

# Contracts Lesson 2

- **Brokerage Relationships Definitions**
- “Broker”, “employing real estate broker”, or “employing broker” means a broker who is shown in real estate commission records as employing or engaging another broker.
- “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.
- “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.
- “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.
- “Limited agent” means an agent whose duties and obligations to a principal are to perform the terms of the written agreement made with the seller or landlord. To exercise reasonable skill and care for the seller or landlord. To promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity, including, but not limited to: Seeking a price and terms acceptable to the seller or landlord, presenting all offers in a timely manner, and disclosing to the seller or landlord adverse material facts.
- **Dual agent**
- A broker shall not establish dual agency with any seller, landlord, buyer, or tenant.
- **Transaction-broker**
- A broker engaged as a transaction-broker is not an agent for either party.

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- **Broker disclosure**
- 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.
- The broker shall provide to the party a written definition of that brokerage relationship that has been promulgated by the Colorado real estate commission.
- Prior to engaging in any of the activities 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.
- As part of each relationship entered into by a broker with 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.
- If the transaction-broker undertakes any obligations or responsibilities in addition to or different from such obligations or responsibilities shall be disclosed in a writing shall be signed by the involved parties.
- Prior to engaging in any of the activities 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 for the seller or landlord with the buyer or tenant.
  - (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.

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- **Duration of relationship**
- 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.
- 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:
  - (A) Any date of expiration agreed upon by the parties.
  - (B) Any termination or relinquishment of the relationship by the parties.
  - (C) One year after the date of the engagement.
- **Compensation**
- 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.
- Payment of compensation shall not be construed to establish an agency relationship between the broker and the party who paid such compensation.
- **Certificate of license history required**
- **Applicant with prior legal involvement**
- Within the last 10 years.
- **Criminal history check required prior to application**
- Applicants for an initial license must submit a set of fingerprints to the Colorado Bureau of Investigation and Federal Bureau of Investigation for the purpose of conducting a state and national criminal history record check prior to submitting an application for a license. Fingerprints must be submitted to the Colorado Bureau of Investigation for processing in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of Investigation.

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- **NSF check voids application**
- If the fees accompanying any application or registration made to the Commission (including fees for the recovery fund, renewals, transfers, ect.) are paid for by the check is not immediately paid upon presentment to the bank upon which the check was drawn, the application shall be canceled; the application may be reinstated only at the discretion of the Commission and upon full payment of any fees together with payment of the fee required by state fiscal rules for the clerical services necessary for reinstatement.
- **Temporary broker license**
- A temporary broker's license maybe issued to a corporation, partnership or limited liability company to prevent hardship. No application for a temporary broker's license will be approved unless the designated individual is a Colorado real estate broker with two years of active license experience as indicated by the records of the Real Estate Commission. No more than two temporary licenses may be issued to any corporation, partnership or limited liability company, whether consecutive or not, during any 18-month period, except by the Commission.
- **Methods of completing continuing education**
- Pass the Colorado state portion of the licensing exam.
- Complete 72 total hours of pre-licensure education concerning the understanding and preparation of Colorado real estate contracts (48 Hours) and real estate closings (24 hours).
- Each active licensed broker must complete the "Annual Commission Update" course by achieving a passing score of 70% on a written or on-line course examination developed by the Commission. The Commission shall provide multiple course examinations for successive use by licensed brokers failing the end-of-course examination.

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- **Courses excluded from continuing education credit.**
- The following types of courses will not qualify for continuing education credit:
  - (a) Sales or marketing meetings conducted in the general course of a real estate brokerage practice.
  - (b) Orientation, personal growth, self-improvement, self-promotion or marketing sessions.
  - (c) Motivational meetings or seminars.
  - (d) Examination preparation or exam technique courses.
- **Proof of course completion.**
- **Resident broker required to have office; exceptions.**
- Emery resident Colorado real estate employing broker shall maintain and supervise a brokerage practice available to the public, except those brokers registered in the Commission office as in the employ of another broker or those brokers registered as inactive.
- **Responsible broker availability.**
- Any broker licensed as an individual proprietorship or the acting broker for a corporation, partnership, or limited liability company must be reasonably available to manage and supervise such brokerage practice.
- **Notice of termination: employing broker.**
- The employing broker must immediately notify the Commission in a manner acceptable to the Commission, of the employing broker's termination of employment.
- **Inactive license request.**
- A real estate licensee may request that the Commission records show their license inactive until proper request for reactivation has been made.
- **Inactive license must be renewed.**
- A real estate licensee whose license is on inactive status must apply for renewal of such inactive license and pay the regular renewal fees.

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- **Renew using method approved by commission.**
- Renewal of all licenses can be effected by use of the renewal application form provided by the Commission or by other methods acceptable to the Real Estate Commission.
- **License renewal notification.**
- Notification that a license will expire, unless renewed, will be sent to the electronic mail address on file with the Commission.
- **Direct compensation from previous broker.**
- When a real estate license is on an inactive status or has been transferred to a subsequent employing broker, a licensee may be compensated directly by a previous employing broker for commissions earned during that term of employment.
- **Initial license.**
- Each applicant who has satisfied the requirements for licensure will be issued a license expiring December 31 of the year of issue. Thereafter, a licensee will renew a license on a calendar year cycle commencing on January 1 of year one and expiring on December 31 of year three.
- **Renewal fees non-refundable.**
- All fees paid for the renewal of a license shall be non-refundable.

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- **Errors and omissions (E&O) insurance**
- The Commission Insurance Policy shall provide, at a minimum, the following terms of coverage:
  - (1) Coverage for all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
  - (2) That the coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event a licensee becomes inactive or is revoked or an applicant is denied a license.
  - (3) Pro-ration of premiums for coverage which is purchased during the course of a calendar year but with no provision for refunds of unused premiums.
  - (4) Not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of licensees or entities to which a settlement or claim may apply, not including costs of investigation and defense.
  - (5) An annual aggregate limit of not less than \$300,000 per licensed individual or entity, not including costs of investigation and defense.
  - (6) Coverage for investigation and defense shall be provided in addition to policy coverage limits.
- **Renewal fees non-refundable.**
- All fees paid for the renewal of a license shall be non-refundable.
- (7) A deductible amount for each occurrence of not more than \$1,000 for claims and no deductible for legal expenses and defense.
- (8) The obligation of the insurance carrier to defend all covered claims and the ability of the insured licensee to select counsel of choice subject to the written permission of the carrier, which shall not be unreasonably withheld.
- (9) Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.

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- **Errors and omissions (E&O) insurance cont.**
- (10) The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the state carrier as may be determined by the carrier.
- (11) That coverage is individual and license specific and will cover the licensee regardless of changes in employing broker.
- (12) The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.
- (13) A conformity endorsement allowing a Colorado resident licensee to meet the errors and omissions insurance requirement for an active license in another group mandated state without the need to purchase separate coverage in that state.
- (14) Prior acts coverage shall be offered to licensees with continuous past coverage.
- **Separate accounts - Records - Accountings - Investigations**
- Accounts in name of broker and business entity
- **Accounts in name of employing broker only**
- When a broker is registered in the office of the Real Estate Commission as in the employ of another broker the responsibility for the maintenance of all trust accounts shall be the responsibility of the employing broker.
- Escrow funds must be available immediately without penalty
- **Accounts in name of employing broker only**
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- Escrow funds must be available immediately without penalty



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- **Commingling prohibited.**
- A broker's personal funds shall not be commingled with money belonging to others except that an arrangement may be made with a depository to deposit a sufficient amount of the broker's funds to maintain such account. One or more separate escrow or trust bank accounts may be maintained by a broker pursuant to the following duties and limitations.
- Money held in escrow or trust account which is due and payable to the broker shall be withdrawn promptly.
- **Money belonging to others defined**
- Money belonging to others which is received by the broker includes but is not limited to money received in connection with: property management contracts; partnerships; limited liability companies; syndications; rent or lease contracts; advance fee contracts; guest deposits for short term rentals; escrow contracts; collection contracts; earnest money contracts; or, money belonging to others received by the broker for future investment or other purpose.
- **Earnest money on new construction**
- If a broker who is also acting as a builder receives deposit money under an executory sales contract which provides for the construction purposes unless the written consent of the purchaser is secured.
- Separate escrow accounts required for managing 7 or more residences.
- **Installment land contract**
- Contract for deed, land contract, owner will carry.

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- **Earnest money**
- Checks received as earnest money under an earnest money contract must be identified as a check in the contract and may be withheld from presentment for payment only if so disclosed in the contract or pursuant to the written instructions of the seller. If a note is received as earnest money under an earnest money contract, the seller must be informed by identifying the note in the contract and by informing the seller of the date such note becomes due by stating the due date in the contract or attaching a copy of the note to the contract. The broker must present the note or check for payment in a timely manner and if payment is not made, the broker shall properly notify the seller.
- **Time limits for deposit of money belonging to others**
- All money belonging to others which is received by a broker as a property manager shall be deposited in such broker's escrow or trust account not later than five business days following receipt. All other money belonging to others which is received by a broker shall be deposited in such broker's escrow or trust account not later than the third business day following receipt.
- **Recordkeeping requirements**
- A broker shall supervise and maintain, at the broker's licensed place of business, a record keeping system, consisting of at least the following elements for each required escrow or trust account.
- A record called an "escrow or trust account journal" or an equivalent accounting system which records in chronological sequence all money belonging to others which is received or disbursed by the broker.
- In the absence of a written agreement to the contrary, the "cash basis" of accounting shall be used for maintaining all required escrow or trust accounts and records.
- **Diversion/Conversion prohibited**
- Money belonging to one beneficiary of a separate trust or escrow account shall not be used for the benefit of another beneficiary of a trust, or escrow account.

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- **Items in lieu of cash**
- Any instrument or equity or thing of value taken in lieu of cash shall be held by the broker except as otherwise agreed.
- **Branch office trust accounts require branch office recordkeeping**
- In the event a branch office maintains a trust account, separate from the trust account(s) maintained by the main office, a separate record keeping system must be maintained in the branch office.
- **Licensee must produce records; HOA records belong to HOA.**
- A real estate licensee shall produce for inspection by an authorized representative of the Real Estate Commission any document or record as may be reasonably necessary for investigation or audit in the enforcement of Title 12 Article 61 and in enforcement of the rules and regulations of the Real Estate Commission. Such records are the property of the owners association and if the broker wishes to maintain copies for the broker's own files these must be made at the broker's expense.
- **Closing responsibility; closing statement distribution**
- At time of closing, the individual licensee who has established a brokerage relationship with the buyer or seller or who works with the buyer or seller as a customer, either personally or on behalf of an employing broker, shall be responsible for the proper closing of the transaction and shall provide, sign and be responsible for an accurate, complete and detailed closing statement as it applies to the party with whom the brokerage relationship has been established. If signed by an employed licensee, closing statements shall be delivered to the employing broker immediately following closing. Nothing in this rule shall relieve an employing broker of the responsibility for fulfilling supervisory responsibilities.
- Closing statements shall be provided to the respective parties at the time of the delivery and acceptance of the title whether such delivery and acceptance be effected by bill of sale, deed or by an installment contract to give a deed at a future date.

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- **Closing responsibility; closing statement distribution cont.**
- If closing documents and statements are prepared by, and the closing is conducted by, an employing broker's company such broker is primarily responsible for the accuracy and completeness of the settlement statements and documents.
- If a licensee with whom a brokerage relationship has been established is unable to attend a closing or review closing documents, another licensee may agree or be designated by an employing broker to review and sign a closing statement and will assume joint responsibility with the absent licensee for its accuracy, completeness and delivery.
- A broker may transfer funds pertinent to a real estate transaction from a trust or escrow account to a lawyer or a closing entity acting on behalf of the broker at or before closing or final settlement. The broker will not be relieved of responsibilities in regard thereto. The broker delivering the earnest money deposit to a lawyer or a closing entity providing settlement services shall obtain a dated and signed receipt from the person or transaction file. The settlement statements prepared by the lawyer or closing entity shall bear the names of the licensee who signed the statement and the employing broker if applicable.
- **Teams**
- Brokers who form a team shall not advertise in a manner that misleads the public as to the identity of the team's brokerage firm. Teams are prohibited from using the following terms in the team's name:
  - Realty
  - Real estate
  - Realtors
  - Company
  - Corporation
  - Corp
  - Inc
  - LLc

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- **Teams cont.**
- LP or LLP
- Or any other term that would imply a separate entity from the brokerage firm with which the team brokers are licensed.
- **Teams**
- All team advertising must include the legal name or trade name of the brokerage firm.
- If requested by a consumer, the Commission, another brokerage firm or a broker, advertising as being licensed with the brokerage firm.
- Brokers may not allow the use of the team name to other brokers outside the team's brokerage firm.
- **Listing must have termination date. (Expiry)**
- When a licensee secures a written agreement to perform activities requiring a license, a definite date for termination shall be included therein.
- **Holdover agreement**
- When a written agreement contains a provision entitling the broker to a commission on a sale or purchase made after the expiration of the agreement, such provision must refer only to those persons or properties with whom or on which the broker negotiated during the term of the agreement, and whose names or addresses were submitted in writing to the seller or buyer during the terms of the agreement, including any extension thereof.