or least rate for the property;
- (b) What the motivating factors are for the party buying or leasing the property;
- (c) That the buyer or tenant will agree to financing terms other than those offered;
- (d) Any material information about the buyer or tenant unless disclosure is required by law or failure to disclose the information would constitute fraud or dishonest dealing; or
- (e) Any facts or suspicions regarding circumstances that would psychologically impact or stigmatize any real property pursuant to section 38-35.5-101.

§12-10-407(3), C.R.S.: The following information shall not be disclosed by a transaction broker without the informed consent of all parties:

- (a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;
- (b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;
- (c) What the motivating factors are for any party buying, selling, or leasing the property;
- (d) That the seller, buyer, landlord, or tenant will agree to financing terms other than those offered;
- (e) Any facts or suspicions regarding circumstances that may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101; or
- (f) Any material information about the other party unless disclosure is required by law or failure to disclose the information would constitute fraud or dishonest dealing.

Confidential information may be shared with the Employing Broker if the Designated Broker obtains the Client's informed written consent. Commission Rule 6.27 sets forth the requirements for informed consent. Without informed consent of the Client, potential solutions available to the Employing Broker include, but are not limited to:

1. The Employing Broker can designate themselves, or another experienced and competent Broker (to whom the Employing Broker would need to delegate supervisory authority), to be a Designated Broker in addition to the existing Designated Broker, thereby adopting the same duties as the Designated Broker (i.e. have a more experienced broker co-list with a less experienced broker). The designation should be made in writing so that all parties are aware of who the designated brokers are.

2. The Employing Broker can direct their Brokers through training and the Office Policy Manual to not include confidential information in the listing contracts or to redact that information prior to providing the listing contracts for review by anyone other than the Designated Broker or in their conversations with the Employing Broker or anyone else in the Brokerage Firm.
3. Adopt a policy to refer a client to another Broker or Brokerage Firm, or an attorney if the transaction or the Client circumstances are so complex that the Designated Broker is unable to perform the required brokerage duties and the Client refuses to provide informed consent to allow the Employing Broker to assist the Designated Broker.

In determining which solution(s) may be appropriate, the Employing Broker needs to assess the abilities and experience of the Designated Broker and try to anticipate potential issues that may arise.

Conflicts of Interest

A Conflict of Interest is defined in Rule 1.13 and includes both real or apparent competing professional or personal interests. Inherently, there are potential conflicts that may arise if Designated Brokers from the same Brokerage Firm are engaged to represent both sides of the same transaction. Before the Employing Broker receives confidential information about one or more of the Clients to the same transaction, the Designated Brokers must obtain the informed written consent of their Clients to share that information. The Employing Broker must safeguard the confidential information to ensure that it is not shared with anyone else, including the opposing parties of the transaction. The representation of both parties by designated brokers in the same Brokerage Firm needs to be included as part of the informed written consent obtained from the Client.

When an Employing Broker is representing themselves or is the Designated Broker for one party of the transaction, and the other party to the transaction is represented by another Designated Broker from the same Brokerage Firm (the “opposing broker”), no confidential information about the opposing broker’s client can be shared with the Employing Broker. The Employing Broker may delegate the supervision of the opposing broker to another competent and experienced broker within the Brokerage Firm. The delegation must be made in writing. Before the Delegated Supervisor receives confidential information, the Designated Broker must obtain the informed written consent of their Clients to share that information. If it is not possible to delegate supervision to another experienced and competent broker within the Brokerage Firm, then representation of the opposing broker’s client should be referred to a Broker who is not licensed with the same Brokerage Firm, or a licensed attorney.