

Chapter 14: Brokerage Relationships

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

I. Introduction

A. We're # 1

Colorado is a national leader in the creation of real estate brokerage laws. For many years, the common law practice of agency guided relationships between the broker and the seller, landlord, buyer or tenant. (For ease of reference, “seller, landlord, buyer or tenant” **when** used together will be referred to as the “party” in this Chapter 13.) Effective January 1, 1994, the “Brokerage Relationships in Real Estate Act” significantly changed Colorado license law by establishing two different types of working relationships between a broker and a party: single agency and transaction-brokerage. This legislation codified the duties and obligations of a real estate broker.

B. Two Good Choices

A party now has two choices when engaging the services of a real estate broker. One choice is “transaction-brokerage” where the broker *assists* one or more parties throughout the transaction without being an advocate for any party. The second relationship is “agency” where the broker is a single agent *representing* only one party in the transaction. In addition to the seventeen “Uniform Duties” (described in Section V) that both transaction-brokers and agents are obligated to perform under the Colorado real estate statutes, the broker acting as an *agent* is obligated to: (1) promote the interests of the party with the utmost good faith, loyalty and fidelity; (2) seek a price or lease rate and terms that are acceptable to the party; and (3) counsel the party as to any material benefits or risks of a transaction.

C. The Way We Were

Before January 1, 2003, when the brokerage firm entered into an agency agreement with a party, all of the brokers in that firm would become agents of that party. Confidential information concerning the party and the transaction could be exchanged between brokers within the brokerage firm. The same broker or other brokers in the firm were permitted to work as the agent for the other party in the transaction—thus creating dual agency. The firm (and all the brokers in the firm) could represent both sides in the transaction. This brokerage arrangement created a potentially sensitive and difficult situation within the brokerage firm and resulted in problems and conflicts.

D. You're the One

The second major change to Colorado’s real estate brokerage relationships was the 2003 “Designated Brokerage Relationships in Real Estate Act.” This statute created two types of brokers in a multiple-person brokerage firm—the employing broker and the employed broker. The statute made each broker within the brokerage firm an independent, stand-alone broker for the purposes of establishing a brokerage relationship. In the past, the party entered

into an agency or transaction-brokerage relationship with the brokerage firm. However, the new statute provided that the brokerage relationship is only between the individual broker and the party. The employing broker of the multiple-person brokerage firm was given the responsibility to designate either the employing broker or one or more employed brokers as the “designated broker” to work with a particular party in a specific real estate transaction. By making the relationship at the broker level rather than at the brokerage firm level and by prohibiting the imputation of information within the brokerage firm, the statute has simplified and improved the brokerage relationship between the broker and the party.

E. Good News/Bad News

Fortunately, Colorado statutes provide the broker and the party with maximum brokerage relationship flexibility through the introduction and implementation of designated brokerage, agency and transaction-brokerage. In Colorado, each brokerage relationship can be custom-designed for each specific personality, situation and transaction. While a number of disclosures, agreements, policies and rules are required to make certain that these diverse brokerage relationships are properly presented and implemented, the end result is that the public is better protected. Although initially the requirements explained throughout this chapter seem a bit overwhelming, they do fit together like pieces of a puzzle and create a brokerage relationships picture that makes sense.

F. Get a Job

There are seven standard brokerage employment agreements that have been approved by the commission. All of these agreements can be used to establish either an agency or transaction-brokerage relationship with the Party.

- Exclusive Right-to-Sell Listing Contract
- Exclusive Brokerage Listing Contract
- Open Listing Contract
- Exclusive Right-to-Buy Contract
- Exclusive Right-to-Lease Contract
- Exclusive Tenant Contract
- Brokerage Duties Addendum to Property Management Agreement

II. Designated Brokerage

A. One-Person Firm

A brokerage employment contract is not a contract between the individual broker and the party. An employment contract is a contract between the *brokerage firm* and the party. If the employment contract is with a brokerage firm that consists of only one licensed natural person, then the brokerage firm and the individual broker are—for brokerage purposes—conceptually treated as one and the same. Hence, there is no reason to “designate” a broker to work with the party (as the broker could only designate himself). With a one-person brokerage firm, there is no “designated broker.”

B. Multiple-Person Firm

If the employment contract is with a brokerage firm that consists of more than one licensed natural person, the employing broker or an individual broker employed or engaged by that employing broker shall be designated by the employing or supervising broker to work with the party as a “designated broker.” The employing or supervising broker may designate more than one of its individual brokers to work with a party as “designated brokers.”

A brokerage relationship exists only with the individual broker(s) so designated. The duties, obligations, and responsibilities of that relationship do not extend to the employing broker, brokerage firm or to any other brokers employed or engaged by the brokerage firm.

C. Stop the Flow

Preventing the imputation of knowledge and transmission of confidential information from the designated broker to the employing broker or an employed broker who has not been so designated is of paramount importance with designated brokerage. However, at the same time, the employing broker and brokerage firm remain responsible for the supervision of the employed brokers of the brokerage firm and may have liability for the actions of the employed brokers. Under certain circumstances, these provisions could be contradictory, particularly if the employed designated broker was working, for example, with the seller and the employing broker was the designated broker for the buyer in the same transaction. By approving Rule E-45, the commission took steps to address this potential conflict.

D. Supervising

Commission Rule E-45 states that a designated broker shall be permitted to reveal to a supervising broker, and a supervising broker shall be permitted to receive, confidential information as authorized by the informed consent of the party the designated broker is assisting or working with, without changing or extending the designated brokerage relationship beyond the designated broker. A *supervising broker* is an experienced broker selected by the employing broker and authorized by commission Rule E-31 to perform some of the responsibilities of the employing broker.

All of the standard commission-approved employment contracts listed above contain a provision granting the party’s consent to the designated broker’s disclosure of confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of the party, or use such information to the detriment of the party.

E. Not Dual

As the result of the designated brokerage statute, a designated broker may work as a single agent for a seller or landlord and another designated broker in the same firm may work as a single agent for a buyer or tenant in the same transaction, and this designated brokerage arrangement does not create dual agency for either of the brokers, the employing broker, or the brokerage firm.

III. Agency

A. Two Kinds of Agency Law

The agency relationship evolved from the master-servant relationship under English common law. The servant owed absolute loyalty to the master. This loyalty was superior to the servant's personal interests as well as the interests of others. *Common law* is established by court decisions. Under common law, the agent owes the principal five duties of care, obedience, accounting, loyalty (including confidentiality) and disclosure. Statutory law is the law enacted by the legislature.

B. The Basics

The *agent* is the individual who is authorized and consents to represent the interests of the principal. The *principal* is the individual hiring the agent and granting to the agent the authority to represent the principal. A *fiduciary relationship* exists between the agent and the principal where the agent is held in a position of special trust and confidence by the principal.

C. No Secret Agents

There are three kinds of agents—universal agents, general agents and special agents. A *universal agent* has unlimited authority to perform any act on behalf of the principal. A *general agent* has far-reaching or wide authority to conduct a series of transactions of a continuous nature on behalf of the agent's principal. For example, the vice-president of the western region of the company would be able to make all the decisions for the western region (but not so for the other regions). A *special agent* has only limited authority to conduct a single transaction for the principal. A real estate broker and an attorney are examples of special agents. In real estate, a *single agent* means a broker who is engaged by and represents only one party in a transaction.

D. Authority 3-Ways

An agent generally gains authority to act on behalf of the agent's principal by entering into a contract. A contract is considered *express authority* where specific terms, duties and responsibilities are established between the agent and the principal. A written listing agreement to sell a property is an example of an express authority. *Implied authority* is authority reasonably expected to permit the agent to be able to perform the scope of the agency. *Apparent authority* is when third parties reasonably believe an individual has authority to act and bind the principal based upon the principal's words or conduct. Although authority in an agency can be created expressly (written or oral), implied or by the imposition of apparent (ostensible) authority, Colorado real estate law specifically states that any agency relationship between the broker and the principal must be created by a written agreement signed by both parties.

E. Don't Go There

Even when acting as an agent, the broker's right to bind a party is very restricted. A commission-approved listing agreement does not give the broker the right to sign or initial legal documents for the party. Absent a power of attorney, the broker should not sign for a party on any document related to the real estate transaction.

F. Real Estate Agency

For many years, Colorado real estate brokers worked with the public under the common law of agency. Brokers automatically became an agent of their party by entering into a listing for the sale or leasing of the party's property. In 1993, the legislature decided that the duties and responsibilities associated with real estate brokerage relationships should be specifically defined in the statute. C.R.S. 12-61-804 defines the duties and obligations of the single agent engaged by a seller or landlord. C.R.S. 12-61-805 defines the duties and obligations of a single agent engaged by a buyer or tenant. All of these duties and obligations are summarized in the "Uniform Duties" section that follows.

IV. Transaction-Brokerage

Transaction-brokerage was created as a new, non-agency relationship. Under Colorado law, a broker is presumed to be a transaction-broker unless a single agency relationship is created by a written agreement between the broker and the party. A *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. C.R.S. 12-61-807 defines the duties and obligations of a transaction-broker engaged by a party. All of these duties and obligations are summarized in the "Uniform Duties" section below.

V. Uniform Duties

A. Getting Started

In Colorado, a broker must be either an agent or a transaction-broker. If a broker is an agent, there must be a written agreement between the broker and the party. A broker may be a transaction-broker by either entering into a written agreement with the party or through disclosure only.

If a broker is acting either as an agent or as a transaction-broker in Colorado, there are seventeen duties that the broker is responsible to perform. Since all of these duties are the same for agency and transaction-brokerage, they are called "*uniform duties*." If the broker and the party determine that the broker should be an agent, then the broker must agree to perform the three "*additional duties*" shown in "C" or "E" below.

Beginning January 1, 2006, the uniform duties and additional duties language outlined below appears in all commission-approved employment contracts between the broker and a party. By signing any of these agreements, the broker is agreeing to abide by and perform each of these duties. Therefore, it is imperative that the broker understands both the uniform and additional duties for agency.

B. Seller or Landlord Uniform Duties

Brokerage firm, acting through broker, shall provide brokerage services to the seller or landlord. The broker, acting as either a transaction-broker or a seller or landlord agent, shall perform the following *uniform duties* when working with seller or landlord:

1. Broker shall exercise reasonable skill and care for seller or landlord, including, but not limited to the following:

- a. Performing the terms of any written or oral agreement with seller or landlord;
 - b. Presenting all offers to and from 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;
 - c. Disclosing to seller or landlord adverse material facts actually known by broker;
 - d. Advising seller or landlord regarding the transaction and to obtain expert advice as to material matters about which broker knows but the specifics of which are beyond the expertise of broker;
 - e. Accounting in a timely manner for all money and property received; and
 - f. Keeping seller or landlord fully informed regarding the transaction.
2. Broker shall not disclose the following information without the informed consent of seller or landlord:
 - a. That seller or landlord is willing to accept less than the asking price for the property or asking lease rate for the premises;
 - b. What the motivating factors are for seller or landlord to sell the property or lease the premises;
 - c. That seller or landlord will agree to financing or lease terms other than those offered;
 - d. Any material information about 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 that could psychologically impact or stigmatize the property or premises.
 3. Seller or landlord consents to broker's disclosure of seller's or landlord's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of seller or landlord, or use such information to the detriment of seller or landlord.
 4. Brokerage firm may have agreements with other sellers to market and sell their property. Broker may show alternative properties not owned by seller or landlord to other prospective buyers or tenants and list competing properties for sale or lease.
 5. Broker shall not be obligated to seek additional offers to purchase or lease the property or premises while the property or premises is subject to a contract for sale or a lease or letter of intent to lease.
 6. Broker has no duty to conduct an independent inspection of the property or premises for the benefit of a buyer or tenant and has no duty to independently verify the accuracy or completeness of statements made by seller or landlord or independent inspectors. Broker has no duty to conduct an independent investigation of a buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by a buyer or tenant.
 7. Seller or landlord shall not be liable for the acts of broker unless such acts are approved, directed or ratified by the seller or landlord.

C. Seller or Landlord Agency – Additional Duties

If broker is a limited agent of seller or landlord (seller's or landlord's agent), broker has the following *additional duties*:

1. Promoting the interests of seller or landlord with the utmost good faith, loyalty and fidelity.
2. Seeking a price and lease rates and terms that are acceptable to seller or landlord.
3. Counseling seller or landlord as to any material benefits or risks of a transaction that are actually known by broker.

D. Buyer or Tenant Uniform Duties

Brokerage firm, acting through broker, shall provide brokerage services to the buyer or tenant. Broker, acting as either a transaction-broker or a buyer or tenant agent, shall perform the following *uniform duties* when working with buyer or tenant:

1. Broker shall exercise reasonable skill and care for buyer or tenant, including, but not limited to the following:
 - a. Performing the terms of any written or oral agreement with buyer or tenant;
 - b. Presenting all offers to and from buyer or tenant in a timely manner regardless of whether buyer or tenant is already a party to a contract to purchase the property or a written agreement to lease the premises;
 - c. Disclosing to buyer or tenant adverse material facts actually known by broker;
 - d. Advising buyer or tenant regarding the transaction and to obtain expert advice as to material matters about which broker knows but the specifics of which are beyond the expertise of broker;
 - e. Accounting in a timely manner for all money and property received; and
 - f. Keeping buyer or tenant fully informed regarding the transaction.
2. Broker shall not disclose the following information without the informed consent of buyer or tenant:
 - a. That buyer or tenant is willing to pay more than the purchase price offered for the property or lease rate offered for premises;
 - b. What buyer's or tenant's motivating factors are;
 - c. That buyer or tenant will agree to financing or lease terms other than those offered;
 - d. Any material information about 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 that could psychologically impact or stigmatize the property or premises.
3. Buyer or tenant consents to broker's disclosure of buyer's or tenant's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of buyer or tenant, or use such information to the detriment of buyer or tenant.

4. Broker 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. Broker shall not be prohibited 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. Broker shall not be obligated to seek other properties while buyer or tenant is already a party to a contract to purchase property or to a lease or letter of intent to lease.
6. Broker has no duty to conduct an independent inspection of the property for the benefit of buyer or tenant and has no duty to independently verify the accuracy or completeness of statements made by a seller or landlord or independent inspectors. Broker has no duty to conduct an independent investigation of buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by buyer or tenant.
7. Broker shall disclose to any prospective seller or landlord all adverse material facts actually known by broker, including but not limited to adverse material facts concerning buyer's or tenant's financial ability to perform the terms of the transaction and whether buyer intends to occupy the property as a principal residence.
8. Buyer or tenant shall not be liable for the acts of broker unless such acts are approved, directed or ratified by the buyer or tenant.

E. Buyer or Tenant Agency – Additional Duties

If broker is a limited agent of buyer or tenant (buyer or tenant's agent), broker has the following *additional duties*:

1. Promoting the interests of buyer or tenant with the utmost good faith, loyalty and fidelity.
2. Seeking a price or lease rate and terms that are acceptable to buyer or tenant.
3. Counseling buyer or tenant as to any material benefits or risks of a transaction that are actually known by broker.

VI. Entering into a Brokerage Relationship

A. Get It in Writing

A broker serving in a brokerage capacity must either be a single agent for the party or be a transaction-broker with one or both parties. 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 to be represented by such broker. If the transaction-broker undertakes any duties in addition to or different from those set forth in the statute, such additional duties shall be disclosed in writing and signed by the broker and the party.

B. Agency

Prior to engaging in any brokerage activities, a broker intending to establish a single agency relationship with a party shall enter into a written agency agreement with the party to be represented. The agreement shall set forth the agent's duties as they appear in the agency sections of the statute and should set forth any other agreed upon duties.

C. Transaction-Brokerage

Prior to engaging in any brokerage activities, a broker becomes a transaction-broker by doing one of the following: (1) Entering into a written transaction-broker contract with the party; or (2) Providing the party with a written transaction-brokerage disclosure with a signature block for the party to acknowledge receipt. If the disclosure is not signed, the broker shall note when the disclosure was presented.

D. Customer

The statute defines “*customer*” as 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. For example, if the broker is acting as a buyer agent and the broker contacts a homeowner and the homeowner is not represented by another broker, the homeowner’s relationship to the broker is as a customer.

E. Lots of Combinations

Because there are different combinations of brokerage engagements, the statute defines which are permitted and not permitted.

Different Relationships with Same Party

A broker may work with a single party in separate transactions using different relationships including, but not limited to, selling one property as a seller agent and working with that seller in buying another property as a transaction-broker or buyer agent, provided the broker establishes separate relationships for each transaction.

Separate Transactions

A broker may work with a seller or landlord in one transaction and work with a buyer or tenant in another transaction.

No Double-Ended Brokerage

A broker shall not enter into a brokerage relationship with one party as an agent and the other party as a transaction-broker in the same transaction. A broker who works with both the buyer and seller or landlord and tenant in the same real estate transaction may do so as: (a) a transaction-broker with both buyer and seller or landlord and tenant; or (b) a single agent for the seller or landlord, treating the buyer or tenant as a customer; or (c) a single agent for the buyer or tenant, treating the seller or landlord as a customer. (Rule E-40)

Brokerage Firm – Both Sides OK

A brokerage firm may have one designated broker working as a single agent for the seller or landlord and another designated broker working as an agent for the buyer or tenant in the same real estate transaction without creating dual agency for the employing broker, brokerage firm or any broker employed or engaged by that employing broker.

No Dual Agency

A broker shall not establish agency with the seller or landlord and the buyer or tenant in the same transaction.

Switching

A broker may switch or change from acting in one capacity to another. For example, a broker acting as a seller or landlord agent may change to a transaction-broker if agreed upon by the parties and the broker supplies a Change of Status – Transaction-Brokerage Disclosure (Form CS23).

VII. Disclosures

A. When to Do It

Colorado law provides a party with a number of alternative ways to engage a real estate broker. Consequently, there are several brokerage relationship disclosures that may be presented by the broker to the party prior to the broker engaging in any activities that require a brokerage license.

Commission Rule E-35 states that “*brokerage activities*” occur when a broker elicits or accepts confidential information from a party concerning specific real estate needs, motivations or financial qualifications. Activities such as an open house, preliminary conversations or small talk concerning price range, location, property styles or responding to general factual questions about properties that have been advertised for sale or lease do not qualify as triggering “brokerage activities.”

B. They’re in There

All commission-approved real estate brokerage employment contracts described above contain the following two mandatory disclosures to the party:

Counsel

“This is a binding contract. This form has important legal consequences and the parties should consult legal and tax or other counsel before signing.”

Relationships

“Different brokerage relationships are available that include seller agency, landlord agency, buyer agency, tenant agency or transaction-brokerage.”

C. Designated Brokerage Disclosure

When a party engages a broker from a multiple-person firm, that broker is a designated broker. Prior to engaging in any brokerage activities, the designated broker shall advise the party in a written agreement that the brokerage relationship exists only with the designated broker and does not extend to the brokerage firm, the employing broker, or to any other brokers employed or engaged by the employing broker who are not so designated. The extent and limitations of the brokerage relationship with the designated broker shall be disclosed to the party working with that designated broker.

D. In the Beginning

- * The commission has approved five brokerage relationship disclosure forms for presentation to potential parties prior to the broker engaging in any brokerage activities with these individuals. The forms are should be presented to the appropriate individual upon initial contact or as soon as practical thereafter. The broker should fill in the appropriate form and

attempt to secure a signature from the party to acknowledge receipt. If the disclosure is not signed, the broker shall note when the disclosure was presented and retain a copy in the broker's files. These forms are disclosures only, and even if the party signs any of these forms, they are not considered contracts.

Definitions of Working Relationships (Form DD25)

This disclosure shall be provided to any individual who requests definitions of these working relationships with brokers.

Brokerage Disclosure to Seller (For Sale by Owner) (Form SD16)

This disclosure is used when a broker comes in contact with a potential seller or landlord of a property and discusses the possible sale or leasing of that property. The property address must be included. Also, the broker must state whether: (a) the broker is an agent of a buyer or tenant and the seller or landlord is a customer; or (b) the broker is a transaction-broker.

- * ***Brokerage Duties Disclosure to Seller (REO and Non-CREC Approved Listing Agreements) (Form BDD56)***

Brokerage Disclosure to Buyer/Tenant (Form BD24)

- * ***Brokerage Disclosure to Tenant (BDT20)***

These disclosures are used when a broker comes in contact with a potential buyer or tenant and discusses the possible purchase or leasing of property. The property address or requirements must be included. Also, the broker must state whether: (a) the broker is an agent of a seller or landlord and the buyer or tenant is a customer; or (b) the broker is a transaction-broker.

E. Other Upfront Disclosures

Tell Others

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.

Transaction-Brokerage

Prior to engaging in any brokerage activity, a transaction-broker shall disclose in writing to the party to be assisted that such broker is not acting as an agent for the other party and that the broker is acting as a transaction-broker.

Potential Conflicts of Interest

Commission Rule E-25 states that when a broker is acting in a licensed capacity or when a broker sells, buys or leases real property in which the broker has an ownership or financial interest, the broker shall have a continuing duty to disclose any known conflicts of interest. In addition, the broker shall disclose in the real estate contract or in a separate document that the broker has an ownership interest in the property and is a licensed Colorado real estate broker.

Difficult Neutrality

Commission position CP-31 states that before acting as a transaction-broker in transactions where neutrality is difficult, the broker should consider whether the transaction-brokerage arrangement is suitable, consult with the broker's supervising broker and make any necessary disclosures. Some examples of transaction-brokerage "neutrality difficult" situations are when the broker is selling or purchasing for the account of: (a) the broker; (b) a spouse or family member of the broker; (c) a close personal friend or business associate of the broker; or (d) a repeat or regular party. Similarly, the broker may find certain agency situations or transactions where acting as an agent and advocate for a party could be difficult. In these circumstances, the broker should consider whether the agency arrangement is appropriate, consult with the broker's supervising broker and act accordingly.

F. Mid-Stream

If a broker acting as an agent for both a seller or landlord and a buyer or tenant and begins to assist those parties in the same real estate transaction, the broker is acting as a dual agent, which is not permitted under Colorado real estate law. The broker must immediately provide the written Change of Status – Transaction-Brokerage Disclosure (Form CS23) to the seller or landlord and buyer or tenant and begin working with both parties as a transaction-broker. The broker should attempt to secure the acknowledgements and signatures of the seller or landlord and buyer or tenant. However if that is not possible, the broker shall complete the broker acknowledgement, sign the disclosure form and retain a file copy. (Rule E-41)

VIII. Two Examples

A. Only One Broker

Broker Amy is working with Seller Sam who owns a home. Buyer Bob, who is not working with a broker, sees Broker Amy's open house sign, likes the home and determines that he is interested in making an offer.

Agent/Customer

If Broker Amy is working as an agent for Seller Sam, then Broker Amy must treat Buyer Bob as a customer. A "*customer*" is 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. Broker Amy must present commission-approved form BD24 "Brokerage Disclosure to a Buyer" to Buyer Bob and check the box which states "Customer: The Broker is the seller's agent and the Buyer is a customer."

Transaction-Broker

If Broker Amy is working as a transaction-broker with Seller Sam, then Broker Amy must also be a transaction-broker assisting Buyer Bob. A "*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. Broker Amy must present commission-approved form BD24 "Brokerage

Disclosure to Buyer” to Buyer Bob and check the box which states “Transaction-Brokerage Only: The Broker is a transaction-broker assisting in the transaction.”

B. Other Broker Involved

Broker Amy is working with Seller Sam who owns a home. Buyer Barbara is working with Broker Brad, and after they tour the home, Buyer Barbara decides she would like to make an offer. Depending upon the already-established brokerage relationships:

Both Agents

Broker Amy could be an agent for Seller Sam, and Broker Brad could be an agent for Buyer Barbara; or

Seller’s Agent/Transaction-Broker

Broker Amy could be an agent for Seller Sam, and Broker Brad could be a transaction-broker assisting Buyer Barbara; or

Transaction-Action Broker/Buyer’s Agent

Broker Amy could be a transaction-broker assisting Seller Sam and Broker Brad could be an agent for Buyer Barbara; or

Both Transaction-Brokers

Broker Amy could be a transaction-broker assisting Seller Sam and Broker Brad could be a transaction-broker for Buyer Barbara.

C. Prohibited Relationships

Dual Agency

Colorado statutes prohibit either broker from acting as an agent for both the seller and the buyer. This is dual agency and has been illegal since 2003.

Single Transaction-Brokerage

A broker cannot be a transaction-broker assisting one party and be an agent for the other party in the same transaction.

IX. Duration of Relationships

Brokerage relationships between a broker and a party are in effect for certain specific periods of time. Colorado statutes define this time period and the duties and responsibilities after the relationship ends.

A. Term

The relationships 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. Termination

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: (1) any date of expiration agreed upon by the broker and the party; or (2) any termination or relinquishment of the relationship by the broker or the party.

C. No Duties after Termination

Except as otherwise agreed to in writing and except as set forth in the following paragraph D below, a broker engaged as an agent or transaction-broker owes no further duty or obligation to the party after termination or expiration of the contract or completion of performance.

D. Responsibilities after Termination

A broker shall be responsible after termination or expiration of the contract or completion of performance for the following: (1) Accounting for all moneys and property related to and received during the engagement; and (2) If the broker was acting as an agent, the broker must keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the party, unless the party grants written consent to disclose such information, disclosure of such information is required by law; or the information is public or becomes public by the works or conduct of the party or from a source other than the broker.

X. Office Policies

Two commission rules provide guidance for office policy relating to brokerage relationships. Commission Rule E-38 states that in a multiple-person firm, an employing broker or employed broker must be designated in writing by the employing broker to serve as a single agent or transaction-broker. In addition, Rule E-38 sets forth certain guidelines regarding individual and team brokerage employment contracts, substitute or additional brokers and transaction-broker written disclosures. Rule E-39 states that a brokerage firm must adopt a written office policy that identifies and describes the relationships offered to the public by the brokers of that firm. A brokerage firm may elect to engage in agency only, transaction-brokerage only, or both.

XI. Compensation

The Colorado statutes set forth specific policies concerning the disclosure and payment of compensation to brokers.

A. Payment Not Agency

Payment of compensation shall not be construed to establish an agency relationship between the broker and the party who paid such compensation. For example, one broker has an agency agreement with a seller and another broker has an agency agreement with a buyer in the same transaction. Even though the seller is the only party paying the commission and that payment is being shared by the seller's broker and buyer's broker, the seller's broker is working as a seller's agent only for the seller and the buyer's broker is working as a buyer's agent only for the buyer.

B. Multiple Payments

More than one party may compensate a broker for services in a transaction as long as all parties to the transaction have consented in writing to such multiple payments prior to entering into a contract to buy, sell or lease.

C. Payer

The broker's compensation may be paid by the party, a third party or by the sharing or splitting of a commission or compensation between brokers.

D. Approval to Share

A broker shall obtain the written approval of the broker's party before such broker may propose to the other broker that the other broker be compensated by sharing compensation paid by such party.

E. ID

Prior to entering into a brokerage employment contract, the identity of those parties, persons or entities paying compensation or commissions to any broker shall be disclosed to the parties to the transaction.

F. Out-of-State Brokers

Commission Rule E-23 states that a Colorado broker who cooperates with a broker who is licensed in another state or country may pay such out-of-state broker a finder's fee or share of the commission if: (1) such broker resides and maintains an office in the other state or county; (2) all advertising, negotiations, contracting and conveyancing done in Colorado is performed in the name of the Colorado broker; and (3) all money collected prior to the closing is deposited in the name of the Colorado broker.