

2025 Annual Commission Update

Compiled by:

Aaron L. Diem



COLORADO
Department of
Regulatory Agencies

Consumer Protection is Our Mission.



Real Estate College of Colorado, Inc.

Material in this book is not intended to represent legal advice and should not be so construed. Readers should consult legal counsel for advice regarding points of law.

Portions of this course have been taken, by permission, from the Colorado Division of Real Estate manual and by pre-produced material provided by the Colorado Division of Real Estate.

All rights reserved. No part of this book may be reproduced in any form by any means without the express written consent of the publisher.

Table of Contents

i. Preface.....	1
1. Compliance	3
Broker Competency.....	5
Continuing Education Audits	10
Transaction Files and Retention	19
Complaint Process	23
2. General Practice Issues.....	29
Contract Terminations.....	31
Referral Business	35
Leasing Issues	40
Social Engineering	73
Data Security	82
Occupancy Agreements.....	86
N.A.R. Settlement	89
Contracts and Forms	95
3. Legislation and Commission News	105
New Legislations.....	107
Commission News and Resources	120

PREFACE

The 2025 Annual Commission Update is a required course for all active Colorado real estate licensees.

It is recommended brokers take the Annual Commission (ACU) Course between January and June.

This course is not a comprehensive overview of the Contract changes that affect calendar year 2024. Brokers should consider taking a contracts course every year to gain this competency.

1

Compliance


Broker Competency

Continuing Education Audits

Transaction Files and Retention


Complaint Process


Broker Competency

COMPLIANCE 

Broker Competency

- Competency continues to be the common thread in complaints received, investigations conducted, and discipline rendered by the Commission.
- §12-10-217(1)(q), C.R.S. and CREC Rule 6.2
Unworthy, Incompetent Practice



 4

Real Estate markets are in flux. Agents need to be aware of the relevant laws and regulations. Although the ACU is an important step to help brokers understand trends, new laws, and new practices, there are many educational providers that offer in-depth courses on a wide variety of topics. The ACU is not designed to be an in-depth analysis, but rather an introduction to these varied topics.

Division staff are regularly referred complaints and questions pertaining to broker competency. Do you, as a licensee, have the knowledge, skills and abilities necessary to take on a translation? What do you do to get competent?



Broker Competency



Practical Scenario

After Buyer is under contract, but before closing, the Buyer is offered a job requiring travel 95% of the time. Without informing their Broker about the job offer, Buyer asks “What do you think I can rent the condo for?” Broker responds:

“I know you could get \$1500/mo short term rentals maybe \$2000 in a few years rents will likely go up”

Reading that, and believing that, Buyer decided to close with the intention of renting the property when she was traveling. Buyer was then informed by the HOA board that short term rentals are not permitted.



Broker Competency



Questions

- ❓ Did the Broker exercise competency?
- ❓ How do you gain competency?





Broker Competency



LET'S
DISCUSS!

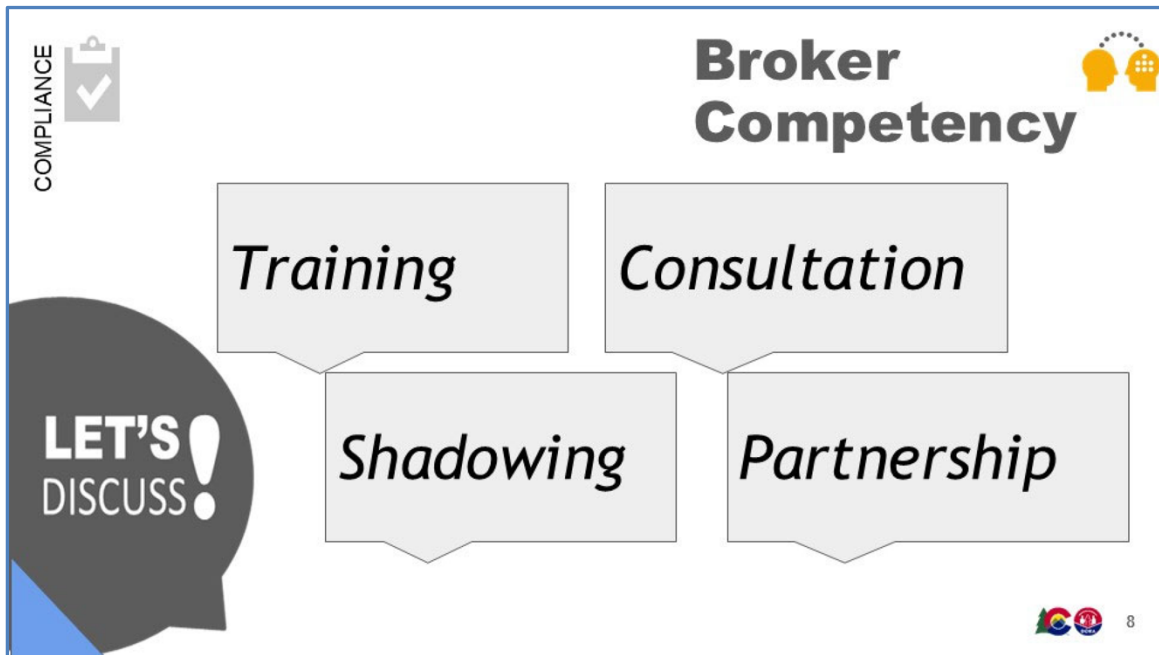
Did the Broker exercise competency?

1. Effective communication is vital to Broker's success.
2. Understanding Short-Term Rentals or Long-Term Rentals
3. Understanding Common Interest Communities (HOAs, POA, Condominium Associations, Cooperatives), if the subject property is located in one.



In the scenario, did the Broker exercise competency? Likely, no. The Broker failed by:

1. By communicating with the Buyer so poorly: (1) little or no punctuation, (2) incomplete sentences, and (3) conclusory language, Broker did not act competently.
2. Broker did not discuss what the Buyer was asking? Short-Term Rental? Long-Term Rental? Broker failed to determine and discuss any requirements for short-term rentals or determine if short-term rentals were permitted. The same can be said about long-term rentals. Broker did not act competently.
3. Broker did not consider that the property is located in an HOA. In this case, the Broker should have known because the unit was a condo, that it was in an HOA (or some other Common Interest Community). Deed and use restriction, including rental restrictions, are very common. Broker did not act competently.



How do you gain competency?

- *Training*: You can take CE, attend Colorado Real Estate Commission Meetings, and obtain certifications and designations.
- *Shadowing*: Working with another Broker through several deals until you have complete understanding of the type of transaction.
- *Consultation*: Discuss the type of transaction you are interested in with your Employing Broker, Supervisory Broker, other Broker with experience, or Colorado Attorney.
- *Partnership*: Co-list with a broker with experience in a particular type of transaction.



Broker Competency



Practice Pointer: On the job training is not the best route. Brokers should not solely rely on learning on the job. Brokers should understand important and difficult concepts **before** working on a transaction.

If difficult situations arise during a transaction, do not delay-consult with your managing/employing broker or other professional.



Practice Pointer: Can the broker learn as they go?

No. Brokers should not figure out things as they work through a transaction. It is important to understand these difficult concepts BEFORE working on a transaction. By learning as you go, you will significantly increase the probability of discipline, but, when in doubt, consult with the managing or employing broker if situations arise during a transaction.




Broker Competency




- ★ §12-10-217(1)(q), C.R.S.
- ★ CREC Rule 6.2-Competency
- ★ Your Employing Broker, Mentor, Team Lead, Legal Counsel, Continuing Education



Continuing Education Audits

COMPLIANCE 


Continuing Education




Practical Scenario


Broker had a difficult few years coming out of the pandemic. After a sharp decrease in business, Broker picked up a different job, ceased working in real estate, and did not take any more education courses, but kept their license active with the Division of Real Estate.

Last week, Broker received a notice from the Division that they were selected for a Continuing Education audit. They do not have the required course certificates.






COMPLIANCE 

Continuing Education



Questions

-  What happens during a continuing education audit?
-  What rules apply to continuing education?





Continuing Education



What is the CE audit process?

- Audited brokers are selected from a list of all active brokers.
- First notice by email to licensee and their employing broker **at the email address on file with the Division.**
- The broker has 2 weeks to provide a response.
 - Read the email carefully.
 - The notice sets forth requirements and expectations for the audit process.
- A reminder email will be delivered a week before the initial deadline set forth in the first email.
- Second/final notice will be sent by US mail.



A background on the Continuing Education audit process is important. By understanding the process and the Division's expectations, we can shed light on this process. Brokers should understand that audits are NOT punishment but are an important part of compliance with license law. On a rolling basis, the Division audits brokers for compliance with continuing education requirements.

1. The Division selects audited brokers from a pool of all active brokers.
2. First notices to audited brokers (and their employing brokers) are delivered to the email address on file in the Division's licensing system.
 - a. It is essential that all licensees have their current email address on file with the Division so that Division staff can make contact. If Brokers have the wrong or an incorrect email address on file with the Division, and they fail to respond to the audit, they will be deemed non-responsive.
 - b. All non-responsive Brokers will be referred to the Enforcement Program. Brokers are advised that failure to respond to an audit is additional grounds for discipline.
3. Response is necessary within 2 weeks.
4. Read it carefully. This correspondence contains EVERYTHING that the broker needs to know.
5. A reminder notice is usually delivered by email before the initial deadline.
6. If no response is received, or the email bounces back as undeliverable, a second notice will be sent by US mail. This notice will go to the Broker and the Broker's Employing Broker.



Continuing Education



Carefully review the notice! It explains what you need to know.

- The license cycle: all courses must have been completed within the license cycle being audited.
- How to submit certificates.
- Options for submission are required in the applicable license cycle (not after audit commences):
 - Option 1-Submission of course completion certificates for all required courses
 - Option 2-Commission-approved 24-hour “Broker Reactivation” course
 - Option 3-Passing score on the Colorado State portion of the licensing exam
 - Option 4-72 total hours of pre-licensure education
- Audit response deadline.
- Effect of broker’s failure to comply.



The notice is a detailed description of everything the broker needs to know about the audit process.

Don't panic, just read the notice carefully. The notice explains:

1. That the broker has been selected for an audit and the legal authority for the audit.
2. Which license cycle is being audited. **Note: license cycles begin on January 1 and end on December 31 three years later.** (example: January 1, 2022 through December 31, 2024)
3. That all courses need to have been completed **DURING** the license cycle. Therefore, brokers should submit all certificates of completion for that cycle only.
4. How to properly submit certificates pursuant to the audit. **Note: Email certificates as attachments. Do not use regular mail or UPS or FedEx, etc.**
5. If the broker does not have the required certificates, there are three other options:
 - a. Evidence of completion of the Commission-approved 24-hour “Broker Reactivation” course during the license cycle (this option is only available EVERY OTHER LICENSE CYCLE)
 - b. Evidence of passing the Colorado State portion of the licensing exam during the license cycle


- c. Evidence of completion of 72 total hours of pre-licensure education during the license cycle (48 hours of Contracts and Regulations, 24 hours of Real Estate Closings)

6. When the response deadline is.


7. What the effect of the broker's failure to comply may be.

NOTE: Coursework does not apply to future requirements. See CREC Rule 4.5.C.

COMPLIANCE




Continuing Education



What is Next?

The Division processes submissions in the order received. Please be patient with Division Staff as they process a large amount of audits.

- If the broker is compliant, the broker will receive an Approval Notification via email.
- If the broker is noncompliant, Division staff will explain next steps including referring the investigation to the Enforcement Program.


 15

The Division will process responses in the order they are received.


1. Allow a minimum of five to seven business days for Division staff to review your submission.
2. Allow at least 7 business days before inquiring regarding the status. The Division receives hundreds of inquiries and submissions each month. To ensure your inquiry is not pushed back in the queue, please do not send multiple emails.
3. There is no need to call or email the Division regarding receipt of your email/certificate(s). The Division will contact the broker if there are any questions or to advise you of the next steps, if needed.

If the broker is compliant, confirmation will be delivered via email. If the broker is NOT compliant, an email detailing the next steps will be delivered. Division staff will contact the broker to explain what is missing and why specific certificates that were submitted were not accepted for credit.

COMPLIANCE



Continuing Education



has successfully completed the course titled:

2024 Annual Commission Update

Approval # 109713 for 4 hour(s) of continuing education credit as approved by the Colorado Real Estate Commission for the period between 1/1/2024 and 12/31/2024

Student's License #


Employing Broker Rule 2.5.C.3.a.ii.

Student's Course Completion Date

5/18/2023

When a broker is noncompliant, the auditor will deliver the audit to the Enforcement Team in the Expedited Settlement Program (ESP) to propose, prepare, and deliver a stipulation to the broker.

The stipulation will require corrective continuing education and a required fine.

 16

After a determination has been made that a broker is noncompliant (either does not have the required certificates or does not respond to the audit notice), the auditor will deliver the broker to the Enforcement Team which is a part of the Expedited Settlement Program at the Division. The Enforcement Team will prepare a Stipulation for Diversion which will summarize the details of the case and the make-up coursework requirements and the necessary fine for noncompliance.

Discuss the image on the slide with students. What is missing? What is inaccurate?

1. Student's license is missing (although it was deleted from this image to protect the licensee identity).
2. The 2024 ACU course was not available in 2023. Therefore, invalid or fraudulent.




Continuing Education



CREC Rules that apply to ALL licensees (active or inactive):


- 24 credits required each licensing cycle (Rule 4.2.A)
- Maximum 8 credits per day (Rule 4.5.A)
- No course can be repeated in the same calendar year (including the ACU) (Rule 4.5.B)
- No credits can be carried forward to the next license cycle (Rule 4.5.C)
- Education taken as discipline may not be used in an audit (Rule 4.5.D)
- Partial credit for a course is not permitted (Rule 4.5.F)

 **Rule Change:** Brokers can receive 2 continuing education credits for attending a Commission public meeting if the broker is present for at least 2 hours. Elective credit can be awarded for one Commission meeting during each calendar year (Rule 4.5.H)


There are several common pitfalls that brokers encounter during the audit process. Knowing these rules ahead of time will prevent issues. These CREC Rules apply:

1. Rule 4.2.A: 24 credits each license cycle. 3 different ACUs plus 12 electives.
2. Rule 4.5.A states that a maximum number of credits per day is **8 credit hours**. This is the most commonly violated CE Audit Rule. Furthermore, this is most commonly violated by on-demand students but not exclusively. Brokers may not complete classes totaling more than 8 credits in one day. Division staff carefully review course certificates to verify completion dates and the number of hours. The date on the Certificate of Completion is the date of the credits. If you take the test and pass, that will be the date on the Certificate of Completion.
3. Rule 4.5.B is clear that no course can be repeated in the same calendar year. This includes the Annual Commission Update.
4. Rule 4.5.C states that excess credits cannot be carried forward into the next licensing cycle. **All courses MUST be completed in the relevant licensing cycle.** Courses completed prior to or after the compliance period cannot be used to satisfy the continuing education requirements.
5. Rule 4.5.D says that any course(s) taken to satisfy license discipline may not be used to fulfill the license cycle education requirements.
6. Rule 4.5.F states that only fully attended courses can be credited. For example, if a student attends 3 hours of a 4 hour course, they may not receive a certificate of completion or any credit.

In addition, it is important to point out that a CREC Rule change took effect in 2024. Previously, only in person attendance at CREC meetings were eligible for Continuing Education credits. The rule change now allows electronic attendance at CREC meetings. Provided the meeting lasts at least 2 hours, 2 elective credits can be awarded each calendar year. See Rule 4.5.H.


COMPLIANCE 

Continuing Education




Practice Pointers:

- Ensure your contact information in licensing system is current to avoid enhanced discipline for non-responsiveness.
- Confirm your license cycle with the Division's licensing system
- Ensure ALL emails from @state.co.us are approved and not delivered to Spam/Junk
- Before taking a course, verify that the course is approved by the Commission


 18

The Division suggests the following practice pointers for all brokers to consider:

1. Regularly review your contact information in the Division's licensing system. If old email address or no email address is associated with your license in the Division's licensing system, broker will become non-compliant for not providing a response to the audit.
2. The only official license cycle is the Division's license cycle. Do not rely on any third-party CE credit trackers. It is your responsibility to confirm your license cycle and whether you are in compliance with continuing education requirements.
3. All email correspondence from the Division will be delivered from emails ending "@state.co.us". Add email addresses from @state.co.us to a "safe sender" or "whitelist" in your email program.
4. Before you take a course, verify that it is approved for continuing education credits on the Division's website.

COMPLIANCE 


Continuing Education



All Certificates must contain the following information:

- Name of the course provider
- Course Title, which must describe the topical content
- Number of continuing education hours/credits
- Course date(s)
- Name of the student
- Authentication by the course provider
- Course approval number as issued by the Division, if applicable

Broker's responsibility to ensure certificates are complete

 19

Identify the contents of every certificate:

1. Name of the course provider
2. Course Title, which must describe the topical content
3. Number of continuing education hours/credits
4. Course date(s)
5. Name of the student
6. Authentication by the course provider
7. Course approval number as issued by the Division, if applicable

Every broker is responsible to verify that the certificates they receive are compliant with CREC Rule 4.7. If not, they should contact the education provider **immediately** and get corrected certificates issued. Delay is not in favor of the Broker. Although Education providers are required to maintain records for a number of years after the course is offered, what happens if the Education Provider goes out of business or changes contact information. All brokers should review their certificates right away and contact the education provider if any information is inaccurate or missing.

COMPLIANCE




Continuing Education




- ★ CREC Rule 4.2-CE Requirements
- ★ CREC Rule 4.5-CE Limitations
- ★ CREC Rule 4.7-Certificate Requirements
- ★ CREC Rule 5.21-Audit Authority
- ★ Broker Continuing Education Audit Webpage:
<https://dre.colorado.gov/division-programs/real-estate-broker/education/broker-continuing-education-audit>
- ★ Approved Continuing Education Course List:
<https://dre.colorado.gov/division-programs/real-estate-broker/education/broker-education-providers-course-approval>

Transaction Files and Retention


COMPLIANCE 


Transaction Files




Practical Scenario

Broker entered into a buyer listing contract in October, 2019 and successfully closed a transaction on January 2, 2020. On December 5, 2023, the buyer filed a complaint with the Division and the Broker was notified by the Division of the complaint December 25, 2023 (Happy Holidays!). In early January, 2024, Broker begins to search for their transaction files but the Broker's brokerage already deleted the transaction file.




 21


COMPLIANCE 


Transaction Files



Questions

-  Who has the obligation to ensure that the transaction file is complete?
-  What is required to have a complete transaction file?
-  When do the CREC Rules permit transaction files to be disposed?

 22


COMPLIANCE 

Transaction Files


Transaction files (the Contracts and Forms reflecting the transaction) must be maintained by the Broker and Brokerage Firm.

- The Commission has identified the files necessary for file retention which may be updated from time to time. The transaction file content requirements can be found at:

<https://dre.colorado.gov/transaction-file-requirements-and>

LET'S DISCUSS! 

Practice Pointer: Brokers should consider retaining text messages and emails in the transaction files. Check your brokerage policies. Retention may already be required.

 23

1. Who has the obligation to ensure that the transaction file is complete?

The broker has the obligation to ensure that the transaction file is complete.

2. What is required to have a complete transaction file?

CREC Rule 6.20 allows the Commission to review and update the requirements of a transaction file when appropriate. The Commission-approved requirements are not fully discussed here but the files are categorized into (1) Sales Transaction Files and (2) Property Management Files. Visit the link on the slide to view the document lists.

3. What other materials might be appropriate to maintain above and beyond the documents that are required by the Commission?

Emails and texts often help support what was done and what was said in a transaction.

Retaining correspondence with your consumer, as well as any other brokers, other consumers, and professionals (radon inspectors, home inspectors, roofers, cleaning crews, etc.) is a best practice. Every broker should also review their brokerage policies because this might already be included your current practices as a requirement.

Exceptions To Transaction File Requirements: CREC Rules do not require Brokers 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.



Transaction Files



File Retention Requirements

- Duration: Four (4) years beginning from either:
 - the consummation date of the transaction
 - the expiration date of any listing contracts that do not consummate.
- Consummate = Close

LET'S
DISCUSS!



When do the CREC Rules permit transaction files to be disposed?

CREC Rule 6.20 states that files need to be maintained for 4 years from the consummation date of the transaction OR the expiration of a listing contract that does not consummate. Here, the Broker was notified of a complaint and investigation before the 4-year duration was complete. Brokers (and Brokerages) should diligently review and prepare any responses to a complaint and ensure that transaction files are not deleted, destroyed, or disposed of before allowed by Commission Rules. **In this scenario, because the Broker was notified before 4 years, the Broker should have immediately contacted the brokerage and informed them of the investigation and stopped the destruction of the transaction file.**

What is consummation?

Consummation means:

1. Closing the transaction or
2. The date that the transaction fails to close.




Transaction Files




- ★ CREC Rule 5.21-Production of Documents
- ★ CREC Rule 6.20-Transaction File Requirements
- ★ CREC Rules: Chapter 4-Continuing Education
- ★ Commission's Transaction File Checklist:
<https://dre.colorado.gov/transaction-file-requirements-and>

Complaint Process



COMPLIANCE




Complaint Process

Complaint Submission

- United States mail
- In-person
- Email
- Facsimile
- Submitted online through the Division's website

- Complaints may also be opened by the Division if it receives information that necessitates an investigation.



26

The Division has simplified the complaint process because it is important to ensure that any licensee or any member of the public can file a complaint. The Division can accept complaints by US mail, in-person, by email, by facsimile, or through the online website.

In addition to complaints being submitted by licensees or the public, complaints can also be opened by the Division.



Complaint Process

- ALL complaints are reviewed for jurisdiction. If a complaint is NOT dismissed, it will be assigned to a Division Investigator.
- The Licensee will be notified that a complaint has been filed. **Notice will be provided by email to the address on file with the Division.**
- All complaints should be responded to by the Broker, regardless of licensee status.
- The notice will include:
 - A copy of the complaint;
 - A detailed request for supporting documents and response; and
 - A deadline to respond.



In some cases, the complaint is dismissed due to the alleged actions being outside of the jurisdiction of the Commission. When a complaint is not dismissed, it will be assigned to a Division investigator, and the licensee will be notified **and given an opportunity to respond**. It is important that all licensees understand that notice will be provided by email to the address on file in the licensing management program. **Licensees should always ensure that their email address is up to date and current.**

Notice to the licensee, also called a Respondent, will include:

1. A copy of the complaint.
2. A detailed request for supporting documents and a narrative response.
3. A deadline to respond. Note that communication with Division investigators is imperative. Failure to respond is an additional charge should the Commission move forward with disciplinary action.



Complaint Process

- The Division Investigator will carefully review the complaint, the response, and any documents submitted or collected.
- Next, the Investigator will conduct interviews of the Complainant, the Respondent, and any other relevant witnesses.
- After the investigation is completed, the results will be presented to the Commission.



Upon completion of the investigation, results will be presented to the Commission at an open meeting. Names are not used, and the Commission will take reasonable steps to protect the confidentiality of the parties to the investigation.



Complaint Process

- The Commission recommendation may approve, adjust, or deny the discipline suggested by the Division.
- Next, typically, the Licensee will receive a initial stipulated agreement reflecting proposed settlement terms.



The Division offers to the Commissioners discipline recommendations. These help to normalize discipline for similar actions across investigations, but Commissioners will look at the facts of each specific scenario and recommend discipline based on the facts and circumstances in each investigation.

After the Commission meeting, the file will be transferred to the Expedited Settlement Procedures (“ESP”) program in the Division to prepare a Stipulation. The Stipulation will be delivered to the licensee. These stipulations are prepared in a manner consistent with the Commission’s discipline.



Complaint Process

- The Respondent may request mediation with the Division regarding discipline. See section 24-4-105(4), C.R.S.
- If a stipulated agreement is not reached between the Licensee and the Division, the matter will be referred to the Colorado Office of the Attorney General for a formal hearing.
- A hearing will take place before an Administrative Law Judge who will issue an Initial Decision with recommended disciplinary action.

Agreeing to a stipulation is **voluntary**, but stipulations are generally faster, less expensive, and less severe than if the matter is referred to the Attorney General Office.

The Respondent is permitted to request mediation with the Division.

If the ESP program and Respondent cannot agree on stipulated terms, the Attorney Generals will take the case to an Administrative Law Judge (“ALJ”) to obtain an Initial Decision. This process requires a formal evidentiary hearing in court.

If the court determines wrongdoing, the court will issue an order called an “Initial Decision.” The Respondent can appeal the Initial Decision, if there are legal grounds for appeal. If no legal grounds exist for an appeal, the Commission will issue a Final Agency Order.



Complaint Process

Depending on the complexity of the investigation, the investigator's caseload, witness availability, and the case docket for the Administrative Law Judge, resolution may take ten (10) months or longer to complete.



Note for Respondents: Failure to participate in investigations and/or any Court proceeding is not in your favor.



Investigations vary in complexity, sometimes extremely.

It is important that brokers and the public, more generally, understand that resolution can take a long time.

For cases referred to the Office of the Attorney General, the process can take even longer. With filings, notices, scheduling, and setting a case for trial, resolutions can be even longer.

On average, cases that are referred to the AG's Office to be submitted to the Office of Administrative Law (OAC), is approximately 10 months. In some cases, however rare, the Division has seen cases take 24+ months.

2

General Practice Issues

Contract Terminations

Referral Business

Leasing Issues

Social Engineering


Data Security / CP-30

Post-Closing Occupancy Agreements


NAR Settlement

New Contracts and Forms

Contract Terminations


GENERAL PRACTICE 

Contract Terminations


Practical Scenario

Broker listed a residence on 35 acres in Elbert County and quickly found a buyer. The parties entered into a contract and due diligence commenced.

On the day of the Mineral Rights Examination Deadline, Buyer received unfavorable information and messaged her Broker to terminate. Buyer's Broker immediately called the Listing Broker and left a voice message. The next day, Broker emailed the Notice to Terminate.

 33


GENERAL PRACTICE 

Contract Terminations


Questions

 Did the Buyer's Broker properly notify Listing Broker of their intention to Terminate?

 How can a party terminate a Contract?

 34



Contract Terminations

Did the Buyer's Broker properly notify Listing Broker of their intention to Terminate?

- No. Although Buyer's Broker called Listing Broker before the expiration of the Mineral Rights Examination Deadline, **written notice** to terminate was not received before the deadline.

How can a party terminate a Contract?

- A written statement is required to terminate the contract.
- BUT WAIT, there is more to the analysis!

1. Did the Buyer's Broker properly notify Listing Broker of their intention to Terminate?

No. In this scenario, Buyer's Broker was required to communicate in writing the Buyer's intention to terminate before the applicable deadline (Mineral Rights Examination Deadline). A Voice message before the deadline is likely not sufficient, even though it was followed up the next day with a writing.

2. How can a party terminate a Contract?

The legal standard requires that to terminate a contract, a written notice to terminate a contract is required.

Therefore, it is possible that a judge could rule that a contract is properly terminated as long as the notice was in writing. If a judge were to rule that way, the Buyer would likely get their earnest money back.

But that may not satisfy the Broker's License obligations.

GENERAL PRACTICE



Contract Terminations

Practice Pointer:

Language in the Contract to Buy and Sell Real Property is clear that a termination must be made in writing. Equally important though, CREC Rule 7.1 applies to all Broker activity and says that if a form exists, Brokers should use it, subject to a few exceptions.

LET'S DISCUSS!

- ⚠ Notice of Termination (CREC-approved form)-IF A BROKER CAN USE THE FORM, THEY MUST.
- ⚠ Brokers must comply with CREC Rule 7.1.



AT THE SAME TIME, this is likely a violation of license law. Why?

The Commission has approved a Notice to Terminate form.

CREC Rule 7.1 requires the use of Commission-approved forms if such a form exists and it is appropriate for the transaction. It was most recently updated by the Commission for use after January 1, 2024. If a Broker is able to use the form, they must if the circumstances are appropriate.

It must be signed by the terminating party.

It must be delivered to the non-terminating party on or before the applicable deadline.

In this scenario, the Buyer's Broker delivered an intention to terminate the contract via voice message on or before the deadline, but did not deliver the Notice to Terminate

Use the form based on the circumstances.



Contract Terminations



Practice Pointer:

Text messages between Brokers are especially common, but they are often ambiguous. So can other writings. Be clear. For example: what does: “the buyer is out” mean?

LET'S
DISCUSS!



Do not threaten to terminate without the client's authorization.



Do not delay in preparing for deadlines. Advise your clients in advance of upcoming deadlines to avoid 11th hour issues.



Clear communication is imperative. Text messages can be especially ambiguous. Consider the language you use carefully.

The CREC form is clear.

Do not threaten to terminate without the client's authorization.

Do not delay in preparing for deadlines. Advise your clients in advance of upcoming deadlines to avoid 11th hour issues.



Contract Terminations



★ CREC Rule 7.1-Use of Standard Forms


★ Contract to Buy and Sell Real Estate


★ Notice to Terminate

★ CREC-Approved Contracts and Forms:
<https://dre.colorado.gov/real-estate-broker-contracts-and-forms>




Referral Business

GENERAL PRACTICE 





Practical Scenario


 **Referral Business**

Broker has been working for 20 years and has not needed to advertise services for the better part of 10 years. 100% of her business is referral business.


Broker is deciding to retire soon, but wants to continue to earn some residual income.




 39


GENERAL PRACTICE 



Questions

 **Referral Business**

-  Does Broker have options to earn residual income from her referrals?
-  What does Broker have to do to earn referral income?
-  Does referral business affect Broker's liability for transactions?

 40



Referral Business

Does Broker have options to earn residual income from her referrals?

- Provided that Broker complies with the Real Estate Settlement Procedures Act (RESPA), Broker can receive incentives or things of value under certain conditions.
- Specifically, payment of cooperative referral arrangements is permissible.

LET'S
DISCUSS!

RESPA does permit:


- Payment to attorneys for services rendered,
- Payment to title companies for services performed,
- Payment to mortgage loan originators for services performed,
- Payment of salaries for services rendered,
- Payment of cooperative referral arrangements, or
- Promotional or educational activities that do not involve the defraying of expense that would otherwise be incurred.

The relevant exception in this scenario is: Payment of cooperative referral arrangements.



Referral Business

What does Broker have to do to earn referral income?

- Broker must maintain an ACTIVE license. An INACTIVE license is not sufficient to receive referrals
- Broker must comply with RESPA
- Broker must provide a name to another real estate Broker where an actual introduction of business is established to receive a referral fee for reasonable cause.
-  Brokers or Brokerage Firms who pay or receive a prohibited referral fee in violation of RESPA would also be considered in violation of Colorado license law.

RESPA is a federal law.

RESPA applies to transactions involving federally related residential mortgage transactions. Federally related mortgage loans include:

- Deposits are insured by an agency of the federal government,
- HUD insured or VA guaranteed,
- Intended to be sold to FNMA, and
- Loans made by “creditors”

Although payment to an unlicensed person or real estate Broker with an Inactive or Expired license is not specifically addressed in the Colorado Real Estate Practice Act, RESPA Section 8 prohibits giving any incentive or things of value to an unlicensed individual in exchange for the referral of business to a real estate Broker or other settlement service provider. Therefore, the Commission views such activity as a possible violation unless the individual receiving the referral had an Active license at the time of making the referral.

Does referral business affect Broker's liability for transactions?

- Provided that the referral agreement is entered into between the Brokers' respective Brokerage Firms at the time the referral is made, liability for the referring broker is limited.
- ! Referring brokers need to be aware of negligent referrals. Know who you are referring your consumers to.
- ! Commissions or fees may be received where the commission or fee was earned prior to that Broker's or Brokerage Firm's suspension, revocation, expiration, or transfer to Inactive status.



**LET'S
DISCUSS!**

The Division has received numerous requests for information from Brokers on how to limit their liability.

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. See CREC Rule 6.26.D.

Due to market changes, Brokers might look for alternative revenue streams. Some larger brokerages have set up secondary referral brokerages to accommodate Brokers looking to capitalize on their book of business.


Generally, the referring broker reduces broker's liability when properly entering into a referral agreement. The broker should always be cognizant of responsibly referring their business to avoid potential liability for negligent referral.




Referral Business

- ★ Rule 6.21-Referral Fees and RESPA
- ★ 12 U.S.C., Chapter 27, Section 8-Real Estate Settlement Procedures Act
- ★ CP 3 - RESPA and Referral Fees
- ★ Rule 6.26.D-Actions when License is Suspended, Revoked, Expired or Inactive

Leasing Issues

GENERAL PRACTICE 

Leasing Issues




Most laws and regulations passed in recent legislative sessions apply to anyone who owns or manages a residential rental property.

This includes:

1. Brokers managing properties for others professionally
2. Brokers managing their own rentals
3. ALL owners/clients who have purchased a rental or are thinking about renting out their home

Accordingly, an overview of recent changes to leasing laws is appropriate.



Many laws and regulations apply to all residential rentals, therefore affecting property managers and landlords. This sub-section of the ACU is an overview of what (1) property managers, (2) brokers that lease their own properties, and (3) brokers that work with investors should know regarding recent changes to residential tenant laws.

Leasing Issues



Practical Scenario




Broker owns a four unit residential property that includes 10 parking spaces. Other people living on the block regularly park without authorization in the parking lot.

Broker has signage from an old towing company posted, and issued the towing company blanket authorization to tow when certain cars are parked in the lot.

Leasing Issues



Questions

-  Does the Broker have to update its towing signage?
-  Can Broker give blanket permission to tow unauthorized vehicles?
-  Can Broker have authorized cars with expired registration towed?



Leasing Issues



Does the Broker have to update its towing signage?

Yes. Signage requirements were updated and modified by HB24-1051. Signs must be:

- At least two square feet in size
- Lettering not less than one inch in height
- Lettering color that contrasts
- View of sign cannot be obstructed and cannot be higher than 10 feet or lower than 3 feet.
- Printed in English and Spanish

LET'S
DISCUSS!

HB24-1051 updated the signage requirements in Colorado. It became effective August 6, 2024.

Technically, compliance with the bill for all signage is required for towing companies (towing carriers) who are contracted for towing on the properties. This means that the towing company is legally responsible for updating their signs, but property managers and landlords should be aware of the requirements. If the towing carrier is not in compliance with the law, issues can and will arise for the owner and property manager.

Signage requirements are specifically set out in the new law. Signage must:


- Not be less than two square feet in size
- Have lettering not less than one inch in height
- Have lettering that contrasts sharply in color with the background of the sign and contrasts sharply with the structure the signs are placed on
- Contain the following information in the following order:
 - The restriction or prohibition on parking
 - The times of the day and days that the restriction is applicable. If parking is restricted 24 hours a day, 7 days a week, the sign must say “Authorized Parking Only”
 - The name and telephone number of the towing carrier authorized to perform tows from the private property.

- Be printed in English and Spanish.
- Be permanently mounted both at the entrance to the private property facing outward toward the street and inside the private property facing the parking area.
- Not be obstructed from view or placed in a manner that prevents direct visibility.
- Not be placed higher than ten feet or lower than three feet from the surface closest to the sign's placement.

Some of these requirements fall squarely on the towing company, but others, like the placement and keeping the signage free from obstruction are important for owners and property managers to be aware of. If hanging signage in the winter, consider if the sign view will be unobstructed when trees and other plants come into bloom.

GENERAL PRACTICE

Leasing Issues




Can Broker give blanket permission to tow unauthorized vehicles?

No. Blanket permission is not allowed by HB24-1051. Before 24 hours of every tow, the towing company must receive written permission to tow.

- Permission must:
 - Not be pre-approved
 - Not be automated
 - Be signed by authorized person
- Authorization Form:
 - <https://drive.google.com/file/d/136rGujG69qP9YvxiYzGWwkPlEockQei/view>

LET'S
DISCUSS!


 49

Prior to the passage of HB24-1051, HOAs, apartment complexes, and owners commonly issued blanket authorization so that a towing company could, on their own accord or with a simple phone call, issue a notice and direct the towing company to tow a vehicle. This changed with the new law. Now, permission must be given to the towing company within 24 hours of each tow IN WRITING.

Towing carrier must receive documented permission, within 24 hours of tow, (not automated or preapproved) for each individual tow, from either:

- The owner or leaseholder of private property, unless the owner or leaseholder would earn income, then the towing carrier may authorize another towing carrier to perform the tow
- An employee of the owner, leaseholder, or property management company retained to collect rent and perform residential services. If an employee who has a financial interest in or relationship with the towing carrier or that earns income from the tow they are not allowed to not grant permission to authorize the tow.

The law goes to a great extent to make clear that no one with a financial conflict of interest may execute the authorization form.


Leasing Issues 

Can Broker have authorized cars with expired registration towed?

No. A vehicle cannot be towed from private property for expired registration alone. See section 40-10.1-405(7), C.R.S.

LET'S DISCUSS!

GENERAL PRACTICE

 50

The Division (and the HOA Information & Resource Center) are regularly asked questions about when towing is permitted from private property. In particular, a common theme is vehicles with expired registration. In 2022, HB22-1314 was passed. This bill has been discussed in previous ACUs, but in short, it was a significant overhaul of the towing company laws in Colorado. This bill expressly prohibited a property owner or property manager from authorizing the towing of a vehicle solely because of an expired registration (UNLESS the tow is at the direction of a Peace Officer).



Leasing Issues



Practical Scenario

Broker manages 250 doors in a college community. The owner of the complex prefers to rent to students because students have a better history of paying rent because they have access to financial aid and family support. Owner directs Broker to not renew leases if the tenants are no longer students.






51



Leasing Issues



Questions


-  What is no-fault eviction?
-  What notice is required to terminate a lease or refuse to renew for a no-fault eviction?
-  Can Broker refuse to renew tenants' leases?



52

GENERAL PRACTICE

Leasing Issues




What is no-fault eviction?

No-Fault Eviction is defined in statute. It allows non-renewal of a lease under certain and particular situations:

- Demolition or substantial repair or renovation
- Owner or owner's family moving back in
- Selling the property
- Refusal to sign a reasonable new lease
- Late payments at least 3 times during lease term - specifically outlined in bill


LET'S DISCUSS!



53




With certain conditions, the following additional scenarios constitute grounds for a no-fault eviction of a tenant:


- (1) Demolition or conversion of residential premises to a short-term rental property.
- (2) Substantial repairs or renovations.
- (3) The landlord or a family member of the landlord assumes occupancy within 3 months after the tenant vacates the premises.
- (4) Withdrawal from rental market for the purpose of selling the residential premises.
- (5) The tenant refuses to sign a new lease with reasonable terms.
- (6) The tenant has a history of nonpayment of rent or late payment more than 2 times.

GENERAL PRACTICE 

Leasing Issues

LET'S DISCUSS!

-  Neither landlord or tenant can waive or modify the reasons for no-fault eviction.
-  Mediation is required due to some tenant's income source or housing assistance.
-  If landlord proceeds with an eviction in violation of law, HB24-1098 creates a civil cause of action and an affirmative defense to eviction for tenant.

 54

IMPORTANT: During the negotiation of a lease or rental agreement, landlord and tenant may not waive or modify the provisions set forth in this law. Any effort to do so is void and unenforceable.

IMPORTANT: Is Mediation Required? If the tenant receives supplemental security income, social security disability insurance, or cash assistance through the Colorado works program, the notice MUST also include a statement that the tenant has the right to mediation prior to the landlord filing an eviction complaint.

IMPORTANT: If a landlord proceeds with an eviction in violation of the law, the tenant may seek relief as described in section 38-12-510, C.R.S. Similarly, if a landlord does not comply with the law, the tenant may assert the landlord's failure to do so as an affirmative defense in the eviction proceeding and the Court can dismiss the eviction proceeding.

Overall, the law demonstrates that any efforts to circumvent the requirements of the law are quite problematic. An example is that the landlord cannot increase tenant's rent in a discriminatory, retaliatory, or unconscionable manner to circumvent the requirements.



Leasing Issues



What notice is required to terminate a lease or refuse to renew for a no-fault eviction?

- Written notice
- In English and Spanish (or any other language the landlord knows tenant speaks)
- Timely notice

LET'S
DISCUSS!



1. A written notice is required, and it must include a statement of the legal and factual basis for the landlord's no-fault eviction.
2. Language: A demand or notice must be written in the primary language of the tenant (English, Spanish, or any other language that the landlord knows or has reason to know is spoken by the tenant).
3. Timeliness: In the case of a periodic tenancy, written notices to terminate the tenancy may be provided by the landlord before the end of the period or fixed term. The notice must describe the property, the particular date when the tenancy will terminate, and be signed.

GENERAL PRACTICE

Timing of the Notice for Reasons Other Than No-Fault Eviction

Leasing Issues



Tenancy Duration		Notice Duration
1 year or longer		At least 91 days
6 months-less than 1 year		At least 28 days
1 month-less than 6 months		At least 21 days
1 week-less than 1 month		At least 3 days
Tenancy At Will		At least 3 days
Less than 1 week		At least 1 day

Federal CARES Act is still in effect requiring 30-day eviction notice for any property with federally backed loan per the Colorado Supreme Court.

 56

**LET'S
DISCUSS!**

The timing of the notice is also imperative. Timing requirements are as follows for No Fault Eviction:

- (1) Demolition or substantial repair or renovation: 90 days.
- (2) Owner or owner's family moving back in: 90 days or 45 days if the landlord is active military duty or spouse.
- (3) Selling the property: 90 days.
- (4) Refusal to sign a reasonable new lease: 90 days
- (5) Late payments at least 3 times during lease term: 90 days

For Reasons Other Than No Fault Eviction:


- 1) For a tenancy for one year or longer, at least 91 days
- 2) For a tenancy of 6 months or longer, but less than a year, at least 28 days
- 3) For a tenancy of 1 month or longer but less than 6 months, at least 21 days
- 4) For a tenancy of 1 week or longer but less than 1 month, at least 3 days
- 5) For a tenancy at will, at least 3 days
- 6) For a tenancy for less than 1 week, at least 1 day

Finally, the notifications required by section 38-33-112 do not permit a landlord from terminating a lease prior to the expiration without the consent of both the tenant and the landlord. In the case that the lease term is set to expire less than ninety days from the date of notification or if there is no written lease, a tenancy may not be terminated less than 90 days after the date of the notice. The act states that return receipt is evidence of the date and evidence of receipt of the notice.

As discussed in the 2024 ACU, the Federal CARES Act is still in effect requiring 30-day eviction notice for any property with federally backed loan per the Colorado Supreme Court.

GENERAL PRACTICE


Leasing Issues



Can Broker refuse to renew tenants' leases?
 For the reason stated in the scenario, no! In addition to no-fault restrictions, HB24-1098 requires **cause** for residential eviction. Cause includes:

- Squatters
- Nonpayment of rent
- Substantial/material/repeat violations
- For possession after a legal sale of the property

LET'S DISCUSS!



57

Prior to the passage of HB24-1098, landlords, property owners, and property managers had additional options to refuse to renew tenants' leases. After the passage and effective date of April 19, 2024, acceptable non-renewal options are limited to No-Fault evictions and CAUSE:

1. Squatters-when persons or people are residing in the property without permission.
2. Nonpayment of Rent-failure to pay rent and failure to cure non-payment of rent upon demand in accordance with the lease. This includes:
 - a. When a tenant has engaged in conduct that creates a nuisance or disturbance that interferes with the quiet enjoyment of the landlord or other tenants at the property or when the tenant is negligently damaging the property
3. Substantial Violations and Material Violations and Repeat Violations: Violations that are likely to cause substantial or material damage to the premises, or a failure by the tenant to stop a violation after being provided proper notice of a violation.
4. For Possession After a legal sale of the property: If an owner closes a legal sale of a property, the new owner is permitted to not renew a lease. This includes when a property has been sold under a judgment or decree and the party to the judgment or decree refuse or neglect to surrender possession; when an heir or devisee continues in possession in possession after the property is sold; or when a seller (or vendee) holds over after failing to comply with an agreement to purchase lands or tenements



Leasing Issues



Practice Pointers:

Landlords and Property Managers must comply with fair housing laws and not discriminate against protected classes at all times.

Eviction is a highly technical action and may have significant legal consequences if not handled properly.

Consult with your attorney, or direct your client to consult with their attorney BEFORE any eviction proceedings.



Practice Pointer: Landlords and Property Managers must comply with fair housing laws and not discriminate against protected classes.

HB24-1098 creates significant and numerous opportunities for a property owner, property manager, or landlord to run afoul with the law. If you are the landlord or the owner, you should consult with legal counsel. If you are the property manager, you should direct your client to consult with legal counsel. Any recommendation should be made in writing. Such consultation should be made PRIOR to the initiation of any eviction proceedings.



Leasing Issues



Practice Pointer:

This law does not apply to the “management or landlord of a mobile home park UNLESS:

- both the mobile home space and the mobile home are being rented to a mobile home resident or
- the mobile home park resident is NOT residing in the mobile home park under a lease-to-own agreement.

In these situations, a manager or landlord of a mobile home park is subject to the new law.”





Practice Pointer:

HB24-1098 does NOT apply to:

- (1) Short-term rental property
- (2) An initial lease of of less than 12 months but does apply if a tenant is in the property for longer than 12 month
- (2) A residential premises or adjacent property which is occupied and maintained by the owner
- (3) A mobile home space occupied pursuant to a lease-to-own agreement, purchase option, or similar agreement
- (4) Employer-provided housing
- (5) A residential tenant who is not known to the landlord to be the tenant

Leasing Issues



The new law also does NOT apply to:

- Short-term rental property.
- A residential tenant of less than 12 months **HOWEVER**, if Tenant is in the property for longer than 12 months, HB24-1098 does apply.
- A residential premises or adjacent property occupied and maintained by the owner: **NOTE:** For this, the residential premises must be
 1. a single-family home, with or without an accessory dwelling unit on the same lot,
 2. a duplex,
 3. a triplex, or
 4. NOT be a multifamily property of four or more dwelling units.
- A mobile home space occupied pursuant to a lease-to-own agreement, purchase option, or similar agreement.
- A residential premises leased pursuant to an employer-provided housing agreement.
- A residential tenant who is not known to the landlord to be the tenant.



Leasing Issues



Practical Scenario




Broker manages a series of row homes. After a bad traffic accident, Tenant is permanently disabled, requiring use of a wheelchair. Tenant requests that a ramp be installed to access the unit. Due to medical bills, tenant stated that he cannot afford to pay the cost of installation.



Leasing Issues



Questions

-  Can tenant require the owner to install a ramp?
-  If tenant cannot afford the installation, is the landlord responsible?
-  When tenant ends the lease, can the ramp be removed?



Can tenant require the owner to install a ramp?

- Colorado law requires that tenants are entitled to the full enjoyment of the premises.
- Any adjustments to the property that are deemed reasonable accommodations are required.

LET'S
DISCUSS!

Can tenant require the owner to install a ramp?

Yes. Landlords, property owners, and property managers may not discriminate against any disability. Since Colorado law requires that tenants are entitled to the full enjoyment of the premises, reasonable accommodations must be made to allow the tenant to do so.

Reasonable Accommodation: Under the Fair Housing Act, a Reasonable Accommodation or Reasonable Modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Common examples used by HUD are the installation of grab bars in a shower/bath, **installation of a ramp**, and lowering the entry threshold of a unit. It is important to understand that these changes can include modifications that may be structural.


Discussion: What if the property is in a Common Interest Community? The requirements to address the request are no different, however the process may be more involved. In the case of a Common Interest Community (an HOA, POA, Condominium Association, Cooperative, etc.), the property owner is usually required to obtain authorization from the Common Interest Community Board. This is usually satisfied by submitting a Architectural Review Application. The application should not be denied by the Board, however, the Board is allowed to make reasonable changes to comply with any aesthetic or design guidelines for the community.



If tenant cannot afford the installation, is the landlord responsible?

Maybe. HB24-1318 was passed and became effective law August 7, 2024.

- The relevant question to determine responsibility is whether or not the accommodation is reasonable.

 Landlords and Brokers should not opine on whether an accommodation is reasonable. Consult with an attorney.

LET'S
DISCUSS!

If tenant cannot afford the installation, is the landlord responsible?

For clarity, the tenant's ability to pay is not relevant.

Prior to the passage of HB24-1318, property owners, landlords and property managers were permitted to **require** tenants making requests for reasonable accommodations, to pay for them out of their own pocket. HB24-1318, which became effective August 7, 2024, removed that requirement and NOW, the law does not expressly define what party is responsible for the costs associated with the reasonable accommodation. If tenant does not pay, landlord may be required to pay for an accommodation if the reasonable modification. What is made clear by HB24-1318 is that the installation must take place if it is a reasonable accommodation.

Brokers and Landlords should not make a decision on whether an accommodation is a reasonable one or not. All landlords, property owners, and property managers should consult with a licensed Colorado attorney to determine how to approach reasonableness and responsibility for payment. Ultimately, only a judge can determine what is reasonable.



Leasing Issues



When tenant ends the lease, can the ramp be removed?

Yes.

- Cost of the removal, like the installation cost, is not clear.
- Landlord cannot condition approval of the installation on the tenant paying to remove the reasonable accommodation.
- Tenant is not required to restore the property to the original condition, but landlord can elect to do so.

LET'S
DISCUSS!

When tenant ends the lease, can the ramp be removed?

HB24-1318 removed language from section 24-34-502.2, C.R.S. which previously allowed the landlord to condition approval of the reasonable accommodation on the tenant's willingness to remove and pay for the removal of the accommodation. Now that this language is removed from the statute, the landlord is prohibited from conditioning the removal and payment for the removal on the approval.

To determine payment of costs for removal, like the costs for installation, the landlord, property owner, and property manager should consult with a Colorado attorney.

If the landlord wishes to remove the ramp after the lease has terminated, landlord may do so, however, the landlord should carefully consider the effect that such removal would have on the value, marketability, and desirability of the property going forward.

Leasing Issues






Practical Scenario

Broker is a property manager for 100 properties in a mountain community that were built in 1988 during Phase 1 of the community and do not have central air conditioning, but do have window air conditioning units. After a recent wildfire, many of the window units stopped operating and the weather forecast for next week is above 90 degrees for several days. Broker just received a letter from tenants to repair the A/C units.

Leasing Issues



Questions

-  What is the Warranty of Habitability and does it apply to A/C Units?
-  After notice from the tenants, Broker orders new units which will arrive in 3 weeks. What do the Broker and Landlord do in the meantime?
-  Can tenants withhold rent until the repairs are complete?



Leasing Issues



What is the Warranty of Habitability?

The Warranty of Habitability is a long standing legal concept in Colorado that EVERY residential rental agreement is deemed to warrant that the residential premises is fit for home habitation at the inception of the occupancy and that the landlord will maintain the residential premises as fit for human habitation.

See section 38-12-503, C.R.S.

LET'S
DISCUSS!

What is the Warranty of Habitability?

The Warranty of Habitability states that EVERY residential rental agreement is deemed to warrant that the residential premises is fit for home habitation at the inception of the occupancy and that the landlord will maintain the residential premises as fit for human habitation throughout the duration of the lease agreement.

A landlord breaches the warranty of habitability if a residential premises is:

1. Uninhabitable as described in section 38-12-505 or
2. In a condition that materially interferes with the tenant's life, health, or safety and
3. The landlord has notice of the condition and
4. Has failed to commence remedial action after having notice



Leasing Issues



Does it apply to window A/C units?

- Yes. The Warranty of Habitability applies to A/C if the units are supplied at the start of the lease
- Landlord must respond and fix situations within days as discussed on the next slide
- Landlord may be required to find and pay for tenant accommodation!

LET'S
DISCUSS!

Does it apply to window A/C units?

SB24-098 became law on May 3, 2024. This law **expanded the definition** of the Warranty of Habitability in two ways:

1. To include air conditioning or other permanent cooling devices as an appliance.
2. To include an elevator when the tenant has a disability that prevents the tenant from being able to use the stairs to access the dwelling unit and there are no other operable elevators.



Leasing Issues



LET'S
DISCUSS!

After notice from the tenants, Broker orders new units which will arrive in 3 weeks. What do the Broker and Landlord do in the meantime?

- Notice of breach by Tenant is required
- Tenant has burden to establish a breach
- Landlord must respond timely and remediate timely
- Landlord must commence remedial action within:
 - 24 hours where the condition **materially interferes with the tenant's life, health, or safety**, or
 - 72 hours where the residential premises are otherwise uninhabitable
- Communication during remediation is key!



The Warranty of Habitability is breached if the premises is uninhabitable as defined in section 38-12-505, C.R.S. or a condition on or in the premises **materially interferes with the tenant's life, health, or safety** AND the landlord has notice of the condition.

1. Notice must be in writing to the landlord.
2. Upon notice to the landlord, landlord must commence remedial action within 24 hours where the condition materially interferes with the tenant's life, health, or safety, or 72 hours where the residential premises are otherwise uninhabitable.
3. Remedial action must be started as set forth above, but the condition must be remedied or repaired to completion within a reasonable time.
4. The tenant has the burden of establishing that a breach of the warranty of habitability has occurred.
5. A landlord must contact the tenant not more than 24 hours after receiving a notice and
 - a. Must indicate the landlord's intentions to remedy or repair the condition, including an estimate of when the action will start and finish.
 - b. Inform the tenant of the landlord's responsibilities and obligations, including the obligation to provide a hotel or comparable unit.
 - c. Provide at least 24 hours' notice of entry, EXCEPT in an event where the condition threatens an individual's life, health, or safety, or threatens to cause substantial and material damage to the premises.



Leasing Issues



Practice Pointers:

Landlord or Property Manager should get an inspection within 24 hours.

For Property Managers, consider documenting any advice to landlord in writing.

LET'S
DISCUSS!



Landlords have an obligation to get an inspection of the condition within 24 hours of receiving notice.

If certain situations, landlords may not want to conduct repairs resulting from the inspection. If such situations, property managers should consider documenting any advice given to the landlord. Commemorate the advice in writing.



Leasing Issues



LET'S
DISCUSS!

Interference with the tenant's life, health or safety requires, at the request of the tenant:

- Comparable dwelling unit or hotel room:
 - For up to 60 days
 - Within a reasonable distance
 - With at least the same number of beds
- If required for more than forty-eight hours, the unit must include a fridge and freezer and a range stove/oven or the landlord must provide a per diem for daily meals and incidentals for each tenant
- Landlord is responsible for reasonable costs that are incurred due to the tenant's relocation, including storage and transportation



When the condition materially **interferes with the tenant's life health, or safety**, remedial action must include the landlord providing the tenant, **at the request of the tenant** and within twenty-four hours after the request, a comparable dwelling unit, as selected by the landlord, at no cost to the tenant or a hotel room, as selected by the landlord, at no cost to the tenant.

NOTE: The replacement dwelling must include at least the same number of beds as there are used in the tenant's dwelling unit.

NOTE: If a tenant requires the comparable unit or hotel room for more than forty-eight hours, the unit or hotel must include a fridge with a freezer and a range stove or oven or the landlord must provide a per diem for daily meals and incidentals for each tenant in an amount that is at least equal to the CO state employee per diem for intrastate travel as established by the Department of Personnel.

NOTE: There are distance requirements and guidelines for the hotel or comparable unit. It cannot be located an unreasonable distance from the rental premises.

NOTE: Landlord is also responsible for reasonable costs that are incurred due to the tenant's relocation, including storage and transportation.

The landlord is required to provide the hotel for up to sixty consecutive days. The landlord is relieved of the obligation if the landlord determines that the condition at the property cannot be remedied or repaired within 60 days due to

circumstances outside the landlord's reasonable control and the landlord provides the tenant, at the earliest opportunity, written notice that specifies:

- i. The condition cannot be remedied or repaired within 60 days.
- ii. The date the landlord will no longer pay for the hotel.
- iii. That the tenant may terminate their lease with no liability or penalty and.
- iv. The landlord returns the tenant's full security deposit on or before the date required by the lease.

GENERAL PRACTICE

Leasing Issues

4 Rent

Can tenants withhold rent until the repairs are complete?
No. Tenants must still pay rent, even while they are staying in a hotel or other comparable unit.

LET'S DISCUSS!

Practice Pointer: Warranty of Habitability issues span 41 pages and place many requirements on landlords. These issues are complicated and have legal ramifications. Consult with a licensed Colorado attorney that is versed in Landlord/Tenant laws.

73

An essential tenet of the Colorado Warranty of Habitability is that **even while the premises are deemed uninhabitable**, the tenant must still continue to pay rent. Withholding of rent is not permitted by the tenant. This includes even while the tenant is staying in a hotel or other comparable unit.

Practice Pointer: As with many leasing issues, Warranty of Habitability issues are complicated and have important legal ramifications. Consult with a licensed Colorado attorney. Brokers must understand that warranty of habitability issues can expose the landlord and the Broker to liability. Before practicing in this area, take a comprehensive property management class.

GENERAL PRACTICE

Leasing Issues

4 Rent

Practice Pointer:

After January 1, 2025, every residential rental agreement requires a statement about the Warranty of Habitability in at least 12 point, **bold font**.

LET'S DISCUSS!

74

Starting with every new residential rental lease executed between a landlord and a tenant, on or after January 1, 2025, 2 important disclosures are required in the rental agreement:

1. A statement in at least 12-point, bold-face type that states that every tenant is entitled to safe and healthy housing under Colorado's warranty of habitability and that a landlord is prohibited by law from retaliating against a tenant in any manner for reporting unsafe conditions in the tenant's residential premises, requesting repairs, or seeking to enjoy the tenant's right to safe and healthy housing.
2. A statement in English and Spanish in at least 12-point, bold-faced type that states an address where a tenant can mail or personally deliver written notice of an uninhabitable condition and an email address or accessible online tenant portal or platform where a tenant can deliver written notice of an uninhabitable condition.

The Commission does not have an approved residential lease form. If your lease form requires updating, consult with a Colorado attorney.

In addition, if a landlord provides a tenant with an online portal or platform, the landlord must post in a conspicuous place in the portal or platform a statement in English and Spanish that states an address where a tenant can mail or deliver written notice and an email or accessible online portal or platform where a tenant can deliver notice.



Leasing Issues



Practical Scenario

Broker is a property manager and has numerous landlords who have been clients for many years. Broker has always effectively disclosed all markups to his clients. Broker does not require tenants to use his repair services, but tenants do use Broker's services. Broker has not disclosed any fees or markups received from tenants to the landlord.



Leasing Issues



Questions

- Are markups to landlord allowed?
- Are markups to tenants allowed?
- Does Broker need to disclose tenant markups to the landlord?



Leasing Issues



Markups to Landlord Permitted?

Yes. Markups are permitted.

Markups to Tenant Permitted?

Markups for tenants are permitted but are limited to EITHER 2% of the amount the landlord is billed or \$10.00, but not both, per month.

Disclosure Requirements?

ALL compensation paid to Broker must be disclosed to all parties, including customers, even if paid by tenant. Brokers and Brokerage firms must obtain prior written consent from the consumer to assess or receive markups or other compensation. CREC Rule 5.17.



Leasing Issues



Some additional bills that directly affect Leasing Issues from 2024:

- HB24-1007
- HB24-1091
- HB24-1259





Leasing Issues



HB24-1007: Residential Occupancy Limits

- Prohibits local governments from limiting the number of people who may live in a single dwelling **based on familial relationship**.
- Local governments still retain the authority to set occupancy limits based on:
 - Demonstrated health and safety standards (building codes, fire codes, etc.) or
 - Affordable housing program guidelines

Residential Occupancy Limits: Prior to the passage of HB24-1007, local governments (counties, municipalities) had the authority to issue limitations on the number of people living in a single dwelling unit based on familial relationships. HB24-1007 took this authority away from the local government and made it a state issue, however, local governments still have the authority to set occupancy limits based on two important factors:

1. Demonstrated health and safety codes (building code, fire code, etc.)
2. Affordable housing program guidelines.

**HB24-1091: Fire-Hardened Building Materials**

Common Interest Communities are not allowed to prohibit the installation, use, or maintenance of fire-hardened building materials on a unit owner's property

- Siding
- Roofing
- Fencing

Fire-Hardened Building Materials: Prior to the passage of HB24-1091, Common Interest Communities were allowed to restrict the use of certain materials based on the association's governing documents. This includes materials for siding, roofing and fencing. This meant that simply for aesthetic purposes, unit owners were not allowed to take reasonable steps to protect their units from the effects of fire. HB24-1091 now prohibits associations from prohibiting the installation, use, or maintenance of fire-hardened building materials on a unit owner's property.

An association is allowed to develop standards that impose reasonable restrictions on the design, dimensions, placement, or external appearance of fire-hardened building materials used for fencing.



HB24-1259: Rent Price Gouging

- Price gouging during a disaster period is unfair and unconscionable
- Prohibits rental increase of more than 10%

Price Gouging in Declared Disaster Areas:

1. Price gouging is defined as an increase in rent of more than 10%.
2. Disaster declaration is:
 - a. A national emergency by the President of the United States.
 - b. A disaster emergency by the Governor.
3. Disaster period means the date a disaster declaration begins and continuing for one year after the date of the initial disaster.
4. **Price gouging of rent is now an unfair and unconscionable act or practice when, during a disaster period and within the designated area if a disaster declaration specifically declares a material decrease in residential housing units, the person engages in price gouging in the provision of or offer to provide rent-based housing.**



Leasing Issues



Over the last several years, the laws related to property management, landlord/tenant, and leasing issues have evolved significantly. On the next few slides is a list of just some of the laws passed by the Colorado General Assembly in the last few years.



Leasing Issues



- SB18-010: Receipts and Copies
- SB18-015: Protecting Homeowners and Deployed Military Personnel Act
- HB19-1106: Rental Application Fees
- HB19-1118: Time to Cure Lease Violations
- HB19-1170: Residential Tenant Health and Safety Act





Leasing Issues



- HB19-1328: Bed Bugs
- HB20-1009: Suppressing Court Records of Eviction
- HB20-1332: Source of Income
- SB20-224: Immigrant Tenant Protection Act
- HB21-1121: Residential Tenancy Procedures
- SB21-173: Rights in Residential Lease Agreements

LET'S
DISCUSS!



Leasing Issues



- HB22-1102: Veterans and Military Status in Fair Housing
- HB22-1314: Towing Carrier Nonconsensual Tows
- SB23-148: Concerning Property Used to Illegally Manufacture Drugs
- HB23-1254: Warranty of Habitability Expansion
- HB23-1120: Eviction Protections for Residential Tenants
- SB23-184: Protections for Residential Tenants

LET'S
DISCUSS!





LET'S
DISCUSS!

Leasing Issues



- HB23-1099: Portable Tenant Screening Report
- HB23-1095: Prohibiting the Inclusion of Certain Provisions in Written Rental Agreements
- HB23-1068: Pet Ownership in Housing
- SB23-206: Environmental Hazards - Radon
- HB24-1286: Equal Justice Fund Authority
- HB24-1099: Defendant Filing Fees in Evictions



Obtaining or maintaining competence is imperative. If you are assisting clients in this sector OR if you are a Broker acting as a principal (you are a landlord or a tenant) acting on your own account, getting up to date on the latest laws and regulations is best. We just identified 23 bills that became law in recent years. How many of these are you aware of?

If you lack knowledge or competency on these bills, there are many Continuing Education providers offering in-depth courses on these essential leasing issues.

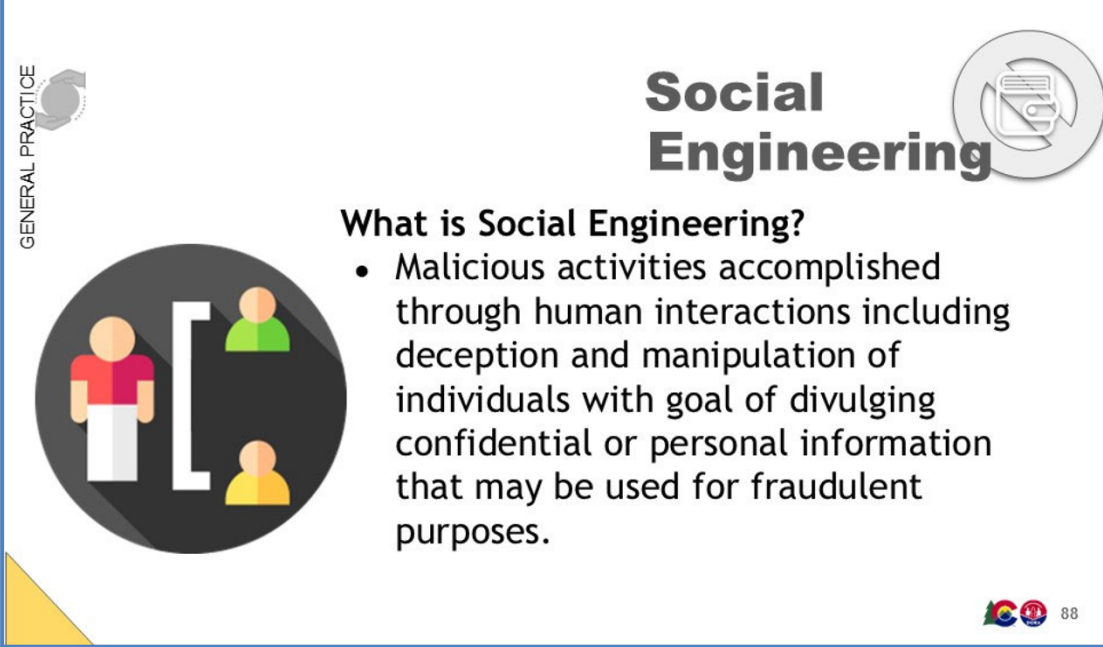


Leasing Issues



- ★ CREC Rule 5.17-Mark-Ups
- ★ CREC Rule 6.21-Referral Fees and RESPA
- ★ § 12-10-217(1)(t), C.R.S.
- ★ Commission Position Statement 1-Contracts Provided By Principals Selling Real Property
- ★ Commission Position Statement 22-Conflicts of Interest
- ★ Seibel v. Colorado Real Estate Commission, 530 P.2d 1290 (Colo. App. 1974)
- ★ Colorado General Assembly Bills:
<https://leg.colorado.gov/bills>

Social Engineering



The slide features a blue border. On the left, a vertical label reads 'GENERAL PRACTICE' next to a circular icon containing three stylized human figures. To the right, the title 'Social Engineering' is displayed in a large, bold, dark font, with a circular icon of a document and a keyhole to its right. Below the title, the question 'What is Social Engineering?' is followed by a bullet point. In the bottom right corner, there are small logos and the number '88'.

Social Engineering

What is Social Engineering?

- Malicious activities accomplished through human interactions including deception and manipulation of individuals with goal of divulging confidential or personal information that may be used for fraudulent purposes.

88

What is Social Engineering?

- Social engineering is the use of deception to manipulate individuals into divulging confidential or personal information that may be used for fraudulent purposes.
- Social engineering relies on exploiting human psychology rather than direct hacking of computer systems.
- There is no singular approach to committing this type of fraud. It may include one or a combination of the following:

Phishing: Fraudulent emails or messages tricking victims into providing sensitive information, like passwords or credit card numbers.

Pretexting: Creating a fabricated scenario to gain trust and extract information, such as impersonating a bank representative.

Baiting: Offering something enticing (e.g., a free download) to get victims to expose their data or systems to attack.

Tailgating: Physically following an authorized person into a restricted area by taking advantage of their courtesy.

Quid Pro Quo: Promising a benefit or service in exchange for sensitive information, like posing as tech support offering assistance.

- Social Engineering is any type of action where a fraudster uses human interactions to accomplish a fraudulent goal.

It could be as simple as someone politely asking to “hold the door” to gain access to a secure area.

It can be more complex as well, creating elaborate explanations for why the transaction should happen quickly and/or without in-person meetings or making threats that something confidential or embarrassing will be disclosed if the broker does not comply with demands.



Social Engineering



Practical Scenario

Broker uses a showing service to schedule and share entry credentials for its listing. A person (claiming to be a broker) contacts Broker directly saying that they have a very interested buyer, asks if the property is inhabited or not, and indicates their buyer is looking for a quick close. Broker gives entry credentials to the person.



Social Engineering



Questions

- What did the Broker do wrong?
- What could the Broker have done differently?



Social Engineering



What did the Broker do wrong?

- Broker should not have provided confidential information about the property or access to the property.

What could the Broker have done differently?

- Broker should have utilized the showing service.
- Broker should have verified license status of caller.

What did the Broker do wrong?

Should not have provided confidential information about the property unless authorized by the seller.

Should not have discussed if the property was inhabited.

Should not have discussed any interest for the sellers to have a fast close.

Broker did not confirm whether the other person was a broker or not.

Should not have provided any entry information/lockbox information.

What could the Broker have done differently?

Broker should have confirmed the identity of the other person-
Broker?

Broker should have utilized the showing service.



Social Engineering



Practice Pointers:

1. Social Engineering Scams are common.
2. Scams can affect buyers, sellers, landlords, tenants, brokers, title companies, and others involved in real estate transactions.
3. Brokers should be on the lookout for basic cues that might indicate fraud.

Several practice points that all Brokers should be aware of.

1. Social Engineering Scams are common. According to the Colorado Bureau of Investigations, social engineering scams are increasingly common. To that end, the Division of Real Estate has issued numerous Broker Practice Advisories over the years regarding this increase. In addition, various other law enforcement agencies have expressed concerns about this increase. Brokers need to keep their eyes and ears open.

2. Scams Target Everyone. Scams can affect buyers, sellers, landlords, tenants, brokers, title companies, and others involved in real estate transactions. Scammers commonly cast a wide net.

3. Brokers should be on the lookout for basic cues that might indicate fraud.



Social Engineering



Practical Scenario

Broker was contacted by the owner of a 35 acre parcel of land with a small cabin in unincorporated Pueblo County.

Seller has one brief telephone call with Broker and all communications thereafter are by email because Seller travels a lot for work. Broker researches ownership records in county records and the owner name matches the name of who they spoke to on the telephone.

As the transaction progresses, (1) Seller refuses to meet with the Broker, (2) Seller misspells his own name a few times in emails, and (3) Seller asks for a remote closing with a title company of their choosing that Broker never has worked with before.



Social Engineering



Questions

- ❓ What should the Broker be looking for from the Seller?
- ❓ What basic cues should Broker have picked up on?



Social Engineering



What should the Broker be looking for from the Seller?

- Identity of the consumer. Engage with the title company, neighbors, HOA Boards, assessor, deed, etc.

What basic cues should Broker have picked up on?

- The scenario addresses that (1) the Seller refused to meet with the Broker, (2) Seller misspelled his own name a few times, and (3) Seller asked for a remote closing with a title company of their choosing that Broker never has worked with before.



95

What should the Broker be looking for from the Seller?

Listing Brokers should be able to confirm the identity of their consumer. Consider:

- Public research-Assessor's Office or Clerk and Recorder records.
- Title company.
- Internet research.
- Reviewing government issued ID.
- Meeting in person.

What basic cues should Broker have picked up on?

There are a lot of cues in the scenario itself.


- the Seller refused to meet with the Broker,
- Seller misspelled his own name a few times, and
- Seller asked for a remote closing with a title company of their choosing that Broker never has worked with before.

There are many other basic cues that Brokers should be aware of (this is not an exhaustive list, and no single example is indicative of fraud): To identify a few:


- Fraudsters may not have a strong grasp of the English language.
- Fraudsters contact brokers through a legitimate-seeming email address or manipulate their caller ID for contact via telephone or text to initiate the transaction.
- Fraudsters not allowing in-person communication and requires that all communications be by text or email.

- Fraudsters commonly develop various excuses for (1) why they want to sell the property, (2) why time is of the essence, or (3) why they are the only point of contact for the transaction.
- Fraudsters instruct the broker to use a remote closing company.
- Fraudsters will typically use a “local” notary of the fraudster’s choosing and not accept the services of other professionals.
- Fraudsters may present documentation in support of their claim of being a legitimate representative such as Letters from a Probate Court or an executed power of attorney or fraudulent government ID.
- Fraudsters appear to carbon copy (cc) the actual owner on email correspondence.

GENERAL PRACTICE




Social Engineering



Practice Pointer: Some brokers may rely on their legal counsel to make sure that they have practices in place to prevent security breaches or when they take on representation for people who are not the **real** owners.

Not all brokers have legal counsel at the ready. Therefore, all brokers need to be aware of the inherent risks and the increased frequency of these types of scams. Risks include both loss of reputation and disciplinary action.



Office policy manuals often identify common vehicles for fraud and how to avoid them. While not all these policies are developed by legal counsel, many are. It is important that brokers follow these policies to ensure security in their transactions.

With that understood, not every brokerage has a lawyer (or a law firm) at their disposal. Brokerages should consider having office policy manuals reviewed regularly to address common and less common scams. In support of that, the Commission has, in 2024, determined that cybersecurity and privacy concerns warranted a new Commission Position Statement. In October 2024, the Commission approved CP 30 to address these issues.




Social Engineering




- ★ 12-10-404(2), 12-10-405(2) and 12-10-407(3), C.R.S.-Confidentiality Statutes
- ★ CREC Rule 6.3.D-Employing Broker Responsibilities

Data Security


GENERAL PRACTICE 

Data Security



Practice Pointer: Data Security is paramount in your practice. Commission Position Statement 30 was passed and became effective October 1, 2024. **It addresses a variety of best practices for data security:**

- Conducting a cybersecurity threat assessment
- Email security and use
- Password practices
- Access to networks, including public wi-fi
- Multi-factor Authentication (MFA)/2 factor authentication (2FA)
- Wire transfer safety



CP-30 addresses various best practices that all brokers should consider implementing into their practice:

- When conducting scams, fraudsters look for the weakest link where they can obtain information. Do not let this be you, the broker.
- Fraudsters have to be right once. Brokers, other professionals, and consumers need to be right every time.
- Brokers should be careful to verify the parties to a transaction before ever sending confidential information.


CP 30 Addresses:

1. Conducting a cybersecurity threat assessment
2. Email security and use
3. Password practices
4. Access to networks, including public wi-fi
5. Multi-factor Authentication (MFA)/2 factor authentication (2FA)
6. Wire transfer safety


Carefully review CP 30 and implement it into your practice.


GENERAL PRACTICE

Data Security


 **Practice Pointer:** There are 30 approved Commission Position Statements. Review all of them carefully on the Division website here:

[Search for a Licensee](#) [Real Estate Manual & Position Statements](#) Select Language ▾

 **COLORADO**
Department of
Regulatory Agencies
Division of Real Estate


Search 




Division of Real Estate ▾ Division Programs ▾ Consumers ▾ Online Services ▾ DORA Home


 99

GENERAL PRACTICE

Data Security

 Important notes to discuss about Commission Position Statements generally:

-  CPs are approved by the Colorado Real Estate Commission.
-  CPs are not law. CPs should be interpreted as non-binding direction on relevant laws and regulations.
-  CPs offer important practice-related guidance to real estate practitioners.






 100

1. CPs may be updated, deleted, or added from time to time by the Colorado Real Estate Commission.
2. CPs are not law. CPs should be interpreted as non-binding direction on relevant laws and regulations. CPs **do not** carry the full force and effect of laws and regulations.

CPs offer important practice-related guidance to real estate practitioners. For new and seasoned professionals, CPs can serve as a starting point to understand law and learn about a new segment of the practice.



Quick Tips To Keep Your Data and Your Consumers Data Safe from Social Engineering Scams!

-  Slow down
-  Research the facts
-  Do not let a link be in control of where you go
-  Be Aware of Hackers
-  Discuss these concepts with your consumer so that they are also on alert

1. **Slow down.** Spammers want you to act first and think later. If the message conveys a sense of urgency or uses high-pressure sales tactics be skeptical; never let their urgency influence your careful review.
2. **Research the facts.** Be suspicious of any unsolicited messages. If the email looks like it is from a company you use, do your research. Use a search engine to go to the real company's site, or a phone directory to find their phone number.
3. **Do not let a link be in control of where you go.** Stay in control by finding the website yourself using a search engine to be sure you land where you intend to land. Hovering over links in email will show the actual URL at the bottom, but a good fake can still steer you wrong.
4. **Be Aware of Hackers.** Hackers, spammers, and social engineers can take over control of people's email accounts (and other communication accounts). Once they control an email account, they can prey on the trust of the person's contacts. Even when the sender appears to be someone you know, if you are not expecting an email with a link or attachment check with your friend before opening links or downloading.
5. **Discuss With Your Consumer.** Ensure that you have discussed these concepts with your consumer so that they do not fall prey to these types of fraud during or after the transaction.



Data Security

- ★ CP 30-Data Security and Privacy:
<https://dre.colorado.gov/real-estate-manual-and-position-statements>
- ★ Broker Real Estate Advisory:
https://drive.google.com/file/d/1PQ_nHin4ZOmuZi_HUQCS1q4qhebh3vue/view

Occupancy Agreements

GENERAL PRACTICE



Occupancy Agreements



Practical Scenario

Buyer and Seller enter into a Post-Closing Occupancy Agreement because the Seller needs 30 days to get out of the residence after closing. Buyer is moving from out-of-state and is in no rush, so they agree. Seller states that because they will be maintaining the property for 30 days, they do not want to pay rent. Buyer agrees and the parties sign an agreement with \$0.00/month rent and a \$3,000.00 security deposit.



GENERAL PRACTICE



Occupancy Agreements

Questions

- ? What is a Post-Closing Occupancy Agreement?
- ? Can rent be \$0.00 per month?
- ? Can the security deposit be \$3,000.00?





Occupancy Agreements

LET'S
DISCUSS!

What is a Post-Closing Occupancy Agreement?

- an arrangement to rent-back a property to the sellers

Can rent be \$0.00 per month?

- Yes, but use caution

Can the security deposit be \$3,000.00?

- If rent is \$0.00, NO!



What is a Post-Closing Occupancy Agreement?

Available for use for up to sixty (60) days following closing is a short-term rental arrangement between the buyer and the seller. There are a variety of reasons for the allowed duration of 60 days, but the primary reason is that lenders may interpret a term longer than 60 days to indicate that the property is not owner-occupied and, might constitute a breach of any lending agreements or deeds of trust. Licensees should know that if seller possession will last longer than sixty (60) days, a document should be prepared by an attorney licensed to practice law in the State of Colorado.

The Colorado Real Estate Commission has approved a Post-Closing Occupancy Agreement form which addresses a variety of topics: maintenance, damage taking place after closing, access to the property by the buyer, and the amount of rent, to identify a few.

Can Rent be \$0.00 per month?

Yes, a buyer can charge a rental amount, provided that the seller agrees to the amount in the Post-Closing Occupancy Agreement. For the reason discussed in the answer to the next question, the parties should consider a positive amount of rent.

Can the security deposit be \$3,000.00?

No, as long as the rent is \$0.00. Security Deposit law change limited Security Deposits. Pursuant to SB23-184, **security deposits cannot exceed 2 times the monthly rent**. If buyer does not charge rent (i.e. \$0.00), then there can be no security deposit.

Brokers should be aware that a Post-Closing Occupancy Agreement creates a landlord/tenant relationship. Therefore, landlord/tenant laws apply.



Occupancy Agreements

LET'S
DISCUSS!

What is a Post-Closing Occupancy Agreement?

- an arrangement to rent-back a property to the sellers

Can rent be \$0.00 per month?

- Yes, but use caution

Can the security deposit be \$3,000.00?

- If rent is \$0.00, NO!



Brokers are acting like a property manager or landlord in these situations. Compliance with applicable laws is required (ie-security deposits, fair housing, etc.). Example: return of security deposit within 30 days is required. If you fail to comply with requirements to return the security deposit, you are subject to treble damages.

Brokers should carefully discuss the specific terms of any Post-Closing Occupancy Agreement. There are numerous important concepts which should be understood by either the buyer or the seller.



Occupancy Agreements



CREC-Approved Post-Closing Occupancy Agreement Form:

https://drive.google.com/file/d/1EbWUq_S6f85-OZ6ESPal-L_YXE71T40/view



Broker Practice Advisory:

https://drive.google.com/file/d/11LdfBqA7L_mcwHcYYPN6mZsoda2Lulf/view




N.A.R. Settlement

This section is not presented to provide a comprehensive background about the National Association of Realtors® (N.A.R.) lawsuits but a brief description of the lawsuits may be helpful. Understand that this discussion is not designed to discuss the merits of those cases.

The most well-known lawsuit name was Sitzer-Burnett although the N.A.R. settlement resolved numerous lawsuits.

The lawsuits generally alleged that Realtors® conspired to earn more fees and violated antitrust laws.


GENERAL PRACTICE 


N.A.R. Settlement

Background

What is the N.A.R. Settlement About?

- ❗ Over the last few years, numerous lawsuits have been filed across the country.
- ❗ In these cases, the plaintiffs generally **alleged** Realtors®:
 - conspired to earn more in fees
 - violated antitrust laws.


 108


GENERAL PRACTICE 

N.A.R. Settlement

Background Is there more to the N.A.R. Settlement story?
Although the NAR Settlement has been approved by the Judge, what might happen next is still in flux. As these issues evolve, all licenses must stay on top of this:

- Check with your MLS about changes
- Take relevant Continuing Education Courses
- Discuss with your Managing Broker

 **Practice Pointer:** Colorado law, particularly the Uniform Duties, have not changed at all as a result of the N.A.R. Settlement

 109

Is the N.A.R. settlement the end of the saga?

- The short answer is that we do not know but also, we are not here today to guess at what is next.
- It is possible that additional lawsuits be filed by buyers, sellers, landlords and tenants.
- It is possible that the Department of Justice may take an interest on the federal level.
- Accordingly, licensees should stay up to speed on current events. Licensees can do so by checking with your MLS REGULARLY about practice changes, talk with your Brokerage Firm, take relevant Continuing Education courses.

Colorado law has not changed at all as a result of the N.A.R. Settlement.

**Background**

As licensees, why does the N.A.R. settlement matter?

- ❗ Many licensees are Realtors®
- ❗ Other licensees are “Participants” in Multiple Listing Services

All squares are rectangles, but **not all** rectangles are squares. Similarly, all Colorado Realtors® are licensees, but **not all** licensees are Realtors®. As of the effective date of the settlement, Colorado had approximately 52,000 licensees and at about the same time, the Colorado Association of Realtors® identified more than 26,000 members.

An important question must be answered: Who does the N.A.R. settlement apply to in Colorado? The settlement applies to:

1. All Realtors®
2. All “Participants” in the MLS. All licensees should carefully review and understand the terms of service for their MLS. Most MLS services identify “Participants” as MLS users who are not Realtors®. These terms of service require compliance with the settlement. This brings in many agents because so many agents use the services of MLS companies around the State.



N.A.R. Settlement



Background

Approaching the N.A.R. settlement since August 17, 2024. What has changed?


- Prohibited: Offers of compensation/cooperative commission agreement in MLS.
- Other changes
- ❗ License law and the terms of the N.A.R. settlement differ. It is NOT the law that requires these practice changes.
- ❗ Brokers must not misrepresent the law.

Practice Changes vs. Regulation and law: The N.A.R. Settlement dictates what Realtors® have to adopt as practice changes, THESE ARE NOT LEGAL CHANGES.






All brokers that are Realtors® or Participants in the MLS need to comply with the settlement terms however, the Commission will **NOT** enforce a failure to do so. This means:


1. Listing agents are not permitted to identify a cooperative commission in the MLS. Historically, many agents offered a cooperative commission in the listing on the MLS. This is no longer allowed. Commissions have been decoupled: buyer's agent and seller's agent compensation are no longer connected.
2. Other changes include having an agreement in place before showing a property to a prospective buyer. The N.A.R. Settlement requires that to view a property, a buyer and Realtor® must enter into an agreement.
 - a. Many people have adopted the term "Touring Agreement" to talk about this written agreement, but there is **NO REQUIREMENT UNDER COLORADO LAW.**
 - b. **Colorado law does not require a written agreement for a Transaction Brokerage relationship however Broker does need authorization to receive compensation. Best Practice is, and has always been, to get an agreement in writing.**

3. **The NAR settlement did NOT change the law in Colorado.** The State of Colorado is not a party to the lawsuits nor to the settlement. As such, all brokers must use caution to:
 - a. Not misrepresent the law.
 - b. Not conflate MLS Rules with Colorado State law.
 - c. Not mischaracterize the purpose of the touring agreement.

N.A.R. Settlement 

Practice Pointers:


-   No Broker should refuse to show a property because of the amount of compensation that is offered.
-  Every Broker should have a conversation with their consumer about compensation.
-  The N.A.R. Settlement only applies to residential transactions. It does not apply to commercial transactions.
-  Be aware of the exchange of confidential information and providing the Brokerage Disclosure to Buyer (BDB24-8-24).





Important Comments:




1. Colorado law does not require a real estate license to show a property, but **BEFORE** any confidential information is exchanged, working relationships must be defined.
2. It is important for all licensees to understand that neither single agency nor transaction brokerage require a signed agreement with a broker to view property. C.R.S. §12-10-301 states that a real estate agent or broker is entitled to a commission for finding a purchaser who is ready, willing and able to complete the purchase of real estate as proposed by the owner until the same is consummated or is defeated by the refusal or neglect of the owner to consummate the same as agreed.
- Any agent with questions about how to comply with the settlement terms should:


1. Refer to the MLS rules and the NAR settlement
2. Discuss with your managing broker, legal counsel, MLS provider, or the Colorado Association of Realtors.
 - The N.A.R. Settlement only applies to residential transactions. It does not apply to commercial transactions.
 - The Division is commonly asked about the existence of additional forms and why certain forms have not been promulgated by the Commission. Examples are a residential lease and a tenant and/or buyer radon disclosure form. CREC Rule 7.1.A is clear, that if there is a Commission-approved form, a Broker must use that form if it is appropriate for the transaction.
 - For those Brokers that require forms that are not Commission-approved, Brokers can consider contacting the Colorado Bar Association Continuing Legal Education store (<https://cle.cobar.org/>) where forms like the following can be found:
 1. Tenant Radon Disclosure Form (pursuant to SB23-206)-prepared by the Colorado Bar Association.
 2. Buyer Radon Disclosure Form (pursuant to SB23-206)-prepared by the Colorado Bar Association.
 3. Brokerage Firm Compensation Agreement Form-prepared by the Colorado Bar Association.

N.A.R. Settlement 


GENERAL PRACTICE 





-  C.R.S. §12-10-301-When entitled to commission
-  N.A.R. Settlement:
<https://www.nar.realtor/sites/default/files/documents/nar-settlement-agreement-download-2024-04-19.pdf>
-  N.A.R. Settlement FAQs:
<https://www.nar.realtor/the-facts/nar-settlement-faqs>

 113


Contracts and Forms


GENERAL PRACTICE 


 **CONTRACTS & FORMS**




With a highlight of changes made to various existing CREC-approved contracts and forms and new forms created and approved by CREC, students will be able to better serve their clients.

 114

GENERAL PRACTICE 

 **CONTRACTS & FORMS**




In August, 2024, 11 documents were updated by the Commission.

The Division provides redline and clean versions of the changed forms each year. These are provided for Brokers to review **BEFORE** and **DURING** the time that forms are effective. These redlined documents remain available until approximately October each year.



CREC-Approved Contracts & Forms Webpage:

<https://dre.colorado.gov/real-estate-broker-contracts-and-forms>

 115


All Brokers should be advised that the Division makes available any updated Contracts and Forms each year. After any forms have been approved by the Commission, the Division, on its website, makes available both redline and clean versions of the updated forms for review. This allows every Broker to review the documents in advance of the implementation of the contracts and forms.

Furthermore, the documents exhibiting the changes remain on the Division's website for much of the following year, so Brokers that would like to revisit any changes or for any Broker who has not used a certain form for some time, so that the Broker can be aware of any changes since the form was used last in their practice.



Brokerage Disclosure To Buyer

- The first section of this document is unchanged.
- The first section of this document is NOT an agreement, it is ONLY a disclosure and must be provided to the consumer before the Broker solicits confidential information.



Brokerage Disclosure to Buyer is one of the more commonly misused and misunderstood forms for Brokers across the state.

The first portion of this document is a DISCLOSURE. It is not a CONTRACT. It is not an agreement.



Brokerage Disclosure To Buyer

- The second section of this document (shown on the next slide) has been added and can create an agreement between the parties regarding compensation (NOTE: The Buyer's Listing Contract does so as well)
- Brokers need to be reminded that CREC Rule 7.1 requires that if the Commission has approved a form, Brokers are required to use that form.

The second section of the Brokerage Disclosure to Buyer can be used to create an agreement between the parties for compensation.

Another CREC-approved form that can be used to establish an agreement for compensation is the Buyer's Listing Contract.



Brokerage Disclosure To Buyer (con't)

BUYER'S BROKER'S COMPENSATION AGREEMENT

Compensation charged by brokerage firms is not set by law and is fully negotiable.

In consideration of the services to be performed by Buyer's Broker as Buyer's transaction-broker, Buyer's Broker's brokerage firm (Brokerage Firm) will be paid a fee equal to ___ % of the purchase price or \$ _____ (Success Fee) with no discount or allowance for any efforts made by Buyer or any other person. Unless approved by Buyer, in writing, Brokerage Firm is not entitled to receive additional compensation, bonuses, and incentives paid by listing brokerage firm or seller.

The Success Fee is earned by Brokerage Firm upon Buyer's Broker performing services that result in Buyer entering into a contract to purchase property acceptable to Buyer and is payable upon closing of the transaction. If any transaction fails to close as a result of the seller's default, with no fault on the part of Buyer, the Success Fee will be waived. If any transaction fails to close as a result of Buyer's default, in whole or in part, the Success Fee will not be waived; such fee is due and payable upon Buyer's default, but not later than the date that the closing of the transaction was to have occurred.

Broker is authorized and instructed to request payment of the Success Fee from one or both of the following: (1) the seller's brokerage firm; (2) seller. Buyer is obligated to pay any portion of the Success Fee which is not paid by the seller's brokerage firm or seller, but only if Broker discloses to Buyer the amount Buyer must pay, in writing and prior to Buyer entering into a contract with the seller.

Part Two of the document is a contract.


It is imperative that all Brokers be reminded to not misrepresent the law to the public. Except for Buyer Agency, no contract is required by Colorado Law. Transaction Brokerage does not require a written contract.

Why consider presenting this section to your consumer?

If you conduct business as a transaction broker, a relationship is established but there is no mechanism by which the parties have yet contemplated compensation. This compensation agreement sets forth the amount and manner of compensation for the Buyer's Broker.

It makes clear that the Buyer must approve in writing any additional compensation, bonuses, or incentives to the Brokerage Firm paid by the listing brokerage or the seller.


GENERAL PRACTICE



CONTRACTS & FORMS

- Contract to Buy and Sell Real Estate:
 - Residential
 - Residential Foreclosure
 - Income-Residential
 - Commercial
 - Land

906 **29. BUYER'S BROKERAGE FIRM COMPENSATION.** Buyer's brokerage firm's compensation will be paid, at Closing, as
907 follows:
908 **29.1.** ____% of the Purchase Price or \$ _____ by Seller. Buyer's brokerage firm is an intended third-party
909 beneficiary under this provision only. The amount paid by Seller under this provision is in addition to any other amounts Seller is
910 paying on behalf of Buyer elsewhere in this Contract.
911 **29.2.** ____% of the Purchase Price or \$ _____ by Buyer pursuant to a separate agreement between Buyer and
912 Buyer's brokerage firm. This amount may be modified between Buyer and Buyer's brokerage firm outside of this Contract.
913 **29.3.** ____% of the Purchase Price or \$ _____ by a separate agreement between Buyer's brokerage firm and
914 Seller's brokerage firm.

 119

Paragraph 29 was added to the five different versions of the Contract to Buy and Sell.

29.1-29.3 set forth different scenarios for the compensation of the Buyer's Brokerage Firm.


Contract to Buy and Sell Real Estate: Other Changes

- Paragraph 2.5: Inclusions
 - Home Warranty
 - Encumbered Inclusions
 - Leased Items
 - Solar Power Plan
- Paragraph 2.7: Water Rights/Well Rights
- Paragraph 4.5.3: Loan Limitations
- Paragraph 4.6: Assumption
- Paragraph 5.5: Buyer Representation of Principal Residence
- Paragraph 8.9: Mineral Rights Review
- Paragraph 24: Termination

Paragraph 2.5: Inclusions

- 1) Home Warranty paragraph was moved to this paragraph from another location in the CBS.
- 2) Encumbered Inclusions, Leased Items, and Solar Power Plans: Added checkboxes to clarify if Buyer Will or Will Not assume the debt associated with each section.
- 3) Leased Items: Added checkboxes to clarify if Buyer Will or Will Not assume the debt associated with each section.
- 4) Solar Power Plans: Added checkboxes to clarify if Buyer Will or Will Not assume the debt associated with each section.

Paragraph 2.7: Water Rights/Well Rights

Buyer has right to terminate contract if water rights are unsatisfactory.

Paragraph 4.5.3: Loan Limitations

Seller and Buyer agree that any closing costs for a FHA or VA loan does not include any compensation to be paid to Buyer's Brokerage firm.

Paragraph 4.6: Assumption

Added language to terminate the Contract if Seller's lender does not provide written consent for the loan assumption by Buyer to the Buyer and the Closing Company either on or before the Closing.

Paragraph 5.5: Buyer Representation of Principal Residence

Added language that Buyer represents that Buyer will or will not occupy the Property as a principal residence after closing.


Paragraph 8.9: Mineral Rights Review

Buyer has the right to terminate the contract if the mineral rights are unsatisfactory.

Paragraph 24: Termination


Added language that any Notice to Terminate delivered after the applicable deadline is ineffective and does not terminate the Contract.

GENERAL PRACTICE

 **CONTRACTS & FORMS**

Contract to Buy and Sell Real Estate: Commercial

- Paragraph 10.6.4
 - References to the Americans with Disability Act (“the ADA”) were moved.

 121

Paragraph 10.6.4

References to the ADA were moved.



Exclusive Right to Buy Listing Contract

- Compensation charged by brokerage firms is not set by law **and is fully negotiable.**
- Throughout the form, the term “Commission” was changed to “Compensation”.
- Paragraph 7: Compensation to Brokerage Firm



Practice Pointer: Brokers should be reminded that an agreement is **REQUIRED** to act as an Agent.

Compensation charged by brokerage firms is not set by law and is fully negotiable.

Throughout the form, the term Commission was changed to Compensation.

Paragraph 7: Compensation to Brokerage Firm

- Brokerage firms are not entitled to additional compensation, incentives or bonuses without the Buyer’s written approval.
- Paragraph 7.3.1: Checkbox to allow Buyer’s Broker to seek compensation from the Seller or Seller’s Brokerage Firm.
- Paragraph 7.3.2: Checkbox to require Buyer to pay Buyer’s Broker
Buyer is obligated to pay unless agreed to by the Buyer.
- If no box is checked, 7.3.1 is the default.

A written agreement is REQUIRED to act as an Agent.



Exclusive Right to Sell Listing Contract

- Compensation charged by brokerage firms is not set by law and is **fully negotiable**.
- Throughout the form, the term Commission was changed to Compensation.
- Brokers have an obligation to disclose compensation offers made by Seller when authorized to do so and keep them confidential when NOT authorized to disclose.



Exclusive Right to Sell Listing Contract (con't)

- Paragraph 7: Compensation to Brokerage Firm

121 7. COMPENSATION TO BROKERAGE FIRM; COMPENSATION TO BUYER BROKERAGE FIRM. Seller agrees that
 122 any Brokerage Firm compensation that is conditioned upon the Sale of the Property will be earned by Brokerage Firm as set forth
 123 herein without any discount or allowance for any efforts made by Seller or by any other person in connection with the Sale of the
 124 Property.
 125 7.1. Amount. In consideration of the services to be performed by Brokerage Firm Seller agrees to pay Brokerage Firm as follows:
 126 7.1.1. Sale Compensation. (1) _____ % of the gross purchase price or (2) _____
 127 in U.S. dollars.
 128 7.1.1.1. If buyer's brokerage firm: (i) procures a buyer; and (ii) the transaction results in a closing of the
 129 Sale of the Property to such buyer, Seller's Brokerage Firm may enter into a compensation agreement with buyer's brokerage firm
 130 to contribute from the Sale Compensation an amount of _____ % of the gross purchase price or \$ _____, in U.S. dollars to buyer's
 131 brokerage firm.
 132 7.1.1.2. If Seller agrees to pay the buyer's brokerage firm pursuant to the contract between buyer
 133 and Seller, Seller's compensation to Seller's Brokerage Firm will be reduced by that amount not to exceed the buyer's brokerage
 134 firm compensation set forth in § 7.1.1.1.
 135 7.1.2. Lease Compensation. If the box in § 3.6.2. is checked, Brokerage Firm will be paid a fee equal to (1) _____ %
 136 of the gross rent under the lease, or (2) _____ in U.S. dollars, payable as follows:
 137 Brokerage Firm agrees to contribute from the Lease Compensation to tenant's brokerage firm an amount of _____ % of the
 138 gross rent or \$ _____ in U.S. dollars if (i) tenant's brokerage firm procures the tenant; and (ii) the tenant enters into a lease with
 139 owner or owner's agent for the Property.
 140

Paragraph 7: Compensation to Brokerage Firm

- Paragraph 7.1.1 allows for compensation between brokerage firms and the Seller compensating the Buyer's Broker.
- Paragraph 7.1.2: Lease Compensation allows for the listing Brokerage to compensate the Tenant's Brokerage firm.



CONTRACTS & FORMS

Other Documents: Changes were made to address minor substantive changes to the following documents:

- Agreement to Amend/Extend Contract
- Counterproposal
- Residential Addendum to Contract to Buy & Sell Real Estate



CONTRACTS & FORMS



CREC Rule 7.1-Use of Standard Forms



Contracts & Forms Website:
<https://dre.colorado.gov/real-estate-broker-contracts-and-forms>



Colorado Bar Association Forms Store:
<https://cle.cobar.org/>


3


Legislation and Commission News

New Legislation

Commission News and Resources


New Legislation

LEGISLATION 




Practical Scenario


NEW LEGISLATION
RELATED TO OR AFFECTING THE
REAL ESTATE INDUSTRY




Broker regularly lists residential, commercial, and mixed-use properties. She works in Durango where there is an affordable housing shortage. She just listed a 10 unit mixed-use property with 2 commercial units and 8 affordable-housing residential units which were previously rental units.


Broker receives 2 offers and a contract is signed. Broker schedules the closing. Broker is then contacted by the city, stating it wants to purchase the property.


 128


LEGISLATION 




Questions


 What is a right of first refusal?

 What is a Qualifying Property?

 Where can Broker learn more about local government requirements for affordable housing?

NEW LEGISLATION
RELATED TO OR AFFECTING THE
REAL ESTATE INDUSTRY



 129



**LET'S
DISCUSS!**

What is a right of first refusal?

- A Right of First Refusal (ROFR) allows a third party to step in and match an existing offer
- HB24-1175 was passed and became law August 7, 2024 and grants a ROFR to local governments on certain qualifying properties in order to increase available affordable housing stock.

What is a right of first refusal?

A Right of First Refusal (ROFR) allows a third party to step in and **match** an existing offer.

HB24-1175 was passed and became law August 7, 2024 and grants a ROFR to local governments on certain qualifying properties in order to increase available affordable housing stock.

Pursuant to HB24-1175, an offer must be economically identical to any other offer a seller receives and is willing to accept on the qualifying property.

If the local government provides notice to a seller that the government may exercise its right of first refusal, the residential seller shall not proceed with the sale of the property to any other party and the local government shall have a right to make an offer on the property.

LEGISLATION



NEW LEGISLATION
RELATED TO OR AFFECTING THE
REAL ESTATE INDUSTRY



What is a Qualifying Property?

- A Qualifying Property is defined as a multifamily residential or mixed-use rental property consisting of not less than five units that is existing affordable housing, excluding a mobile home park.
- Goal: Increase available affordable housing stock
- Applies to residential and commercial practice



131

What is a qualifying property?

A Qualifying Property is defined as a multifamily residential or mixed-use rental property consisting of not less than five units that is existing affordable housing, excluding a mobile home park.

HB24-1175 aims to increase available affordable housing stock by creating a right of first refusal for a local government to purchase, in the event that a Qualifying Property is being sold.

HB24-1175 applies to both residential and commercial practice.



Where can Broker learn more about local government requirements for affordable housing?

- Local governments may opt to waive its right of first refusal by posting notice in a conspicuous location on its website



**LET'S
DISCUSS!**



Practice Pointer: If buying or selling a qualified property, parties should check with the local government regarding any potential waiver.

Where can Broker learn more about local government requirements for affordable housing?

Brokers, assisting with the listing or the purchasing of qualified properties, should be aware of the rights conferred upon local governments by this bill.

Also, local governments may opt to waive its right of first refusal by posting notice in a conspicuous location on its website.

If buying or selling a qualified property, parties should check with the local government regarding any potential waiver. Several brokers and several real estate attorneys have reached out to the Division of Real Estate to share that they have encountered issues/difficulties due to not being aware of this important law.



Practical Scenario

Broker is the owner of several single-family homes for rental purposes near Fort Collins. Each home is in an HOA on parcels of 2 acres each.



Broker plans to build several Accessory Dwelling Units (ADUs) to increase rental income and reviews the association governing documents, but notes ADUs are not permitted. Nevertheless, she reaches out to the board and submits an architectural design plan/request.



Practical Scenario

Broker is the owner of several single-family homes for rental purposes near Fort Collins. Each home is in an HOA on parcels of 2 acres each.

Broker plans to build several Accessory Dwelling Units (ADUs) to increase rental income and reviews the association governing documents, but notes ADUs are not permitted. Nevertheless, she reaches out to the board and submits an architectural design plan/request.



NEW LEGISLATION
RELATED TO OR AFFECTING THE
REAL ESTATE INDUSTRY

Can the HOA board deny Broker's request to build several ADUs?

- No. HB24-1152 allows single ADU-use as an accessory to a single-unit detached dwelling in a "subject jurisdiction".
- In Common Interest Communities, no provision of a Declaration, Bylaw, or Rule may restrict the creation of an ADU as an accessory use to any single-unit detached dwelling.

Must the Broker provide additional off-street parking?

- That depends. If there is an existing driveway/garage/parking, additional parking is not required.

Can the board deny Broker's request to build several ADUs?

No. HB24-1152 allows single ADU use as an accessory to a single-unit detached dwelling in "subject jurisdiction."

A "Subject Jurisdiction" means either:

- A municipality that both has a population of one thousand or more, and is within a metropolitan planning organization, or
- The portion of a county that is both within a census designated place with a population of 40,000 or more and is within a metropolitan planning organization. In Common Interest Communities, no provision of a Declaration, Bylaw, or Rule may restrict the creation of an ADU as an accessory use to any single unit detached dwelling. If any such provision was passed/implemented, whether before the effective date of HB24-1152 or after the effective date of HB24-1152, such restriction is void as a matter of public policy.

Must the Broker provide additional off-street parking?

- Maybe. It depends on if there is existing off-street parking available to address the increased residential capacity.
- Parking, Owner-Occupied Rules, and overly restrictive designs are not permitted. Local authorities and associations may not require:
 - New off-street parking, as long as there is an existing driveway, garage, tandem parking space, or other off-street parking space or a parking space is required by an applicable zoning district.
 - The ADU or other dwelling on the same lot to be owner-occupied.
 - A restrictive design or dimension standard. For Common Interest Communities, a Reasonable Restriction is defined as a “substantive condition or requirement that does not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct an Accessory Dwelling Unit.”



Bills Specific to Common Interest Communities (01 of 02):



HB24-1337: Changes the process and requirements by which an HOA board can foreclose on a lien.



HB24-1383: Clarifies who has authority to sign an HOA Declaration. It must be executed by, or on behalf of, the owner of the real estate.



SB24-021: Increases the number of units allowed from ten (10) to twenty (20) units for associations to be considered a Limited Expense Community pursuant to the Colorado Common Interest Ownership Act

Every year, the legislature offers a variety of bills that affect Common Interest Communities more directly. Common Interest Communities include homeowners' associations, property owners' associations, condominium associations, cooperatives, etc.).

HB24-1337: Concerning The Rights Of A Unit Owner In A Common Interest Community In Relation To The Collection Of Amounts Owed By The Unit Owner To The Common Interest Community

An association may only foreclose on a lien as long as the association has performed one of the three (3) following functions:

1. Obtained a personal judgment against the unit owner in a civil action; or
2. Attempted to bring a civil action against the unit owner but was prevented by the death of or incapacity of the unit owner; or
3. Attempted to bring a civil action against the unit owner but the association was unable to serve the unit owner within 180 days.

An association has authority to foreclose on a lien if the unit owner is in a bankruptcy civil action.

This bill limits the reimbursement amount for attorney fees the HOA may seek to collect from a unit owner who is delinquent on assessments to 1) \$5,000, or 2) 50% of the original money owed, whichever is less.

This bill establishes a right of redemption for 180 days following a foreclosure sale.

Note: This bill does not affect the ability of the association to foreclose during a payment plan offered by the association in accordance with 38-33.3-209.5, C.R.S. An association may not foreclose on a lie if the unit owner is in compliance with a payment plan.

HB24-1383: Concerning Declarations That Form Common Interest Communities Under The “Colorado Common Interest Ownership Act”


A declaration to a Common Interest Community must be executed by, or on behalf of, the owner of the real estate. In most cases, the owner of the real estate is the developer of the common interest community (or the “Declarant”).

Any amendment to a declaration that adds real estate to an existing Common Interest Community must be executed by, or on behalf of, the owner(s) of the real estate to be added, as shown by the records of the county clerk and recorder’s office of the county where the real estate is located.


SB24-021: Concerning Exempting Certain Small Communities From Certain Requirements Of The “Colorado Common Interest Ownership Act”

This bill consolidates the exception for smaller associations (what are commonly referred to as Limited Expense Communities) by increasing the number of units allowed from ten (10) to twenty (20) units for associations created between the years 1992 and 1998, and uniformly applies the common expenses threshold and inflation adjustment regardless of when an HOA was created.

The bill provides that a cooperative or planned community that may claim the exemption may elect instead to be subject to all of CCIOA by adopting an amendment to its declaration evidencing its election.





LEGISLATION





NEW LEGISLATION
RELATED TO OR AFFECTING THE
REAL ESTATE INDUSTRY

Bills Specific to Common Interest Communities (02 of 02):


- 

HB24-1233: HOA Boards must update their Collection Policy regarding collection on delinquent accounts owned by a unit owner.
- 

SB24-064: The bill directs the Judicial Department to gather and make public information pertaining to residential eviction data.
- 

SB24-134: Common Interest Communities may no longer enforce any covenant or restriction that would prohibit a unit owner from operating a home-based business.
- 

SB24-145: Covenants, Rules or Restrictions which are discriminatory on the basis of race, color, religion, national origin, sex, familial status, disability, or other personal characteristics have long been unenforceable and now can be changed more easily by Boards or Unit Owners.

 137

HB24-1233: Concerning Modifications To Certain Procedural Requirements With Which A Unit Owners’ Association Must Comply When Seeking Payment of Delinquent Amounts Owed By A Unit Owner

Requires associations to update their Collection Policy, one of the nine required responsible governance policies required by the Colorado Common Interest Ownership Act (CCIOA, pronounced Kiowa)

SB24-064: Concerning Requiring The Judicial Department To Make Residential Eviction-Related Information Available To The Public, And, In Connection Therewith, Making An Appropriation

The bill directs the Judicial Department to gather and make public information pertaining to residential eviction data.

This information may prove valuable for property managers and Common Interest Communities and can be shared with consumers and property owners.

SB24-134: Concerning The Operation Of A Home-Based Business In A Common Interest Community

Common Interest Communities may no longer enforce any covenant or restriction that would prohibit a unit owner from operating a home-based business.

Any business must be operated in accordance with reasonable and applicable rules and regulations governing architectural control, parking, landscaping, noise, or nuisance.

SB24-145: Concerning The Enactment Of The “Uniform Unlawful Restrictions In Land Records Act”

Covenants, Rules or Restrictions which are discriminatory on the basis of race, color, religion, national origin, sex, familial status, disability, or other personal characteristics have long been unenforceable.

SB24-145 created a mechanism by which the board or unit owners can have any such offending language removed from the Declaration of Covenants, Conditions and Restrictions.



Other Laws Bills Affecting Real Estate (01 of 02)



HB24-1267: Metropolitan Districts that enforce covenants and design review services must have a written Dispute Resolution Policy and are prohibited certain public policy prohibitions



HB24-1302: Towns, cities, school districts, special districts, and taxing authorities must disclose each tax levy as a part of their annual certification

HB24-1267: Concerning Requiring A Metropolitan District Engaging In Covenant Enforcement Activities To Comply With Certain Policies Related To Covenant Enforcement

For certain Metropolitan Districts, this bill limits the authority to foreclose on liens and imposes restrictions on Metropolitan Districts.

If Metropolitan Districts enforce covenants, they must have a written Fines Policy.

If Metropolitan Districts enforce covenants and design review services, they must have a written Dispute Resolution Policy.

Metropolitan Districts are prohibited from enforcing certain public policy issues, similar to those found in CCIOA (display of flags, display of certain signs, defensible space for fire mitigation, use of rain barrels, and operation of a family childcare home, etc.).

HB24-1302: Concerning Information To Real Property Owners Regarding Property Taxes, And, In Connection Therewith, Making An Appropriation

Towns, cities, school districts, special districts, and other taxing authorities must disclose each tax levy as a part of their annual certification. This information is publicly available, and brokers should consider making their buyers aware of these disclosures so that they are fully informed of the cost of housing.



Other Laws Bills Affecting Real Estate (02 of 02)



HB24-1451: Expansion of the CROWN Act: hair length, as a trait associated with one's race, is a protected trait.



SB24-005: Local entities must comply with certain water-wise activities.



SB24-058: Specific signage is required to limit liability against recreational users of the property for private landowners

HB24-1451: Concerning Protections Against Discrimination Based On Hair Length That Is Associated With One's Race

Previous versions of the ACU have discussed the CROWN Act: (Creating A Respectful and Open World For Natural Hair Act).

Previously, hair texture, hair type, and protective hairstyles were protected against discrimination in public education, employment, and housing practices.

This bill now adds hair length to the list of traits associated with one's race as a protected trait.

SB24-005: Concerning The Conservation Of Water In The State Through The Prohibition Of Certain Landscaping Practices

Local Entities (cities, counties, special districts, and metropolitan districts) are prohibited from installing, planting, or placing any nonfunctional turf, artificial turf, or invasive species, as part of a new development project or redevelopment project after January 1, 2026.

Brokers should consider making their buyers aware of these changes as it may affect the expectations and future use of community elements.

SB24-058: Concerning Landowner Liability Under The Colorado Recreational Use Statute

Requires specific signage (requirements set forth in the bill) to be posted by landowners in order to protect an owner from certain negligence against recreational users of the property.

Commission News and Resources



CREC Rules Updated: March 30, 2024

During 2024, the Colorado Real Estate Commission approved updated the Colorado Real Estate Commission Rules (4 CCR 725-1).



The screenshot shows a webpage titled "Rules & Notices of Rule Making Hearings". It includes a navigation bar with "Home", "About Us", "Contact Us", "Rules", "Forms", "Public Hearings", and "News". The main content area has a heading "Division Program Rules" and lists several rule categories: "Rules Regarding Real Estate Brokers", "Rules Regarding Real Estate Associations", "Rules Regarding Mortgage Loan Originators and Mortgage Companies", and "Rules Regarding Subdivisions and Timeshares". A red arrow points to the "Division Program Rules" section.

 141

Effective March 30, 2024, new rules governing real estate brokers became effective. Rules changes are related to:

1. Updated definitions
2. Commission-approved forms
3. Continuing education requirements
4. Use and handling of trust or escrow accounts, security deposits, and rental proceeds
5. Disclosure of confidential information
6. Accuracy of electronic media and advertising
7. Sign crossing
8. Property access
9. Commission's review of initial decisions and exceptions
10. Implementation of a data security policy
11. Use of mark-ups
12. Use of non-Commission approved Contracts to Buy and Sell
13. Compliance with federal law H.R. 7939, which allows for license portability for members of the military and their spouses.

2025 Colorado Real Estate Manual

The 2025 Colorado Real Estate Manual consists of information pertaining to the Division's licensing programs, applicable statutes, rules, position statements, landmark case law, and important real estate subject areas.

The manual is a beneficial resource for new licensees and seasoned real estate Brokers, mortgage loan originators, appraisers, and other real estate professionals and comes with an eBook download benefit to search the manual digitally.

The 2025 CREC Manual may be purchased from Lexis/Nexis at:

<https://store.lexisnexis.com/>



The Colorado Real Estate Manual is as essential tool for all licensees-both newly licensed and seasoned professionals. It is updated annually with current situation, statutes, and regulations.

Purchasing the Colorado Real Estate Manual from the link on the slide, <https://store.lexisnexis.com/>, will come with a digital eBook so you can take it with you everywhere you go.

Division of Real Estate Website

- Updated Contracts and Forms
- Licensee Advisories
- Consumer Advisories
- E-License: License Upgrades and Renewals
- Licensee & Public Disciplinary Action Look-Up
- Licensee and Common Interest Community Online Complaint Filing
- Education Pages
- BiMonthly Notifications and Quarterly Newsletters
- Abridged 2025 Real Estate Manual
- Division Rules
- Position Statements
- Colorado Open Records Act (CORA) Requests
- HOA Information & Resource Center program page and Frequently Asked Questions
- Link to Division's YouTube Channel With Even More Information





RESOURCES

Colorado Foreclosure Protection Act Guidance:
<https://dre.colorado.gov/division-notifications/understanding-the-colorado-foreclosure-protection-act>

Tenant and Owner Assistance from the Department of Local Affairs:
<https://doh.colorado.gov/im-a-resident>

Active Military for Foreclosures - Servicemembers Civil Relief Act
877-827-3702

Colorado Foreclosure Hotline
1-877-601-HOPE

Colorado Housing Connects
www.coloradohousingconnects.org
1-844-926-6632



As evidenced by local and state law changes in 2024 and statistical data, housing continues to be a significant issue. Housing availability, taxes, cost of housing, foreclosure, and eviction continue to be important and pressing issues in our Colorado communities. This slide identifies various resources all licensees should be aware of to aid their consumers, as well as the general public.

Licensees can encourage consumers in need to reach out.



FEEDBACK

Your feedback is very important to the Division of Real Estate and is taken into consideration when creating the Annual Commission Update course each year.

The feedback will help: (1) the Education Task Force develop future courses and (2) provide instructors with input on their teaching of the course. Help your fellow licensees and help your practice at the same time.

Feedback may be sent by using the survey link below:

<https://www.surveymonkey.com/r/SWY2P2M>

We Value Your Feedback!



The Division carefully reviews and analyzes this information every year to improve the Annual Commission Update course. Student input is essential to improvement. The Division hopes to receive feedback on this course, and input for future courses as well as input on how instructors are teaching the course.

EXAMINATION



Time to Test Your Knowledge

There are two versions of the exam.
Estimated time for an exam is 10 minutes.

At least one exam version must be passed to earn a course completion certificate.

To obtain a passing score, at least 70% of the questions must be answered correctly.



This examination should take roughly 10 minutes.

If a participant is unable to pass the first exam, a second exam is available and can be administered.

If a participant is unable to pass both versions of the exam, the instructor **MUST** review the areas the participant is not understanding.

Once the instructor feels comfortable that the participant has understood the information, a course completion certificate may be granted.