

An \* in the left margin indicates a change in the statute, rule or text since the last publication of the manual.

## ***CHAPTER 1 - LICENSE LAW***

### **Reason for Its Enactment**

Because of the importance of land in the lives of all people, whatever transpires in connection therewith should be on a technically sound and firm legal basis. The Colorado Real Estate Broker License Law was passed, not to make a monopoly of the real estate business, but to protect the people of the State of Colorado. Through licensing, the law seeks competency and integrity on the part of those engaged in the real estate business. Because competency and integrity are essential to good business practice, the law has had the effect of raising the general standing of the real estate business and thus has helped to safeguard the interests of both the public and those engaged in the business.

### **The Concept of Single Licensing**

#### **What is Single Licensing?**

On January 1, 1997, Colorado became the first state to enact single licensing, meaning that all real estate licensees are brokers. Single licensing eliminated the two-tiered system of salespersons and brokers that existed since the first licensing act in 1926.

Single licensing is based on the belief that the public is better served by strengthening basic requirements for licensure. It recognizes that dramatic changes in the industry and in the way real estate transactions are handled directly impact the public. Licensees operating with greater independence should be better trained and bear more responsibility for their acts.

#### **Why have it?**

1. The public expectation is for competence and professionalism from all real estate licensees. All licensees need the same information and need to be trained to perform the same services.
2. The buying and selling public does not distinguish a broker from a salesperson.
3. The workplace environment has changed. The public expects real estate licensees to provide services outside the traditional office-based setting.
4. Technology and training allow associates to operate more independently.
5. Employing brokers are responsible for setting policy and for overall supervision. They are also responsible for a high level of supervision over new licensees.
6. Individuals are more responsible for their acts.
7. Public protection is maintained.

**New Brokers:** Pre-licensing education increased from 120 to 168 hours. A broker licensed on or after January 1, 1997 requires additional education and 2 years experience to become an employing broker.

**Obligations and Duties of an Employing Broker:** Under single licensing, a person meeting the requirements for employing broker status may choose to own and operate a company or become employed by another broker. Responsibility for one's actions under the license law changed somewhat. An experienced broker associate has more responsibility for his or her own acts. However, the employing broker retains important obligations and duties for the protection of the public, including:

1. Maintaining trust accounts and trust account records.
2. Maintaining company transaction records.

3. Developing an office policy manual and ensuring compliance with it.
4. Providing a high level of supervision over new licensees.

### **What the Law Does Not Cover**

The law does not dictate the ethical standards that should be observed in the real estate industry, nor generally of any trade, business or profession. Only indirectly, through the law of crimes (public wrongs) and of torts (private wrongs), does the law impose responsibility for one's moral misconduct in a given field of endeavor. As an example, one entrusted with another's money may be held responsible for its misuse in two ways:

1. through the crime of theft by deception for which a person may be fined and imprisoned, and
2. through the tort of conversion for which a person may be required to return the money plus compensation for any harm caused to the rightful owner by the wrongful use of the money.

Codes of ethics have been voluntarily adopted by various organizations of real estate men and women as guiding standards of high moral and ethical practice. Adherence to such codes is recommended to all who are licensed to engage in real estate business. The codes promote ethical and harmonious endeavor, enables the real estate business to render better service to the people of Colorado and is an additional safeguard for the protection of the public's interest.

The Real Estate Commission should not be confused with the Colorado Association of REALTORS®, a private trade organization affiliated with the National Association of REALTORS® whose members are the only licensees authorized to use the registered trademark "REALTOR"®.

### **The Commission Office**

The office of the Real Estate Commission is structured in state government as one of ten principal divisions of the Department of Regulatory Agencies. An executive director who is responsible for the budgeting, purchasing and related management functions of the entire department, which includes the Real Estate Commission, heads this department.

The Commission has been given rule-making authority by the legislature. Rules are made after notice and public hearing in which all interested parties may participate. In order to assure fairness and impartiality, department executive director must approve the rules promulgated in the areas of licensing and examination. The commission exercises its rule-making authority and the regulation of licensees independent of the department.

The five commissioners are appointed by the Governor and meet each month.

The director of the division of real estate is an administrative officer who executes the directives of the commission and is given statutory authority in all matters delegated by the commission.

The overall objective of the commission is to protect the public. The methods of attaining this objective are included in the following activities or programs.

### **The Master File**

The division staff records the historical and current day-to-day information concerning the licensing status of employers, employees, corporations, limited liability companies and partnership entities, trade names, office locations, and disciplinary actions. The computerized master file supplies public information and is used as evidence in lawsuits concerning real estate transactions.

## **Licensing**

The section's major responsibility is the data entry and upkeep of more than 45,000 real estate broker and appraiser licensing records, as well as registration of subdivision/timeshare developers and mortgage brokers. Licensing staff reviews all applications, including printing and mailing licenses. Application review includes screening for required qualifications (education, experience, examinations, errors & omission (E&O), criminal history background checks). The licensing section also issues license histories to licensees who need to prove their credentials to other jurisdictions.

Colorado has offered to recognize real estate licenses issued by other U.S. and Canadian jurisdictions whose licensing systems are based on similar education and examination requirements. Licensing administers this program currently in effect with approximately 26 full recognition and 9 limited recognition jurisdictions. The full list is on the division Website. The division also reciprocates with most other appraisal jurisdictions.

Applicants with a past civil/criminal conviction may request a "preliminary advisory opinion" regarding the likelihood of a license being issued prior to completing the requirements to apply for a license (Commission Rule A-12). The commission/board may issue either a favorable or unfavorable opinion.

Pre-licensing investigations along with the processing of fingerprint cards are conducted on preliminary advisory and license applicants to safeguard the statutory mandate for truthfulness, honesty and good moral character (12-61-102 and 103(3), and 12-61-709(1) C.R.S). All applications disclosing civil/criminal violations or any form of previous license discipline any jurisdiction are reviewed and investigated thoroughly.

Licenses issued by the section include:

- Real estate broker
- Corporate/LLC real estate brokerage
- Partnership real estate brokerage
- Temporary real estate broker
- Registered appraiser
- Licensed appraiser
- Certified residential appraiser
- Certified general appraiser
- Temporary appraiser

The licensing section also reviews and registers:

- Raw ground subdivision developers
- Time-share and vacation club developers
- Condominium conversion developers
- Mortgage brokers

Information on licensing is located on the Division of Real Estate website at:

<http://www.dora.state.co.us/real-estate/>

## **Enforcement Section**

The real estate commission has the power to investigate the real estate activities of any licensee upon its own motion. If a written complaint is filed, the office is compelled to investigate.

If the complaint against the licensee is of such a serious nature that it may result in disciplinary action against a licensee, a hearing will be held before an administrative law judge appointed by

the department of personnel and administration. The administrative law judge will make an initial decision of revocation, suspension, censure or dismissal. Education courses, probation, and fines can also be mandated. If written objections are not filed with the commission within 30 days, the initial decision becomes final. If written objections are filed, the commission may adopt the findings and initial decision of the administrative law judge, modify the disciplinary action or it may refer the matter back for rehearing. The commission can also issue letters of admonishment in instances where conduct does not warrant formal disciplinary proceedings.

This program also includes:

1. Investigation of applicants;
2. Evaluation of complaints;
3. Investigation of complaints;
4. Informal hearings with complainants, respondents, witnesses and attorneys;
5. Recommendations for dismissal or disciplinary action;
6. Preparation of notices, charges, subpoenas and other legal documents;
7. Preparation of cases for formal hearing, restraining orders, injunctions, or complaints for filing with district attorneys;
8. Working with federal agencies, e.g. Securities and Exchange Commission, Housing and Urban Development, etc.

### **Financial Examination Section**

The real estate commission has the authority to audit a broker's escrow or trust accounts and to examine the records of all real estate transactions. The financial examinations section employs routine and investigative audits to document broker compliance with applicable statutes and commission rules. Routine audits performed on randomly selected brokers are designed as preventive measures to protect the millions of dollars of public money entrusted to them. These audits also advise brokers and their employees on proper procedures to follow when accounting for third party funds in their possession, maintaining required transaction files and supervising the brokerage operation. Investigative audits are initiated in response to complaints received from the public or when routine audit findings identify significant problems. Auditors and investigators work together to resolve these complaints.

**LICENSE LAW**  
**COLORADO REAL ESTATE LICENSE LAW**  
**TITLE 12, ARTICLE 61, C.R.S., AS AMENDED PART 1**

**12-61-101. Definitions.**

As used in this part I, unless the context otherwise requires:

- (1) "Employing real estate broker" or "employing broker" means a broker who is shown in real estate commission records as employing or engaging another broker.
- (1.3) "Limited liability company" shall have the same meaning as it is given in section 7-80-102 (7), C.R.S.
- (1.5) "Option dealer" means any person, firm, partnership, limited liability company association, or corporation who, directly or indirectly, takes, obtains, or uses an option to purchase, exchange, rent, or lease real property or any interest therein with the intent or for the purpose of buying, selling, exchanging, renting, or leasing said real property or interest therein to another or others whether or not said option is in that person's or its name and whether or not title to said property passes through the name of said person, firm, partnership, limited liability company, association, or corporation in connection with the purchase, sale, exchange, rental, or lease of said real property or interest therein.
- (1.7) "Partnership" includes, but is not limited to, a registered limited liability partnership.
- (2) "Real estate broker" or "broker" means any person, firm, partnership, limited liability company, association, or corporation who, in consideration of compensation by fee, commission, salary, or anything of value or with the intention, of receiving or collecting such compensation, engages in or offers or attempts to engage in, either directly or indirectly, by a continuing course of conduct or by any single act or transaction, any of the following acts:
  - (a) Selling, exchanging, buying, renting, or leasing real estate, or interest therein, or improvements affixed thereon;
  - (b) Offering to sell, exchange, buy, rent, or lease real estate, or interest therein, or improvements affixed thereon;
  - (c) Selling or offering to sell or exchange an existing lease of real estate, or interest therein, or improvements affixed thereon;
  - (d) Negotiating the purchase, sale, or exchange of real estate, or interest therein, or improvements affixed thereon;
  - (e) Listing, offering, attempting, or agreeing to list real estate, or interest therein, or improvements affixed thereon for sale, exchange, rent, or lease;
  - (f) Auctioning or offering, attempting, or agreeing to auction real estate, or interest therein, or improvements affixed thereon;
  - (g) Buying, selling, offering to buy or sell, or otherwise dealing in options on real estate, or interest therein, or improvements affixed thereon or acting as an "option dealer";

- (h) Performing any of the foregoing acts as an employee of, or in behalf of, the owner of real estate, or interest therein, or improvements affixed thereon at a salary or for a fee, commission, or other consideration;
  - (i) Negotiating or attempting or offering to negotiate the listing, sale, purchase, exchange, or lease of a business or business opportunity or the goodwill thereof or any interest therein when such act or transaction involves, directly or indirectly, any change in the ownership, or interest in real estate, or in a leasehold interest or estate, or in a business or business opportunity which owns an interest in real estate or in a leasehold unless such act is performed by any broker-dealer licensed under the provisions of article 51 of title 11, C.R.S., who is actually engaged generally in the business of offering, selling, purchasing, or trading in securities or any officer, partner, salesperson, employee, or other authorized representative or agent thereof;
  - (j) Soliciting a fee or valuable consideration from a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence. Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof engaged in the act of soliciting a fee or valuable consideration from any person other than a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence, is exempt from this definition of "real estate broker" or "broker". This exemption applies only in respect to the furnishing of information concerning the availability of real property.
- (3) "Real estate salesperson" or "salesperson" means any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity of a real estate broker, as defined in subsection (1.5) or (2) of this section, for compensation or otherwise.
- (4) "Real estate salesperson" or "real estate broker" does not apply to any of the following:
- (a) Any **attorney-in-fact** acting without compensation under a power of attorney, duly executed by an owner of real estate, authorizing the consummation of a real estate transaction;
  - (b) Any **public official** in the conduct of his official duties;
  - (c) Any **receiver, trustee, administrator, conservator, executor, or guardian** acting under proper authorization;
  - (d) Any **person, firm, partnership, limited liability company, or association** acting personally or a corporation acting through its officers or regular salaried employees on behalf of that person or on its own behalf as principal in acquiring or in negotiating to acquire any interest in real estate;
  - (e) An **attorney-at-law** in connection with his representation of clients in the practice of law;

- (f) Any person, firm, partnership, limited liability company, association or corporation or any employee or authorized agent thereof engaged in the act of negotiating, acquiring, purchasing, assigning, exchanging, selling, leasing, or dealing in **oil and gas or other mineral leases** or interests therein or other severed mineral or royalty interests in real property, including easements, rights-of-way, permits, licenses, and any other interests in real property for or on behalf of a third party, for the purposes of, or facilities related to, intrastate and interstate pipelines for oil, gas, and other petroleum products, flow lines, gas gathering systems and natural gas storage and distribution;
- (g) A **natural person** acting personally with respect to property owned or leased by that person or a natural person who is a **general partner of a partnership, a manager of a limited liability company, or an owner of twenty percent or more** of such partnership, or limited liability company, and authorized to sell or lease property owned by such partnership or limited liability company, except as provided in subsection (1.5) of this section;
- (h) A **corporation with respect to property owned or leased by it**, acting through its officers or regular salaried employees, when such acts are incidental and necessary in the ordinary course of the corporation's business activities of a non real estate nature (but only if the corporation is not engaged in the business of land transactions), except as provided in subsection (1.5) of this section. For the purposes of this paragraph (h), the term "officers or regular salaried employees" means persons regularly employed who derive not less than seventy-five percent of their compensation from the corporation in the form of salaries;
- (i) A **principal officer of any corporation** with respect to property owned by it when such property is located within the state of Colorado and when such principal officer is the owner of twenty percent or more of the outstanding stock of such corporation, except as provided in subsection (1.5) of this section, but this exemption does not include any corporation selling previously occupied one-family and two-family dwellings;
- (j) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers or partners, or through regular salaried employees, with respect to property owned or leased by such sole proprietor, corporation, partnership, or limited liability company on which has been or will be erected a commercial, industrial, or residential **building which has not been previously occupied and where the consideration paid for such property includes the cost of such building, payable, less deposit or down payment, at the time of conveyance of such property and building**;
- (k) A corporation, partnership, or limited liability company, acting through its officers, partners, managers, or regularly salaried employees receiving no additional compensation therefore, or its wholly owned subsidiary or officers, partners, managers or regular salaried employees thereof receiving no additional compensation, with respect to property located in Colorado which is owned or leased by such corporation, partnership, or limited liability company and on

which has been or will be erected a **shopping center, office building, or industrial park** when such shopping center, office building, or industrial park is sold, leased or otherwise offered for sale or lease in the ordinary course of the business of such corporation, partnership, limited liability company or wholly owned subsidiary. For the purpose of this paragraph (k), "shopping center" means land on which buildings are or will be constructed which are used for commercial and office purposes around or adjacent to which off-street parking is provided; "office building" means a building used primarily for office purposes; and "industrial park" means land on which buildings are or will be constructed for warehouse, research, manufacturing, processing, or fabrication purposes.

- (l) A **regularly salaried** employee of an owner of an apartment building or complex who acts as an **on-site manager of such an apartment building** or complex. This exemption applies only in respect to the customary duties of an on-site manager performed for his employer. (*Ed. Note: See also Rule C-24*)
- (m) A **regularly salaried employee of an owner of condominium units who acts as an on-site manager** of such units. For purposes of this paragraph (m) only, the term "owner" includes a **homeowners' association** formed and acting pursuant to its recorded condominium declaration and bylaws. This exemption applies only in respect to the customary duties of an on-site manager performed for his employer;
- (n) A real estate **broker licensed in another state** who receives a share of a commission or finder's fee on a cooperative transaction from a licensed Colorado real estate broker;
- (o) Repealed (effective 4-19-94)
- (p) A sole proprietor, corporation, partnership, or limited liability company acting through its officers, partners, or regularly salaried employees, with respect to property located in Colorado, where the **purchaser** of such property **is in the business of developing land** for residential, commercial, or industrial purposes.
- (q) Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof, engaged in the act of negotiating, purchasing, assigning, exchanging, selling, leasing, or acquiring **rights-of-way**, permits, licenses, and any other interests in real property for or on behalf of a third party for the purpose of, or facilities related to:
  - (I) Telecommunication lines;
  - (II) Wireless communication facilities;
  - (III) CATV;
  - (IV) Electric generation, transmissions, and distribution lines;
  - (V) Water diversion, collection, distribution, treatment, and storage or use; and
  - (VI) Transportation, so long as such person, firm, partnership, limited liability company, association, or corporation including any employee or



authorized agent thereof does not represent any displaced person or entity as an agent thereof in the purchase, sale, or exchange of real estate, or an interest therein, resulting from residential or commercial relocations required under any transportation project, regardless of the source of public funding.

**12-61-102. License required.**

It is unlawful for any person, firm, partnership, limited liability company, association, or corporation to engage in the business or capacity of real estate broker or real estate salesperson in this state without first having obtained a license from the real estate commission. No person shall be granted a license until such person establishes compliance with the provisions of this part 1 concerning education, experience, and testing; truthfulness and honesty and otherwise of good moral character; and in addition to any other requirements of this section, competency to transact the business of a real estate broker or real estate salesperson in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications, together with the application for such license, is filed in the office of the commission. In determining such person's character, the real estate commission shall be governed by the provisions of section 24-5-101, C.R.S.

**12-61-103. Application for license.**

- (1) (a) All persons desiring to become real estate brokers shall apply to the real estate commission for a license under the provisions of this part 1. Application for a license, as a real estate broker shall be made to the commission upon forms or in a manner prescribed by it.
- (b) (I) Prior to submitting an application for a license pursuant to paragraph (a) of this subsection (1), each applicant shall submit a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. The applicant shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the real estate commission.  
*(Ed. Note: See Rule A-16.)*
- (II) For purposes of this paragraph (b), "applicant" means an individual, or any person designated to act as broker for any partnership, limited liability company, or corporation pursuant to subsection (7) of this section.
- (2) Every real estate broker licensed under this part 1 shall maintain a place of business within this state, except as provided in section 12-61-107. In case a real estate broker maintains more than one place of business within the state, the broker shall be responsible for supervising all licensed activities originating in such offices.
- (3) The commission is authorized by this section to require and procure any such proof as is necessary in reference to the truthfulness, honesty, and good moral character of any applicant for a real estate broker's license or, if the applicant is a partnership, limited

liability company or corporation, of any partner, manager, director, officer, member, or stockholder if such person has, either directly or indirectly, a substantial interest in such applicant prior to the issuance of such license.

- (4) (a) An applicant for a broker's license shall be at least eighteen years of age. The applicant must furnish proof satisfactory to the commission that the applicant has either received a degree from an accredited degree-granting college or university with a major course of study in real estate or has successfully completed courses of study, approved by the commission, at any accredited degree granting college or university or any private occupational school that has a certificate of approval from the private occupational school division in accordance with the provisions of article 59 of this section or that has been approved by the commission or licensed by an official state agency of any other state as follows:
- (I) Forty-eight hours of classroom instruction or equivalent correspondent hours in real estate law and real estate practice; and
  - (II) Forty-eight hours of classroom instruction or equivalent correspondent hours in understanding and preparation of Colorado real estate contracts; and
  - (III) A total of seventy-two hours of instruction or equivalent correspondence hours from the following areas of study: *(Ed Note: See also Rule A-17)*
    - (A) Trust accounts and record-keeping;
    - (B) Real estate closings;
    - (C) Current legal issues; and
    - (D) Practical applications.
- (b) An applicant for a broker's license who has been licensed as a real estate broker in another jurisdiction shall be required to complete only the course of study comprising the subject matter areas described in subparagraphs (II) and (III) (B) of paragraph (a) of this subsection (4).
- (c) An applicant for a broker's license who has been licensed as a real estate salesperson in another jurisdiction shall be required to complete only the course of study required in subparagraphs (II) and (III) of paragraph (a) of this subsection.
- (d) Repealed (effective 1 -1 -97)
- (5) Repealed (effective 1-1-97)
- (6) (a) The applicant for a broker's license shall submit to and pass an examination designated to determine the competency of the applicant and prepared by or under the supervision of the real estate commission or its designated contractor. The commission may contract with an independent testing service to develop, administer, or grade examinations, or to administer licensee records. The contract may allow the testing service to recover the costs of the examination and the costs of administering exam and license records from the applicant. The commission may contract separately for these functions and

allow recovered costs to be collected and retained by a single contractor for distribution to other contractors. The commission shall have the authority to set the minimum passing score that an applicant must receive on the examination, and said score shall reflect the minimum level of competency required to be a broker. Said examination shall be given at such times and places as the commission prescribes. The examination shall include, but not be limited to, ethics, reading, spelling, basic mathematics, principles of land economics, appraisal, financing, a knowledge of the statutes and law of this state relating to deeds, trust deeds, mortgages, listing contracts, contracts of sale, bills of sale, leases, agency, brokerage, trust accounts, closings, securities, the provisions of this part 1, and the rules of the commission. The examination for a broker's license shall also include the preparation of a real estate closing statement.

- (b) An applicant for a broker's license who has held a real estate license in another jurisdiction that administers a real estate broker's examination and the applicant has been licensed for two years prior to applying for a Colorado license may be issued a broker's license if the applicant establishes that he or she possesses credentials and qualifications that are substantively equivalent to the requirements in Colorado for licensure by examination. A broker's license may be issued under this paragraph (b) only if the jurisdiction from which the applicant holds a real estate license allows the issuance of a real estate broker's license to applicants from the state of Colorado in substantially the same manner as set forth in this paragraph (b).
- (c) In addition to all other applicable requirements, the following provisions apply to brokers that did not hold a current and valid broker's license on December 31, 1996.
  - (I) No such broker shall engage in an independent brokerage practice without first having served actively as a real estate broker or salesperson for at least two years. The commission shall adopt rules requiring an employing broker to ensure that a high level of supervision is exercised over such a broker during such two-year period. (*Ed Note: See Rule E-32*)
  - (II) No such broker shall employ another broker or salesperson without first having completed twenty-four clock hours of instruction, or the equivalent in correspondence hours, as approved by the commission, in brokerage administration.
- (7) (a) Real estate brokers' licenses may be granted to individuals, partnership, limited liability companies, or corporations. A partnership, limited liability company or corporation, in its application for a license, shall designate a qualified, active broker to be responsible for management and supervision of the licensed actions of the partnership, limited liability company or corporation and all licensees shown in commission records as being in the employ of such entity. The application of the partnership, limited liability company or corporation and the application of the broker designated by it shall be filed with the real estate commission.

- (b) No license shall be issued to any partnership, limited liability company or corporation unless and until the broker so designated by the partnership, limited liability company or corporation submits to and passes the examination required by this part 1 on behalf of the partnership, limited liability company or corporation. Upon such broker's successfully passing the examination and upon compliance with all other requirements of law by the partnership, limited liability company or corporation, as well as by the designated broker, the commission shall issue a broker's license to the partnership, limited liability company or corporation, which shall bear the name of such designated broker, and thereupon the broker so designated shall conduct business as a real estate broker only through the said partnership, limited liability company or corporation and not for the broker's account.
- (c) If the person so designated is refused a license by the real estate commission or ceases to be the designated broker of such partnership, limited liability company or corporation, such entity may designate another person to make application for a license. If such person ceases to be the designated broker of such partnership, limited liability company or corporation, the director may issue a temporary license to prevent hardship for a period not to exceed ninety days to the licensed person so designated. The director may extend a temporary license for one additional period not to exceed ninety days upon proper application and a showing of good cause; if the director refuses, no further extension of a temporary license shall be granted except by the commission. If any broker or employee of any such partnership, limited liability company or corporation, other than the one designated as provided in this section, desires to act as a real estate broker, such broker or employee shall first obtain a license as a real estate broker as provided in this section and shall pay the regular fee therefore. *(Ed Note: See Rule A-26)*
- (8) The broker designated to act as broker for any partnership, limited liability company or corporation is personally responsible for the handling of any and all earnest money deposits or escrow or trust funds received or disbursed by said partnership, limited liability company or corporation. In the event of any breach of duty by the said partnership, limited liability company or corporation as a fiduciary, any person aggrieved or damaged by the said breach of fiduciary duty shall have a claim for relief against such partnership, limited liability company or corporation, as well as against the designated broker, and may pursue said claim against the partnership, limited liability company or corporation and the designated broker personally. The said broker may be held responsible and liable for damages based upon such breach of fiduciary duty as may be recoverable against the said partnership, limited liability company or corporation, and any judgment so obtained may be enforced jointly or severally against said broker personally and the said partnership, limited liability company or corporation.
- (9) No license for a broker registered as being in the employ of another broker and no real estate salesperson's license shall be issued to a partnership, limited liability company or a corporation or under a fictitious name or trade name; except that a woman may elect to use her birth name.

- (10) No person shall be licensed as a real estate broker or salesperson under more than one name, and no person shall conduct or promote a real estate brokerage business except under the name under which such person is licensed. *(Ed Note: See also Rule C-19)*
- (11) Repealed (effective 7-1-79)
- (12) A licensed attorney shall take and pass the examination referred to in this section after having completed twelve hours of classroom instruction or equivalent correspondent hours in trust accounts, record-keeping, and real estate closings. *(Ed. Note: Attorney may be licensed at any bar)*

**12-61-103.5 Transitional provisions-holders of existing salesperson's licenses.**

- (1) Effective January 1, 1997, the real estate commission shall no longer issue a real estate salesperson's license.
- (2) A holder of a salesperson's license who wishes to renew on active status for the year 2000 or any subsequent year must renew, if at all, as brokers and shall be issued a real estate broker's license in lieu of a renewed salesperson's license upon meeting either of the following two alternative requirements:
  - (a) Passage of the Colorado portion of the real estate broker's license examination during the three-year period immediately preceding the application for renewal; or
  - (b) Successful completion of a course of study approved by the commission and consisting of twenty-four clock hours of instruction, including instruction in closings and contract preparation, within the three-year period immediately preceding the application for renewal. Such course shall be in lieu of the continuing education requirements of sections 12-61-110 and 12-61-110.5 for the applicable renewal period. A person issued a broker's license pursuant to this paragraph (b) shall practice, if at all, only in the employ of a licensed broker until passing the Colorado portion of the real estate broker's license examination.
- (3) A holder of a real estate salesperson's license who wishes to renew on inactive status for the year 2000 or any subsequent year may do so, subject to any otherwise applicable requirements for such renewal. An application to activate such an inactive license shall be accompanied by proof or certification of compliance with either paragraph (a) or paragraph (b) of subsection (2) of this section. *(Ed Note: See Rule A-14)*

**\* 12-61-103.6. Errors and omissions insurance - duties of the commission - certificate of coverage, when required - group plan made available - effect - repeal.**

- (1) Every licensee under this part 1, except an inactive broker or salesperson or an attorney licensee who maintains a policy of professional malpractice insurance which provides coverage for errors and omissions for their activities as a licensee under this part 1, shall maintain errors and omissions insurance to cover all activities contemplated under this article. The commission shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. Any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Any licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

- \* (2) (a) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the commission, a licensee shall independently obtain the errors and omissions insurance required by this section. (Editor Note: This provision is effective January 1, 2007.)
- (b) The commission shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.
- (3) The commission shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty days prior to the annual premium renewal date as determined by the commission. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the commission by the annual premium renewal date, as determined by the commission.
- (4) In addition to all other powers and duties conferred upon the commission by this article, the commission shall adopt such rules as it deems necessary or proper to carry out the provisions of this section. (*Ed Note: See Rule D-14.*)

**12-61-104. Licenses - issuance - contents - display.**

- (1) The commission shall make available for each licensee a license in such form and size as said commission shall prescribe and adopt. The real estate license shall show the name of the licensee and shall have imprinted thereon the seal, or a facsimile, of the department of regulatory agencies and, in addition to the foregoing, shall contain such other matter as said commission shall prescribe.
- (2) Repealed (effective 3-9-01)
- (3) Repealed (effective 3-9-01)

**12-61-105. Commission - compensation - immunity - subject to termination.**

- (1) There shall be a commission of five members appointed by the governor which shall administer parts 1,3, and 4 of this article. This commission shall be known as the real estate commission, referred to in this part 1 as the "commission", and shall consist of three real estate brokers who have had not less than five years' experience in the real estate business in Colorado, one person with expertise in subdivision development, and one person representative of the public at large. Members of the commission shall hold office for a period of three years. Upon the death, resignation, removal, or otherwise of any member of the commission, the governor shall appoint a member to fill out the unexpired term. The governor shall have the authority to remove any member for misconduct, neglect of duty, or incompetence.
- (2) Each member of the commission shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of registrations pursuant to section 24-34-102(13), C.R.S. Payment for all such per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund provided for in section 12-61-111.5.

- (2.5) Members of the commission, consultants, expert witnesses, and complainants shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith.
- (3) No real estate broker's license and no real estate salesperson's license shall be denied, suspended, or revoked except as determined by a majority vote of the members of the commission.
- (4) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the real estate commission created by this section.

**12-61-106. Director, clerks, and assistants.**

- (1) The executive director of the department of regulatory agencies is authorized by this section to employ, subject to the provisions of the state personnel system laws of the state, a director for the commission and such attorneys, deputies, investigators, clerks, and assistants as are necessary to discharge the duties imposed by the provisions of parts 1,3, and 4 of this article.
- (2) It is the duty of the director, personally, or his designee to aid in the administration and enforcement of parts 1,3, and 4 of this article and in the prosecution of all persons charged with violating any of their provisions, to conduct audits of business accounts of licensees, to perform such duties of the commission as the commission prescribes, and to act in behalf of the commission on such occasions and in such circumstances as the commission directs.

**12-61-107. Resident licensee - nonresident licensee - consent to service.**

- (1) A nonresident of the state may become a real estate broker in this state by conforming to all the conditions of this part 1; except that the nonresident broker shall not be required to maintain a place of business within this state if that broker maintains a definite place of business in another state.
- (2) Every applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper courts of any county of this state in which a cause of action may arise and in which the plaintiffs may reside by the service of any process or pleading authorized by the laws of this state on the secretary of state, said consent stipulating and agreeing that such service or such process or pleading on said secretary shall be held in all courts to be as valid and binding as if due service had been made upon said applicant in the state of Colorado. Said instrument containing such consent shall be authenticated by the signature of the designated broker.
- (3) All such applications, shall contain a certification that the broker is authorized to act for the corporation. In case any process or pleading mentioned in this part 1 is served upon the secretary of state, it shall be by duplicate copies, one of which shall be filed in the office of said secretary and the other immediately forwarded by certified mail to the main office of the applicant against which said process or pleading is directed.

**12-61-108. List of licensees - publications.**

The commission shall maintain a record of the names and addresses of all licensees licensed under the provisions of parts 1 and 4 of this article, together with such other information relative to the enforcement of said provisions as deemed by the commission to be necessary. Publication of the record and of any other information circulated in quantity outside the

executive branch shall be in accordance with the provisions of section 24-1-136, C.R.S.

**12-61-108.5. Compilation and publication of passing rates per educational institution for real estate licensure examinations - rules.**

- (1) The commission shall have the authority to obtain information from each educational institution authorized to offer courses in real estate for the purpose of compiling the number of applicants who pass the real estate licensure examination from each educational institution. The information shall include the name of each student who attended the institution and a statement of whether the student completed the necessary real estate courses required for licensure. The commission shall have access to such other information as necessary to accomplish the purpose of this section. For the purposes of the section, an "applicant" is a student who completed the required education requirements and who applied for and sat for the licensure examination.
- (2) The commission shall compile the information obtained in subsection (1) of this section with applicant information retained by the commission. Specifically, the commission shall compile whether the student applied for the licensure examination and whether the applicant passed the licensure examination. The commission shall create statistical data setting forth:
  - (a) The name of the educational institution;
  - (b) The number of students who completed the necessary real estate course required for licensure;
  - (c) Whether the student registered and sat for the licensure examination; and
  - (d) The number of those applicants who passed the licensure examination.
- (3) The commission shall publish this statistical data and make it available to the public quarterly.
- (4) The commission shall retain the statistical data for three years.
- (5) Specific examination scores for an applicant will be kept confidential by the commission unless the applicant authorizes release of such information.
- (6) The Commission may promulgate rules for the administration of this section.

**12-61-109. Change of license status - inactive - cancellation.**

- (1) Immediate notice shall be given in a manner acceptable to the commission by each licensee of any change of business location or employment. A change of business address or employment without notification to the commission shall automatically inactivate the licensee's license.
- (2) A broker who transfers to the address of another broker or a broker applicant who desires to be employed by another broker shall inform the commission if said broker is to be in the employ of the other broker. The employing broker shall have the control and custody of the employed broker's license, and such employed broker shall have no salespersons licensed under the employed broker during the term of such employment, nor shall the employed broker act on behalf of said broker or as broker for a partnership, limited liability company or corporation during the term of such employment; but this shall not affect the employed broker's right to transfer to another employing broker or to a location where the employed broker may conduct business as an independent



broker or as a broker acting for a partnership, limited liability company or corporation.

- (3) In the event that any licensee is discharged by or terminates employment with a broker, it shall be the **joint duty of both** such parties to immediately notify the commission. Either party may furnish such notice in a manner acceptable to the commission. The party giving notice shall notify the other party in person or in writing of the termination of employment.
- (4) It is unlawful for any such licensee to perform any of the acts authorized under the license in pursuance of this part 1, either directly or indirectly, on and after the date that employment has been terminated. When any real estate salesperson or broker whose employment has been terminated is employed by another real estate broker, the commission shall, upon proper notification, enter such change of employment in the records of the commission. Not more than one employer or place of employment shall be shown for any real estate salesperson or broker for the same period of time.

**12-61-110. License fees - partnership, limited liability company and corporation licenses - rules.**

- (1) Fees established pursuant to section 12-61-111.5 shall be charged by and paid to the commission or the agent for the commission for the following:
  - (a) Each broker's examination;
  - (b) Each broker's original application and license;
  - (c) Each three-year renewal of a broker's license;
  - (d) Any change of name, address or employing broker requiring a change in commission records;
  - (e) A new application which shall be submitted when a licensed real estate broker wishes to become the broker acting for a partnership, limited liability company or a corporation.
- (2) The proper fee shall accompany each application for licensure. The fee shall not be refundable. Failure by the person taking an examination to file the appropriate broker's application within one year of the date such person passed the examination will automatically cancel the examination, and all rights to a passing score will be terminated. *(Ed. Note: See Rule A-8)*
- (3) Each real estate broker's license granted to an individual shall entitle such individual to perform all the acts contemplated by this part 1, without any further application on his part and without the payment of any fee other than the fees specified in this section.
- (4) (a) The Commission shall require that any person licensed under this part 1, whether on an active or inactive basis, renew said license on an anniversary date every three years. Renewal shall be conditioned upon fulfillment of the continuing education requirements set forth in section 12-61-110.5, and submission of fingerprints as required in section 12-61-110.8; except that any person licensed under this part 1 who maintains and inactive license and wants to renew to an active status shall only submit fingerprints as required in section 12-61-110.8 upon application to an active status. For persons renewing or reinstating an

active license, written certification verifying completion for the previous three-year licensing period of the continuing education requirements set forth in said section shall accompany and be submitted to the commission with the application for renewal or reinstatement. For persons who did not submit certification verifying compliance with section 12-61-110.5 at the time a license was renewed or reinstated on an inactive status, written certification verifying completion for the previous three-year licensing period of the continuing education requirements set forth in said section shall accompany and be submitted with any future application to reactivate the license. The commission may by rule establish procedures to facilitate such a renewal. Until such procedures are established, every license issued under the provisions of this part 1 shall expire at 12 midnight on December 31 of the year in which issued; except that each renewal of such license shall be for three years and shall expire at 12 midnight on December 31 of the third year. In the absence of any reason or condition which might warrant the refusal of the granting of a license, or the revocation thereof, the commission shall issue a new license upon receipt by the commission of the written request of the applicant and the fees therefore, as required by this section. Applications for renewal will be accepted thirty days prior to January 1. A person who fails to renew a license before January 1 of the year succeeding the year of the expiration of such license may **reinstate** the license as follows: (*Ed Note: See Rule D-11*)

- (I) If proper application is made within thirty-one days after the date of expiration, by payment of the regular three-year renewal fee;
- (II) If proper application is made more than thirty-one days but within one year after the date of expiration, by payment of the regular three-year renewal fee and payment of a reinstatement fee equal to one-half the regular three-year renewal fee;
- (III) If proper application is made more than one year but within three years after the date of expiration, by payment of the regular three-year renewal fee and payment of a reinstatement fee equal to the regular three-year renewal fee.

(a.5) Repealed, effective April 24,1990.

(b) Any reinstated license shall be effective only as of the date of reinstatement. Any person who fails to apply for reinstatement within three years after the expiration of a license shall, without exception, be treated as a new applicant for licensure.

(c) All reinstatement fees shall be transmitted to the state treasurer, who shall credit same to the division of real estate cash fund, as established by section 12-61-111.5.

(5) The suspension, expiration, or revocation of a real estate broker's license shall automatically inactivate every real estate broker's or real estate salesperson's license where the holder of such license is shown in the commission records to be in the employ of the broker whose license has expired or has been suspended or revoked pending notification to the commission by the employed licensee of a change of employment.

(6) Deleted by Amendment, effective July 1, 1991

**12-61-110.5. Renewal of license – continuing education requirement.**

- (1) Commencing January 1, 1992, except as otherwise provided in subsection (4) of this section, a salesperson or broker applying for renewal of a license pursuant to section 12-61-110 (4) shall include with such application a certified statement verifying successful completion of real estate courses in accordance with the following schedule:
  - (a) Repealed 4/1/04
  - (b) Repealed 4/1/04
  - (c) For licensees applying for renewal in 1994 and thereafter, passage within the previous three years of the Colorado portion of the real estate exam or completion of a minimum of twenty-four hours of credit, eight of which shall be the credits developed by the real estate commission pursuant to subsection (2) of this section.
- (2) The real estate commission shall develop eight hours of credit designed to assure reasonable currency of real estate knowledge by licensees, which credits shall include an update of the current statutes and the rules and regulations promulgated by the commission that affect the practice of real estate. If a licensee takes a course pursuant to rule 260 of the Colorado rules of civil procedure and such course concerns real property law, such licensee shall receive credit for such course toward the fulfillment of such licensee's continuing education requirements pursuant to this section. Such credits shall be taken from an accredited Colorado college or university; a Colorado community college; or a Colorado private occupational school holding a certificate of approval from the state board for community colleges and occupational education. Successful completion of such credits shall require satisfactory passage of a written examination or written examinations of the materials covered. Such examinations shall be audited by the commission to verify their accuracy and the validity of the grades given. The commission shall set the standards required for satisfactory passage of the examinations.  
*(ed. note: See Rule B-2a*
- (3) All credits, other than the credits specified in subsection (2) of this section, shall be acquired from educational programs contributing directly to the professional competence of a licensee. Such credits may be acquired through successful completion of instruction in one or more of the following subjects:
  - (a) Real estate law;
  - (b) Property exchanges;
  - (c) Real estate contracts;
  - (d) Real estate finance;
  - (e) Real estate appraisal;
  - (f) Real estate closing;
  - (g) Real estate ethics;
  - (h) Condominiums and cooperatives;
  - (i) Real estate time-sharing;

- (j) Real estate marketing principles;
  - (k) Real estate construction;
  - (l) Land development;
  - (m) Real estate energy concerns;
  - (n) Real estate geology;
  - (o) Water and waste management;
  - (p) Commercial real estate;
  - (q) Real estate securities and syndications;
  - (r) Property management;
  - (s) Real estate computer principles;
  - (t) Brokerage administration and management;
  - (u) Agency; and
  - (v) Any other subject matter as approved by the real estate commission.
- (4) A licensee applying for renewal of a license which expires on December 31 of the year in which it was issued is not subject to the education requirements set forth in subsection (1) of this section.
- (5) The real estate commission shall promulgate rules and regulations to implement this section.

**12-61-110.6. Repealed 7-1-01.**

**12-61-110.8 Renewal of license – fingerprint based criminal history record check – repeal.**

- (1) Prior to submitting a renewal application, a salesperson or broker applying for renewal of a license pursuant to section 12-61-110 (4) shall submit a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Nothing in this section shall preclude the commission from making further inquiries into the background of the applicant. The applicant shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check. Upon completion of the criminal history record check, the bureau shall forward the results to the commission
- (2) This section applies only to persons licensed prior to July 1, 2004.
- (3) This section is repealed, effective July 1, 2008

**12-61-111. Disposition of fees.**

All moneys collected by the real estate commission under parts 1 and 4 of this article, not including fees retained by contractors pursuant to contracts entered into in accordance with section 12-61-103 or 24-34-101, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund. Pursuant to section 12-61-111.5, the general assembly shall make annual appropriations from said fund for expenditures of

the commission incurred in the performance of its duties under parts 1 and 4 of this article. The commission may request an appropriation specifically designated for educational and enforcement purposes. The expenditures incurred by the commission under parts 1 and 4 of this article shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law.

**12-61-111.5. Fee adjustments.**

- (1) This section shall apply to all activities of the division under parts 1,3,4 and 7 of this article.
- (2)
  - (a) The division shall propose, as part of its annual budget request, an adjustment in the amount of each fee which it is authorized by law to collect under parts 1, 3, 4 and 7 of this article. The budget request and the adjusted fees for the division shall reflect direct and indirect costs.
  - (b) Based upon the appropriation made and subject to the approval of the executive director of the department of regulatory agencies, the division of real estate shall adjust its fees so that the revenue generated from said fees approximates its direct and indirect costs. Such fees shall remain in effect for the fiscal year for which the budget request applies. All fees collected by the division not including fees retained by contractors pursuant to contracts entered into in accordance with section 12-61-103 or 24-34-101, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, which fund is hereby created. All moneys credited to the division of real estate cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund.
  - (c) Beginning July 1, 1979, and each July 1 thereafter, whenever moneys appropriated to the division for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the division for the next fiscal year, and such amount shall not be raised from fees collected by the division. If a supplemental appropriation is made to the division for its activities, its fees, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Funds appropriated to the division in the annual long appropriations bill shall be designated as a cash fund and shall not exceed the amount anticipated to be raised from fees collected by the division.

**12-61-112. Records - evidence - inspection.**

- (1) The executive director of the department of regulatory agencies shall adopt a seal by which all proceedings authorized under parts 1, 3, and 4, of this article shall be authenticated. Copies of records and papers in the office of the commission or department of regulatory agencies relating to the administration of parts 1,3, and 4 of this article, when duly certified and authenticated by the seal, shall be received as evidence in all courts equally and with like effects as the originals. All records kept in the office of the commission or department of regulatory agencies, under authority of parts 1,3, and 4 of this article, shall be open to public inspection at such time and in such manner as may be prescribed by rules and regulations formulated by the said commission.

- (2) Repealed (1996)
- (3) The commission shall not be required to maintain or preserve licensing history records of any person licensed under the provisions of this part 1 for any period of time longer than seven years.

\* **12-61-113. Investigation - revocation - actions against licensee- repeal.**

- (1) The commission, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and the commission, after the holding of a hearing pursuant to section 12-61-114, has the power to impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and to censure a licensee, to place the licensee on probation and to set the terms of probation, or to temporarily suspend or permanently revoke a license when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:
  - (a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;
  - (b) Making any promise of a character which influences, persuades, or induces another person when he could not or did not intend to keep such promise;
  - (c) Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;
  - (c.5) Violating any provisions of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;
  - (d) Acting for more than one party in a transaction without the knowledge of all parties thereto;
  - (e) Representing or attempting to represent a real estate broker other than the licensee's employer without the express knowledge and consent of that licensee's employer;
  - (f) In the case of a salesperson or of a broker registered as in the employ of another broker, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed broker-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed broker-employer;
  - (g) Failing to account for or to remit, within a reasonable time, any moneys coming into his possession which belong to others, whether acting as real estate brokers, salespersons, or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules and regulations of the commission relative thereto and shall be subject to audit by the commission;
  - (g.5) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the broker's own funds, or failing to keep such funds of others in an escrow or a trustee account with some bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United

States government and to so keep records relative to the deposit which contain such information as may be prescribed by the rules and regulations of the commission relative thereto, which records shall be subject to audit by the commission; (*Ed Note: See Rule E-1(f)*)

- (h) Failing to provide the purchaser and seller of real estate with a closing statement of the transaction, containing such information as may be prescribed by the rules and regulations of the commission or failing to provide a signed duplicate copy of the listing contract and the contract of sale or the preliminary agreement to sell to the parties thereto;
- (i) Failing to maintain possession for future use or inspection by an authorized representative of the commission, for a period of four years documents or records prescribed by the rules and regulations of the commission or to produce such documents or records upon reasonable request by the commission or by an authorized representative of the commission;
- (j) Paying a commission or valuable consideration for performing any of the functions of a real estate broker or real estate salesperson, as described in this part 1, to any person not licensed under the provisions of this part 1; except that a licensed broker may pay a finder's fee or a share of any commission on a cooperative sale when such payment is made to a real estate broker licensed in another state or country. If a country does not license real estate brokers, then the payee must be a citizen or resident of said country and represent that the payee is in the business of selling real estate in said country;
- (k) Disregarding or violating any provision of this part 1 or part 8 of this article, violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this part 1 or part 8 of this article; violating any lawful commission orders; or aiding and abetting a violation of any rule, regulation, commission order, or provision of this part 1 or part 8 of this article;
- (l) Repealed, effective July 1, 1989
- (m) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, C.R.S., in parts 1, 2, 3 and 4 of article 4 of title 18, C.R.S., in parts 1, 2, 3, 4, 5, 7 or 8 of article 5 of title 18, C.R.S., in part 3 of article 8 of title 18, C.R.S., in article 15 of title 18, C.R.S., in article 17 of title 18, C.R.S., or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of such conviction or other official record indicating that such plea was entered shall be conclusive evidence of such conviction or plea in any hearing under this part 1.

*(Editor's note: The numbered articles in Title 18 of Colorado Revised Statute shown in this Part "m" refer to the following types of crimes:  
Article 3 is titled Criminal Solicitation and consists of four parts: homicide, assault, kidnapping and unlawful sexual behavior.*

*Article 4 deals with **offenses against property**, under which part 1 is arson, part 2 is burglary, part 3 robbery, and part 4 is theft.*

*Article 5 consists of **offenses involving fraud**, including part 1 -forgery, obtaining a signature by deception, offering a false instrument for recording, et al, part 2 -fraud obtaining property or services (dual contracts), part 3 -fraudulent sales and business practices (unlawful activity concerning the sale of land), part 4 - bribery, part 5 -offenses relating to the uniform commercial code, part 7 - financial transaction device crime act (ATM's, et al), and part 8 - equity skimming*

*Article 8 -part 3 refers to **government operations**, specifically bribery and corrupt influence.*

*Article 15 deals with making, financing and collecting of **loans**.*

*Article 17 is the Colorado **organized crime** control act.)*

- (m.5) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;
- (m.6) Failing to immediately notify the commission in writing of a conviction, plea, or violation pursuant to paragraph (m) or (m.5) of this subsection (1);
- (n) Having demonstrated unworthiness or incompetency to act as a real estate broker or salesperson by conducting business in such a manner as to endanger the interest of the public;
- (o) In the case of a broker licensee, failing to exercise reasonable supervision over the activities of licensed employees; (*Ed Note: See also Rule E-31*)
- (p) Procuring, or attempting to procure, a real estate broker's license or a real estate salesperson's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate a real estate broker's license or a real estate salesperson's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for such license;
- (q) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of such licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 1;
- (r) Using any provision allowing the licensee an option to purchase in any agreement authorizing or employing such licensee to sell, buy, or exchange real estate for compensation or commission, except when such licensee, prior to or coincident with election to exercise such option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of such principal or employer approving the amount of such profit;
- (s) (I) Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to part 3 of this article. This subparagraph (I) is repealed, effective when the last final judgment from any of the civil actions allowed pursuant to section 12-



61-302 (2) becomes effective and any resulting claim has been paid according to law. The director of the division of real estate shall notify the revisor of statutes, in writing, when the condition specified in this paragraph (s) has been satisfied.

- (II) Effective on and after the repeal of part 3 of this article, fraud, misrepresentation, deceit, or conversion of trust funds that results in the entry of a civil judgment for damages.
- (t) Any other conduct, whether of the same or a different character than specified in this subsection (1), which constitutes dishonest dealing;
- (u) Repealed, effective May 30, 1986
- (v) Having had a real estate broker's or salesperson's license or a subdivision developer's license suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the broker, salesperson, or subdivision developer in any other jurisdiction if the broker's, salesperson's, or subdivision developer's action would constitute a violation of this subsection (1). A certified copy of the order of disciplinary action shall be prima facie evidence of such disciplinary action.
- (w) Failing to keep records documenting proof of completion of the continuing education requirements in accordance with section 12-61-110.5 for a period of **four years** from the date of compliance with said section.
- \* (x) (I) Violating any provision of section 12-61-113.2.  
(II) In addition to any other remedies available to the commission pursuant to this title, after notice and a hearing pursuant to section 24-4-105, C.R.S., the commission may assess a penalty for a violation of section 12-61-113.2 or of any rule promulgated pursuant to section 12-61-113.2. The penalty shall be the amount of remuneration improperly paid and shall be transmitted to the state treasurer and credited to the general fund.
- (1.5) Every person licensed pursuant to section 12-61-101 (2)(j) shall give a prospective tenant a contract or receipt; and such contract or receipt shall include the address and telephone number of the real estate commission in prominent letters and shall state that the regulation of rental location agents is under the purview of the real estate commission.
- (2) In the event a firm, partnership, limited liability company, association, or corporation operating under the license of a broker designated and licensed as representative of said firm, partnership, limited liability company, association, or corporation is guilty of any of the foregoing acts, the commission may suspend or revoke the right of the said firm, partnership, limited liability company, association, or corporation to conduct its business under the license of said broker, whether or not the designated broker had personal knowledge thereof and whether or not the commission suspends or revokes the individual license of said broker.
- (3) Upon request of the commission, when any real estate broker or salesperson is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving the sale or exchange of any interest in real property or out of any transaction involving a leasehold interest in the real property and when such broker or salesperson is

involved in such transaction in such capacity as a licensed broker or salesperson, it shall be the duty of said broker or salesperson to supply to the commission a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and to advise the commission of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence which may be made, entered, or imposed therein.

- (4) This part 1 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.
- (5) Complaints of record in the office of the commission and the results of staff investigations may, in the discretion of the commission, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.
- (6) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the commission, does not warrant formal action by the commission but which should not be dismissed as being without merit, the commission may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy thereof to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.
- (7) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.
- (8) Any application for licensure from a person whose license has been revoked shall not be considered until the passage of one year from the date of revocation.
- \* (9) When the division of real estate becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the division shall, in addition to the exercise of its authority under this part 1, refer and transmit such information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law. (Editor Note: This provision is effective January 1, 2007.)

\* **12-61-113.2. Affiliated business arrangements - definitions -disclosures - enforcement and penalties - reporting - rules -investigation information shared with the division of insurance.**

- (1) As used in this section, unless the context otherwise requires:
  - (a) "Affiliated business arrangement" means an arrangement in which:
    - (I) a provider of settlement services or an associate of a provider of settlement services has either an affiliate relationship with or a direct beneficial ownership interest of more than one percent in another provider of settlement services; and

- (II) a provider of settlement services or the associate of a provider directly or indirectly refers settlement service business to another provider of settlement services or affirmatively influences the selection of another provider of settlement services.
- (b) "Associate" means a person who has one or more of the following relationships with a person in a position to refer settlement service business:
- (I) a spouse, parent, or child of such person;
  - (II) a corporation or business entity that controls, is controlled by, or is under common control with such person;
  - (III) an employer, officer, director, partner, franchiser, or franchisee of such person, including a broker acting as an independent contractor; or
  - (IV) anyone who has an agreement, arrangement, or understanding with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement service business to benefit financially from referrals of such business.
- (c) "Settlement service" means any service provided in connection with a real estate settlement including, but not limited to, the following:
- (I) title searches;
  - (II) title examinations;
  - (III) the provision of title certificates;
  - (IV) title insurance;
  - (V) services rendered by an attorney;
  - (VI) the preparation of title documents;
  - (VII) property surveys;
  - (VIII) the rendering of credit reports or appraisals;
  - (IX) real estate appraisal services;
  - (X) home inspection services;
  - (XI) services rendered by a real estate broker;
  - (XII) pest and fungus inspections;
  - (XIII) the origination of a loan;
  - (XIV) the taking of a loan application;
  - (XV) the processing of a loan;
  - (XVI) underwriting and funding of a loan;
  - (XVII) escrow handling services;
  - (XVIII) the handling of the processing; and
  - (XIX) closing of settlement.

- (2) (a) An affiliated business arrangement is permitted where the person referring business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of section 12-61-113.
- (b) If a licensee or the employing broker of a licensee is part of an affiliated business arrangement when an offer to purchase real property is fully executed, the licensee shall disclose to all parties to the real estate transaction the existence of the arrangement. The disclosure shall be written, shall be signed by all parties to the real estate transaction, and shall comply with the federal "Real Estate Settlement Procedures Act", 12 U.S.C. sec. 2601 et seq.
- (c) A licensee shall not require the use of an affiliated business arrangement or a particular provider of settlement services as a condition of obtaining services from that licensee for any settlement service. For the purposes of this paragraph (c), "Require the use" shall have the same meaning as "required use" in 24 CFR 3500.2 (b).
- (d) No licensee shall give or accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving an affiliated business arrangement shall be referred to any provider of settlement services.
- (e) Nothing in this section shall be construed to prohibit payment of a fee to:
- (I) an attorney for services actually rendered;
  - (II) a title insurance company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;
  - (III) a lender to its duly appointed agent for services actually performed in the making of a loan.
- (f) Nothing in this section shall be construed to prohibit payment to any person of:
- (I) a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;
  - (II) a fee pursuant to cooperative brokerage and referral arrangements or agreements between real estate brokers.
- (g) It shall not be a violation of this section for an affiliated business arrangement:
- (I) to require a buyer, borrower, or seller to pay for the services of any attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction; or
  - (II) if an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or her law practice.

- (h) No person shall be liable for a violation of this section if such person proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adopted to avoid such error,
- (3) On and after July 1, 2006, a licensee shall disclose at the time the licensee enters into or changes an affiliated business arrangement, in a form and manner acceptable to the commission, the names of all affiliated business arrangements to which the licensee is a party. The disclosure shall include the physical location of the affiliated businesses.
- (4) On and after July 1, 2006, an employing broker, in a form and manner acceptable to the commission, shall at least annually disclose the names of all affiliated business arrangements to which the employing broker is a party. The disclosure shall include the physical location of the affiliated businesses.
- (5) The commission may promulgate rules concerning the creation and conduct of an affiliated business arrangement, including, but not limited to, rules defining what constitutes a sham affiliated business arrangement. The commission shall adopt the rules, policies, or guidelines issued by the United States Department of Housing and Urban Development concerning the federal "Real Estate Settlement Procedures Act", 12 U.S.C. sec. 2601 et seq. Rules adopted by the commission shall be at least as stringent as the federal rules and shall ensure that consumers are adequately informed about affiliated business arrangements. The commission shall consult with the insurance commissioner pursuant to section 10-11-124 (2), C.R.S., concerning rules, policies, or guidelines the insurance commissioner adopts concerning affiliated business arrangements. Neither the rules promulgated by the commissioner nor the real estate commission may create a conflicting regulatory burden on an affiliated business arrangement.
- (6) The division may share information gathered during an investigation of an affiliated business arrangement with the division of insurance.

**12-61-113.5. Mobile home transaction - requirements. Repealed (effective 4-19-94)**

**12-61-114. Hearing - administrative law judge - review - rule-making authority.**

- (I) Except as otherwise provided in this section, all proceedings before the commission with respect to disciplinary actions and denial of licensure under this part 1 and part 8 of this article and certifications issued under part 4 of this article shall be conducted by an administrative law judge pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.
- (II) Such proceedings shall be held in the county where the commission has its office or in such other place as the commission may designate. If the licensee is a salesperson or an employed broker, the commission shall also notify the broker employing the licensee by mailing, by first-class mail, a copy of the written notice required under section 24-4-104(3), C.R.S., to the employing broker's last-known business address.
- (III) An administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the commission, subject to appropriations made to the department of personnel. Every administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. The administrative law judge shall conduct the hearing pursuant to the provisions of sections 24-4-104 and

24-4-105, C.R.S. No license shall be denied, suspended, or revoked until the commission has made its decision by majority vote.

- (IV) The decision of the commission in any disciplinary action or denial of licensure under this section is subject to review by the court of appeals by appropriate proceedings under section 24- 4-106 (11), C.R.S. in order to effectuate the purposes of parts 1, 3, 4, and 8 of this article, the commission has the power to promulgate rules and regulations pursuant to article 4 of title 24, C.R.S. The commission may appear in court by its own attorney.
- (V) Pursuant to said proceeding the court has the right, in its discretion, to stay the execution or effect of any final order of the commission; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the commission's order, in the event that the court determines that the order should be stayed, it shall also determine at said hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by such petitioner of all obligations as real estate broker or salesperson and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with such proceedings.
- (VI) In any hearing conducted by the commission in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the commission shall be governed by the provisions of section 24-5-101, C.R.S.

#### **12-61-114.5. Rules and regulations.**

All rules adopted or amended by the commission on or after July 1, 1979, shall be subject to sections 24-4-103(8)(c) and (8)(d) and 24-34- 104(9)(b)(II), C.R.S.

#### **12-61-115. Subpoena compelling attendance of witnesses, records and documents (Repealed 5-24-2002)**

#### **12-61-116. Failure to obey subpoena (Repealed 5/24/2002)**

#### **12-61-117. Salesperson or broker remuneration.**

It is unlawful for a real estate salesperson or for any broker registered in the commission office as in the employ of another broker to accept a commission or valuable consideration for the performance of any of the acts specified in this part 1 from any person except the broker's or the salesperson's employer, who must be a licensed real estate broker.

#### **12-61-118. Acts of salespersons - broker's liability.**

Any unlawful act or violation of any of the provisions of this part 1 upon the part of any real estate salesperson or employee or any officer or member of a licensed real estate broker shall not be cause for disciplinary action against a real estate broker, unless it appears to the satisfaction of the commission that the real estate broker had actual knowledge of the unlawful act or violation or had been negligent in the supervision of salespersons or employees.

#### **12-61-119. Violations.**

Any natural person, firm, partnership, limited liability company, or association or any

corporation violating the provisions of this part 1 by acting as real estate broker or real estate salesperson in this state without having obtained a license or by acting as real estate broker or real estate salesperson after that person's license has been revoked or during any period for which said license may have been suspended is guilty of a misdemeanor and, upon conviction thereof, if a natural person, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment and, if a corporation, shall be punished by a fine of not more than five thousand dollars. A second violation, if by a natural person, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

**12-61-120. Subpoena compelling attendance of witnesses and production of records and documents.**

The commission, the director for the commission, or the administrative law judge appointed for hearings may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of such commission. Such subpoenas shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses and the production of documents at hearings. If a person fails or refuses to obey a subpoena issued by the commission, the director, or the appointed administrative law judge, the commission may petition the district court having jurisdiction for issuance of a subpoena in the premises, and the court shall, in a proper case, issue its subpoena. Any person who refuses to obey such subpoena shall be punished as provided in section 12-61-121.

**12-61-121. Failure to obey subpoena - penalty.**

Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him in any matter conducted under parts 1, 3, and 4 of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of twenty-five dollars, or imprisonment in the county jail for not more than thirty days for each such offense, or by both such fine and imprisonment. Each day such person so refuses or neglects shall constitute a separate offense.

**12-61-122. Powers of commission - injunctions.**

The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of parts 1,3, and 4 of this article, and, upon a showing that a person is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by such court regardless of the existence of another remedy there for. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the Colorado rules of civil procedure.

**12-61-123. - Repeal of part.**

This part 1 is repealed effective July 1, 2008, including the service of process requirements pursuant to section 12-61-303 (6). Prior to such repeal, the real estate division, including the real estate commission shall be reviewed as provided for in section 24-34-104, C.R.S.

**TITLE 12, ARTICLE 61, C.R.S., AS AMENDED PART 2**

**BROKERS COMMISSIONS**

**12-61-201. When entitled to commission.**

No 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 upon.

#### **12-61-202. Objections on account of title.**

No real estate agent or broker is entitled to a commission when a proposed purchaser fails or refuses to complete his contract of purchase because of defects in the title of the owner, unless such owner, within a reasonable time, has said defects corrected by legal proceedings or otherwise.

#### **12-61-203. When owner must perfect title.**

The owner shall not be required to begin legal or other proceedings for the correction of such title, until such agent or broker secures from the proposed purchaser an enforceable contract in writing, binding him to complete the purchase whenever the defects in the title are corrected.

#### **12-61-203.5. Referral fees - interference with brokerage relationship**

- (1) No licensee under parts 1 to 4 of this article shall pay a referral fee unless reasonable cause for payment of the referral fee exists. A reasonable cause for payment means:
  - (a) An actual introduction of business has been made;
  - (b) A contractual referral fee relationship exists; or
  - (c) A contractual cooperative brokerage relationship exists.
- (2)
  - (a) No person shall interfere with the brokerage relationship of a licensee,
  - (b) As used in this subsection (2):
    - (I) "Brokerage relationship" means a relationship entered into between a broker or salesperson and a buyer, seller, landlord, or tenant under which the broker or salesperson engages in any of the acts set forth in section 12-61-101(2). A brokerage relationship is not established until a written brokerage agreement is entered into between the parties or is otherwise established by law.
    - (II) "Interference with the brokerage relationship" means demanding a referral fee from a licensee without reasonable cause.
    - (III) "Referral fee" means any fee paid by a licensee to any person or entity, other than a cooperative commission offered by a listing broker to a selling broker or vice versa.
- (3) Any person aggrieved by a violation of any provision of this section may bring a civil action in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to actual damages and, in addition, the court may award an amount up to three times the amount of actual damages sustained as a result of any such violation plus reasonable attorney fees.

#### **12-61-204. Repeal of part.**

This part 2 is repealed effective July 1, 2008. Prior to such repeal, the provisions in this part 2 shall be reviewed as provided for in section 24-34-104, C.R.S.



**TITLE 12, ARTICLE 61, C.R.S., AS AMENDED PART 3**

**Recovery Fund**

**12-61-301. Real estate recovery fund – fees - repeal.**

**12-61-302. Limitation on payments out of the real estate cash fund - repeal.**

- (1) No payment shall be made from the general fund pursuant to this part 3 unless:
  - (a) The applicant has notified the commission, in writing, of the commencement of a civil action for a judgment that may result in an application for recovery from the fund. Such written notice shall be given no later than ninety days after commencement of the civil action.
  - (b) The revenues, if any, transferred to the division of real estate cash fund pursuant to subsection (11) of this section have first been exhausted. As used in this part 3, “fund” shall mean in the first instance such revenues transferred pursuant to subsection of this section, and then, if such revenues have been exhausted, the general fund.
- (2) No payment shall be made from the fund unless the underlying civil action, on the basis of which payment from the fund is sought, was commenced within the time period prescribed in section 13-80-103, C.R.S., and by thirty days after the effective date of this subsection (2) as amended.
- (3)
  - (a) No payment shall be made from the fund unless the order of judgment in the underlying civil action contains specific findings of fact and conclusions of law that the licensed real estate broker or salesperson committed negligence, fraud, willful misrepresentation, or conversion of trust funds.
  - (b) Notwithstanding the provisions of paragraph (a) of this subsection (3), no payment for negligence shall be made from the fund if said licensed real estate broker or salesperson, at the time of the negligent act or omission, had in effect a complying policy of errors and omissions insurance coverage pursuant to section 12-61-103.6 at the time of the negligent act or omission.
- (4) The fund shall be liable to pay only for reimbursement of actual and direct out-of-pocket losses, court costs and reasonable attorney fees that remain unpaid on the judgment, and postjudgment interest as provided by law. The fund shall not be liable for the payment of prejudgment interest of any kind.
- (5) The fund shall not be liable for losses attributable to pain and suffering or mental anguish.
- (6) Attorney fees recoverable pursuant to this section shall not exceed twenty-five percent of the amount of actual and direct out-of-pocket losses paid from the fund.
- (7) The fund shall be liable only for claims based on judgments against natural persons.
- (8) The fund shall not be subject to a claim by a licensee involving a transaction in which the applicant performed acts for which a broker's or salesperson's license is required.

- (9) Notwithstanding any provision of this part 3 to the contrary, the liability of the fund shall not exceed:
- (a) For applications filed after July 1, 1987, and before July 1, 1991, fifteen thousand dollars per claimant.
  - (b) For applications filed on or after July 1, 1991 and before July 1, 1995, fifteen thousand dollars per transaction, regardless of the number of persons aggrieved or the number of real estate licensees or parcels of real estate involved in such transactions.
  - (c) For applications filed on or after July 1, 1995, and before July 1, 1999 twenty thousand dollars per transaction, regardless of the number of persons aggrieved, the number of parcels, or the number of real estate licensees involved in such transaction.
  - (c.5) For applications filed on or after July 1, 1999, fifty thousand dollars per transaction, regardless of the persons aggrieved, the number of parcels, or the number of real estate licensees involved in such transactions;
  - (d) One hundred fifty thousand dollars for any one licensee, regardless of the number of judgments entered against the licensee, parcels of real estate involved, number of licensees involved, or number of persons aggrieved in such transactions.
- (10) (a) If the validly filed applications exceed the limitation on liability set forth in paragraphs (a) to (d) of subsection (9) of this section, then payment from the fund shall be distributed among such applicants in the ratio that their respective claims bear to the aggregate of such valid claims or in such other manner as a court of record may deem equitable. Distribution of such moneys shall be among the persons entitled to share therein without regard to the order of priority in which their respective judgments may have been obtained or their applications may have been filed.
- (b) If the commission issues an administrative order which directs payment from the fund in accordance with section 12-61-303 and this subsection (10), any prospective applicant affected by such order may file a petition with the appropriate court pursuant to section 12-61-304. In that proceeding, the commission may then move the court for an order consolidating, or joining all applicants and prospective applicants whose judgments have been entered against a common licensee judgment debtor into one action so that the respective rights of all such applicants may be equitably adjudicated and settled.
- (11) (a) The unexpended and unencumbered balance of the real estate recovery fund, as such balance existed prior to its repeal, shall be transferred to the division of real estate cash fund.
- (b) This part 3 is repealed, effective with the last final judgment from any of the civil actions allowed pursuant to subsection (2) of this section becomes effective and any resulting claim has been paid according to law. The director of the division of

real estate shall notify the revisor of statutes when the condition specified in this paragraph (b) has been satisfied.

**12-61-303. Simplified procedure - application for administrative order for payment from the fund - repeal.**

- (1) A person who obtains a final judgment in any court of competent jurisdiction against a real estate broker or salesperson may file a verified application with the Colorado real estate commission for an administrative order for payment from the fund of any amount remaining unpaid on the judgment. The burden shall be upon such applicant to show the validity of the application under this part 3 and to provide the commission with such information as the commission may deem necessary to determine the validity of the application.
- (2) The application shall be made on a form provided by the commission, which form shall be sufficient to provide the applicant with a reasonable opportunity to show compliance with this part 3 and shall require that the applicant submit the following information:
  - (a) The name, address, and telephone number of the applicant;
  - (b) If the applicant is represented by an attorney, the name, business address, telephone number, and Colorado supreme court registration number of the attorney;
  - (c) Identification of the underlying judgment forming the basis of the application, including the named parties, case number, and court entering judgment;
  - (d) The amount of the claim and an explanation of the applicant's computation of the claim; and
  - (e) Any other information the commission reasonably deems necessary to determine the validity of the application.
- (3) The form provided to the applicant by the commission shall contain, in a prominent place, the following notice to the licensee judgment debtor:

"Notice: based on a judgment entered against you in the above-captioned matter, an application for an administrative order directing payment has been filed with the real estate commission.

If the real estate commission issues an administrative order for payment, your real estate license will automatically be revoked when the order is issued and payment is made to the applicant. Any subsequent application for a license shall not be granted until the amount paid has been reimbursed, plus interest at the statutory rate, and the passage of one year from the date of revocation.

If you wish to object to the application, you must file a written objection, setting forth the specific grounds for such objection, with the commission within thirty days after having been served with a copy of the application. If you do not file a written objection, you waive your right to defend against the claim."
- (4) The applicant shall also be required to show that:

- (a) There is no collusion between the applicant and the judgment debtor or any other person liable to the applicant in the transaction for which the applicant seeks payment from the fund;
  - (b) The judgment debtor was licensed as a real estate broker or salesperson at the time of the transaction;
  - (c) The judgment debtor was acting in a real estate transaction as a real estate broker or salesperson, performing acts for which a real estate broker's or salesperson's license is required under this article, or that the transaction involved acts for which a real estate license was required and the judgment debtor was acting as a principal, not an agent, in that transaction;
  - (d) The judgment debtor committed, fraud, willful misrepresentation, or conversion of trust funds;
  - (d.5) The judgment debtor committed negligence and did not, at the time of the negligent act or omission, have in effect a complying policy of errors and omissions insurance coverage pursuant to section 12-61-103.6;
  - (e) The application was not filed more than one year after finality of the judgment against the judgment debtor, including appeals;
  - (f) The applicant has reasonably sought to obtain a judgment against all persons and entities that are liable to the applicant for losses suffered in the transaction upon which the fund claim is based;
  - (g) The applicant has made reasonable searches and inquiries to ascertain whether there exists real or personal property or other assets available to satisfy the judgment in the underlying civil action and has undertaken reasonable legal means to reach such assets or other property in satisfaction of the judgment.
  - (h) The judgment debtor has been served with a copy of the application as required by subsection (5) of this section.
- (5) When any person files an application with the commission requesting the issuance of an administrative order for payment from the fund, a copy of the verified application including the notice required by subsection (3) of this section and any other documents filed with the application shall be served upon the licensee judgment debtor by the applicant within twenty days after the date upon which the application is filed. A certificate or affidavit of such service shall be filed with the commission. Service upon a licensee judgment debtor shall be made according to the Colorado rules of civil procedure and subsection (6) of this section.
- (6) Any real estate broker or real estate salesperson who is licensed or who renews a license under part 1 of this article on or after January 1, 1972, and upon whom personal service cannot be made with reasonable diligence shall be deemed to have appointed the secretary of state as agent for service of process for purposes of actions and applications filed against said broker or salesperson pursuant to this part 3. Service of process upon such persons shall be made as nearly as practicable in the manner prescribed by section

7-105-104, C.R.S. The burden shall be upon the applicant to show that personal service cannot be made with reasonable diligence.

- (7) The judgment debtor shall have thirty days after being served with the application within which to file a written objection to payment from the fund by the commission. Such objection shall be served upon the commission in accordance with the Colorado rules of civil procedure and shall clearly set forth the grounds upon which the objection is made. Failure to file such an objection shall constitute waiver of any right to proceed under section 12-61-304.
- (8)
  - (a) If the commission determines that an application is complete and valid, the commission may, by administrative order:
    - (I) Pay the requested amount or such lesser amount as the commission may deem appropriate;
    - (II) Settle the claim with the applicant for an appropriate agreed amount; or
    - (III) Deny the application on the grounds that the application does not demonstrate compliance with this part 3.
  - (b) Such administrative determination shall be promptly made by the commission or its designee in writing in the form of an administrative order and, if the application is denied, setting forth the general grounds there for.
  - (c) Such administrative order shall be sent by regular mail to the applicant and the judgment debtor at their last known addresses according to records of the commission.
- (9) The commission may adopt rules implementing this part 3 in accordance with article 4 of title 24, C.R.S.

**12-61-304. Procedure upon objection to payment or denial of application.**

- (1) If the commission issues an administrative order that denies an application for payment from the fund in whole or in part, the applicant may file a verified petition for payment from the fund in the court that entered the judgment on which the application is based. When an applicant files such a petition, the applicant shall serve a copy of the verified petition, including the notice required by subsection (2) of this section upon the real estate commission and upon the licensee judgment debtor in accordance with the Colorado rules of civil procedure and section 12-61-303 (6). A certificate or affidavit of such service shall be filed with the court.
- (2) When a petition is filed with the court pursuant to subsection (1) of this section, the petition shall be accompanied by a notice that shall state as follows:

**"Notice: based on a judgment entered against you in the above captioned matter, a petition for an order directing payment has been filed with the court.**

**If the real estate commission makes a payment pursuant to a court order based upon this petition, your real estate license will automatically be**

**revoked when the court order becomes final and payment is made. Any subsequent application for a license shall not be granted until the amount paid has been reimbursed, plus interest at the statutory rate, and the passage of one year from the date of revocation.**

**If you wish to defend against this claim, you must file a written response with the court and mail a copy to the party filing the petition and to the real estate commission within thirty days after having been served with this notice. If you do not file a written response, you waive your right to defend against the claim."**

- (3) If the judgment debtor files an objection to the issuance of an administrative order for payment from the fund in accordance with section 12-61-303 (7) and the commission issues an administrative order directing payment from the fund, the judgment debtor may file a verified petition objecting to payment from the fund in the court that entered the judgment on which the application was based. When a judgment debtor files such a petition, the judgment debtor shall serve a copy of the petition upon the real estate commission and the applicant in accordance with the Colorado rules of civil procedure. A certificate or affidavit of such service shall be filed with the court.
- (4) A petition filed with a court pursuant to subsection (1) or (2) of this section shall be in the form of a pleading and shall comply with the rules of procedure applicable to the court in which it is filed. Such petition shall be filed in the appropriate court no later than thirty days from the date upon which the administrative order is mailed by the commission pursuant to section 12-61-303 (8). The petition shall be accompanied by a verified copy of the application form and any attached documents that were filed with the commission.
- (5) The real estate commission and any person served with a petition pursuant to this section shall have thirty days after service of the petition within which to file a written answer. The court shall thereafter set the matter for hearing.
- (6) At a hearing under subsection (5) of this section the party filing the petition shall be required to show compliance, or lack thereof, with sections 12-61-302 to 12-61-304. Such hearing shall be on the merits of the application and shall not be in the nature of judicial review of the administrative order issued by the commission or of the procedure employed in issuing such order.

**12-61-305. Commission may defend against petition - burden of proof - presumption - compromise of claims.**

The real estate commission may, on behalf of the fund, defend against a petition filed pursuant to section 12-61-304 and shall have recourse to all appropriate means of defense and appeal, including examination of witnesses and the right to relitigate any issues that were material and relevant to the proceeding against the fund and that were finally adjudicated in the underlying action on which the judgment in favor of the applicant was based. If such judgment was by default stipulation, or consent, or whenever the action against the licensee judgment debtor was defended by a trustee in bankruptcy, the applicant shall have the burden of producing evidence of, and the burden of proving, the negligence, fraud, willful misrepresentation, or conversion of trust funds by the licensee judgment debtor; otherwise,

the judgment shall create a rebuttable presumption of the negligence, fraud willful misrepresentation, or conversion of trust funds by the licensee, and such presumption shall affect the burden of producing evidence. The real estate commission may, subject to court approval, settle a claim based upon the petition of an applicant and shall not be bound by any prior compromise of the judgment debtor.

**12-61-306. Defense against petition - conclusive adjudication of issues.**

The judgment debtor may defend an action against the fund and shall have recourse to all appropriate means of defense and appeal, including examination of witnesses; except that matters finally adjudicated in the underlying action, including, but not limited to, the issues of negligence, fraud, willful misrepresentation, or conversion of trust funds, are conclusive against both the licensee judgment debtor and the applicant and may not be relitigated.

**12-61-307. Automatic revocation of license - reinstatement.**

- (1) Should the real estate commission pay from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson, either by administrative order or by order of the court, the license of the broker or salesperson shall be automatically revoked upon the final date of such order.
- (2) No such broker or salesperson shall be eligible to be licensed again until such broker or salesperson has repaid in full, plus interest at the statutory rate, the amount paid from the fund on the broker or salesperson's account and one year has passed from the date of revocation.

**12-61-308. Distribution from fund - fund insufficient to pay claims - delayed distribution authorized.**

- (1) Upon the issuance by the commission of an administrative order directing that payment be made out of the fund, or upon the entry of such an order by a court of competent jurisdiction, the controller is authorized to draw a warrant for the payment of the same upon a voucher approved by the real estate commission, and the state treasurer is authorized to pay the same out of the fund.
- (2) If at any time the balance remaining in the fund is insufficient to satisfy any duly authorized claim or portion thereof, the real estate commission, when sufficient money has been deposited in the fund, shall satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of four percent per year.
- (3) After an administrative order for payment from the fund has been issued by the commission, the commission may delay payment in order to allow the filing periods in section 12-61-304 to expire. In the event that a petition is filed pursuant to section 12-61-304, payment pursuant to the administrative order shall be withheld pending the outcome of the court proceeding on the petition.

**12-61-309. Subrogation of rights.**

- (1) When, upon administrative order of the real estate commission or of any court, the real estate commission has made payment from the fund to an applicant, the real estate commission shall be subrogated to the rights of the applicant with respect to the amount so paid.

- (2) Up to an amount equal to five percent of the payment to an applicant may be drawn from the fund and expended by the real estate commission for the purpose of enforcing the rights of a particular applicant to which the commission is subrogated pursuant to this section.



Part 4 – Subdivisions – See Chapter 4

Part 5 – Rental Location Agents - Repealed

Part 6 – Preowned Housing Home Warranty Contracts - See Chapter 24

Part 7 – Real Estate Appraisers – See Chapter 10

## **Part 8 - Brokerage Relationships**

### **12-61-801. Legislative declaration.**

- (1) The general assembly finds, determines, and declares that the public will best be served through a better understanding of the public's legal and working relationships with real estate brokers and by being able to engage any such real estate broker on terms and under conditions that the public and the real estate broker find acceptable. This includes engaging a broker as a single agent or transaction-broker. Individual members of the public should not be exposed to liability for acts or omissions of real estate brokers than have not been approved, directed, or ratified by such individuals. Further, the public should be advised of the general duties, obligations, and responsibilities of the real estate broker they engage.
- (2) This part 8 is enacted to govern the relationships between real estate brokers and sellers, landlords, buyers, and tenants in real estate transactions.

### **12-61-802. Definitions as used in this part 8, unless the context otherwise requires:**

- (1) "Broker" shall have the same meaning as set forth in subsection (2) or (3) of section 12-61-101, except as otherwise specified in this part 8. For purposes of this part 8, "broker" may include a "salesperson" as defined in section 12-61-101 (3).
- (1.3) "Customer" means a party to a real estate transaction with whom the broker has no brokerage relationship because such party has not engaged or employed a broker.
- (1.5) "Designated Broker" means an employing broker or employed broker who is designated in writing by an employing broker to serve as a single agent or transaction-broker for a seller, landlord, buyer or tenant in a real estate transaction. "Designated broker" does not include a real estate brokerage firm that consists of only one licensed natural person.
- (2) "Dual agent" means a broker who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as a limited agent for both the seller and buyer or both the landlord and tenant.
- (3) "Limited agent" means an agent whose duties and obligations to a principal are only those set forth in section 12-61-804, 12-61-805, with any additional duties and obligations agreed to pursuant to section 12-61-803 (5).
- (4) "Single agent" means a broker who is engaged by and represents only one party in a real estate transaction. A single agent includes the following:
  - (a) "Buyer's agent", which means a broker who is engaged by and represents the buyer in a real estate transaction;
  - (b) "Landlord's agent", which means a broker who is engaged by and represents the landlord in a leasing transaction;

- (c) "Seller's agent", which means a broker who is engaged by and represents the seller in a real estate transaction; and
  - (d) "Tenant's agent", which means a broker who is engaged by and represents the tenant in a leasing transaction.
- (4) "Subagent" means a broker engaged to act for another broker in performing brokerage tasks for a principal. The subagent owes the same obligations and responsibilities to the principal as does the principal's broker.
- (5) "Transaction-broker" means a broker who assists one or more parties throughout a contemplated real estate transaction with communication, interposition, advisement, negotiation, contract terms, and the closing of such real estate transaction without being an agent or advocate for the interests of any party to such transaction. Upon agreement in writing pursuant to section 12-61-803 (2) or a written disclosure pursuant to section 12-61-808 (2) (d), a transaction-broker may become a single agent.

**12-61-803. Relationships between brokers and the public.**

- (1) When engaged in any of the activities enumerated in section 12-61-101 (2) or (3), a broker may act in any transaction as a single agent or transaction-broker. The broker's general duties and obligations arising from that relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to section 12-61-808.
- (2) A broker shall be considered a transaction-broker unless a single agency relationship is established through a written agreement between the broker and the party or parties to be represented by such broker.
- (3) A broker may work with a single party in separate transactions pursuant to different relationships including but not limited to selling one property as a seller's agent and working with that seller in buying another property as a transaction-broker or buyer's agent, but only if the broker complies with this part 8 in establishing the relationships for each transaction.
- (4) A broker licensed pursuant to part 1 of this article, whether acting as a single agent or transaction-broker, may complete standard forms including those promulgated by the Colorado real estate commission and may advise the parties as to effects thereof, if the broker is performing the activities enumerated or referred to in section 12-61-101 (2) or (3) in the transaction in which the forms are to be used, in any such transaction, the broker shall advise the parties that the forms have important legal consequences and that the parties should consult legal counsel before signing such forms.
- (5) Nothing contained in this section shall prohibit the public from entering into written contracts with any broker which contain duties, obligations, or responsibilities which are in addition to those specified in this part 8.
- (6) (a) If a real estate brokerage firm has more than one licensed natural person, the employing broker or an individual broker employed or engaged by that employing broker shall be designated to work with the seller, landlord, buyer or tenant as a designated broker. The employing broker may designate more

than one of its individual brokers to work with, a seller, landlord, buyer or tenant.

- (b) The brokerage relationship established between the seller, landlord, buyer or tenant and a designated broker, including the duties, obligations, and responsibilities of that relationship, shall not extend to the employing broker nor to any other broker employed or engaged by that employing broker who has not been so designated and shall not extend to the firm, partnership, limited liability company, association, corporation or other entity that employs such broker.
  - (c) A real estate broker may have designated brokers working as single agents for a seller or landlord and a buyer or tenant in the same real estate transaction without creating dual agency for the employing real estate broker, or any broker employed or engaged by that employing real estate broker.
  - (d) An individual broker may be designated to work for both a seller or landlord and a buyer or tenant in the same transaction as a transaction-broker for both, as a single agent for the seller or landlord treating the buyer or tenant as a customer, or as a single agent for a buyer or tenant treating the seller or landlord as a customer, but not as a single agent for both. The applicable designated brokerage relationship shall be disclosed in writing to the seller or landlord and buyer or tenant in a timely manner pursuant to rules promulgated by the real estate commission.
  - (e) A designated broker may work with a seller or landlord in one transaction and work with a buyer or tenant in another transaction.
  - (f) When a designated broker serves as a single agent pursuant to section 12-61-804 or 12-61-805, there shall be no imputation of knowledge to the employing or employed broker who has not been so designated.
  - (g) The extent and limitations of the brokerage relationship with the designated broker shall be disclosed to the seller, landlord, buyer or tenant working with that designated broker pursuant to section 12-61-808.
- (7) No seller, landlord, buyer or tenant shall be vicariously liable for a broker's acts or omissions that have not been approved, directed or ratified by such seller, buyer, landlord or tenant.
- (8) Nothing in this section shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by such broker or firm nor to shield such broker or firm from vicarious liability

**12-61-804. Single agent engaged by seller or landlord.**

- (1) A broker engaged by a seller or landlord to act as a seller's agent or a landlord's agent is a limited agent with the following duties and obligations:
  - (a) To perform the terms of the written agreement made with the seller or landlord;
  - (b) To exercise reasonable skill and care for the seller or landlord;

- (c) To promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity, including, but not limited to:
  - (I) Seeking a price and terms which are acceptable to the seller or landlord; except that the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;
  - (II) Presenting all offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or a lease or letter of intent to lease;
  - (III) Disclosing to the seller or landlord adverse material facts actually known by the broker;
  - (IV) Counseling the seller or landlord as to any material benefits or risks of a transaction which are actually known by the broker;
  - (V) Advising the seller or landlord to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of such broker;
  - (VI) Accounting in a timely manner for all money and property received; and
  - (VII) Informing the seller or landlord that such seller or landlord shall not be vicariously liable for the acts of such seller's or landlord's agent that are not approved, directed or ratified by such seller or landlord.
- (d) To comply with all requirements of this article and any rules promulgated pursuant to this article; and
- (e) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.
- (2) The following information shall not be disclosed by a broker acting as a seller's or landlord's agent without the informed consent of the seller or landlord:
  - (a) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;
  - (b) What the motivating factors are for the party selling or leasing the property;
  - (c) That the seller or landlord will agree to financing terms other than those offered;
  - (d) Any material information about the seller or landlord unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or
  - (e) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.

- (3) (a) A broker acting as a seller's or landlord's agent owes no duty or obligation to the buyer or tenant; except that a broker shall, subject to the limitations of section 38-35.5-101, C.R.S., concerning psychologically impacted property, disclose to any prospective buyer or tenant all adverse material facts actually known by such broker. Such adverse material facts may include but shall not be limited to adverse material facts pertaining to the title and the physical condition of the property, any material defects in the property, and any environmental hazards affecting the property which are required by law to be disclosed.
- (b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by such seller or landlord or any independent inspector.
- (4) A seller's or landlord's agent may show alternative properties not owned by such seller or landlord to prospective buyers or tenants and may list competing properties for sale or lease and not be deemed to have breached any duty or obligation to such seller or landlord.
- (5) A designated broker acting as a seller's or landlord's agent may cooperate with other brokers but may not engage or create any subagents.

**12-61-805. Single agent engaged by buyer or tenant.**

- (1) A broker engaged by a buyer or tenant to act as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:
  - (a) To perform the terms of the written agreement made with the buyer or tenant;
  - (b) To exercise reasonable skill and care for the buyer or tenant;
  - (c) To promote the interests of the buyer or tenant with the utmost good faith, loyalty, and fidelity, including, but not limited to:
    - (I) Seeking a price and terms which are acceptable to the buyer or tenant; except that the broker shall not be obligated to seek other properties while the buyer is a party to a contract to purchase property or while the tenant is a party to a lease or letter of intent to lease;
    - (II) Presenting all offers to and from the buyer or tenant in a timely manner regardless of whether the buyer is already a party to a contract to purchase property or the tenant is already a party to a contract or a letter of intent to lease;
    - (III) Disclosing to the buyer or tenant adverse material facts actually known by the broker;
    - (IV) Counseling the buyer or tenant as to any material benefits or risks of a transaction which are actually known by the broker;

- (V) Advising the buyer or tenant to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of such broker;
  - (VI) Accounting in a timely manner for all money and property received; and
  - (VII) Informing the buyer or tenant that such buyer or tenant shall not be vicariously liable for the acts of such buyer's or tenant's agent that are not approved, directed, or ratified by such buyer or tenant;
- (d) To comply with all requirements of this article and any rules promulgated pursuant to this article; and
  - (e) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.
- (2) The following information shall not be disclosed by a broker acting as a buyer's or tenant's agent without the informed consent of the buyer or tenant:
- (a) That a buyer or tenant is willing to pay more than the purchase price or lease rate for the property;
  - (b) What the motivating factors are for the party buying or leasing the property;
  - (c) That the buyer or tenant will agree to financing terms other than those offered;
  - (d) Any material information about the buyer or tenant unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or
  - (e) Any facts or suspicions regarding circumstances which would psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.
- (3)
- (a) A broker acting as a buyer's or tenant's agent owes no duty or obligation to the seller or landlord; except that such broker shall disclose to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts concerning the buyer's or tenant's financial ability to perform the terms of the transaction and whether the buyer intends to occupy the property to be purchased as a principal residence.
  - (b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the buyer's or tenant's financial condition for the benefit of the seller or landlord and owes no duty to independently verify the accuracy or completeness of statements made by such buyer or tenant or any independent inspector.
- (4) A buyer's or tenant's agent may show properties in which the buyer or tenant is interested to other prospective buyers or tenants without breaching any duty or obligation to such buyer or tenant, nothing in this section shall be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

- (5) A broker acting as a buyer's or tenant's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent inspectors, except that nothing in this subsection (5) shall be construed to limit the broker's duties and obligations imposed pursuant to subsection (1) of this section,
- (6) A broker acting as a buyer's or tenant's agent may cooperate with other brokers but may not engage or create any subagents.

**12-61-806. Dual agent.**

- (1) A broker shall not establish dual agency with any seller, landlord buyer or tenant.

**12-61-807. Transaction-broker.**

- (1) A broker engaged as a transaction-broker is not an agent for either party.
- (2) A transaction-broker shall have the following obligations and responsibilities:
  - (a) To perform the terms of any written or oral agreement made with any party to the transaction;
  - (b) To exercise reasonable skill and care as a transaction-broker, including, but not limited to:
    - (I) Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or letter of intent;
    - (II) Advising the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction-broker knows but the specifics of which are beyond the expertise of such broker;
    - (III) Accounting in a timely manner for all money and property received;
    - (IV) Keeping the parties fully informed regarding the transaction;
    - (V) Assisting the parties in complying with the terms and conditions of any contract including closing the transaction;
    - (VI) Disclosing to all prospective buyers or tenants any adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the title, the physical condition of the property, any defects in the property, and any environmental hazards affecting the property required by law to be disclosed;
    - (VII) Disclosing to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the buyer's or tenant's financial ability to perform the terms of the transaction and the buyer's intent to occupy the property as a principal residence; and

- (VIII) Informing the parties that as seller and buyer or as landlord and tenant they shall not be vicariously liable for any acts of the transaction-broker;
  - (c) To comply with all requirements of this article and any rules promulgated pursuant to this article; and
  - (d) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.
- (3) The following information shall not be disclosed by a transaction-broker without the informed consent of all parties:
- (a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;
  - (b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;
  - (c) What the motivating factors are for any party buying, selling, or leasing the property;
  - (d) That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered;
  - (e) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.; or
  - (f) Any material information about the other party unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing.
- (4) A transaction-broker has no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and has no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent inspectors.
- (5) A transaction-broker has no duty to conduct an independent investigation of the buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer or tenant.
- (6) A transaction-broker may do the following without breaching any obligation or responsibility:
- (a) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;
  - (b) List competing properties for sale or lease;
  - (c) Show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and
  - (d) Serve as a single agent or transaction-broker for the same or for different parties in other real estate transactions.



- (7) There shall be no imputation of knowledge or information between any party and the transaction-broker or among persons within an entity engaged as a transaction-broker.
- (8) A transaction-broker may cooperate with other brokers but shall not engage or create any subagents.

**12-61-808. Broker disclosures.**

- (1)
  - (a) Any person, firm, partnership, limited liability company, association, or corporation acting as a broker shall adopt a written office policy that identifies and describes the relationships offered to the public by such, broker.
  - (b) A broker shall not be required to offer or engage in any one or in all of the brokerage relationships enumerated in sections 12-61-804, 12-61-805 or 12- 61-807.
  - (c) Written disclosures and written agreements required by subsection (2) of this section shall contain a statement to the seller, landlord, buyer, or tenant that different brokerage relationships are available that include buyer agency, seller agency, or status as a transaction-broker. Should the seller, landlord, buyer, or tenant request information or ask questions concerning a brokerage relationship not offered by the broker pursuant to the broker's written office policy enumerated in subsection (1) (a) of this section, the broker shall provide to the party a written definition of that brokerage relationship that has been promulgated by the Colorado real estate commission.
  - (d) Disclosures made in accordance with this part 8 shall be sufficient to disclose brokerage relationships to the public.
- (2)
  - (a)
    - (I) Prior to engaging in any of the activities enumerated in subsection (2) or (3) of section 12-61-101, a transaction-broker shall disclose in writing to the party to be assisted that such broker is not acting as agent for such party and that such broker is acting as a transaction -broker.
    - (II) As part of each relationship entered into by a broker pursuant to subparagraph (I) of this paragraph (a), written disclosure shall be made which shall contain a signature block for the buyer, seller, landlord, or tenant to acknowledge receipt of such disclosure. Such disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If such buyer, seller, landlord, or tenant chooses not to sign the acknowledgment, the broker shall note that fact on a copy of the disclosure and shall retain such copy.
    - (III) If the transaction-broker undertakes any obligations or responsibilities in addition to or different from those set forth in section 12-61-807, such obligations or responsibilities shall be disclosed in a writing which shall be signed by the involved parties.
  - (b) Prior to engaging in any of the activities enumerated in section 12-61-101 (2) or (3), a broker intending to establish a single agency relationship with a seller,

landlord, buyer, or tenant shall enter into a written agency agreement with the party to be represented. Such agreement shall disclose the duties and responsibilities specified in section 12-61-804 or 12-61-805, as applicable. Notice of the single agency relationship shall be furnished to any prospective party to the proposed transaction in a timely manner.

- (c) Deleted.
- (d) (I) Prior to engaging in any of the activities enumerated in section 12-61-101 (2) or (3), a broker intending to work with a buyer or tenant as an agent of the seller or landlord shall provide a written disclosure to such buyer or tenant that shall contain the following:
  - (A) A statement that the broker is an agent for the seller or landlord and is not an agent for the buyer or tenant;
  - (B) A list of the tasks that the agent intends to perform with the buyer or tenant; and
  - (C) A statement that the buyer or tenant shall not be vicariously liable for the acts of the agent unless the buyer or tenant approves, directs or ratifies such acts.
- (II) The written disclosure required pursuant to subparagraph (I) of this paragraph (d), shall contain a signature block for the buyer or tenant to acknowledge receipt of such disclosure. Such disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If the buyer or tenant does not sign such disclosure, the broker shall note that fact on a copy of such disclosure and retain such copy.
- (e) Deleted.
- (f) A broker who has already established a relationship with one party to a proposed transaction shall advise at the earliest reasonable opportunity any other potential parties or their agents of such established relationship.
- (g) (I) Prior to engaging in any of the activities enumerated in section 12-61-101 (2) or (3), the seller, buyer, landlord or tenant shall be advised in any written agreement with a broker that the brokerage relationship exists only with the designated broker, does not extend to the employing broker or to any other brokers employed or engaged by the employing broker who are not so designated, and does not extend to the brokerage company.
- (II) Nothing in this paragraph (g) shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by such broker or firm, nor to shield such broker or firm from vicarious liability.

**12-61-809. Duration of relationship.**

- (1) (a) The relationships set forth in this part 8 shall commence at the time that the broker is engaged by a party and shall continue until performance or completion of the agreement by which the broker was engaged.
- (b) If the agreement by which the broker was engaged is not performed or completed for any reason, the relationship shall end at the earlier of the following:
  - (I) Any date of expiration agreed upon by the parties;
  - (II) Any termination or relinquishment of the relationship by the parties; or
  - (III) One year after the date of the engagement.
- (2) (a) Except as otherwise agreed to in writing and pursuant to paragraph (b) of this subsection (2), a broker engaged as a seller's agent or buyer's agent, owes no further duty or obligation after termination or expiration of the contract or completion of performance.
- (b) Notwithstanding paragraph (a) of this section (2), a broker shall be responsible after termination or expiration of the contract or completion of performance for the following:
  - (I) Accounting for all moneys and property related to and received during the engagement; and
  - (II) Keeping confidential all information received during the course of the engagement which was made confidential by request or instructions from the engaging party unless:
    - (A) The engaging party grants written consent to disclose such information;
    - (B) Disclosure of such information is required by law; or
    - (C) The information is made public or becomes public by the words or conduct of the engaging party or from a source other than the broker.
- (3) Except as otherwise agreed to in writing, a transaction-broker owes no further obligation or responsibility to the engaging party after termination or expiration of the contract for performance or completion of performance; except that such broker shall account for all moneys and property related to and received during the engagement.

**12-61-810. Compensation.**

- (1) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, or by the sharing or splitting of a commission or compensation between brokers.
- (2) Payment of compensation shall not be construed to establish an agency relationship between the broker and the party who paid such compensation.

- (3) A seller or landlord may agree that a transaction-broker or single agent may share the commission or other compensation paid by such seller or landlord with another broker.
- (4) A buyer or tenant may agree that a single agent or transaction-broker may share the commission or other compensation paid by such buyer or tenant with another broker.
- (5) A buyer's or tenant's agent shall obtain the written approval of such buyer or tenant before such agent may propose to the seller's or landlord's agent that such buyer's or tenant's agent be compensated by sharing compensation paid by such seller or landlord.
- (6) Prior to entering into a brokerage or listing agreement or a contract to buy, sell, or lease, the identity of those parties, persons, or entities paying compensation or commissions to any broker shall be disclosed to the parties to the transaction.
- (7) A broker may be compensated by more than one party for services in a transaction, if those parties have consent in writing to such multiple payments prior to entering into a contract to buy, sell, or lease.

**12-61-811. Violations.**

The violation of any provision of this part 8 by a broker or salesperson shall constitute an act pursuant to section 12-61-113 (1) (k) for which the real estate commission may investigate and take administrative action against any such broker or salesperson pursuant to sections 12-61-113 and 12-61-114 if it has reason to believe that this part 8 has been violated.

\*

## PART 9 - MORTGAGE BROKERS

**12-61-901. Short title.** This part 9 shall be known and may be cited as the "Mortgage Broker Registration Act".

**12-61-902. Definitions.** As used in this part 9, unless the context otherwise requires:

- (1) "Affiliate" means a person who, directly or indirectly, through intermediaries controls, is controlled by, or is under the common control of another person addressed by this part 9.
- (2) "Broker a mortgage" means to directly or indirectly act as a mortgage broker.
- (3) "Director" means the director of the division of real estate.
- (4) "Division" means the division of real estate.
- (5) "Mortgage broker" means an individual who negotiates, originates, or offers or attempts to negotiate or originate for a borrower, and for a commission or other thing of value, a loan to be consummated and funded by a mortgage lender.
- (6) "Mortgage lender" means a lender who is in the business of making mortgage loans if:
  - (a) The lender is the payee on the promissory note evidencing the loan; and
  - (b) The loan proceeds are obtained by the lender from its own funds or from a line of credit made available to the lender from a bank or other entity who regularly loans money to lenders for the purpose of funding mortgage loans.
- (7) "Originate" means to submit an application or documentation to a lender or underwriter in an attempt to obtain a loan.

**12-61-903. Registration required.**

- (1)
  - (a) On or after January 1, 2007, unless registered with the director, a person shall not broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.
  - (b) A registered mortgage broker shall apply for registration in accordance with subsection (2) of this section every three years.
- (2) An applicant for registration shall submit to the director the following:
  - (a) A criminal history background check in compliance with subsection (3) of this section;
  - (b) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1) (c); and
  - (c) The application fee established by the director in accordance with section 12-61-908.
- (3) Prior to submitting an application for registration, an applicant shall submit a set of fingerprints to the Colorado bureau of investigation. Upon receipt of the applicant's fingerprints, the Colorado bureau of investigation shall use the fingerprints to conduct a state and national criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. All costs arising from such criminal

history record check shall be borne by the applicant and shall be paid when the set of fingerprints is submitted. Upon completion of the criminal history record check, the bureau shall forward the results to the director.

- (4) Before registering an applicant, the director shall require the applicant to post a bond as required by section 12-61-907.
- (5) The director shall issue or deny a registration within twenty-one days after receiving the completed criminal history record check, completed application, application fee, and proof of the posting of the surety bond.

**12-61-904. Exemptions.**

- (1) This part 9 shall not apply to the following:
  - (a) Employees of an agency of the federal government, of the Colorado government, or of any of Colorado's political subdivisions;
  - (b) An owner of real property who offers credit secured by a mortgage or deed of trust on the property sold;
  - (c) A bank, savings bank, savings and loan association, building and loan association, industrial bank, industrial loan company, credit union, or bank or savings association holding company organized under the laws of any state, the District of Columbia, a territory or protectorate of the United States, or the United States, subject to regulation and supervision by a federal banking agency, or an operating subsidiary or affiliate of such entities, or an employee or exclusive agent of any of such entities, including, without limitation, a subsidiary or affiliate of such entities;
  - (d) An attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans;
  - (e) A federal housing administration approved mortgagee or an appointed federal housing administration correspondent, acting through officers, partners, members, exclusive agents, contractors, or employees of such entities when making or brokering any mortgage loan; or
  - (f) A person who:
    - (I) Funds a residential mortgage loan that has been originated and processed by a registered person or by an exempt person;
    - (II) Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and
    - (III) Does not participate in the negotiation of residential mortgage loans with the borrower, except for setting the terms under which a person may buy or fund a residential mortgage loan originated by a registered or exempt person.

- (2) The exemptions in subsection (1) of this section shall not apply to persons acting beyond the scope of such exemptions.

**12-61-905. Powers and duties of the division.**

- (1) The director shall deny, refuse to renew, or revoke the registration of an applicant who has:
- (a) Filed an application with the director containing material misstatements of fact or omitted any disclosure required by this part 9;
  - (b) Within the last five years, been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty; or
  - (c) Had a license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as:
    - (I) A mortgage broker;
    - (II) A real estate broker, as defined by section 12-61-101 (2);
    - (III) A real estate salesperson, as defined by section 12-61-101 (3);
    - (IV) A real estate appraiser, as defined by section 12-61-702 (5);
    - (V) An insurance producer, as defined by section 10-2-103 (6), C.R.S.;
    - (VI) An attorney;
    - (VII) A securities broker-dealer, as defined by section 11-51-201 (2), C.R.S.;
    - (VIII) A securities sales representative, as defined by section 11-51-201 (14), C.R.S.;
    - (IX) An investment advisor, as defined by section 11-51-201 (9.5), C.R.S.; or
    - (X) An investment advisor representative, as defined by section 11-51-201 (9.6), C.R.S.
- (2) The director may investigate the activities of a registrant or other person that present grounds for disciplinary action under this part 9 or that violate section 12-61-910 (1).
- (3) (a) If the director has reasonable grounds to believe that a mortgage broker is no longer qualified under subsection (1) of this section, the director may summarily suspend the mortgage broker's registration pending a hearing to revoke the registration. A summary suspension shall conform to article 4 of title 24, C.R.S.
- (b) The director shall suspend the registration of a broker who fails to maintain the bond required by section 12-61-907 until the registrant complies with such section.

- (4) The director or an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary hearings concerning mortgage brokers. Such hearings shall conform to article 4 of title 24, C.R.S.
- (5)
  - (a) Except as provided in paragraph (b) of this subsection (5), a person whose registration has been revoked shall not be eligible for registration for two years after the effective date of the revocation.
  - (b) If the director or an administrative law judge determines that an application contained a misstatement of fact or omitted a required disclosure due to an unintentional error, the director shall allow the applicant to correct the application. Upon receipt of the corrected and completed application, the director or administrative law judge shall not bar the applicant from being registered on the basis of the unintentional misstatement or omission.
- (6)
  - (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the director or an administrative law judge.
  - (b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order requiring the witness to appear before the director or administrative law judge and produce the relevant papers, books, records, documentary evidence, testimony, or materials in question. Failure to obey the order of the court may be punished as a contempt of court. The director or an administrative law judge may apply for such order.
- (7) If the director has reasonable cause to believe that a person is violating this part 9, including but not limited to section 12-61-910 (1), the director may enter an order requiring such person to cease and desist such violations.
- (8) The director shall keep records of the persons registered as mortgage brokers and of disciplinary proceedings. The records kept by the director shall be open to public inspection in a reasonable time and manner determined by the director.
- (9)
  - (a) The director shall maintain a system, which may include, without limitation, a hotline or web site, that gives consumers a reasonably easy method for making complaints about a mortgage broker.
  - (b) The director shall review the complaints annually and prepare a report to be issued to the committee of the general assembly that has oversight of mortgage brokers. Such report shall contain the trends in complaints and investigations under this part 9.

#### **12-61-906. Immunity.**

A person participating in good faith in the filing of a complaint or report or participating in an investigation or hearing before the director or an administrative law judge pursuant to this part 9 shall be immune from any liability, civil or criminal, that otherwise might result by reason of



such action.

**12-61-907. Bond required.**

- (1) Prior to registration, an applicant for registration shall post with the director a surety bond, or an alternative authorized by article 35 of title 11, C.R.S., of twenty-five thousand dollars. A registered mortgage broker shall maintain such bond at all times.
- (2) The surety shall not be required to pay a person making a claim upon the bond until a final determination of fraud, forgery, criminal impersonation, or fraudulent representation has been made by a court with jurisdiction.
- (3) The surety bond shall require the surety to provide notice to the director within thirty days if payment is made from the surety bond or if the bond is cancelled.

**12-61-908. Fees.**

- (1) The director may set the fee for registration under this part 9. The fee shall be set in an amount, not to exceed two hundred dollars, that offsets the direct and indirect costs of implementing this part 9. The moneys collected pursuant to this section shall be transferred to the state treasurer, who shall credit them to the mortgage broker registration cash fund.
- (2) There is hereby created in the state treasury the mortgage broker registration cash fund. Moneys in the fund shall be spent only to implement this part 9 and shall not revert to the general fund at the end of the fiscal year. The fund shall be subject to annual appropriation by the general assembly.

**12-61-909. Attorney general - district attorney - jurisdiction.**

The attorney general shall have concurrent jurisdiction with the district attorneys of this state to investigate and prosecute allegations of criminal violations of this part 9.

**12-61-910. Violations - injunctions.**

- (1)
  - (a) Brokering a mortgage or practicing as a mortgage broker without registering under this part 9 shall be a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.
  - (b) Each mortgage brokered by an unregistered person shall be a separate violation of this subsection (1).
- (2) The director may forward information concerning possible violations of the law committed by or complaints filed against a mortgage broker to the attorney general, a district attorney, or a state or federal law enforcement agency.
- (3) The director may request that an action be brought in the name of the people of the state of Colorado by the attorney general or the district attorney of the district in which the violation is alleged to have occurred to enjoin a person from engaging in or continuing the violation or from doing any act that furthers the violation. In such an action, an order or judgment may be entered awarding such preliminary or final injunction as is deemed proper by the court. The notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.
- (4) A violation of this part 9 shall not affect the validity or enforceability of any mortgage.

**12-61-911. Repeal.**

- (1) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended, apply to the registration of mortgage brokers under this part 9.
- (2) The sunset review, performed pursuant to section 24-34-104, C.R.S., shall include an analysis of the number and types of complaints and whether the registration of mortgage brokers correlates with the public being protected from fraudulent activities.
- (3) This part 9 is repealed, effective July 1, 2011.

**Effective date - applicability.**

This act shall take effect July 1, 2006, and shall apply to acts committed and loans made on or after said date.

(Editor Note: The following provision of HB06-1161 pertains to the requirements of 12-61-907 C.R.S. as listed above.)

**11-35-101. Alternatives to surety bonds permitted - requirements.**

- (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in sections 12-5.5-202 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-11-101 (1) (d), 12-11-104, 12-11-106, 12-14-124 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-33-403 (3), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2), 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3), and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state. Such savings account, deposit, or certificate of deposit shall be in the amount specified by statute, if any, and shall be assigned to the appropriate state agency for the use of the people of the state of Colorado. The aggregate liability of the bank or savings and loan association shall in no event exceed the amount of the deposit. For the purposes of the sections referred to in this section, "bond" includes the savings account, deposit, or certificate of deposit authorized by this section.