COLORADO
REAL ESTATE MANUAL

DEPARTMENT OF REGULATORY AGENCIES
Barbara Kelley, Executive Director

THE COLORADO DIVISION OF REAL ESTATE
Marcia Waters, Director

REAL ESTATE COMMISSION
Christopher McElroy, Fort Collins – Chair
Amy Jo Dorsey, Vail
Gina Piccoli, Durango
Richard Krohn, Grand Junction
Julia T. Waggener, Denver

BOARD OF REAL ESTATE APPRAISERS
Bruce Willard, Greeley – Chair
Wayne L. Hunsperger, Englewood
Frank Beltran, Pueblo
Dean Davenport, Arvada
Robin Anderson, Denver
Scot Rose, Lafayette
Peter Muccio, Denver

BOARD OF MORTGAGE LOAN ORIGINATORS
Julie Piepho, Fort Collins – Chair
Bruce M. Jordan, Denver
Leslie Mitchell, Denver
Rosemary Marshall, Denver
Bart Bartholomew, Arvada

CONSERVATION EASEMENT OVERSIGHT COMMISSION
Chris West, Denver– Chair
Kent Holsinger, Denver
William Boortz, Denver
John Carney, Montezuma
Nancy Fishbein, Boulder
Josh Tenneson,
Great Outdoors Colorado
Martha Cochran, Glenwood Springs
Nicole Reed,
Colorado Department of Agriculture
Chris Smith,
Colorado Department of Natural Resources

PREFACE

The Colorado Division of Real Estate and LexisNexis have prepared this manual with assistance from members of the Real Estate Commission, the Board of Real Estate Appraisers, the Board of Mortgage Loan Originators, and the Conservation Easement Oversight Commission. We gratefully acknowledge the help of the many who have contributed their time and experience, especially Marcia Waters and the dedicated staff at the Division of Real Estate for their commitment to making this publication available to the industry.

We hope this manual will be helpful to new applicants for licensure and also a benefit to practicing real estate brokers, appraisers and mortgage professionals as a ready reference.

The information contained in this manual is fundamental to a sound introduction to the real estate industry. It is not intended as an all-inclusive real estate text; nor should it be relied upon as a source of legal advice.

For those who desire to increase their educational and professional competency, there are many classes and courses of instruction available throughout the State of Colorado and a number of colleges and universities that offer four-year programs leading to a degree in real estate and related fields. Suggestions, corrections and criticisms for and of this publication are solicited and will receive careful consideration.

Disclaimer: The portions of the Colorado Revised Statutes, reprinted in this Manual with permission of the Committee on Legal Services in accordance with section 2-5-118, C.R.S., are unofficial publications of the Colorado Revised Statutes. They are included as: a reference for real estate practitioners, an aid to those preparing for licensure, and others with an interest in a digest of real estate related laws and information. The Division of Real Estate makes every effort to maintain accurate information; however the State makes no warranties whatsoever in relation to the contents of this manual, and users rely upon the information contained herein at their own risk. Official statutes are maintained on the Colorado General Assembly website at: www.leg.state.co.us/.

Official rules of the Real Estate Commission, Board of Real Estate Appraisers, Board of Mortgage Loan Originators, and the Conservation Easement Oversight Commission are compiled and published by the Secretary of State in the Code of Colorado Regulations at: www.sos.state.co.us/CCR.

More information and portions of this Manual are available on the Colorado Division of Real Estate website at: www.dora.state.co.us/real-estate.

LexisNexis®
Matthew Bender & Company, Inc.
Editorial Offices
701 E. Water Street
Charlottesville, VA 22902
800-446-3410
www.lexisnexis.com
Printers and Distributors

Print Edition ISBN: 978-0-7698-9417-1
Electronic Edition ISBN: 978-0-327-18453-9

© 2013 State of Colorado Department of Regulatory Agencies, Division of Real Estate

TABLE OF CONTENTS

Chapter-Page

CHAPTER 1: REAL ESTATE BROKER LICENSE LAW 1-1
I. Reason for Its Enactment 1-1
II. What the Law Does Not Cover 1-1
III. The Commission Office 1-1
A. The Master File 1-2
B. Licensing 1-2
C. Enforcement Section 1-3
IV. License Law 1-4
A. Part 1 – Brokers 1-4
B. Part 2 – Brokers Commissions 1-27
C. Part 3 – Recovery Fund 1-28
D. Part 8 – Brokerage Relationships 1-33

CHAPTER 2: COMMISSION RULES AND REGULATIONS 2-1
Rules of the Colorado Real Estate Commission 2-1
Rule A. License Qualifications, Applications and Examinations 2-1
Rule B. Continuing Education 2-4
Rule C. Licensing – Office 2-8
Rule D. Renewal, Transfer, Inactive License, Errors and Omissions Insurance 2-12
Rule E. Separate Accounts – Records – Accountings – Investigations 2-15
Commission Approved Forms 2-32
Rule F. Use of Commission Approved Forms 2-32
Rule G. Brokers Acting Under 12-61-101(2)(a)(X) C.R.S. (Rental Referrals) 2-36
Rule H. Repealed 2-38
Rule I. Declaratory Orders 2-38
Rule J. Repealed 2-40
Rule K. Exceptions and Commission Review of Initial Decisions 2-40

CHAPTER 3: COMMISSION POSITION STATEMENTS 3-1
CP-1 Commission Policy on Homebuilder's Exemption from Licensing 3-3
CP-2 Commission Position on Earned Fees 3-3
CP-3 Position Statement Concerning Commission Rule E-13 3-5
CP-4 Commission Position on Interest Bearing Trust Accounts 3-6
CP-5 Commission Position on Advance Rentals and Security Deposits 3-7
CP-6 Commission Position on Release of Earnest Money Deposits 3-7
CP-7 Commission Position on Closing Costs 3-8
CP-8 Commission Position on Assignment of Contracts and Escrowed Funds 3-9
CP-9 Commission Position on Record Keeping by Brokers 3-10
CP-10 Commission Position on Compensation Agreements Between Employing and Employed Brokers 3-11
CP-11 Commission Position on Assignments of Broker's Rights to a Commission 3-11
CP-12 Commission Position on the Broker's Payment or Rebating a Portion of an Earned Commission 3-11
CP-13 Commission Policy on Single-Party Listings 3-12
CP-14 Commission Position on Sale of Modular Homes by Licensees 3-13
CP-15 Commission Position on Sale of Items Other Than Real Estate 3-13
CP-16 Commission Position on Access to Properties Offered for Sale 3-14
CP-18 Commission Position on Payments to a Wholly Owned Employee's Corporation 3-14

CP-19 Commission Position on Short Term Occupancy Agreements 3-14
CP-20 Commission Position Statement on Personal Assistants 3-15
CP-21 Commission Position on Office Policy Manuals 3-16
CP-22 Commission Position Statement on Handling of Confidential Information in Real Estate Brokerage 3-17
CP-23 Commission Position on Use of "Licensee Buyout Addendum" 3-17
CP-24 Commission Position on Preparation of Market Analyses and Real Estate Evaluations Used for Loan Purposes 3-18
CP-25 Commission Position on Recording Contracts 3-19
CP-26 Commission Position on Auctioning 3-20
CP-27 Commission Position on the Performance of Residential Leasing and Property Management Functions 3-20
CP-28 Commission Position on Showing Properties 3-25
CP-29 Commission Position on "Megan's Law" 3-26
CP-30 State of Colorado Real Estate Commission and Board of Real Estate Appraisers Joint Position Statement 3-27
CP-31 Commission Position on Acting as a Transaction Broker or Agent in Particular Types of Transactions. 3-27
CP-32 Commission Position on Brokerage Disclosures 3-28
CP-33 Joint Position Statement from the Division of Real Estate and Division of Insurance Concerning Application of the Good Funds Laws 3-29
CP-34 Commission Position on Settlement Service Provider Selection, Closing Instructions and Earnest Money Deposits 3-30
CP-35 Commission Position on Brokers as Principals 3-31
CP-36 Commission Position on Minimum Service Requirements 3-32
CP-37 Commission Position on Survey and Lease Objections to the Contract to Buy and Sell Real Estate 3-34
CP-38 Commission Position on Disclosure of Affiliated Business Arrangements and Conflicts of Interest 3-35
CP-39 Commission Position on Lease Options, Lease Purchase Agreements and Installment Land Contracts 3-36
CP-40 Commission Position on Teams 3-36
CP-41 Commission Position on Competency 3-37
CP-42 Commission Position on Apartment Building or Complex Management 3-37

CHAPTER 4: SUBDIVISION LAWS 4-1
I. Jurisdiction of Commission 4-1
A. Introduction 4-1
B. Exempt from Registration under the Subdivision Developer's Act 4-1
C. Additional Provisions of the Subdivision Act 4-2
II. Subdivision Statutes 4-2
III. Rules and Regulations for Subdivision Developers 4-8
IV. Licensee's Responsibilities 4-18
V. Municipal Planning and Zoning Laws 4-19
VI. County Planning Laws 4-19
VII. Special Types of Subdivisions 4-20
A. Condominiums as Subdivisions 4-20
VIII. Condominium Ownership Act – Referenced in Chapter 5, Common Interest Communities 4-20
IX. Colorado Common Interest Ownership Act – Referenced in Chapter 5, Common Interest Communities 4-20

X. Management of the Common Interest Community – Referenced in Chapter 5, Common Interest Communities 4-21
XI. Cooperative Housing Corporations 4-21

CHAPTER 5: COMMON INTEREST COMMUNITIES 5-1
I. HOA Information and Resource Center 5-1
II. HOA Registration 5-1
III. HOA Statutes 5-2
IV. Condominium Ownership Act 5-5
Title 38, Article 33, C.R.S. – Condominium Ownership Act 5-5
V. Colorado Common Interest Ownership Act 5-12
VI. Management of the Common Interest Community 5-53

CHAPTER 6: LANDMARK CASE LAW AND OPINIONS 6-1
I. Supreme Court Decision on Practice of Law by Brokers 6-1
Summary of Decision on Practice of Law by Brokers 6-2
Companion Decision on Practice of Law 6-4
II. Licensee Acting on Own Account—Commission Jurisdiction 6-5
III. Attorney General's Opinion on Business Opportunities 6-7
Summary 6-9

CHAPTER 7: INTERESTS IN LAND HISTORY 7-1
I. Introduction 7-1
II. Kinds of Interests in Land 7-1
A. Freehold Estates 7-2
B. Non-Freehold Estates 7-4
III. Concurrent Interests 7-4
A. Joint Tenancy 7-4
B. Tenancy in Common 7-6
IV. Concurrent Conveyances 7-6
V. Homestead Exemption 7-6
VI. Easements 7-8
VII. Adverse Possession 7-8
VIII. Combined Types of Ownership 7-10

CHAPTER 8: LAND DESCRIPTIONS 8-1
I. Introduction 8-1
II. The United States Governmental Survey System 8-1
III. Metes and Bounds Descriptions 8-5
A. Bearing System 8-5
B. Azimuth System 8-7
IV. Recorded Subdivision Plat 8-7
V. Surveys and Certificates 8-8
VI. Colorado Coordinate System 8-11
VII. Metric System 8-13

CHAPTER 9: DEEDS AND TRANSFER OF TITLE 9-1
I. Introduction 9-1
A. Types of Deeds 9-5
B. Usual Elements of Deeds 9-6

CHAPTER 10: EVIDENCE OF TITLE 10-1
I. Introduction 10-1

II. Abstract and Opinion 10-1
A. Liability 10-2
B. Risks 10-2
III. Title Insurance 10-2
A. Owner's versus Mortgagee's Policies 10-3
B. Title Insurance Commitments 10-3
C. Division of Insurance 10-3
D. Application of the Good Funds Laws 10-5
IV. Torrens Certificate of Title 10-6
A. Methods of Registration 10-6
B. Transfer of Torrens Title 10-7

CHAPTER 11: APPRAISER REGULATION 11-1
I. The Colorado Board of Real Estate Appraisers 11-1
II. Appraiser Licensing and Certification 11-1
III. Levels of Appraiser Licensure 11-2
IV. Requirements for Appraiser Licensure 11-2
V. Continuing Education Requirements 11-3
VI. Appraisal Management Companies 11-3
Title 12, Article 61, Part 7, Colorado Revised Statutes – Real Estate Appraisers 11-4
VII. Rule Making of the Board of Real Estate Appraisers 11-21
Rules of the Colorado Board of Real Estate Appraisers 11-23
VIII. Appendix – Affidavit for Conservation Easement Appraisals 11-56

CHAPTER 12: CONSERVATION EASEMENTS 12-1
I. Introduction 12-1
II. The Aggregate Annual Limit 12-1
III. Pre-Approval Process for Donations Made After January 1, 2014 12-1
IV. Conservation Easement Statutes 12-2
V. Conservation Easement Regulations 12-19

CHAPTER 13: MORTGAGE LOAN ORIGINATORS 13-1
I. Introduction 13-1
II. Mortgage Loan Originator Licensing and Mortgage Company Registration Act 13-2
Colorado Revised Statutes Title 12, Article 61, Part 9 13-2
III. Standards for Mortgage Lending and Servicing 13-25
IV. Loan Fraud 13-30
V. Mortgage Loan Originator Rules 13-31
Rules Regarding Mortgage Loan Originators 13-31
VI. Position Statements 13-56
Position Statement – MB 1.1 [Repealed] 13-56
Position Statement – MB 1.2 [Repealed] 13-56
Position Statement – MLO 1.3 – Board Position on Individuals Not Required to be Licensed – Supervisors and Support Staff (revised 09/18/2013) – effective 11/14/2013 13-56
Position Statement – MLO 1.4 – Mortgage Loan Originator and Mortgage Company Exemptions (revised 09/18/2013) 13-57
Position Statement – MLO 1.5 – Loan Modifications 13-58
Position Statement – MLO 1.7 – Financial Responsibility Requirement 13-59
Position Statement – MLO 1.8 – Real Estate Brokerage Activity 13-59
Position Statement – MLO 1.9 – Mortgage Company Definition Applicability 13-60

CHAPTER 14: WATER RIGHTS 14-1
I. Water Allocation Laws and Procedures 14-1
II. Well Permits 14-3
III. Conveying and Encumbering Water Rights 14-4
IV. Disclosure of Potable Water Source 14-6
V. Special Considerations for Irrigated Land 14-7
VI. Water Conservation and Drought Mitigation 14-8
VII. Conclusion 14-11
VIII. Water Right Terminology 14-11

CHAPTER 15: BROKERAGE RELATIONSHIPS 15-1
I. Introduction 15-1
A. Brokerage Relationships in Real Estate Act 15-1
B. Establishing the Relationship 15-1
C. Refining Agency Relationships 15-1
II. Real Estate Brokerage Basics 15-2
A. One-Person Firm 15-2
B. Multiple-Person Firm 15-2
C. Confidential Information 15-2
D. Supervision 15-3
E. Intraoffice Relationships 15-3
III. Agency 15-3
IV. Transaction-Brokerage 15-4
V. Uniform Duties 15-4
A. Seller or Landlord Uniform Duties 15-5
B. Seller or Landlord Agency – Additional Duties 15-6
C. Buyer or Tenant Uniform Duties 15-6
D. Buyer or Tenant Agency – Additional Duties 15-7
VI. Entering into a Brokerage Relationship 15-7
A. Agency 15-8
B. Transaction-Brokerage 15-8
C. Customer 15-8
D. Permitted Relationships 15-8
VII. Mandatory Disclosures 15-9
A. Establishing the Brokerage Relationship 15-9
B. Mandatory Disclosures 15-9
C. Designated Brokerage Disclosure 15-9
D. Disclosure Forms 15-10
E. Other Disclosures 15-10
F. Change of Status 15-11
VIII. Two Examples 15-11
A. One Broker for Both Sides of a Transaction 15-11
B. Both Sides Represented 15-12
C. Prohibited Relationships 15-12
IX. Duration of Relationships 15-12
A. Term 15-13
B. Termination 15-13
C. No Duties after Termination 15-13
D. Responsibilities after Termination 15-13
X. Office Policies 15-13
XI. Compensation 15-13
A. Payment Does Not Establish Agency 15-13

B. Multiple Payments 15-14
C. Payer 15-14
D. Approval to Share 15-14
E. Identity 15-14
F. Out-of-State Brokers 15-14

CHAPTER 16: LISTINGS 16-1
I. Introduction 16-1
II. Right-to-Sell Agreements 16-1
III. Types of Seller Agreements 16-2
A. Net Listing 16-2
B. Open Listing 16-2
C. Exclusive Agency Listing 16-2
D. Exclusive Right-to-Sell Listing 16-3
E. Multiple Listing 16-3
IV. Right-to-Buy Agreements 16-3
Exclusive Right-to-Buy Contract 16-3
V. Change of Status 16-4
VI. Approved Forms 16-4
VII. Broker Responsibility 16-4
A. Diligence in Pursuing the Objective of the Listing Agreement 16-4
B. Cancelled Listings 16-5
C. Conflicts of Interest 16-5
D. Scope of Activity – Principal Consent 16-5
E. Commission-Approved Forms 16-5
F. Closing Instructions 16-6
G. Broker Compensation 16-6
H. Sales Arrangements Between Brokers 16-7

CHAPTER 17: CONTRACTS 17-1
I. Introduction 17-1
II. Essential Elements of a Contract 17-1
III. Matters to be Considered in Real Estate Contracts 17-5
A. Names and Signatures of the Parties 17-6
B. Sale Price and Payment Provisions 17-6
C. Description of the Property 17-6
D. Type of Deed 17-6
E. Condition of Title 17-6
F. Default Provisions 17-7
G. Contingency Provisions 17-7
H. Possession 17-7
I. Apportionment or Adjustment 17-7
J. Risk of Loss 17-7
IV. Colorado Buy-Sell Contract 17-8
V. Competency in Preparing Contracts 17-9
A. Loan Contingency 17-10
B. Assumptions 17-10
C. Buyer's Creditworthiness 17-10
D. Balloon Payments 17-11
VI. Surveys 17-11
VII. Dual Contracting and Loan Fraud 17-11
VIII. Installment Contracts 17-11

IX. Manufactured, Modular, and Mobile Homes 17-15

CHAPTER 18: TRUST DEEDS AND LIENS 18-1
I. Trust Deeds and Mortgages 18-1
A. Introduction and Background of Mortgages 18-1
II. The Foreclosure Process 2008 18-2
Foreclosure Revolution 18-2
III. Mortgages and Deeds of Trust 18-4
IV. Concerning Real Estate Foreclosures (Deeds of Trust) 18-5
V. Master Form Mortgage or Deed of Trust 18-21
A. Master Form of Mortgage or Deed of Trust 18-21
B. Acknowledged and Recorded for the Protection 18-22
VI. Usual Elements of a Deed of Trust or Mortgage 18-23
VII. Assumption of Indebtedness 18-24
VIII. Section 38-30-165, C.R.S., Limit on Interest Rate Increase 18-25
IX. The Promissory Note 18-25
X. Second Mortgage or Trust Deed 18-25
XI. Installment Land Contract 18-26
XII. Liens 18-27
A. Introduction 18-27
B. Specific Liens 18-27
C. General Liens 18-31

CHAPTER 19: CLOSING STATEMENTS 19-1
I. Introduction 19-1
II. Rules and Requirements for Closings 19-1
A. Responsibility for Closing 19-1
B. Preparation of Legal Documents 19-2
C. Good Funds 19-2
D. Closing Statements (SS 60-9-08) 19-3
E. Signing the Closing Statement 19-3
F. Broker Closing Records 19-3
G. Escrow Tax Reserve Account Refunds 19-3
H. Internal Revenue Service Reporting – Real Estate Sales 19-3
I. Certain Cash Transactions 19-3
J. FIRPTA Withholding 19-4
K. Nonresident of Colorado Withholding 19-4
L. Real Estate Settlement Procedures Act (RESPA) 19-4
M. Special Taxes 19-5
III. The Closing Process 19-6
IV. Closing Examples 19-8
A. Final Settlement with a Seller Carry Loan 19-8
1. Facts 19-8
2. Sub-Totals 19-13
3. Balance Due to Seller 19-13
4. Balance Due from Buyer 19-13
5. Totals 19-13
6. Closing Statements 19-13
7. Worksheet for Real Estate Settlement – Seller Carry Loan 19-14
B. Final Settlement with an Assumed Loan 19-15
1. Introduction 19-15
2. Assumption Statement 19-15

3. Other Charges and Adjustments for a Loan Assumption..... 19-16
4. Worksheet for Real Estate Settlement – Assumed Loan 19-18
C. Final Settlement with a New Loan 19-19
1. New Loan Lender Statement 19-19
2. Worksheet for Real Estate Settlement – New Loan..... 19-21
V. Closing Statement..... 19-22
A. Seller's Closing Statement – New Loan..... 19-22
B. Buyer's Closing Statement – New Loan..... 19-23
VI. Other Settlement Items..... 19-24
A. Loan Fees 19-24
B. HOA Fees 19-24
C. Rentals 19-25
D. Seller Concessions..... 19-25
VII. Statutes, Rules, and Position Statements Affecting Closings..... 19-26
VIII. Useful Closing Web Sites..... 19-26

CHAPTER 20: ESCROW RECORDS 20-1
I. Introduction 20-1
A. Concepts and Responsibilities – A Chapter Summary..... 20-1
II. Sales Escrow Accounts 20-3
A. The Escrow Bank Account..... 20-3
B. The Cash Receipts and Disbursements Journal (The "Journal")..... 20-7
C. The Beneficiary's Ledger Record (The "Ledger")..... 20-9
D. Illustrated Escrow Accounting Transactions..... 20-12
E. Transaction Files and the Retention of Records 20-16
F. Administrative Matters..... 20-19
III. Property Management Records 20-22
A. Management Accounting Requirements 20-22
B. Required Management Records..... 20-26
C. Accounting for Security and Advance Rental Deposits 20-32
IV. Subdivisions and Associations 20-36
A. General 20-36
B. Accounting Requirements for Registered Developers..... 20-38
C. Management of Common Interest Associations..... 20-39
V. Appendix – Sample Forms 20-41
A. Notice of Escrow or Trust Account..... 20-42
B. Escrow Account Journal..... 20-43
C. The Beneficiary and Broker Ledger Cards..... 20-44
D. The Bank Reconciliation Worksheet..... 20-45
E. Tenant Ledger..... 20-46
F. Tenant Security Deposit Ledger..... 20-47
G. Owner's Ledger..... 20-48
H. Change of Employing Broker Affidavit..... 20-49
I. Schedule of Commissions Earned Versus Amounts Taken..... 20-50

CHAPTER 21: PROPERTY MANAGEMENT AND LEASES..... 21-1
I. Introduction 21-1
II. Management Functions 21-3
III. Merchandising Rental Space 21-5
IV. General Accounting Concepts..... 21-6
V. Security Deposits..... 21-8
A. Introduction 21-8

Title 38, Article 12, C.R.S. 1973 Security Deposits-Wrongful Withholding 21-9
B. City Ordinances Concerning Security Deposits 21-11
C. Guidelines for the Property Manager Regarding Security Deposits 21-11
VI. Leases 21-12
A. Introduction 21-12
B. Leasehold Tenancies 21-12
C. Types of Leases 21-13
D. Elements of a Lease 21-15
E. Termination of Leases 21-16
F. Duties and Liabilities of the Parties 21-18
G. 2008 Warranty of Habitability Act (Residential Properties) 21-19
H. Electric Vehicle Charging Systems 21-25
I. Carbon Monoxide Alarms 21-27
VII. Sources of Information and Training 21-30
VIII. Mobile Home Park Tenancies 21-30

CHAPTER 22: FARM AND RANCH BROKERAGE 22-1
I. Introduction 22-1
II. Farm and Ranch Glossary 22-4

CHAPTER 23: BUSINESS OPPORTUNITIES 23-1
I. Introduction 23-1
II. Matters to be Considered 23-1
III. The Uniform Commercial Code 23-3
IV. The Colorado Use Tax 23-4
A. Forms and Settlement 23-4
Business Opportunity Worksheet 23-5
Income Statement 23-6
B. Colorado UCC Financing Statements 23-7
§ 4-9-502, C.R.S. Contents of financing statement – record of mortgage as financing statement – time of filing financing statement. 23-7
§ 4-9-521, C.R.S. Uniform form of written financing statement and amendment. 23-7

CHAPTER 24: TAX FACTORS PERTAINING TO REAL ESTATE PRACTICE 24-1
I. Introduction 24-1
II. Ownership of a Personal Residence 24-1
A. Buying Expenses 24-2
B. IRA Withdrawal Used to Fund Purchase 24-2
C. Qualified Residential Mortgage Interest 24-2
D. Mortgage Interest Credit 24-3
E. Mortgage Insurance Premiums 24-4
F. Property Taxes 24-4
G. Personal Property Taxes 24-4
H. Non-business Casualty and Theft Losses 24-4
I. Moving Expenses 24-5
J. Business Use of Home (Home Offices) 24-5
III. Sale of a Personal Residence 24-6
A. Installment Sales 24-7
B. Foreclosure 24-7
C. Colorado Withholding Tax on Certain Transfers of Real Estate 24-8
IV. Property Used in a Trade or Business 24-8

A. Rental Property Operations 24-8
B. Depreciation 24-9
C. Certain Business Gains and Losses 24-10
D. Tax Credits Applicable to Business Property 24-12
V. Federal Estate and Gift Taxation 24-14
A. Real Property 24-14
B. Federal Gift Taxes 24-15
VI. Tax Treatment of Various Legal Entities 24-15
A. Corporations 24-15
B. Partnerships 24-15
C. S Corporations 24-15
D. Limited Liability Companies (LLC) 24-15
E. Trusts 24-16
F. Homeowner Associations 24-16
G. Real Estate Mortgage Investment Conduit (REMIC) 24-16
H. Tax Shelters 24-16
VII. Employed Real Estate Licensees 24-16
VIII. Withholding of State Income Tax on Proceeds from Transfers by Nonresidents of Real Property Located in Colorado 24-17
§ 39-22-604.5, C.R.S. Withholding tax – transfers of Colorado real property – nonresident transferors. 24-17

CHAPTER 25: FAIR HOUSING 25-1
I. Introduction 25-1
II. Federal Civil Rights Acts 25-1
A. Civil Rights Acts of 1866 and 1870 (42 U.S.C. §§ 1981 and 1982) 25-1
42 U.S.C. 1981 – Equal rights under the law 25-1
42 U.S.C. 1982 – Property rights of citizens 25-1
B. Fair Housing Act 1968, Amended 1988 (42 U.S.C. §§ 3601 to 3619) 25-2
Bases of Discrimination 25-2
Exemptions to Property Covered 25-2
III. Illegal Practices Under Federal Law 25-3
IV. Equal Credit Opportunity Act (ECOA) (15 U.S.C. §§ 1691, *et seq*.) 25-9
V. Americans with Disabilities Act 25-9
A. Licensee ADA Responsibilities in Conducting Real Estate Practices 25-9
B. Licensee ADA Responsibilities in Listing, Selling, Leasing, or Managing Property 25-10
C. ADA Responsibilities in Real Estate Instruction 25-11
D. ADA Responsibilities as Employers 25-11
VI. Colorado Fair Housing Act 25-12
A. Title 24, Article 34, C.R.S. 25-12
B. Major Differences Between the Federal and Colorado Fair Housing Acts 25-12
VII. Colorado Civil Rights Division—Commission—Procedures 25-13
VIII. Housing Practices 25-14
IX. Discrimination in Places of Public Accommodation 25-23
X. Discriminatory Advertising 25-25
XI. Persons with Disabilities – Civil Rights 25-26

CHAPTER 26: RELATED REAL ESTATE LAW 26-1
I. Real Estate Settlement Procedures Act (RESPA) 26-1
12 U.S.C. § 2607 – Prohibition against kickbacks and unearned fees 26-1
II. Manufactured Homes 26-2

III. Mobile Home Park Act 26-5
IV. Title to Manufactured Homes Act 26-16
V. Nondisclosure of Information Psychologically Impacting Real Property 26-39
VI. Soil and Hazard Analyses of Residential Construction 26-39
VII. Uniform Power of Attorney Act 26-40
VIII. Relief of Residential Taxpayers from Lien of Special District Taxes for General Obligation Indebtedness 26-44
Certification and Notice of Special District Taxes for General Obligation Indebtedness 26-44
IX. Colorado Consumer Protection Act 26-46
X. Disclosure – Methamphetamine Laboratory 26-53
Illegal Drug Laboratories 26-55
XI. Common Interest Community Disclosure 26-57
XII. Equity Skimming 26-58
XIII. Colorado Foreclosure Protection Act 26-59
XIV. Foreclosure Consultants 26-62
XV. Equity Purchasers 26-65
XVI. Notaries Public Act 26-70
XVII. Uniform Recognition of Acknowledgments Act 26-79

CHAPTER 27: COMMISSION-APPROVED AND MISCELLANEOUS FORMS 27-1
I. Commission-Approved Forms 27-1
Rule F – Use of Commission-Approved Forms 27-1
II. Appendix – Commission-Approved Forms 27-5

GLOSSARY OF TERMS Glossary-1

TOPICAL INDEX ..... Topical Index-1

Chapter 1:
Real Estate Broker License Law

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

I. Reason for Its Enactment

The Colorado Real Estate Broker License Law was passed 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. The law has had the effect of raising the general standing of the real estate business and has helped to safeguard the interests of both the public and those engaged in the business.

II. What the Law Does Not Cover

The law does not dictate the ethical standards that should be observed in the real estate industry, or generally of any trade, business, or profession. The law imposes responsibility for one's moral misconduct only indirectly, through the law of crimes (public wrongs) and of torts (private wrongs). 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 and provide compensation for any harm caused by the wrongful use of the rightful owner's money.

Codes of ethics have been voluntarily adopted by various real estate organizations 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.

III. The Commission Office

The Division of Real Estate has a five-member Commission that meets bi-monthly to conduct rulemaking hearings, make policy decisions, consider licensing matters, review complaints, and take disciplinary action against real estate brokers. Rules are promulgated after notice and public hearings at which all interested parties may participate. The five Commission members consist of three real estate brokers and two members of the public. Commission members serve a three-year term.

The Division of Real Estate is part of the Department of Regulatory Agencies and is responsible for budgeting, purchasing, and related management functions. The director of the Division is an administrative officer who executes the directives of the Commission and is given statutory authority in all matters delegated by the Commission.

The Division of Real Estate is the licensing, regulation, and enforcement agency for real estate brokers, appraisers, mortgage loan originators, subdivision developers, and conservation easement holders. To become licensed, individuals must comply with education and/or

experience requirements, qualify for reciprocity, and/or pass a general and/or state portion of the licensing exam.

The Division's objectives are to:

- Provide protection to consumers and other stakeholders
- Educate consumers on their rights and promote consumer awareness throughout the State of Colorado
- Enforce state and federal laws, rules, regulations, and standards and impose disciplinary action when recommended
- License real estate brokers
- License real estate appraisers
- License mortgage loan originators
- Register timeshares, raw land subdivisions developers and homeowners' associations
- Certify the holders of conservation easements
- Investigate complaints
- Enforce compliance with state and federal laws
- Impose recommended disciplinary actions against licensees

The Commission exercises its duties and authorities independently through the following programs or activities.

A. The Master File

The Division staff records the historical and 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.

B. Licensing

The Licensing section's major responsibility is the data entry and upkeep of nearly 50,000 real estate broker, appraiser, and mortgage loan originator licensing records, as well as registration of subdivision/timeshare developers, homeowners' associations and conservation easement holders. The Licensing staff reviews and processes all incoming applications, which are screened for required qualifications, including education, experience, examinations, errors & omission (E&O), and criminal history background checks. The Licensing section also issues license histories to licensees who need to prove their credentials to other jurisdictions.

Colorado recognizes real estate licenses issued by all other U.S. and Canadian jurisdictions if the licensee in the other jurisdiction has held that license for 2 years or more. Licensing currently administers this program and offers a limited recognition program to these licensees. The Division also reciprocates with most other appraisal jurisdictions.

Applicants with a past civil judgment or criminal conviction may request a "preliminary advisory opinion" regarding the likelihood of receiving a license before completing the

requirements to apply for a license (Commission Rule A-12). The Commission/board may issue either a favorable or unfavorable opinion.

Both "preliminary advisory" applicants and license applicants are subject to pre-licensing investigations and fingerprinting to safeguard the statutory mandate for truthfulness, honesty, and good moral character. (See §§ 12-61-102, -103(3), -709(1), and -905(1) C.R.S) All applications that disclose civil or criminal violations or any form of previous license discipline in 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
- Mortgage loan originator

The Division also reviews and registers:

- Raw ground subdivision developers
- Timeshare and vacation club developers
- Condominium conversion developers
- Homeowners' associations
- Conservation easement holders

Information on licensing is located on the Division of Real Estate website at:
http://dora.colorado.gov/dre

C. Enforcement Section

The Real Estate Commission has the power upon its own motion to investigate any licensee's real estate activities. 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. The judge is 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 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:

- Investigation of applicants
- Evaluation of complaints
- Investigation of complaints
- Routine and investigative audits
- Recommendations for dismissal or disciplinary action
- Preparation and execution of subpoenas, and other legal documents
- Preparation of cases for formal hearing, restraining orders, injunctions, or complaints for filing with district attorneys and local law enforcement agencies
- Working with federal agencies, *e.g.*, the Securities and Exchange Commission or Housing and Urban Development, the Federal Bureau of Investigation, or the Internal Revenue Service.

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

IV. License Law

A. Part 1 – Brokers

§ 12-61-101, C.R.S. Definitions.

As used in this part 1, 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.

(1.2) "HOA" or "homeowners' association" means an association or unit owners' association formed before, on, or after July 1, 1992, as part of a common interest community as defined in section 38-33.3-103, C.R.S.

(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) (a) "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:

(I) Selling, exchanging, buying, renting, or leasing real estate, or interest therein, or improvements affixed thereon;

(II) Offering to sell, exchange, buy, rent, or lease real estate, or interest therein, or improvements affixed thereon;

(III) Selling or offering to sell or exchange an existing lease of real estate, or interest therein, or improvements affixed thereon;

(IV) Negotiating the purchase, sale, or exchange of real estate, or interest therein, or improvements affixed thereon;

(V) Listing, offering, attempting, or agreeing to list real estate, or interest therein, or improvements affixed thereon for sale, exchange, rent, or lease;

(VI) Auctioning or offering, attempting, or agreeing to auction real estate, or interest therein, or improvements affixed thereon;

(VII) 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";

(VIII) 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;

(IX) 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;

(X) 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.

(b) "Real estate broker" does not apply to any of the following:

(I) 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;

(II) Any **public official** in the conduct of his or her official duties;

(III) Any **receiver**, **trustee**, **administrator**, **conservator**, **executor**, or **guardian** acting under proper authorization;

(IV) 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;

(V) An **attorney-at-law** in connection with his or her representation of clients in the practice of law;

(VI) 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 purpose 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;

(VII) 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;

(VIII) 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 subparagraph (VIII), 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.

(IX) 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;

(X) 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**;

(XI) (A) A **corporation**, **partnership**, or **limited liability company** acting through its officers, partners, managers, or regularly salaried employees receiving no additional compensation therefor, 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.

(B) For the purposes of this subparagraph (XI), "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.

(XII) 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 or her employer.

(XIII) A **regularly salaried employee of an owner of condominium units who acts as an on-site manager** of such units. For purposes of this subparagraph (XIII) 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 or her employer.

(XIV) 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;

(XV) 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;

(XVI) 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:

(A) Telecommunication lines;

(B) Wireless communication facilities;

(C) CATV;

(D) Electric generation, transmission, and distribution lines;

(E) Water diversion, collection, distribution, treatment, and storage or use; and

(F) 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, C.R.S. 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 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 good moral character; and, in addition to any other requirements of this section, competency to transact the business of a real estate broker 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 section 24-5-101, C.R.S.

§ 12-61-103, C.R.S. Application for license – rules.

(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. The real estate commission may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. *(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 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 title 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 (4).

(d) (Deleted by amendment, L. 96, p. 414, § 2, effective January 1, 1997.)

(5) (Deleted by amendment, L. 96, p. 414, § 2, effective January 1, 1997.)

(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 who has been licensed for two or more 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.

(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 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 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, partnerships, 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 the commission's 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 own 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 therefor. (*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 shall be issued to a partnership, a limited liability company, or a corporation or under a fictitious name or trade name; except that a married woman may elect to use her birth name.

(10) No person shall be licensed as a real estate broker 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.

(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, C.R.S. Transitional provisions – holders of existing salesperson's licenses. (Repealed)

§ 12-61-103.6, C.R.S. Errors and omissions insurance – rules.

(1) Every licensee under this part 1, except an inactive broker or an attorney licensee who maintains a policy of professional malpractice insurance that 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 parts 1 to 8 of this article. The division of real estate 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. A group policy obtained by the division of real estate must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division of real estate.

(2) (a) If the division of real estate 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 division of real estate, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division of real estate shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division of real estate shall determine the terms and conditions of coverage required under this section based on rules promulgated by the commission. The commission shall notify each licensee of the required terms and conditions at least thirty days before 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 division of real estate.

(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*)

(5) (Deleted by amendment, L. 2008, p. 497, § 4, effective April 17, 2008.)

§ 12-61-104, C.R.S. 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) and (3) (Deleted by amendment, L. 2001, p. 24, § 2, effective March 9, 2001.)

§ 12-61-105, C.R.S. 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, also 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 and two representatives 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 may 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 professions and occupations 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 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, C.R.S. Division of real estate – 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 of the division of real estate, who in turn shall employ such attorneys, deputies, investigators, clerks, and assistants as are necessary to discharge the duties imposed by parts 1, 3, and 4 of this article. The division of real estate, which shall be a division in the department of regulatory agencies, and the director of the division shall exercise their powers and perform their duties and functions under the department of regulatory agencies as if they were transferred to the department by a **type 2** transfer.

(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, C.R.S. 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) If a broker has no registered agent registered in this state, such registered agent is not located under its registered agent name at its registered agent address, or the registered agent cannot with reasonable diligence be served, the broker may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address. Service is perfected under this subsection (2) at the earliest of:

(a) The date the broker receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed by or on behalf of the broker; or

(c) Five days after mailing.

(3) All such applications shall contain a certification that the broker is authorized to act for the corporation.

§ 12-61-108, C.R.S. 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, C.R.S. 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 this 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, C.R.S. 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. The employed broker may not 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 or after the date that employment has been terminated. When any real estate 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 broker for the same period of time.

§ 12-61-110, C.R.S. 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) and (b) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)

(c) Each broker's examination;

(d) Each broker's original application and license;

(e) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)

(f) Each three-year renewal of a broker's license;

(g) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)

(h) Any change of name, address, or employing broker requiring a change in commission records;

(i) A new application which shall be submitted when a licensed real estate broker wishes to become the broker acting for a partnership, a 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.

(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 an 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 and, except that, the real estate commission may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. 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 that 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 therefor, 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 Rules D-11 and D-13*)

(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.

(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 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, L. 91, p. 1628, § 8, effective July 1, 1991.)

§ 12-61-110.5, C.R.S. Renewal of license – continuing education requirement.

(1) Commencing January 1, 1992, except as otherwise provided in subsection (4) of this section, a 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) and (b) Repealed.

(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, twelve 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 twelve 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 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; a Colorado private occupational school holding a certificate of approval from the state board for community colleges and occupational education; or an educational institution or an educational service described in section 12-59-104. 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-3(c)*)

(3) All credits, other than the credits specified in subsection (2) of this section, shall be acquired from educational courses approved by the commission that contribute 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, C.R.S. Study – repeal. (Repealed)

§ 12-61-110.8, C.R.S. Renewal of license – fingerprint based criminal history record check – repeal. (Repealed)

§ 12-61-111, C.R.S. Disposition of fees.

All fees collected by the real estate commission under parts 1 and 4 of this article, not including administrative fees that are in the nature of an administrative fine and 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, C.R.S. Fee adjustments.

* (1) This section shall apply to all activities of the division under parts 1, 3, 4, and 7 of this article. *(Ed. Note: This version of subsection (1) is effective until January 1, 2015.)*

* (1) This section shall apply to all activities of the division under parts 1, 3, 4, 7, and 10 of this article. *(Ed. Note: This version of subsection (1) is effective January 1, 2015.)*

* (2) (a) (I) The division shall propose, as part of its annual budget request, an adjustment in the amount of each fee that 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. *(Ed. Note: This version of subparagraph (I) is effective until January 1, 2015.)*

* (I) The division shall propose, as part of its annual budget request, an adjustment in the amount of each fee that it is authorized by law to collect under parts 1, 3, 4, 7, and 10 of this article. The budget request and the adjusted fees for the division shall reflect direct and indirect costs. *(Ed. Note: This version of subparagraph (I) is effective January 1, 2015.)*

(II) The costs of the HOA information and resource center, created in section 12-61-406.5, shall be paid from the HOA information and resource center cash fund created in section 12-61-406.5. The division of real estate shall estimate the direct and indirect costs of operating the HOA information and resource center and shall establish the amount of the annual registration fee to be collected under section 38-33.3-401, C.R.S. The amount of the registration fee shall be sufficient to recover such costs, subject to a maximum limit of fifty dollars and subject to adjustment to reflect the actual direct and indirect costs of operating the HOA information and resource center pursuant to the general directive to adjust fees to avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds as set forth in section 24-75-401 (3), C.R.S.

(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, C.R.S. 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 effect 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.

(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, C.R.S. 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, advertising, or otherwise;

(c.5) Violating any provision 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 employer;

(f) In the case 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 the licensee's possession that belong to others, whether acting as real estate brokers or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules 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-l(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, of the 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, as described in this part 1, to any person not licensed under 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.

* (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.; parts 1, 2, 3, and 4 of article 4 of title 18, C.R.S.; part 1, 2, 3, 4, 5, 7, 8, or 9 of article 5 of title 18, C.R.S.; article 5.5 of title 18, C.R.S.; parts 3, 4, 6, 7, and 8 of article 6 of title 18, C.R.S.; parts 1, 3, 4, 5, 6, 7, and 8 of article 7 of title 18, C.R.S.; part 3 of article 8 of title 18, C.R.S.; article 15 of title 18, C.R.S.; article 17 of title 18, C.R.S.; section 18-18-404, 18-18-405, 18-18-406, 18-18-411, 18-18-412.5, 18-18-412.7, 18-18-412.8, 18-18-415, 18-18-416, 18-18-422, or 18-18-423, 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 Offenses Against the Person 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 5.5 consists of **computer crime offenses**.*

*Article 6 consists of **offenses involving family relations**.*

*Article 7 consists of **offenses relating to morals**.*

*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.*

*Article 18 is the Uniform Controlled Substances Act, part 4 deals with **offenses** and **penalties**.)*

(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 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 renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a real estate broker'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.

(v) Having had a real estate broker's or a subdivision developer's license suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the broker or subdivision developer in any other jurisdiction if the broker'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.

(y) Within the last five years, having 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 or mortgage loan originator;

(II) A real estate broker or salesperson;

(III) A real estate appraiser, as defined by section 12-61-702 (5);

(IV) An insurance producer, as defined by section 10-2-103 (6), C.R.S.;

(V) An attorney;

(VI) A securities broker-dealer, as defined by section 11-51-201 (2), C.R.S.;

(VII) A securities sales representative, as defined by section 11-51-201 (14), C.R.S.;

(VIII) An investment advisor, as defined by section 11-51-201 (9.5), C.R.S.; or

(IX) An investment advisor representative, as defined by section 11-51-201 (9.6), C.R.S.

(1.5) Every person licensed pursuant to section 12-61-101 (2) (a) (X) 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 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 is involved in such transaction in such capacity as a licensed broker, it shall be the duty of said broker 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 that 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 commission investigations, including commission investigative files, are closed to public inspection. Stipulations and final agency orders are public records subject to sections 24-72-203 and 24-72-204, C.R.S.

(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.

§ 12-61-113.2, C.R.S. 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 of 1974", as amended, 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 locations 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 locations 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 of 1974", as amended, 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, C.R.S. Mobile home transaction – requirements. (Repealed)

§ 12-61-114, C.R.S. Hearing – administrative law judge – review – rule-making authority.

(1) 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.

(2) 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 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.

(3) 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. Each 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 a majority vote.

(4) 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.

(5) 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. If 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 a real estate broker 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.

(6) 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, C.R.S. Rules.

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, C.R.S. Subpoena compelling attendance of witnesses, records and documents. (Repealed)

§ 12-61-116, C.R.S. Failure to obey subpoena – penalty. (Repealed)

§ 12-61-117, C.R.S. Broker remuneration.

It is unlawful for a real estate 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 employer, who shall be a licensed real estate broker.

§ 12-61-118, C.R.S. Acts of third parties – broker's liability.

Any unlawful act or violation of any of the provisions of this part 1 upon the part of an employee, 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 employees.

§ 12-61-119, C.R.S. Violations.

Any natural person, firm, partnership, limited liability company, association, or corporation violating the provisions of this part 1 by acting as real estate broker in this state without having obtained a license or by acting as real estate broker after the broker'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 an entity, 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, C.R.S. 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, C.R.S. 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, C.R.S. 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 therefor. 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, C.R.S. – Repeal of part.

This part 1 is repealed, effective July 1, 2017. 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.

B. Part 2 – Brokers Commissions

§ 12-61-201, C.R.S. 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, C.R.S. 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, C.R.S. 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, C.R.S. 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 and a buyer, seller, landlord, or tenant under which the broker 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, C.R.S. Repeal of part.

This part 2 is repealed, effective July 1, 2017. Prior to such repeal, the provisions in this part 2 shall be reviewed as provided for in section 24-34-104, C.R.S.

C. Part 3 – Recovery Fund

§ 12-61-301, C.R.S. Real estate recovery fund – fees – repeal. (Repealed)

§ 12-61-302, C.R.S. 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 (11) 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 May 27, 2005.

(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 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 fund existed prior to its repeal, shall be transferred to the division of real estate cash fund.

(b) This part 3 is repealed, effective when 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, C.R.S. Simplified procedure – application for administrative order for payment from the fund – rules.

(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) (a) Service upon any real estate broker who is licensed or who renews a license under part 1 of this article on or after January 1, 2008, and upon whom personal service cannot be made with reasonable diligence shall be upon the registered agent of such real estate broker. If the real estate broker has no registered agent, the registered agent is not located under its registered agent name at its registered agent address, or the registered agent cannot with reasonable diligence be served, the real estate broker may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address. Service is perfected under this subsection (6) at the earliest of:

(I) The date the real estate broker receives the process, notice, or demand;

(II) The date shown on the return receipt, if signed by or on behalf of the real estate broker; or

(III) Five days after mailing.

(b) (Deleted by amendment, L. 2008, p. 498, § 6, effective April 17, 2008.)

(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 therefor.

(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, C.R.S. 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, C.R.S. 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, C.R.S. 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, C.R.S. 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, C.R.S. 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, C.R.S. 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.

D. Part 8 – Brokerage Relationships

§ 12-61-801, C.R.S. 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 that 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, C.R.S. Definitions.

As used in this part 8, unless the context otherwise requires:

(1) "Broker" shall have the same meaning as set forth in section 12-61-101 (2), except as otherwise specified in this part 8.

(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 or 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.

(5) "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.

(6) "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, C.R.S. Relationships between brokers and the public.

(1) When engaged in any of the activities enumerated in section 12-61-101 (2), 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) 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 broker 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, buyer, landlord, 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, C.R.S. 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, C.R.S. 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, C.R.S. Dual agent.

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

(2) to (6) (Deleted by amendment, L. 2002, p. 1060, § 6, effective January 1, 2003.)

§ 12-61-807, C.R.S. 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, C.R.S. 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 section 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 section 12-61-101 (2), 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), 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 by amendment, L. 2002, p. 1061, § 8, effective January 1, 2003.)

(d) (I) Prior to engaging in any of the activities enumerated in section 12-61-101 (2), 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; 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 by amendment, L. 2002, p. 1061, § 8, effective January 1, 2003.)

(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), 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, C.R.S. 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 subsection (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, C.R.S. 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 consented in writing to such multiple payments prior to entering into a contract to buy, sell, or lease.

§ 12-61-811, C.R.S. Violations.

The violation of any provision of this part 8 by a broker constitutes 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 pursuant to sections 12-61-113 and 12-61-114.

Chapter 2:
Commission Rules and Regulations

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

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COLORADO REAL ESTATE COMMISSION

4 CCR 725-1

RULES OF THE COLORADO REAL ESTATE COMMISSION

Rule A. License Qualifications, Applications and Examinations

A-1. Repealed (1-6-00)

A-2. Requirements must precede exam and application.

Educational requirements for an initial license imposed by 12-61-103(4) and (6)(c)(II), C.R.S., must be completed and proof of completion filed in a method or manner as prescribed by the Commission prior to taking the examination and applying for a license.

A-3. Exams given only to those qualified.

Examinations will be given only to duly qualified applicants for a real estate broker license, licensees upgrading a license, or licensees meeting the continuing education requirement; however, one instructor from each real estate school offering real estate courses required of applicants under section 12-61-103(4) C.R.S. may write the examination one time during any 12-month period.

A-4. Repealed.

A-5. Real estate license examination, exam expiration and application requirements.

The real estate license examination is made up of two parts, a general portion and a state portion. If an applicant fails one or both parts of the exam, the applicant may retake the failed portion(s) at a subsequent time. A passing score for either part of the exam is valid for one year only. An application received by the Division must be accompanied by the statutory fee, proof of completion of the required education and experience requirements, and proof of successful completion of the appropriate portion(s) of the exam within the year prior to the application being received by the Division. No exam score for either portion of the exam will be considered valid after one year.

A-6. Repealed.

A-7. Exam results certified only if licensed.

The Real Estate Commission will not certify to any person, state or agency any information concerning the results of any examination as it pertains to any person who has written the examination unless such person is or has been licensed as a Colorado real estate broker or pursuant to such examination; except, that the Commission may authorize a special examination for existing licensees for certification purposes.

A-8. Repealed.

A-9. License processing time frames.

Provided the applicant has submitted a complete and satisfactory application in compliance with 12-61-102 C.R.S., the Commission will issue a license within 10 business days after receipt by the Commission of satisfactory results from the fingerprint-based criminal history record check. If the application or record check is not complete or satisfactory, the applicant will be mailed a notice of deferred status. The license of a broker whose application has been approved by the Commission subject to the receipt of certain compliance items shall be issued on an inactive status if such compliance items are not submitted within 20 days after written notification by the Commission.

A-10. Application denied or deferred; exam score extension.

The Commission may deny or defer an original license application pursuant to 12-61-103(3). Under no circumstances will an examination be recognized by the Commission as complying with 12-61-103(6) after 18 months from the date an applicant took the examination which resulted in a passing score.

A-11. Certificate of license history required.

An applicant for a Colorado real estate license, who has held a real estate license in any other state must file with the application for a Colorado license a "certification of licensing history" issued by each state where the applicant is currently or was previously licensed as a real estate broker or salesperson. Such certificate must bear a date of not more than 90 days prior to the submission date of the application. If no longer licensed, such certificate must bear a date subsequent to the expiration date.

A-12. Applicant with prior legal involvement.

(a) Pursuant to 12-61-103 C.R.S., an applicant who has been convicted or pleaded nolo contendere to a misdemeanor or a felony, or any like municipal code violation, or has such charges pending or has agreed to a deferred prosecution, a deferred judgment, or a deferred sentence (violations) (excluding misdemeanor traffic violations) within the last ten years must file prior to or with his or her application for licensing the following information and documentation:

1. A written and signed personal explanation and detailed account of the facts and circumstances surrounding each violation, which shall include the statement, "I have been charged with no other criminal violations either past or pending, other than those I have stated on the application."

2. The completed Commission form number REC-BAA, including results of court hearing(s), in the form of copies of charges, disposition, pre-sentencing report and most recent probation or parole report.

3. If the applicant is to be employed by another licensee, the employing broker must submit a letter stating that he/she is aware of the specific charge(s) or convictions(s).

(b) (1) At any time prior to submission of a formal application for licensure a person may request that the Commission issue a preliminary advisory opinion regarding the potential effect that previous conduct, criminal conviction(s) or violation(s) of the real estate license law may have on a future formal application for licensure. Such opinion may be issued by the Commission, in its discretion, in order to provide preliminary advisory guidance. Any such opinion shall not be binding on the Commission or limit the Commission's authority to investigate a future formal application for licensure. However, if the Commission issues a favorable advisory opinion, the Commission may elect to adopt such advisory

opinion as the final decision of the Commission without further investigation or hearing.

(2) An individual seeking a preliminary advisory opinion under this rule is not an applicant for licensure and the issuance of an unfavorable opinion shall not prevent such individual from making application for licensure pursuant to the real estate licensing law and the rules and regulations of the Commission.

A-13. Repealed August 2, 2005 (effective 10-2-05)

A-14. Repealed (effective October 30, 2008)

A-15. Criminal history check required prior to renewal.

Any broker who has not submitted fingerprints to the Colorado Bureau of Investigation to be used to complete a one-time only criminal history record check, must do so prior to renewal of an active license. Renewed licenses will remain on inactive status until the Commission has received the results of a criminal record check. Fingerprints may be submitted for processing prior to renewal either electronically or on Card No. FD-258 in a manner acceptable to the Colorado Bureau of Investigation. The Commission may acquire a name-based criminal history record check for a renewing licensee who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

A-16. 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.

A-17. Pre-license education requirements.

The seventy two hours of instruction or equivalent distance learning hours required in 12-61-103(4)(a)(III) C.R.S. must be satisfied by successful completion of courses of study approved by the Commission as follows:

(a) A minimum of 24 hours in Real Estate Closings; and

(b) A minimum of 8 hours in Trust Accounts and Record Keeping; and

(c) A minimum of 8 hours in Current Legal issues; and

(d) A minimum of 32 hours in Practical Applications.

A-18. Repealed (effective 1-1-96)

A-19. Repealed (effective 3-4-99)

A-20. Denied license notice required.

If the applicant for licensure is denied by the Commission for any reason, the applicant will be informed of the denial and the reason therefore.

A-21. Repealed (effective 1-1-97)

A-22. Repealed.

A-23. Pre-license and brokerage administration courses must be acceptable to commission.

Completion of the courses of study approved by the Commission as required in 12-61-103(4)(a)(I), (II), (III), & 6(c) (II) C.R.S., whether through classroom or distance learning, must be based upon educational principles acceptable to the Real Estate Commission.

A-23.5. Repealed (effective 7-31-05)

A-24. Commission has course audit authority.

The Commission may audit courses and may request from each school offering a Commission approved course of study under 12-61-103(4)(a) and (b), C.R.S., all instructional material related thereto and student attendance records as may be necessary for an investigation in the enforcement of Section 103 of the License Law and Commission Rules and Regulations. The purpose of the audit shall be to ensure that schools adhere to the approved course of study, offer course material and instruction consistent with acceptable education standards and instruct in such a manner that the desired learning objectives are met. Failure to comply with the provisions of this rule may result in the withdrawal of Commission course approval.

A-25. NSF check voids application.

If the fees accompanying any application or registration made to the Commission (including fees for the recovery fund, renewals, transfers, etc.) are paid for by check and 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.

A-26. Temporary broker license.

Pursuant to 12-61-103(7)(c) C.R.S., 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.

Rule B. Continuing Education

B-1. When continuing education is required.

The Commission has determined that the license renewal process can be made more efficient by apportioning license renewals throughout the entire calendar year. Brokers must satisfy the continuing education requirements prior to applying to renew an active license, to activate an inactive license or to reinstate an expired license to active status. All license renewals shall be for a full three-year period called the "anniversary date renewal period". This period shall commence on the broker's initial date of issuance, *i.e.* the anniversary date, and expire three years later on the broker's anniversary date.

B-2. Methods of completing continuing education.

* Licensed brokers must satisfy the continuing education requirement before they apply to renew an active license, activate an inactive license, or reinstate an expired license to active status. Licensed brokers may satisfy the entire continuing education requirement through one of the following options:

* (a) Complete the twelve hours required by section 12-61-110.5(1)(c), C.R.S., and required by this rule in annual 4-hour increments developed by the Commission, otherwise referred to as the "Annual Commission Update Course." Licensees who choose this option must complete an additional 12 hours of elective credit hours to meet the 24-hour total continuing education requirement during the license period in subject areas listed in section 12-61-110.5(3), C.R.S. Please note that a licensee may not take the same version of the Annual Commission Update Course more than once. If a licensed broker takes more than 12 hours of the Annual Commission Update course during a license period, the licensee will receive elective credit hours for any additional hours.

* (b) Complete the Commission approved 24-hour "Broker Reactivation Course." This option is available to licensees under one of the following conditions:

* (1) Licensee is currently active and did not use the Broker Reactivation Course to satisfy the Rule B-2(a) requirements in the previous license year

* (2) Licensee is inactive or expired for up to thirty-six months prior to activating an inactive license or reinstating an expired license to active status and unable to comply with the education requirements listed in Rule B-2(a).

* (c) Pass the Colorado state portion of the licensing exam.

* (d) 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). The courses and course providers are required to comply with the requirements as described at section 12-61-103(4)(a), C.R.S. Any inactive or expired licensees who cannot meet the education requirements listed in Section 4(a), (b), or (c), must comply with the education requirements found in Section 4(d) before activation or reinstatement of the license.

B-3. Annual Commission Update course standards.

(a) Pursuant to 12-61-110.5(2), C.R.S. and Rule B-2(a), the 4-hour "Annual Commission Update" course shall be developed and presented by the Division of Real Estate and furnished to approved providers. Said course shall be presented without additional development by the provider or instructor.

(b) Any provider specified in commission rule B-6(a) or B-7(a) may request and offer the "Annual Commission Update" course. All other providers must apply annually for approval to offer the course using the commission-approved form and procedures in commission rule B-12, except that the course outline (B-12(a)) and course exam (B-12(b)) will be furnished by the Commission.

(c) 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.

B-4. Distance learning permitted, defined.

All continuing education courses may be offered and completed by distance learning (*i.e.* courses outside the traditional classroom setting in which the instructor and learner are separated by distance and/or time.

B-5. 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.

B-6. Courses automatically accepted for continuing education credit.

The following courses, subject to all other provisions of Rule B, if within the topic areas listed in 12-61-110.5 (3) C.R.S., will be accepted for elective continuing education credit without Commission pre-approval.

a) Courses offered by accredited colleges, universities, community or junior colleges, public or parochial schools or government agencies.

b) Courses developed and offered by quasi-governmental agencies.

c) Courses approved by and taken in satisfaction of another occupational licensing authority's education requirements.

d) Courses in real property law by a provider approved by the Colorado Board of Continuing Legal and Judicial Education.

e) Repealed.

f) Repealed.

B-7. The following continuing education courses must receive Commission approval prior to offering:

a) Courses offered by proprietary real estate schools approved by the Colorado Division of Private Occupational Schools.

b) Currently approved courses that are affected by any substantive changes.

c) Courses offered by any provider proposing to offer course(s) on subjects not listed in C.R.S. 12-61-110.5(3)

d) Courses offered by proprietary real estate schools approved as out of state providers by the Colorado Department of Private Occupational Schools, and are not approved pursuant to Rule B-6.

e) Courses offered by employing brokers to their employed brokers.

f) Courses offered by providers exempt under the provisions of 12-59-104, C.R.S.

g) Courses offered by local, state or national REALTOR® Associations.

B-8. Administrative rules for continuing education courses.

The following course format and administrative requirements apply to all Colorado continuing real estate education for licensed brokers:

(a) Courses must be at least 1 hour in length, containing at least 50 instructional minutes.

(b) A maximum of 8 hours of credit may be earned per day.

(c) No course may be repeated for credit in the same calendar year.

(d) Instructors may receive credit for classroom teaching hours once per course taught per year.

(e) Hours in excess of 24 may not be carried forward to satisfy a subsequent renewal requirement.

(f) No school/provider may waive, excuse completion of, or award partial credit for the full number of course hours.

(g) No challenge exam or equivalency may substitute for the full course outline.

(h) No credit may be earned for remedial education stipulated to between a licensed broker and the Commission as part of a disciplinary action, or alternative to disciplinary action.

(i) No course offering by a provider will be accepted unless the provider has either been granted a certificate of approval by the Colorado Department of Higher Education, Division of Private Occupational Schools, or is exempt from such requirement pursuant to 12-59-104, C.R.S.

(j) Courses approved for continuing education must maintain and improve a broker's skill, knowledge, and competency in real estate practice.

B-9. Term of course approval.

Course approval certification shall be for a period of three years, except that an annual or one-time seminar or conference offering may be approved for a specific date or dates.

B-10. Proof of course completion.

Each Colorado licensed broker is responsible for securing from the provider evidence of course completion in the form of an affidavit, certificate or official transcript of the course. Said documentation must be in sufficient detail to show the name of the licensee, course subject, content, duration, date(s) and contain the authentication of the provider. Licensees must retain proof of continuing education completion for 4 years, and provide said proof to the Commission upon request.

B-11. Provider must retain records.

Each approved provider must retain copies of course outlines or syllabi and complete records of attendance for a period of four (4) years, and provide the records to the Commission upon request.

B-12. Course approval application process.

Continuing education providers required to have Commission course approval must, in accordance with all of the provisions of this Rule B, submit an application form prescribed by the Commission, along with the following information at least 30 days prior to the proposed class dates:

(a) Detailed course outline or syllabus, including the intended learning outcomes, the course objectives and the approximate time allocated for each topic.

(b) A copy of the course exam(s) and instructor answer sheet if applicable. In the absence of an exam, the criteria used in evaluating a person's successful completion of the course objectives.

(c) Copy of instructor teaching credential; if none, a résumé showing education and experience which evidence mastery of the material to be presented.

(d) A copy of advertising or promotional material used to announce the offering.

(e) Upon Commission request, a copy of textbook, manual, audio or videotapes, or other instructional material.

(f) Effective January 1, 2001, providers of continuing education offered through distance learning must submit evidence in a form prescribed by the real estate commission that the method of delivery and course structure is consistent with acceptable education standards assuring that the desired learning objectives are met. The Commission will approve methods of delivery certified by the Association of Real Estate License Law Officials (ARELLO), or by a substantially equivalent authority and method.

B-13. Providers subject to statute, rule and course audit.

By offering real estate continuing education in Colorado, each provider agrees to comply with relevant statutes and Commission rules and to permit Commission audit of said courses at any time and at no cost.

B-14. Licensee attests to compliance by submitting application.

The act of submitting an application for renewal, activation or reinstatement of a real estate license shall mean that the licensee attests to compliance with the continuing education requirements of C.R.S. 12-61-110.5.

Rule C. Licensing – Office

C-1. Individual proprietor must be sole owner.

A broker licensed as an individual or as an individual doing business under a trade name shall be the sole owner of the brokerage business or such brokerage business will be considered as a partnership and the partnership shall apply for a broker's license under 12-61-103(7) C.R.S.

C-2. Resident broker required to have office; exceptions.

Every resident Colorado real estate 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.

C-3. 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.

C-4. Repealed effective 1-1-97

C-5. Repealed effective 1-1-97

C-6. Repealed effective 1-1-97

C-7. Repealed effective 1-1-97

C-8. Repealed effective 1-1-97

C-9. Repealed.

C-10. Repealed.

C-11. Repealed.

C-12. Repealed.

C-13. (a) Repealed

(b) Repealed

C-14. Repealed

C-15. Repealed

C-16. License non-transferable.

No agreement shall be entered into by any licensee whereby an individual licensee lends their name or license for the benefit of another person, partnership, limited liability company or corporation, whereby the provisions of the Colorado Real Estate Broker License Law and Commission Rules relating to licensing are circumvented.

C-17. Corporate license name may not duplicate suspended/revoked license.

The Commission may refuse to issue a license to a partnership, limited liability company or corporation if the name of said corporation, partnership or limited liability company is the same as that of any person or entity whose license has been suspended or revoked or is so similar as to be easily confused with that of the suspended or revoked person or entity by members of the general public.

C-18. Brokerage activity only in trade name or full licensed name.

An independent or employing broker may adopt a trade name according to Colorado law and such trade name will appear on the face of the independent or employing broker's license, however, pursuant to 12-61-103(10), C.R.S. such independent or employing broker must conduct brokerage business only under such trade name or conduct brokerage business under the entire name appearing on the face of the license. Employed brokers, who are licensed under an employing broker that is doing business under a trade name, shall be licensed under the entire name appearing on the face of the license, and not under the brokerage's or individual's trade name.

C-19. Name rules.

(a) The purpose of this rule is to provide interpretation for Section 12-61-103(10), C.R.S. 1973, as amended.

(b) For the purposes of this rule, the following definitions shall apply:

(i) The term "broker" shall mean any sole proprietor, partnership, limited liability company, or corporation licensed by the Real Estate Commission.

(ii) The term "trade name" shall include trademark, service mark, trade identification, or, any portion thereof which is recognizable as a trade name, trademark, service mark, or trade identification.

(c) Pursuant to 12-61-103(10) C.R.S., no person shall be licensed 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 or brokerage business is licensed; however, the use of a trade name with the permission of the owner of such trade name may be used concurrently with the licensed name of the broker in the promotion or conduct of the licensed broker's business.

(d) Repealed.

(e) No broker shall advertise or promote its business in such a manner as to mislead the public as to the identity of the licensed broker: nor shall a portion of the licensed name of any broker be advertised or promoted in a manner which would mislead the public as to the identity of the licensed broker.

(f) Any broker using a trade name, the use of which requires obtaining permission from another who has an existing and continuing right in that trade name by virtue of any state or federal law, in advertising other than of specific properties for sale and in advertising of specific properties for sale jointly with other brokers under a trade name shall cause the following legend to appear in a conspicuous and reasonable manner calculated to attract the attention of the public:

> "Each (Actual Trade Name) brokerage business is independently owned and operated."

(This legend may be re-phrased if the consent of the Commission is secured.)

(g) Any broker using a trade name owned by another on "for sale" or "for lease" signs on specific property or in advertising specific property for sale in any media shall clearly and unmistakably include said broker's name, as registered with the Commission, in a

conspicuous and reasonable manner calculated to attract the attention of the public. The broker's name shall appear where specific property is advertised for sale so that the public may unmistakably identify the broker responsible for the handling of the listing of the specific property.

(h) Any broker using a trade name owned by another on business cards, letterheads, contracts, or other documents relating to real estate transactions, shall clearly and unmistakably include said broker's name as registered with the Commission in a conspicuous and reasonable manner calculated to attract the attention of the public and shall also include the following legend:

> "Each (Actual Trade Name) brokerage business is independently owned and operated."

(This legend may be re-phrased if the consent of the Commission is secured.)

(i) Any broker using a trade name owned by another on signs displayed at a place of business shall clearly and unmistakably include said broker's name as registered with the Commission on such signs in a conspicuous and reasonable manner calculated to attract the attention of the public and shall also include the following legend:

> "Each (Actual Trade Name) brokerage business is independently owned and operated."

(This legend may be re-phrased if the consent of the Commission is secured.)

C-20. No license name identical to one previously issued.

No broker's license will be issued to a broker under a trade name, corporate name, partnership name or limited liability company name which is identical to another licensed broker's trade name, corporate, partnership or limited liability company name.

C-21. Individual proprietor may not appear to be corporate.

A broker licensed as an individual proprietorship shall not adopt a trade name which includes the following words: Corporation, Partnership, Limited Liability Company, Limited, Incorporated, or the abbreviations thereof.

C-22. Employing broker qualifications for business entities.

When a broker applicant submits an application to qualify:

(a) A corporation as a real estate brokerage company, the broker applicant must certify that:

1. The corporation has been properly incorporated with the Colorado Secretary of State or is authorized to do business in Colorado, and is in good standing, proof of which shall be included with the application;
2. If an assumed or trade name is to be used, it has been properly filed with and accepted by the Colorado Secretary of State, proof of which shall be included with the application;
3. The broker applicant has been appointed by the board of directors to act as broker for the corporation;

(b) A partnership as a real estate brokerage company, the broker applicant must certify that:

1. The partnership has been properly registered with the Colorado Department of Revenue or properly filed with the Colorado Secretary of State and is in good standing, proof of which shall be included with the application;

2. If an assumed or trade name is to be used, it has been properly filed with Colorado Department of Revenue or filed and accepted by the Colorado Secretary of State, proof of which shall be included with the application;
3. The broker applicant has been appointed the real estate broker for the partnership by all general partners or managers/officers;

(c) A limited liability company as a real estate brokerage company, the broker applicant must certify that:

1. The limited liability company has been properly registered with the Colorado Secretary of State and is in good standing, proof of which shall be included with the application;
2. If an assumed or trade name is to be used, it has been properly filed with the Colorado Secretary of State, proof of which shall be included with the application;
3. The broker applicant has been appointed the real estate broker for the limited liability company by all managers, or if management has been reserved to the members in the articles of organization, by all members;

C-23. Unlicensed on-site manager.

Pursuant to 12-61-101(2), C.R.S., offering to rent or lease real estate or renting or leasing real estate requires a Colorado real estate broker's license. If a brokerage firm employs an unlicensed on-site manager, the employing broker must:

(a) Actively and diligently supervise all activities of the on-site manager or delegate the supervisory responsibility in writing to a qualified employed broker;

(b) Require the on-site manager to report directly to either the employing broker or the delegated employed broker;

(c) Require the on-site manager account for and remit all monies, including rents and security deposits, collected on behalf of the broker or owner to the employing broker or the delegated employed broker;

(d) Ensure that property maintenance scheduled by the on-site manager is performed in accordance with the executed property management agreement;

(e) Engage the on-site manager, either as a regularly salaried employee or as an independent contractor, and pay the on-site manager through the real estate brokerage firm. The salary may include rent value or other non-commission income.

(f) Instruct the on-site manager to not negotiate any of the material terms of a lease or rental agreement with a tenant or prospective tenant.

The unlicensed on-site manager may fill in blanks, as a scrivener, on lease forms provided by the brokerage firm, show prospective tenants available units, quote rental prices established by the owner or broker, arrange for maintenance, and collect monies, including security deposits and rents.

C-24. Repealed.

C-25. Notice of termination; employing broker.

The employing broker of a licensed corporation, partnership, or limited liability company must immediately notify the Commission in a manner acceptable to the Commission, of the employing broker's termination of employment with such licensed corporation, partnership, or limited liability company, or upon the employing broker's failure to continue to comply with 12-61-103, C.R.S. and applicable rules. Upon such notification, the employing broker and all employed licensees shall be placed on inactive status.

C-26. Inactive license.

A broker license may be issued on an inactive status.

Rule D. Renewal, Transfer, Inactive License, Errors and Omissions Insurance

D-1. Repealed

D-2. 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.

D-3. 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.

D-4. 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.

D-5. Repealed.

D-6. License renewal notification.

Notification that a license will expire, unless renewed, will be sent to the electronic mail address on file with the Commission.

D-7. 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.

D-8. Repealed.

D-9. Form and fees required to change license.

No changes in license status will be made except in a manner acceptable to the Commission to effect such change and upon payment of the statutory fees for such changes.

D-10. Repealed.

D-11. Initial license renewal.

An initial license will be issued for a three-year period commencing on the issuance date and expiring three years from the date of issuance.

D-12. Renewal fees non-refundable.

All fees paid for the renewal of a license shall be non-refundable.

D-13. Anniversary date renewals and reinstatements.

License renewal periods shall begin on the anniversary date of issuance and continue for three full years. An expired license may be reinstated as follows:

(a) If proper application is made within thirty-one days after the date of expiration, by payment of the regular renewal fee;

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

(c) If proper application is made more than one year but within three years after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to the regular renewal fee.

D-14. Errors and omissions (E&O) insurance (See 12-61-103.6 C.R.S.)

Every active real estate licensee shall have in effect a policy of errors and omissions insurance to cover all acts requiring a license. In addition, all active licensed real estate companies that employ licensees in addition to the responsible broker must also have in effect a policy of errors and omissions insurance to cover all acts requiring a license.

(a) The Commission shall enter into a contract with a qualified insurance carrier to make available to all licensees and license applicants a group policy of insurance under the following terms and conditions:

(1) The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state.

(2) The insurance carrier maintains an A.M. Best rating of “B” or better.

(3) The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the Commission on a timely basis and at no expense to the state.

(4) The insurance carrier has been selected through a competitive bidding process.

(5) The contract and policy are in conformance with this rule and all relevant Colorado statutory requirements.

(b) The group 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) Deleted 10/1/03.

(3) 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.

(4) 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.

(5) 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.

(6) An annual aggregate limit of not less than $ 300,000 per licensed individual or entity.

(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.

(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 group 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.

(c) Licensees or applicants may obtain errors and omissions coverage independent of the group plan from any insurance carrier subject to the following terms and conditions:

(1) The insurance carrier is licensed and authorized by the Colorado division of insurance to write policies of errors and omissions insurance in this state and is in conformance with all Colorado statutes.

(2) The insurance provider maintains an A.M. Best rating of "B" or better.

(3) The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in an affidavit issued to the insured licensee or applicant in a form specified by the Commission and agrees to immediately notify the Commission of any cancellation or lapse in coverage. Independent coverage must provide, at a minimum, the following:

(i) The contract and policy are in conformance with all relevant Colorado statutory requirements.

(ii) Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

(iii) Coverage cannot be canceled by the insurance provider, except pursuant to and in conformance with 10-4-109.7 CRS

(iv) Coverage is for not less than $ 100,000 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, with an annual aggregate limit of not less than $ 300,000 per licensed individual and entity.

(v) Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.

(vi) The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.

(vii) That the provider of the independent policy has executed an affidavit in a form or manner specified by the commission attesting that the independent policy is in force and, at a minimum, complies with all relevant conditions set forth herein and that the provider will immediately notify the commission in writing of any cancellation or lapse in coverage of any independent policy.

(viii) Coverage of a licensee's use of lock boxes, which coverage shall not be less than $ 25,000 per occurrence.

(d) Applicants for licensure, activation, renewal and reinstatement shall certify compliance with this rule and 12-61-103.6 C.R.S. on forms or in a manner prescribed by the Commission. Any active licensee who so certifies and fails to obtain errors and

omissions coverage or to provide proof of continuous coverage, either through the group carrier or directly to the Commission, shall be placed on inactive status:

(1) immediately, if certification of current insurance coverage is not provided to the Commission; or,

(2) immediately upon the expiration of any current insurance when certification of continued coverage is not provided.

D-15. Repealed.

D-16. Repealed.

Rule E. Separate Accounts – Records – Accountings – Investigations

E-1. Trust Accounts; Requirements and Purposes.

All "money belonging to others" accepted by a resident or non-resident broker doing business in this state shall be deposited in one or more accounts separate from other money belonging to the broker or brokerage entity. The broker shall identify the fiduciary nature of each separate account in the deposit agreement with the recognized bank or institution by the use of the word "trust" or "escrow" and a label identifying the purpose/type of such account, *i.e.*, "sales escrow", "rental escrow", "security deposit escrow", "owners association escrow", or other abbreviated form defined in the deposit agreement. Unless otherwise permitted by other subsections of this rule, all money belonging to others shall be deposited according to the purpose of the transaction in separate types of escrow accounts. The broker shall retain a copy of each account deposit agreement executed for inspection by an authorized representative of the Commission.

(a) Accounts in name of broker and business entity

Such separate trust accounts must be maintained in the name of the licensed broker or if the licensed broker is a partnership, corporation or limited liability company, such account shall be maintained in the name of the broker acting for such partnership, corporation or limited liability company and in the name of the licensed partnership, limited liability company or corporation. The licensed broker must be able to withdraw money from such separate account, but may authorize other licensed or unlicensed cosigners. However, such authorization shall not relieve the broker of any responsibility under the licensing act.

* (b) 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.

* (c) Escrow funds must be available immediately without penalty

Money belonging to others shall not be invested in any type of account or security or certificate of deposit which has a fixed term for maturity or imposes any fee or penalty for withdrawal prior to maturity unless the written consent of all parties to the transaction has been secured.

* (d) Repealed (effective 1-1-96)

* (e) 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:

(1) Money held in an escrow or trust account which is due and payable to the broker shall be withdrawn promptly.

(2) An escrow or trust account shall not be used as a depository for money belonging to licensees employed by a broker except pursuant to an executory sales contract, nor shall it be used for money the broker owes their licensees, or for bonuses or investment plans for the benefit of their licensees.

(3) Collections for insurance premiums and/or IRS employee's withholding funds shall not be deposited in a separate trust account established pursuant to 12-61-113 (g) and (g.5) C.R.S.

(4) Money advanced by a broker for the benefit of another may be placed in the trust account and identified as an advance but may be withdrawn by the broker only on behalf of such person. Any amount advanced to an escrow or trust account must be identified and recorded in the escrow journal, the beneficiary ledger and disclosed in periodic accounting to the beneficiary.

(5) Funds of others received by a broker relating to real estate partnerships, joint ventures and syndications in which the broker has an ownership interest and also receives compensation for selling or leasing the property shall be maintained in a trust account separate from any other trust account maintained by such broker.

(6) In the absence of a specific written agreement to the contrary, commissions, fees and other charges collected by a broker for performing any service on behalf of another are considered "earned" and available for use by the broker only after all contracted services have been performed and there is no remaining right of recall by others for such money. The broker shall identify and record all commissions, fees, or other charges withdrawn from a trust or escrow account on the account journal and individual ledgers of those against whom the fees or commissions are charged. If a single disbursement of fees or commissions includes more than one transaction, rental period or occupancy or includes withdrawals from the account of more than one trust or escrow account beneficiary, the broker, upon request, shall produce for inspection by an authorized representative of the Real Estate Commission a schedule which details (1) the individual components of all amounts included in the sum of such disbursement and (2) specifically identifies the affected beneficiary or property ledgers. Ledger entries must detail such disbursements in accordance with Rule E-l(p)(2), including the date or time period for each individual transaction, rental or occupancy.

* (f) 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.

* (g) 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 of a house, the deposit money must be placed in a trust account and not used for construction purposes unless the written consent of the purchaser is secured.

* (h) Separate escrow accounts required for managing 7 or more residences

A broker who manages less than seven (7) single-family residential units may deposit rental receipts and security deposits and disburse money collected for such purposes in the "sales escrow" account.

* (i) Repealed (effective 1-1-96)

* (j) Installment land contract

If a conveyance is made by an installment contract for a deed and if such contract contains a provision whereby the broker signs the installment contract as the receipting broker, the broker must escrow the receipted money pursuant to Rule E-l until the owner signs acceptance of the contract and a copy of the fully executed contract is delivered to the purchaser.

* (k) Encumbrance before delivery of deed

When a sales contract or an installment contract for the sale of an interest in real estate is signed by the parties to the transaction and the purchaser also executes a promissory note and/or a mortgage or trust deed encumbering such property before the seller delivers the deed, then all payments received by the broker pursuant to such contract shall be deposited in a trust account in a recognized depository until delivery of such deed to the purchaser unless the broker receives specific written consent from all parties concerning disposition of such funds. This rule shall apply whether or not the broker and seller are one and the same.

* (l) 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 promptly notify the seller.

* (m) Time limits for deposit of money belonging to others

Except as provided in Rule E-l (o), 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.

* (n) Listing broker holds escrow funds; delivery to third party

Except as otherwise agreed to in writing, in any real estate transaction in which one broker holds a listing contract on a property and where the selling broker receipts for earnest money under a contract, the selling broker shall deliver the contract and the earnest money to the listing broker who shall deposit the earnest money in the broker's escrow or trustee account in a recognized depository not later than the third business day following the day on which the broker receives notice of acceptance of such contract. If such selling broker receipts for a promissory note, or thing of value, such note or thing of value shall be delivered with the contract to the listing broker to be held by the listing broker. Any check or note shall be payable to, or assigned to, the listing broker.

(1) The broker receipting for the earnest money deposit, if instructed in writing by the parties to the contract, shall deliver the earnest money to a third party or entity so identified in writing. If the broker is instructed in writing by the parties to the contract to deliver an earnest money deposit to such third party or entity, the broker shall retain in the office transaction file a copy of the earnest money check, note or other thing of value, including any endorsement, and obtain a dated and signed receipt from the person or entity to whom the broker has been instructed to deliver the deposit.

* (o) Recordkeeping requirements

A broker shall supervise and maintain, at the broker's licensed place of business, a record keeping system, subject to subsection (7) of this rule, consisting of at least the following elements for each required escrow or trust account:

(1) 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. For funds received, the records maintained in the system must include the date of receipt and deposit, the name of the person who is giving the money, the name of the person and property for which the money was received, the purpose of the receipt, the amount, and. a resulting cash balance for the account. For funds disbursed, the records maintained in the system must include the date of payment, the check number, the name of the payee, a reference to vendor documentation or other physical records verifying purpose for payment, the amount paid, and a resulting cash balance for the account.

(2) A record collectively called a "ledger" or an equivalent component of an accounting system which records in chronological sequence all money which is received or disbursed by the broker on behalf of each particular beneficiary of a trust account. This record must show the monetary transactions affecting each individual beneficiary and must segregate such transactions from those pertaining to other beneficiaries of the trust account. The ledger record for each beneficiary must contain the same transactional information as is prescribed in subsection (1). No ledger may ever be allowed to have a negative cash balance and the sum of all ledger balances must at all times agree with the corresponding cash balance in the journal after each transaction has been posted.

(3) A written monthly record called the "bank reconciliation worksheet" which proves agreement, on the date of reconciliation, between (1) the cash balance shown in the account journal; (2) the sum of the cash balances for all ledgers; and (3) the corresponding bank account balance. This worksheet must be maintained in hard copy form for later inspection and list each beneficiary's ledger balance on the date of reconciliation. The broker is not required to reconcile any trust account when no money belonging to others has been received or no banking activity has occurred.

(4) When managing property, if summary totals are reported to others, the broker must maintain supporting records which accurately detail all cash received and disbursed under the terms of the management and rental agreements. Such summary totals must be reconcilable to detailed supporting records. Any accounting report furnished to others must be prepared and delivered according to the terms of the management agreement or, in the absence of a provision in the written management agreement to the contrary, within thirty (30) days after the end of the month in which funds were either received or disbursed.

(5) If a broker has on deposit personal funds sufficient to maintain the trust account pursuant to Rule E-l(f), an entry showing such money shall be made in the journal and on a "broker's ledger record" per subsections (1) and (2). Such money shall be included in the bank reconciliation worksheet.

(6) All deposits of funds into an escrow or trust account must be documented (*i.e.*, bank deposits) including confirmation of electronic and telephonic transfers or on detailed schedules attached to the deposit slips or confirmations. The documentation must identify each person tendering funds to the broker for deposit, the amount of funds tendered, types of funds received from each person, and the property address, affected. All disbursements of funds from an escrow or trust account must be supported by source documents such as bids, invoices, contracts, etc. that identify the payees, property addresses affected and amount of funds transferred for each property. Real estate licensees shall produce for inspection by an authorized representative of the real estate commission any cancelled checks (or front and back copies) or hardcopy confirmations of electronic or telephonic transfers as may be reasonably necessary to complete audits or investigations.

(7) 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. If the "accrual basis" of accounting is requested by the beneficiary of funds entrusted to a broker, such request must be in writing and the broker shall maintain separate accrual basis accounts and sets of records for each person or entity affected; such accounts and records shall be separate from other accounts and records maintained on the cash basis.

(8) Pursuant to C.R.S. 12-61-113(l)(c.5),(q) and 6-1-105, the broker must obtain prior written consent to assess and receive mark-ups and/or other compensation for services performed by any third party or affiliated business entity. The broker must retain accurate on-going office records which verify disclosure and consent, and which fully account for the amounts or percentage of compensation assessed or received.

* (p) 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.

* (q) 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.

* (r) 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.

* (s) Repealed (effective 1-1-96)

* (t) Number of separate accounts may vary from zero to unlimited

A broker is not limited as to the number of separate accounts which may be maintained for money belonging to others and if the broker is not in possession of money belonging to others, there is no obligation to maintain a separate account.

E-2. Payment earned after performance; Account within 30 days; non-refundable retainers.

When money is collected by a broker for the performance of specific services or for the expenses of performing such services, or for any other expense including but not limited to advertising expenses in regard to the sale or management of real property, or a business opportunity, and such money is collected before the advertising or other services have been performed, the broker shall deposit such money in an escrow or trust account pursuant to 12-61-113(1)(g.5) C.R.S. No money may be withdrawn from such person's funds, except for actual authorized expenses paid to perform the service, or on behalf of that person, until the broker has fully performed the services agreed upon. A full and itemized accounting must be furnished the person within 30 days of any withdrawal of funds from the escrow or trust account. Nothing in this section shall prohibit a licensee from taking a non-refundable retainer which need not be deposited into an escrow or trust account provided this is specifically agreed to in writing between the licensee and the person paying the retainer.

E-3. 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. Failure to submit such documents or records within the time set by the Commission in its notification shall be grounds for disciplinary action unless the Commission has granted an extension of time for such production. However, a broker who is also acting as a manager for an owners association shall turn all association management records and supporting documentation over to the association at the end of the broker's term of management. 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.

E-4. Document Preparation and Duplicates.

Contracting instruments for all real estate or business opportunity transactions in which a real estate broker participates, including agency and sales contracts, shall accurately reflect the financial terms of the transaction by itemizing things of value paid or received and identifying the party or parties conveying, receiving and/or ultimately benefitting from such things of value. All such terms made subsequent to the original contracting document shall be disclosed in an amending instrument. For the purpose of this rule, the term "things of value" shall include monetary considerations as well as the exchange of tangible, non-monetary assets.

A real estate broker shall immediately deliver a duplicate of the original of any instrument (except deeds, notes and trust deeds or mortgages, prepared by and for the benefit of third party lenders) to all parties executing the same when such instrument has been prepared by the broker or the broker's employed licensee or closing entity and relates to the employment or engagement of the broker or pertains to the consummation of the leasing, purchase, sale or exchange of real property in which the broker may participate as a broker. For purposes of this rule, duplicate shall mean legible photocopy, carbon copy, facsimile, or electronic copies which contain a digital or electronic signature as defined in 24-71-101(1) C.R.S. Such broker shall retain a copy of the duplicate instruments for future use or inspection by an authorized representative of the Real Estate Commission. If a broker or the broker's agent prepares a mortgage or trust deed for the benefit of a buyer or seller, an unsigned duplicate of such security instrument, together with a copy of the note, unsigned or prominently marked "copy," shall be furnished to the purchaser; copies shall also be retained in such broker's office for further use or inspection by an authorized representative of the Real Estate Commission. Cooperating brokers, including brokers acting as agents for buyers in a specific

real estate transaction, shall have the same requirements for retention of copies as stated above, except that a cooperating broker who is not a party to the listing contract need not retain a copy of the listing contract or the seller's settlement statement. Pursuant to Rule E-3, a broker is not required to obtain and retain copies of existing public records, title commitments, loan applications, lender required disclosures or related affirmations from independent third party closing entities after the settlement date.

E-5. Closing responsibility; closing statement distribution.

Pursuant to 12-61-113 (1)(h), 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 pursuant to 12-61-103 (6)(c), 12-61-113(1)(o), 12-61-118 C.R.S and Rules E-31 and E-32.

(a) Subject to Rule E-4, an employing or independent broker with whom a brokerage relationship has been established, either personally or through an employed licensee, shall retain a copy of all closing statements approved by the respective buyers or sellers for future use or for inspection by an authorized representative of the Real Estate Commission.

(b) The closing statement or statements of all real estate or business opportunity transactions in which a real estate broker participates shall show the date of closing, the total purchase price of the property, itemization of all adjustments, money, or things of value received or paid showing to whom each item is credited and/or to whom each item is debited, the dates of the adjustments shall be shown if not the same as the date of the closing, also shown shall be the balances due from the respective parties to the transaction, and the names of the payees, makers and assignees, of all notes paid or made or assumed; the statements furnished to each party to the transaction shall contain an itemization of such credits and such debits as pertain to each respective party. THE CREDITS AND DEBITS CONCERNING THE SALE OF A PREOWNED HOME WARRANTY SERVICE CONTRACT SHALL BE DISCLOSED ON THE CLOSING STATEMENTS.

(c) 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.

(d) 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.

(e) 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.

(f) 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 entity providing settlement services and retain a copy of the receipt in the office transaction file. The settlement statements prepared by the lawyer or closing entity shall bear the names of the licensee who signs the statement and the employing broker if applicable.

E-6. Electronic Records.

Records as required under Title 12, Article 61, Parts 1-8 C.R.S. and rules promulgated by the Commission, may be maintained in electronic format. An electronic record as defined in 24-71.7-103 C.R.S. means a record generated, communicated, received, or stored by electronic means. Such electronic records shall be produced upon request by the Commission and must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the Commission, or by any principal party to a transaction, printed records shall be produced.

E-7. Repealed (Effective February 1, 2001)

E-8. Advertising.

A real estate licensee who performs any act requiring a license, including advertising services or advertising property belonging to another, shall do so in the name of the employing broker; except that a licensed employee may advertise property owned by such employee without complying with this rule if the property is not listed for sale with the employing broker. General advertising which recaps sales activity over a period of time in a given subdivision or geographical area shall cite the source of the data and include a disclaimer that all reported sales were not necessarily listed or sold by the licensee and are intended only to show trends in the area or shall separately identify the licensee's own sales activity.

E-9. Repealed effective 1-1-97

E-10. License non-transferable. Associates not independent or employing.

A broker license is non transferable. No licensee shall, and no broker shall permit, employed licensees to present or to hold themselves out to the public as an employing or independent real estate broker.

E-11. Listing must have termination date.

When a licensee secures a written agreement to perform activities requiring a license, a definite date for termination shall be included therein.

E-12. 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 term of the agreement, including any extension thereof.

E-13. Sign-crossing rule.

A real estate licensee shall not negotiate a sale, exchange, lease or listing contract of real property directly with an owner for compensation from such owner if such licensee knows that such owner has a written unexpired contract in connection with such property which grants to another licensee an exclusive right to sell or lease or which grants an exclusive agency right to sell or lease.

However, when a licensee is contacted by an owner regarding the sale, exchange, lease or listing of property that is exclusively listed with another broker, and the licensee has not initiated the discussion, the licensee may negotiate the terms upon which to take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.

Additionally, a real estate licensee shall not negotiate a purchase, exchange, lease or exclusive right to buy contract with a buyer if such licensee knows that such buyer has a written, unexpired contract which grants to another licensee an exclusive right to buy.

However, when a licensee is contacted by a buyer regarding the purchase, exchange or lease of property, and the licensee has not initiated the discussion, the licensee may enter into or negotiate the terms upon which to enter into a future exclusive right to buy contract to become effective upon expiration of any existing exclusive right to buy contract.

E-14. Licensee must recommend title exam & legal counsel.

A real estate licensee shall recommend, before the closing of a real estate transaction, the examination of title and shall advise the use of legal counsel.

E-15. No broker right to earnest money return.

When for any reason the owner fails, refuses, neglects or is unable to consummate the transaction as provided for in the contract, and through no fault or neglect of the purchaser the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned, and such deposit should be returned to the purchaser at once and the broker should look to the owner for compensation.

E-16. Owner-held security deposits.

A broker receipting for security deposits shall not deliver such deposits to an owner without the tenant's written authorization in a lease or unless written notice has been given to the tenant by first class mail. Such notice must be given in a manner so that the tenant will know who is holding the security deposit and the specific requirements for the procedure in which the tenant may request return of the deposit. If a security deposit is delivered to an owner, the management agreement must place financial responsibility on the owner for its return, and in the event of a dispute over ownership of the deposit, must authorize disclosure by the broker to the tenant of the owner's true name and current mailing address. The broker shall not contract with the tenant to use the security deposit for the broker's own benefit.

E-17. Repealed (Effective June 30, 2004)

E-18. Fees from Mortgage Lenders Require Prior Written Approval.

A licensee shall not accept, directly or indirectly, a placement fee, commission or other valuable consideration for placing a loan with a mortgage lender or its representative in any real estate transaction in which the licensee, directly or indirectly, received, or is entitled to receive a commission as a result of the sale of property in such transaction unless the licensee fully informs any party with whom they have established a brokerage relationship, or worked with as a customer, and obtains prior written consent of such party. All licensees must comply with the RESPA statute and regulations regarding receipt of referral fees. To the extent Rule E-18 on referral fees differs from that of RESPA, licensees should comply with RESPA to avoid jeopardizing their standing with respect to federally related loan programs and are advised to contact the Consumer Financial Protection Bureau for further clarification.

E-19. Fees from title insurance companies prohibited.

A licensee shall not accept a commission, fee, or other valuable consideration from an abstract or title insurance company or its representative in any real estate transaction in which the licensee, directly or indirectly, receives, or is entitled to receive, a real estate commission as a result of the sale of property in such transaction. (Statement of Basis and Purpose as adopted by the Real Estate Commission on October 5, 1988.)

E-20. Property list price must be set by owner.

The licensee shall not submit or advertise property without authority, and, in any offering, the price quoted should not be other than that agreed upon with the owners as the offering price.

E-21. Licensee must respond to complaint or audit notice in writing.

When a licensee has received written notification from the Commission that a complaint has been filed against the licensee, the licensee has been selected for an audit, or that an audit has identified record keeping or trust account deficiencies, such licensee shall submit a written answer to the Commission. Failure to submit a written answer within the time set by the Commission in its notification shall be grounds for disciplinary action unless the Commission has granted an extension of time for the answer in writing and regardless of the question of whether the underlying complaint warrants further investigation or subsequent action by the Commission. The licensee's written answer shall contain the following:

(a.) A complete and specific answer to the factual recitations, allegations or averments made in the complaint filed against the licensee, whether made by a member of the public, on the Commission's own motion or by an authorized representative of the Commission.

(b.) A complete and specific response to any additional questions, allegations or averments presented in the notification letter.

(c.) Any documents or records requested in the notification letter.

(d.) Any further information relative to the complaint that the licensee believes to be relevant or material to the matters addressed in the notification letter.

E-22. Inducements for settlement services prohibited.

Pursuant to 12-61-113.2, C.R.S and the Federal Real Estate Settlement and Procedures Act, 12 U.S.C. Sec. 2601 et. seq., a real estate broker, whether engaged in an affiliated business arrangement or not, shall not accept or give any incentive, disincentive, remuneration, commission, fee or other thing of value to or from a settlement service provider for the referral of business in a real estate transaction involving a federally related mortgage loan. Real estate brokers are allowed to pay a referral fee to another licensed real estate broker if reasonable cause exists as set forth in 12-61-203.5, C.R.S. nothing in this rule shall prohibit a person or entity from receiving a bona fide salary, commission or other compensation for services rendered or as a return on their ownership interest in an affiliated business.

E-23. Payment to Out-of-State Brokers.

A licensed Colorado broker who cooperates with a broker who is licensed in another state or country but is not licensed in Colorado may pay such out-of-state broker a finder's fee or share of the commission under these circumstances:

(a) The broker licensed in the other state or country must reside and maintain an office in the other state or country. This rule shall also apply to payment made to citizens or residents of a country which does not license real estate brokers if the payee represents that they are in the business of selling real estate in said country.

(b) All advertising, negotiations, contracting and conveyancing done in Colorado must be performed in the name of the licensed Colorado broker.

(c) All money collected from the parties to the transaction prior to closing shall be deposited in the name of the licensed Colorado broker according to Commission rules.

E-24. Fraudulent application subject to discipline.

A real estate licensee who procures or attempts to procure a real estate license by fraud, misrepresentation, deceit or by making a material misstatement of fact in an application for such license, will be subject to disciplinary action pursuant to 12-61-113, C.R.S., as amended.

E-25. Continuing Duty to Disclose Conflict of Interest and License Status.

When acting in a licensed capacity or when a licensee sells, buys or leases real property on the licensee's own account, such licensee shall have a continuing duty to disclose any known conflict of interest that may arise in the course of the transaction. In addition, when a licensee sells, buys or leases real property on the licensee's own account, such licensee shall disclose in the contracting instrument, or in a separate concurrent writing, that they are a licensed real estate broker.

A licensee acting as a property manager has a duty to disclose, in writing, any known conflict of interest that may arise in the selection or use of a business or vendor that provides services applicable to lease transactions, including property maintenance. The licensee is required to disclose any ownership, financial or familial interest associated with the selection or use of a particular business or vendor.

E-26. Repealed.

E-27. No representation of future status of property.

No licensee shall make misrepresentations regarding future availability or costs of services, utilities, character and/or use of real property for sale or lease of the surrounding area.

E-28. Repealed.

E-29. Employing broker exercises authority, direction and control.

The terms "employment", in the employ of", "employed", "employing", "placed under contract", or "engaged", as used in the licensing statutes (12-61-101 C.R.S. *et seq.*) and Commission Rules, shall refer to any contractual relationship by or between a real estate broker and another licensee, which may be with or without limitation as to the time, place, or manner of performance of the licensee's activities, but which shall not relieve the real estate broker from the statutory requirement that the real estate broker shall exercise authority, direction and control over licensee's conformance to the licensing statutes and Commission Rules in the performance of such licensee's activities pursuant to 12-61-103 (6)(c)(I) C.R.S., 12-61-113 (1) (o) C.R.S., 12-61-118 C.R.S., and Commission Rules. Whenever a complaint is filed with the Real Estate Commission against an employed licensee, the Commission shall cause an investigation to be made to ascertain whether there may have been a violation of 12-61-113(1)(o) C.R.S. by the employing real estate broker in failing to exercise a reasonable or high level of supervision over such licensee's activities with reference to the licensing statutes and Commission Rules. Such supervision, pursuant to 12-61-118 C.R.S. shall include all broker employees, including but not limited to secretaries, bookkeepers and personal assistants of licensed employees.

E-30. Employing broker responsibilities.

To ensure compliance with commission statutes and rules regarding supervision, employing brokers shall have the following responsibilities:

(a) Maintain all trust accounts and trust account records;

(b) Maintain all transaction records;

(c) Develop an office policy manual and periodically review office policies with all employees;

(d) Provide for a high level of supervision of newly licensed persons pursuant to rule E-32;

(e) Provide for a reasonable level of supervision for experienced licensees pursuant to rule E-31;

(f) Take reasonable steps to ensure that violations of statutes, rules and office policies do not occur or reoccur;

(g) Provide for adequate supervision of all offices operated by the broker, whether managed by licensed or unlicensed persons.

E-31. Reasonable supervision.

Pursuant to section 12-61-113(1)(o), C.R.S., and in addition to the requirements of Commission Rule E-30 "reasonable supervision" of licensees with two or more years of experience shall include, but not be limited to, compliance with the following:

(a) Maintaining a written office policy describing the duties and responsibilities of licensees employed by the broker. A copy of the written policy shall:

  (1) be given to, read and signed by each licensee;

  (2) be available for inspection, upon request, by any authorized representative of the Commission.

(b) Reviewing all executed contracts in order to maintain assurance of competent preparation.

(c) Reviewing transaction files to ensure that required documents exist.

(d) Nothing in this rule shall prohibit an employing broker from delegating supervisory authority to other experienced licensees.

  (1) Employed licensees who accept supervisory authority from an employing broker shall bear responsibility with the employing broker for ensuring compliance with the Commission statutes and rules by all supervised licensees.

  (2) Any such delegation of authority shall be in writing and signed by the employed licensee to whom such authority is delegated. A copy of such delegation shall be maintained by the employing broker for inspection, upon request, by any authorized Commission representative.

  (3) An employing broker shall not contract with any employed licensee so as to circumvent the requirement that the broker supervise employed licensees.

E-32. High-level of supervision.

In addition to the requirements of Rule E-31 and pursuant to section 12-61-103 (6)(c)(I) C.R.S., an employing broker shall provide a "high level of supervision" for licensed persons with less than two years experience as follows:

(a) Provide specific training in office policies and procedures;

(b) Be reasonably available for consultation;

(c) Provide assistance in preparing contracts;

(d) Monitor transactions from contracting to closing;

(e) Review documents in preparation for closing;

(f) Ensure that the employing broker or an experienced licensee attends closings or is available for assistance.

(g) Nothing in this rule shall prohibit an employing broker from delegating supervisory authority to other experienced licensees.

(1) Employed licensees who accept supervisory authority from an employing broker shall bear responsibility with the employing broker for ensuring compliance with the Commission statutes and rules by all supervised licensees.

(2) Any such delegation of authority shall be in writing and signed by the employed licensee to whom such authority is delegated. A copy of such delegation shall be maintained by the employing broker for inspection, upon request, by any authorized Commission representative.

E-33. Ministerial tasks.

Following proper disclosure pursuant to 12-61-808 C.R.S., a broker engaged as a single agent for one party to a transaction may assist the other party by performing such ministerial tasks as showing a property, preparing and conveying written offers and counteroffers, making known the availability of financing alternatives and providing information related to professional, governmental and community services which will contribute to completion of the transaction and successful fulfillment of the agency. Performing such ministerial tasks shall not of themselves violate the terms of an agency relationship between a broker and a buyer, seller, tenant or landlord and shall not create an agency or transaction-broker relationship with the person being assisted.

E-34. Purchase Offers Must Go to Listing Broker.

A licensee must present all offers to purchase or lease to the owner's listing broker only if such owner has a written unexpired contract in connection with the sale or lease of real property which grants to the owner's listing broker an exclusive right to sell or lease. If a licensee has made reasonable, but unsuccessful, attempts to present an offer to purchase or lease to the owner's listing broker, the licensee must present the offer to the listing broker's employing broker or the employing broker's designee. If no employing broker exists, or if reasonable attempts to present the offer to the employing broker have failed, the licensee may present the offer directly to the owner.

E-35. Brokerage relationship disclosure in writing.

Written disclosures pursuant to C.R.S. 12-61-808 shall be made to a buyer or tenant prior to engaging in activities enumerated in C.R.S. 12-61-101 (2) and (3).

a. For purposes of this rule, such activities occur when a licensee elicits or accepts confidential information from a buyer or tenant concerning the buyer's or tenant's real estate needs, motivation, or financial qualifications.

b. Such activities do not include a bona fide "open house" showing, preliminary conversations or "small talk" concerning price range, location and property styles, or responding to general factual questions from a potential buyer or tenant concerning properties which have been advertised for sale or lease.

E-36. Good funds at closing.

Pursuant to 38-35-125, a real estate licensee who provides closing services shall not disburse funds or instruct an agent to disburse funds until those funds have been received and are either:

(1) available for immediate withdrawal as a matter of right from the financial institution in which the funds have been deposited or

(2) available for immediate withdrawal as a consequence of an agreement of a financial institution in which the funds are to be deposited or a financial institution upon which

the funds are to be drawn. Such agreement with a financial institution must be for the benefit of the licensee providing the closing service. If the agreement contains contingencies or reservations no disbursements can be made until these are satisfied. (Statement of Basis and Purpose as adopted by the Real Estate Commission on October 5, 1988.)

E-37. No fees to licensee/agent for legal document preparation.

There is no obligation for a licensee to prepare any legal documents as part of a real estate transaction. However, if a licensee or the licensee's agent prepares any legal document, the licensee or the licensee's agent may not charge a separate fee for preparation of such documents. A licensee shall not be responsible for fees charged for the preparation of legal documents where they are prepared by an attorney representing the purchaser or seller. Costs of closing not related to preparation of legal documents may be paid by the licensee or by any other person. A broker who closes transactions and charges separately for costs of closing not related to the preparation of legal documents must specify the costs and obtain the written consent of the parties to be charged.

E-38. Office Policy Contains Designation of Brokerage Relationship.

For purposes of this rule, seller shall include landlord and buyer shall include tenant. Pursuant to CRS 12-61-802(1.5), an employing broker or employed broker must be designated in writing by the employing broker to serve as a single agent or transaction-broker for the seller or buyer. Employing brokers comply with the statute if they make such written designation, as appropriate to the broker's business, in an office policy that states:

1. listing contracts by single individual: that the individual broker entering into the listing contract is the seller's designated agent or designated transaction-broker, whichever is appropriate.
2. right to buy or tenant contracts by individual: that the individual broker entering into the right to buy or tenant contract is the buyer's designated agent or transaction broker, whichever is appropriate.
3. listing contracts by teams: that the individual team member(s) entering into the listing contract is the seller's designated agent or transaction-broker, whichever is appropriate, in which case that designation and brokerage relationship shall apply to all members of the team.
4. right to buy or tenant contracts by teams: that the individual team member(s) entering into the right to buy or tenant contract is the buyer's designated agent or transaction-broker, whichever is appropriate, in which case that designation and brokerage relationship shall apply to all members of the team.
5. individuals or teams working with both buyer and seller:
   (a) that the individual(s) or team is a transaction-broker for both buyer and seller, or,
   (b) that the individual(s) or team is a single agent for the seller or buyer, and that the other party is a customer.
6. substitute or additional brokers: that the employing broker reserves the right to substitute or add other designated brokers, as appropriate, which shall be disclosed to the buyer or seller.
7. transaction broker – written disclosure: that the broker working with a buyer or seller as a Transaction-Broker as a result of a written disclosure, is the designated broker for that buyer or seller.

E-39. Office brokerage relationship policy must be written.

Pursuant to 12-61-803 and 808 C.R.S., a broker shall adopt a written office policy which identifies and describes the relationships in which such broker and any employed licensee may engage with any seller, landlord, buyer or tenant as part of any real estate brokerage activities. A broker may adopt any policy suitable to the broker's business, subject to the following:

a. An office policy shall apply to all licensees in the office;

b. An office policy shall be given and explained to each licensee and shall be read, agreed to and signed by each licensee;

c. An office policy shall, in a manner compliant with Commission Rule E-38, identify the procedures for the designation of brokers who are to work with a seller, landlord, buyer or tenant pursuant to 12-61-803(6), C.R.S., except office policies of real estate brokerage firms that consist of only one licensed natural person.

d. An office policy shall identify and provide adequate means and procedures for the maintenance and protection of confidential information that:

   (1) The seller or landlord is willing to accept less;

   (2) The buyer or tenant is willing to pay more;

   (3) Information regarding motivating factors for the parties;

   (4) Information that a party will agree to other financing terms;

   (5) Material information about a party not required by law to be disclosed;

   (6) Facts or suspicions which may psychologically impact or stigmatize a property;

   (7) All information required to be kept confidential pursuant to sections 12-61-804(2), 12-61-804(2), 12-61 805(2) and 12-61-807(3), C.R.S.

e. An office policy may permit an employing broker to supervise a transaction and to participate in the same transaction as a designated broker.

E-40. Double-ended brokerage relationships.

A broker shall not enter into a brokerage relationship with one party as an agent and the other party as a transaction broker. A broker who works with both the buyer and seller in the same real estate transaction may do so as (1) a Transaction-Broker for both buyer and seller (2) a single agent for the seller, treating the buyer as a customer or (3) a single agent for the buyer, treating the seller as a customer. These options shall be disclosed and made a part of the agreement between the parties to the listing contract, right to buy contract or tenant contract, whichever is appropriate. *(Ed. Note: See 12-61-803(6)(d))*

E-41. Change of status disclosure in writing.

A broker working with both the buyer and seller in the same real estate transaction who changes from working as a party's agent to assisting the parties as a Transaction-Broker shall either: check the box for "Transaction- Broker" and the box" This is a Change of Status" in the Commission-approved form, Contract to Buy and Sell Real Estate, if applicable, or provide the written "Change of Status (Transaction-Brokerage Disclosure)" to the party that has the changed relationship (seller and buyer) with the broker, at the time the broker begins to assist as a Transaction-Broker, but not later than at the time the party signs the contract. For purposes of this rule, seller shall include landlord, and buyer shall include tenant.

E-42. Notice Required on CMA's or BPOs for Other Than Marketing.

When a real estate broker prepares a competitive market analysis (CMA) or a broker's price opinion (BPO) for any reason other than the anticipated sale or purchase of the property, the licensee must include a notice stating: "This evaluation was prepared by a licensed real estate

broker and is not an appraisal. This evaluation cannot be used for the purposes of obtaining financing." Pursuant to 12-61-702(5)(b)(II), C.R.S, brokers are prohibited from completing CMA's or BPOs that are used for the purpose of obtaining financing.

E-43. Square Footage Disclosure.

This rule applies to transactions involving the sale and purchase of residences, new or existing. It requires the listing licensee to disclose the square footage of the floor space of the living area of the residence to the buyer and seller when a licensee disseminates such information, including submission to a multiple listing service. If the licensee personally measures or provides information from another source of measurement of the residence's square footage the licensee shall use the Commission approved form for such disclosure. The licensee listing the property is responsible for accurately representing any source of square footage.

(a) *Licensee measurement*. A licensee is not required to measure the square footage of a property. If the licensee takes an actual measurement it does not have to be exact, however, the licensee's objective must be to measure accurately and calculate competently in a manner that is not misleading, and:

i. The standard, methodology or manner in which the measurement was taken must be accurately disclosed to the buyer and seller;

ii. The buyer and seller must be advised that the measurement is for purposes of marketing and is not a measurement for loan, valuation or any other purpose; and

iii. The buyer and seller must be advised that if exact square footage is a concern, the property should be independently measured.

(b) *Other sources of square footage*. If a buyer or seller is provided information from another source for square footage, that source (whether an actual measurement, building plans, prior appraisals, assessors office, etc.) shall include the date of issuance if any and must be disclosed to the buyer and seller in writing by the licensee, in a timely manner. Such disclosure must be on the Commission approved form and must advise the recipient to verify the information. A licensee may not provide information to a person from a source known to be unreliable and is responsible for indicating obvious mismeasurement by others.

(c) A licensee working with a buyer must advise that if exact square footage is a concern, the property should be independently measured. This requirement is fulfilled by the licensee supplying such buyer a copy of the Commission approved form for disclosing square footage.

E-44. Actions When License Is Revoked, Expired or Inactive.

Upon suspension, revocation, expiration or transfer to inactive status of a real estate license, the licensee is responsible for immediate compliance with the following:

(1) Cease any activities requiring a license.

(2) Return the license to the commission. If an employing broker, inform all employed licensees of the change in license status and the effect of such change on the license status of those licensees.

(3) Cease all advertising, including but not limited to, use of office signs, yard signs, billboards, newspapers, magazines, the Internet, direct mailings, and multiple listing services:

(4) Inform all owners, buyers and tenants of the action taken and the impact that the change in license status will have on any pending transaction. If an employing broker, release all principals from any listings, management agreements, or other contractual obligations that require a license. The employing broker must instruct all owners,

buyers or tenants with pending transactions to seek guidance from a licensed attorney or an actively licensed real estate broker.

(5) In the case of an employing broker who is being replaced by a new employing broker, the departing employing broker must properly account for and transfer all entrusted funds to the new employing broker, and return all escrow records to the licensed brokerage.

(6) In the case of an employing broker who will not be replaced, and the licensed brokerage will be dissolved, the employing broker is responsible for accounting for all funds and for making all final disbursements. The employing broker is responsible for maintaining all records for four years.

(7) Commissions or fees may be received by licensees only for transactions where the commission or fee was earned prior to the suspension, revocation, expiration or transfer to inactive status.

E-45. Supervising Broker – Confidential Information

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(s) is assisting or working with, without changing or extending the designated brokerage relationship beyond the designated broker. A supervising broker, for purposes of this rule, is a broker performing the responsibilities set forth in rules E-30, 31 and 32. Confidential information includes the information referenced in sections 12-61-804 (2); 805 (2) and 807 (3) C.R.S.

E-46. Affiliated Business Arrangement Disclosures.

Pursuant to 12-61-113.2(2)(b), C.R.S., a broker shall make the following disclosures:

1. Disclose in writing the existence of an affiliated business arrangement to the party they are referring at the time the referral is made. The disclosure shall be in a format consistent with the affiliated business arrangement disclosure promulgated by HUD pursuant to the Real Estate Settlement and Procedures Act.

2. At the time the contract to buy and sell is executed by the buyer and seller, the existence of an affiliated business arrangement with the broker or the employing broker shall be disclosed in writing to all parties to the transaction.

3. A broker is required to make the following disclosures to the Commission.

   a. At the time a broker enters into or changes an affiliated business arrangement, the broker shall disclose the names of all affiliated business arrangements to which the broker is a party. The written disclosure shall include the physical location of the affiliated businesses.

   b. On an annual basis, each employing broker shall disclose the names of all affiliated business arrangements to which the employing broker is a party. The written disclosure shall include the physical location of the affiliated businesses.

The Commission prefers that the written disclosures to the Commission be made through the Colorado Affiliated Business Online Services database which is accessible through the Division of Real Estate's website.

E-48. Prohibited Remedies for Compensation.

No licensee shall file a lien, a lis pendens or record a listing contract to secure the payment of a commission or other fee associated with real estate brokerage duties in a residential transaction. A licensee involved in a residential transaction shall not cause the title to a

property to become clouded or otherwise interfere with the transfer of title when the licensee is not a principal in the transaction.

A broker, who has commercial real estate listed for sale and has provided licensed services that resulted in procuring a tenant who has leased any interest in the commercial real estate in accordance with the written agreement between the broker and the owner, may file a lien pursuant to 38-22.5-103, C.R.S. against the commercial real estate in the amount of the compensation set forth in the written agreement. If the commercial real property has been conveyed to a bona fide purchaser prior to the recording of the notice to lien as required by 38-22.5-104, C.R.S., a broker may not file a lien for a commission that is due as the result of a lease renewal.

Commercial real estate is defined as any real property other than real property containing one to four residential units, single-family or multi-family residential units including condominiums, townhouses, or homes in a subdivision when such real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real property containing more than four residential units.

E-49. Immediate Notification of Conviction, Plea or Violation Required.

A licensee shall make written notification to the Commission within 30 calendar days of any of the following:

(a) A plea of guilty, a plea of nolo contendere or a conviction of any crime identified by 12-61-113(1)(m), C.R.S.

(b) A violation or aiding and abetting in the violation of the Colorado or federal fair housing laws.

(c) Any disciplinary action taken against a licensee in any other jurisdiction, if the licensee's action(s) would constitute a violation of the real estate license law in Colorado.

(d) A suspension or revocation of a license, registration, or certification by Colorado or another state, within the last five years, for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty that denied the licensee the authorization to practice as a mortgage broker, a real estate broker or salesperson, a real estate appraiser, an insurance producer, an attorney, a securities broker-dealer, a securities sales representative, an investment advisor, or an investment advisor representative.

Commission Approved Forms

Through the adoption and promulgation of Commission Rule F, it became compulsory for all real estate brokers licensed by the State of Colorado to use Commission approved forms in most of their contracting. 12-61-803(4) C.R.S. grants the Colorado Real Estate Commission statutory authority to promulgate standard forms for use by licensees.

One of the major purposes of the rule is to help to insure broker compliance with the Colorado Supreme Court Conway-Bogue decision. (See case summary in Chapter 6) A second purpose is to help promote uniformity in contracting to the end that the public is better protected. The privileges granted should not be abused by the real estate broker.

Rule F. Use of Commission Approved Forms

F-1. Permitted and Prohibited Form Modifications

(a) No modifications shall be made to a Commission-approved form by a broker except as provided in rules promulgated by the Commission and as set forth in this Rule F-1

through F-7. For purposes of Rule F-1 through F-7, the term "Commission-approved form" means any form promulgated by the Commission; the term "broker" shall also include brokerage firm.

(b) A broker may add its firm name, address, telephone, e-mail, trademark or other identifying information on a Commission-approved form.

(c) A broker may add initial lines at the bottom of a page of any Commission-approved form.

(d) Any deletion to the printed body of a Commission-approved form, or any "Additional Provision" or "Addenda" which by its terms serves to amend or delete portions of the approved language, must result from negotiations or the instruction(s) of a party to the transaction and must be made directly on the printed body of the form by striking through the amended or deleted portion in a legible manner that does not obscure the deletion that has been made.

(e) Blank spaces on a Commission-approved form may be lengthened or shortened to accommodate the applicable data or information.

(f) Provisions that are inserted into blank spaces must be printed in a style or type that clearly differentiates such insertions from the style or type used for the Commission-approved form language.

(g) A broker may omit part or all of the following provisions of a Commission-approved (changed font) "Contract to Buy and Sell Real Estate" (even if the provision is identified by a different Section number), or corresponding provisions in other Commission-approved forms, if such provisions do not apply to the transaction. In the event any provision is omitted, the provision's caption or heading must remain unaltered on the form followed by the word "OMITTED".

1. Section 2.5 Inclusions in its entirety or any of its subsections
2. Section 2.6 Exclusions
3. Section 4.4 Seller Concessions
4. Section 4.5 New Loan in its entirety or any of its subsections
5. Section 4.6 Assumption
6. Section 4.7 Seller or Private Financing
7. Section 5 Financing Conditions and Obligations in its entirety or any of its sections
8. Section 6 Appraisal Provisions in its entirety or any of its subsections
9. Section 7.3 Homeowners' Association Documents in its entirety or any of its subsections
10. Section 8.4 Special Taxing Districts
11. Section 8.5 Right of First Refusal or Contract Approval
12. Section 10.6 Due Diligence Documents
13. Section 10.7 Due Diligence Documents Conditions in its entirety or any of its subsections
14. Section 10.8 Due Diligence—Environmental, ADA (CBS2, CBS3, CBS4)
15. Section 10.7.3 Source of Potable Water (CBS4)
16. Section 10.9 Existing Leases; Modification of Existing Leases; New Leases (CBS3, CBS4)
17. Section 10.15 Existing Leases; Modification of Existing Leases; New Leases (CBS2)

18. Section 11 Tenant Estoppel Statements in its entirety or any of its subsections (CBS2, CBS3, CBS4)
19. Section 15.3 Status and Transfer Letter Fees
20. Section 15.4 Local Transfer Tax
21. Section 15.6 Sales and Use Tax
22. Section 16.2 Rents
23. Section 16.3 Association Assessments

(h) A broker may add an additional page to the "Contract to Buy and Sell Real Estate", "Counterproposal" and the "Agreement to Amend/Extend Contract", following such document, that contains the dates and deadlines information set forth in § 3, arranged in chronological date sequence.

(i) A broker may omit part or all of the following provisions of the "Counterproposal" and the "Agreement to Amend/Extend Contract" if such provisions do not apply to the transaction. In the event any provision is omitted, the provision's caption or heading must remain unaltered on the form followed by the words "OMITTED".

1. Section 3 Dates and Deadlines table
2. Section 4 Purchase Price and Terms [in the Counterproposal only]

(j) A broker may substitute the term "Landlord" for the term "Seller" and the term "Tenant" for the term "Buyer" in the Brokerage Disclosure to Buyer form, in the Brokerage Disclosure to Seller and Definitions of Working Relationships form when making disclosures in a lease transaction (or use the separate Brokerage Disclosure To Tenant form) .

(k) A broker may add signature lines and identifying labels for the parties signatures on a Commission-approved form.

(*l*) A broker may modify, strike or delete such language on a Commission-approved form as the Commission may from time to time authorize to be modified, stricken or deleted.

F-2. Additional Provisions

(a) The "Additional Provisions" section of a Commission-approved form must contain only those transaction-specific terms or acknowledgments that result from negotiations or the instruction(s) of the party(ies) to the transaction.

(b) A broker who is not a principal party to the contract may not insert personal provisions, personal disclaimers or exculpatory language in favor of the broker in the "Additional Provisions" section of a Commission-approved form.

F-3. Addenda

(a) If a broker originates or initiates the use of a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form which does not result from the negotiations of the parties, such addendum must be prepared by:

(1) an attorney representing the broker or brokerage firm; or

(2) a principal party to the transaction; or

(3) an attorney representing a principal party.

(b) An addendum permitted by this Rule F- 3 (a), shall not be included within the body of, or in the "Additional Provisions" section of, a Commission-approved form.

(c) A broker who is not a principal party to the contract may not insert personal provisions, personal disclaimers or exculpatory language in favor of the broker in an addendum.

(d) If an addendum is prepared by a broker's attorney, the following disclosure must appear on the first page of the addendum in the same sized type as the size of type used in the addendum: "This addendum has not been approved by the Colorado Real Estate Commission. It was prepared by (insert licensed name of broker or brokerage firm's) legal counsel." Broker must retain the document prepared by broker's attorney for 4 years from the date such addendum was last used by the Broker and provide said document and the name of the attorney or law firm that prepared the addendum to the Commission upon request,

(e) If an addendum to a listing, tenant or right to buy contract, is prepared by a broker or brokerage firm, the following disclosure must appear on the first page of the addendum in the same sized type as the size of type used in the addendum: "This addendum has not been approved by the Colorado Real Estate Commission. It was prepared by (insert licensed name of broker or brokerage firm)."

F-4. Prohibited Provisions

No contract provision, including modifications permitted by Rules F-1 through F-3, shall relieve a broker from compliance with the real estate license law, section 12-61-101, et. seq., or the Rules of the Commission.

Pursuant to Rule E-12, 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 term of the agreement, including any extension thereof.

F-5. Explanation of Permitted Modifications

The broker shall explain all permitted modifications, deletions, omissions, insertions, additional provisions and addenda to the principal party and must recommend that the parties obtain expert advice as to the material matters that are beyond the expertise of the broker.

F-6. Commission-Approved Form Reproduction

(a) Commission-approved forms used by a broker, including permitted modification made by a broker, shall be legible.

(b) Brokers generating Commission-approved forms through the use of a computer shall ensure that a security software program is utilized that prevents inadvertent change or prohibited modification of Commission-approved forms by the broker or other computer user.

F-7. Commission Approved Forms

Ed. Note: The most current version of approved forms can be found on the Division of Real Estate website at: **www.dora.state.co.us/real-estate/contracts/contracts2013.htm.**

Real estate brokers are required to use Commission-approved forms as appropriate to a transaction or circumstance to which a relevant form is applicable. Commission-approved forms are posted on the Division of Real Estate's website. Effective June 2009, the Commission will no longer post forms in the Code of Colorado Regulations. The Commission hereby withdraws all forms from the Code of Colorado Regulations. In instances when the Commission has not developed an approved form within the purview of this rule, and other forms are used, they are not governed by Rule F. Other forms used by a broker shall not be prepared by a broker, unless otherwise permitted by law.

To obtain the forms promulgated by the real estate commission that are within the purview of Rule F, visit the Division of Real Estate website at: http://www.dora.state.co.us/real-estate/brokerlicensing.htm or the Division of Real Estate's offices at 1560 Broadway, Suite 925, Denver, Colorado 80202.

Rule G. Brokers Acting Under 12-61-101(2)(a)(X), C.R.S. (Rental Referrals)

G-1. Repealed (1-6-00)

[(a) The funds may be withdrawn from the trust fund account at any time for the purpose of returning the funds to the payor thereof in accordance with the terms of the contract or receipt.

(b) The funds may be withdrawn from the trust or escrow fund account when and if the broker reasonably believes the evidence available that said tenant has obtained a rental through information supplied by or on behalf of the broker.]

G-2. Receipt for advance fees

Pursuant to 12-61-113(1.5) C.R.S., every person licensed acting under 12-61-101(2)(a)(X) C.R.S. shall give a prospective tenant a contract or receipt. At the time of acceptance of an advance fee from a prospective tenant, a broker shall provide the prospective tenant with a written contract or receipt which shall include at least the following:

(a) Name, business address and telephone number of the brokerage company.

(b) Acknowledgment of receipt of advance fee.

(c) A description of the services to be performed by the broker, including significant conditions, restrictions and limitations where applicable, and hours of operation.

(d) The prospective tenant's specifications for the rental property, including but not limited to:

(1) Type of structure, *e.g.*, detached single family, apartment, duplex, condominium, mobile home, et cetera.

(2) Location by commonly accepted residential area name, by designation of boundary streets and municipality or in any other manner affording a reasonable means of identifying acceptable locations.

(3) Furnished or unfurnished.

(4) Number of bedrooms.

(5) Earliest occupancy date desired.

(6) Maximum acceptable monthly rental.

(7) Pets.

(8) Garage, carport or off-street parking.

(e) Contract expiration date.

(f) Date of execution.

(g) Signatures of the prospective tenant, the broker, and if negotiated by a licensee in the employ of a broker, then the employed licensee shall sign on behalf of the employing broker.

(h) The address and the phone number of the Real Estate Commission in prominent letters.

(i) A statement that the regulation of rental location services is under the jurisdiction of the Real Estate Commission.

(j) Recital in bold face and capitals that:

IF THE INFORMATION CONCERNING RENTALS FURNISHED BY THE BROKER IS SHOWN TO BE NOT CURRENT OR ACCURATE IN REGARD TO THE TYPE OF RENTAL DESIRED, THE FULL FEE SHALL BE REPAID OR REFUNDED TO THE PROSPECTIVE TENANT UPON WRITTEN DEMAND. CURRENT RENTALS HAVE BEEN VERIFIED AS TO AVAILABILITY WITHIN THE PAST FOUR BUSINESS DAYS.

G-3. Broker must retain copy of referral lists given in person

Whenever the prospective tenant visits the broker's office, a list of all addresses given to the prospective tenant shall be prepared in duplicate. A copy shall be given to the prospective tenant and the original shall be retained by the broker for a period of 90 days and either affixed to the client's contract or receipt or be placed in the client's file if a separate file is kept. The list shall clearly indicate the following:

(a) The date the addresses were furnished to the prospective tenant.

(b) The type of unit, *e.g.*, detached single family residence, apartment, duplex, condominium, mobile home, etc.

(c) Whether the unit is furnished or unfurnished.

(d) The date when the unit will be available for occupancy.

(e) The date when the unit was most recently entered on the agency's listing records.

(f) The date when the housing accommodation was last verified by the agency to be available for rent.

(g) The address and municipality of the housing accommodation.

(h) The name and address of the property owner or their authorized agent and the telephone number, if available.

(i) The monthly rent required by the landlord.

(j) The number of bedrooms and total number of rooms.

(k) Whether a written lease is required and, if so, the minimum lease term required by the landlord.

(*l*) Any lawful restrictions as to pets, children, furnishings, occupants or activities imposed by the landlord.

G-4. Repealed effective 1-1-97

G-5. Broker must retain copy of referral lists given by phone

Where addresses are furnished to the prospective tenant by telephone or any other manner not requiring the prospective tenant's presence at the broker's office, the addresses shall be noted on the broker's copy of the list. The list shall indicate by which broker or employee of the broker the addresses were furnished and the broker's copy shall be retained for a period of one year.

G-6. Advertising

Each broker engaged in locating or assisting in locating rental properties for an advance fee shall abide by the following regulations regarding advertising practices:

(a) Licensee shall make written registries, posted in a conspicuous place or otherwise disclosed to fee payors, of all advertisements or other publications published or caused to be published by the broker, together with address of each property advertised, the name of the party who offered the property for rent and his or her telephone, if any.

(b) No property shall be advertised which has not been verified for availability four business days or less before said advertisement shall be printed.

(c) Each property advertised for rent or lease through the use of any media form shall be assigned a code (and one code only) in accordance with a uniform coding system adopted by the broker, which code shall also appear in any media advertising placed by said broker. Coding of municipalities shall be included within the uniform system so as to be accurately reflected in media advertising.

(d) A copy of all advertising submitted to any media group for publication (including television, radio, newspaper and mimeographed sheets), together with the name of the person submitting the same, shall be maintained by a broker for a period of one year after publication.

(e) No licensee acting under 12-61-101(2)(a)(X), C.R.S. shall advertise or furnish a prospective tenant with the address of a prospective rental unless such licensee has received specific authorization to list said property from the owner or owner's authorized agent. Specific authorization may be by writing, signed by the owner or owner's agent, or orally, if the broker notes the name of the owner or owner's agent, the date of authorization, and the telephone number of the person so authorizing.

G-7. Grounds for finding unworthiness or incompetence

Pursuant to 12-61-113(1)(n) C.R.S., a licensee acting under 12-16-101(2)(a)(X) C.R.S. shall be considered unworthy or incompetent in the conduct of their business where:

(a) The licensee violates Rule G-6.

(b) With particular respect to media advertising:

(1) The property is not actually located in the area represented.

(2) The rental price shown is less than that asked by the owner of the available property.

(3) The property is non-existent or cannot be verified as currently for rent by the licensee.

(4) The specifics of the property advertised differ materially from the property as it exists.

(5) A property is advertised in such a way or under such a heading as to indicate the property is of a different type than it actually is. The word "type" refers to such designations as: single family detached residence, duplex, apartment, condominium, townhouse, or mobile home.

(c) The licensee fails or refuses to abide by the terms of the contract or receipt between himself and a prospective purchaser.

(d) The broker fails or refuses to refund money pursuant to the terms of the contract or receipt.

(e) The broker has failed to keep accurate records as specified in these rules or has failed to retain said records for the prescribed time periods.

Rules H-1 Through H-26. Repealed.

Rule I. Declaratory Orders

I-1. Any person may petition for an order

Any person [1] may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission.

[1] refers to existing definition of "person" in APA, rule or statute, if any.

I-2. Commission determines whether to rule

The Commission will determine, in its discretion and without prior notice to the petitioner, whether to rule upon any such petition. If the Commission determines it will not rule upon such a petition, the Commission shall issue its written order disposing of the same, stating therein its reasons for such action. A copy of such order shall forthwith be transmitted to the petitioner.

I-3. Commission considerations

In determining whether to rule upon a petition filed pursuant to this rule, the Commission will consider the following matters, among others:

(a) whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Commission;

(b) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission;

(c) whether the petition involves any subject, question or issue which is the subject of a formal matter or investigation currently pending before the Commission or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission and in which petitioner may intervene;

(d) whether the petition seeks a ruling on a moot or hypothetical question and will result in merely an advisory ruling or opinion;

(e) whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

I-4. Petition contents

Any petition filed pursuant to this rule shall set forth the following:

(a) the name and address of the petitioner and whether the petitioner is licensed pursuant to C.R.S. 1973, 12-61-101, *et seq.*

(b) the statute, rule or order to which the petition relates;

(c) a concise statement of all the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

I-5. Procedures if the Commission will rule

If the Commission determines that it will rule on the petition, the following procedures shall apply:

(a) the Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:

(1) any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition;

(2) the Commission may order the petitioner to file a written brief, memorandum or statement of position;

(3) the Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing;

(4) the Commission may dispose of the petition on the sole basis of the matters set forth in the petition;

(5) the Commission may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition;

(6) the Commission may take administrative notice of facts pursuant to the Administrative Procedure Act (C.R.S. 1973, 24-4-105(8)) and utilize its experience, technical competence and specialized knowledge in the disposition of the petition;

(7) if the Commission rules upon the petition without a hearing, it shall issue its written order, stating therein its basis for the order. A copy of such order shall forthwith be transmitted to the petitioner.

(b) The Commission may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to petitioner and any other facts the petitioner desires the Commission to consider.

I-6. Parties to proceedings

The parties to any proceeding pursuant to this rule shall be the Commission and the petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition to intervene shall set forth the same matters as required by section 4 of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Commission.

I-7. Orders subject to judicial review

Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to C.R.S. 1973, 21-4-106.

Rule J. Repealed

Rule K. Exceptions and Commission Review of Initial Decisions

K-1. Written Form, Service and Filing Requirements

1. All Designations of Record, Requests, Exceptions and Responsive Pleadings ("Pleadings") must be in written form, mailed with a certificate of mailing to the Commission.

2. All Pleadings must be filed with the Commission by 5:00 p.m. on the date the filing is due. These rules do not provide for any additional time for service by mail. Filing is in receipt of a pleading by the Commission.

3. Any Pleadings must be served on the opposing party by mail or by hand delivery on the date which the Pleading is filed with the Commission.

4. All Pleadings must be filed *with the Commission* and not with the Office of Administrative Courts. Any Designations of Record, Requests, Exceptions or Responsive Pleadings filed in error with the Office of Administrative Courts will *not* be considered. The Commission's address is:

   Colorado Real Estate Commission
   1560 Broadway, Suite 925
   Denver, CO 80202

K-2. Authority to review

1. The Commission hereby preserves the Commission's option to initiate a review of an initial decision on its own motion pursuant to § 24-4-105(14)(a)(II) and (b)(III), C.R.S. outside of the thirty day period after service of the initial decision upon the parties without requiring a vote for each case.

2. This option to review shall apply regardless of whether a party files exceptions to the initial decision.

K-3. Designation of record and transcripts

1. Any party seeking to reverse or modify the initial decision of the administrative law judge shall file with the Commission a designation of the relevant parts of the record for review ("Designation of Record"). Designations of Record must be filed with the Commission within twenty days of the date on which the Commission mails the initial decision to the parties' address of record with the Commission.

2. Even if no party files a Designation of Record, the record shall include the following:

   a. All pleadings;
   b. All applications presented or considered during the hearing;
   c. All documentary or other exhibits admitted into evidence;
   d. All documentary or other exhibits presented or considered during the hearing;
   e. All matters officially noticed;
   f. Any findings of fact and conclusions of law proposed by any party; and
   g. Any written brief filed.

3. Transcripts: Transcripts will not be deemed part of a Designation of Record unless specifically identified and ordered. Should a party wish to designate a transcript or portion thereof, the following procedures will apply:

   a. The Designation of Record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, or may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript.
   b. Any party who includes a transcript or a portion thereof as part of the Designation of Record must *order* the transcript or relevant portions by the date on which the Designation of Record must be filed (within twenty days of the date on which the Commission mails the initial decision to the parties).
   c. When ordering the transcript, the party shall request a court reporter or transcribing service to prepare the transcript within thirty days. The party shall

timely pay the necessary fees to obtain and file with the Commission an original transcription and one copy within thirty days.

d. The party ordering the transcript shall direct the court report or transcribing service to complete and file with the Commission the transcript and one copy of the transcript within thirty days.

e. If a party designates a portion of the transcript, the opposing party may also file a Supplemental Designation of Record, in which the opposing party may designate additional portions of the transcript. This Supplemental Designation of Record must be filed with the Commission and served on the other party within ten days after the date on which the original Designation of Record was due.

f. An opposing party filing a Supplemental Designation of Record must order and pay for such transcripts or portions thereof within the deadlines set forth above. An opposing party must also cause the court reporter to complete and file with the Commission the transcript and one copy of the transcript within thirty days.

g. Transcripts that are ordered and not filed with the Commission in a timely manner by the reporter or the transcription service due to non-payment, insufficient payment or failure to direct as set forth above will not be considered by the Commission.

K-4. Filing of Exceptions and Responsive Pleadings

1. Any party wishing to file exceptions shall adhere to the following timelines:

   a. *If no transcripts are ordered*, exceptions are due within thirty days from the date on which the Commission mails the initial decision to the parties. Both parties' exceptions are due on the same date.

   b. *If transcripts are ordered by either party*, the following procedure shall apply. Upon receipt of transcripts identified in all Designations of Record, the Commission shall mail notification to the parties stating that the transcripts have been received by the Commission. Exceptions are due within thirty days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.

2. Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings shall be filed within ten days of the date on which the exceptions were filed with the Commission. No other pleadings will be considered except for good cause shown.

3. The Commission may in its sole discretion grant an extension of time to file exceptions or responsive pleadings, or may delegate the discretion to grant such an extension of time to the Commission's designee.

K-5. Request for Oral Argument

1. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings.

2. It is within the sole discretion of the Commission to grant or deny a request for oral argument. If oral argument is granted, both parties shall have the opportunity to participate.

3. Each side shall be permitted ten minutes of oral argument unless such time is extended by the Commission or its designee.

Chapter 3:
Commission Position Statements

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

CP-1 Commission Policy on Homebuilder's Exemption from Licensing 3-3

CP-2 Commission Position on Earned Fees 3-3

CP-3 Position Statement Concerning Commission Rule E-13 3-5

CP-4 Commission Position on Interest Bearing Trust Accounts 3-6

CP-5 Commission Position on Advance Rentals and Security Deposits 3-7

CP-6 Commission Position on Release of Earnest Money Deposits 3-7

CP-7 Commission Position on Closing Costs 3-8

CP-8 Commission Position on Assignment of Contracts and Escrowed Funds 3-9

CP-9 Commission Position on Record Keeping by Brokers 3-10

CP-10 Commission Position on Compensation Agreements Between Employing and Employed Brokers 3-10

CP-11 Commission Position on Assignments of Broker's Rights to a Commission 3-11

CP-12 Commission Position on the Broker's Payment or Rebating a Portion of an Earned Commission 3-11

CP-13 Commission Policy on Single-Party Listings 3-12

CP-14 Commission Position on Sale of Modular Homes by Licensees 3-12

CP-15 Commission Position on Sale of Items Other Than Real Estate 3-13

CP-16 Commission Position on Access to Properties Offered for Sale 3-13

CP-18 Commission Position on Payments to a Wholly Owned Employee's Corporation 3-14

CP-19 Commission Position on Short Term Occupancy Agreements 3-14

CP-20 Commission Position Statement on Personal Assistants 3-15

CP-21 Commission Position on Office Policy Manuals 3-16

CP-22 Commission Position Statement on Handling of Confidential Information in Real Estate Brokerage 3-16

CP-23 Commission Position on Use of "Licensee Buyout Addendum" 3-17

CP-24 Commission Position on Preparation of Market Analyses and Real Estate Evaluations Used for Loan Purposes 3-18

CP-25 Commission Position on Recording Contracts 3-19

CP-26 Commission Position on Auctioning 3-20

CP-27 Commission Position on the Performance of Residential Leasing and Property Management Functions 3-20

CP-28 Commission Position on Showing Properties 3-25

CP-29 Commission Position on "Megan's Law" 3-26

CP-30 State of Colorado Real Estate Commission and Board of Real Estate Appraisers Joint Position Statement on Seller Assisted Down Payments 3-27

CP-31 Commission Position on Acting as a Transaction Broker or Agent in Particular Types of Transactions 3-27

CP-32 Commission Position on Brokerage Disclosures 3-28

CP-33 Joint Position Statement from the Division of Real Estate and Division of Insurance 3-29

CP-34 Commission Position on Settlement Service Provider Selection, Closing Instructions and Earnest Money Deposits 3-30

CP-35 Commission Position on Brokers as Principals 3-31

CP-36 Commission Position on Minimum Service Requirements 3-32

CP-37 Commission Position on Survey and Lease Objections to the Contract to Buy and Sell Real Estate 3-34

CP-38 Commission Position on Disclosure of Affiliated Business Arrangements and Conflicts of Interest 3-35

CP-39 Commission Position on Lease Options, Lease Purchase Agreements and Installment Land Contracts 3-36

CP-40 Commission Position on Teams 3-36

CP-41 Commission Position on Competency 3-37

CP-42 Commission Position on Apartment Building or Complex Management 3-37

CP-1 Commission Policy on Homebuilder's Exemption from Licensing

Corporations that build structures on land they own may sell the land and building together without licensing, provided that the sales are made by corporate officers or regularly salaried employees. The land and building must be sold as a unit and the building must not have been previously occupied. This exemption is usually referred to as the homebuilder's exemption. Since employees who sell must be regularly salaried employees, the question often arises as to what a regular salary is. This is the position of the Commission: 12-61-101(2)(b)(X) C.R.S., among other requirements, requires that a corporation use "regular salaried employees" to sell or negotiate the sale of real property.

It is the position of the Commission that the phrase, "regular salaried employees" means that:

1. The salary must be an actual and stated amount and must not be a draw or advance against future commissions.
2. The salary must be regularly paid (*i.e*., weekly, monthly, etc.).
3. Although the amount of salary may vary, an employee must be paid at least the prevailing federal minimum wage.
4. The corporation should deduct amounts for state and federal withholding taxes, FICA taxes, and other commonly deductible expenses, which the corporation would employ with respect to other employees.

Payment of a commission, in addition to a regular salary, will not invalidate the exemption if the above guidelines are met.

CP-2 Commission Position on Earned Fees

(revised 08/07/2012)

Commissions:

Section 12-61-113(1)(j), C.R.S. of the license law forbids a broker from paying a commission or valuable consideration, for performing brokerage functions, to any person who is not licensed as a real estate broker. Brokerage functions include negotiating the purchase, sale or exchange of real estate. *See* section 12-61-101(2)(a), C.R.S. Pursuant to Colorado case law, "negotiating" means "the act of bringing two parties together for the purpose of consummating a real estate transaction." *Brakhage vs. Georgetown Associates, Inc*., 523 P. 2d 145, 147 (1974). Therefore, any unlicensed person who directly or indirectly brings a buyer and seller together, is negotiating and would need a broker's license in order to be compensated. This includes, but is not limited to, such activities as referring potential time-share purchasers to a developer or referring potential purchasers to a homebuilder.

Referral Fees:

Section 12-61-203.5(1), C.R.S. permits a real estate broker to pay a referral fee if reasonable cause for payment exists. Reasonable cause exists when:

1) An actual introduction of business has been made;
2) A contractual referral fee relationship exists; or
3) A contractual cooperative brokerage relationship exists.

Section 12-61-203.5(2)(b)(III), C.R.S. defines a referral fee as "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." Payment for providing a name to a licensed broker is not specifically addressed in Colorado statute. However, it would be illegal to pay such a fee to anyone performing acts that require a license (*e.g*.., negotiating, listing, and contracting). Care should be taken. At best, the unlicensed referrer can have no active involvement in the transaction beyond merely giving to a

licensee the name of a prospective buyer, seller or tenant. If the payment is simply for the referral of a name to a licensee, with no further activity on the part of the referrer, and the referrer is not a provider of a settlement service, the Commission will not consider it to be a violation of the license law. Complaints and inquiries are dealt with on a case-by-case basis.

In real estate transactions involving federally related mortgage loans, Section 8 of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601 et seq., governs the payment of referral fees. Pursuant to 12 U.S.C. § 2602(1) of RESPA, the term "federally related mortgage loan" is defined to include:

(1) any loan (other than temporary financing such as a construction loan) which—

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) (i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any "creditor", as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. § 1602(f)), who makes or invests in residential real estate loans aggregating more than $ 1,000,000 per year, except that for the purpose of this Act, the term "creditor" does not include any agency or instrumentality of any State.

RESPA and Commission Rule E-22 prohibit the payment or receipt of referral fees and kickbacks which tend to increase unnecessarily the costs of settlement services. As part of this prohibition, any referral of a settlement service is not compensable. Thus, a company is not allowed to pay another company or its employees for the referral of settlement business. Moreover, it is not appropriate for a settlement service provider to pay a broker, or offset a broker's expenses, for lead generation. The Commission views this as payment for the referral of business, which would be a violation of Rule E-22. Additionally, the Commission is required by law to refer such issues to the Consumer Financial Protection Bureau for investigation as a potential violation of RESPA.

RESPA, however, does permit:

1) A payment to an attorney at law for services actually rendered:
2) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;
3) A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;
4) A payment to any person of a bona fide salary or compensation for goods or facilities actually furnished or for services actually performed;

5) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate brokers (all parties must be acting in a real estate brokerage capacity);
6) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or
7) An employer's payment to its own employees for any referral activities.

Administrative Fees:

As a result of the United States Supreme Court's decision in *Freeman v. Quicken Loans, Inc.*, 132 S. Ct. 2034, 2012 U.S. Lexis 3940 (2012), real estate brokers may charge administrative fees, either for services performed by the broker or the real estate brokerage, in addition to the broker's commission. In *Quicken* Loans, the Supreme Court held that while RESPA prohibits the splitting of fees if the charges are divided between two or more persons (i.e. settlement service providers) and the fee was paid for services not actually performed, dividing or splitting fees amongst a single settlement service provider is not prohibited. The Commission considers a real estate broker and his or her licensed broker-employer (or brokerage) to be a single provider of settlement services and fees may be split amongst them.

Marketing Services:

Payment for general promotion of a real estate business is not prohibited. Contracting with newspapers, catalog companies of general circulation or with institutional advertisers such as radio, television or any other media, is not prohibited provided the activity does not otherwise constitute offering, negotiating, listing, selling, or leasing real estate as defined in Section 12-61-101(2), C.R.S. Payment based on the successful sale or lease of real estate does not in itself constitute brokering as so defined. However, in the past, the Commission has determined that many so-called advertising services actually involved brokering activities. The method of payment is often an important factor in determining whether the activity requires a license.

The marketing of a settlement service or product (separate from the licensed brokerage duties provided by the broker), including the collection and conveyance of information, does not constitute the performance of a settlement service. Any marketing performed by a real estate broker for a provider of settlement services must be equivalent to the services that would be provided by a marketing firm. Brokers that share advertising or marketing with other settlement service providers must ensure that the cost of the advertising is commensurate with the advertising, marketing services or space actually provided. Additionally, the broker cannot require a prospective client to use the services of the settlement service provider sharing the advertising or marketing costs.

For example, a broker that pays $2,000.00 per month for a website designed to promote the broker's business can enter into an agreement with a mortgage loan originator to use the website for a fee. If the mortgage loan originator pays the broker, or the website vendor, $1,000.00 per month to advertise on the broker's website, 50% of the advertising services need to be dedicated to the mortgage loan originator. The broker cannot require a prospective buyer to pre-qualify with or utilize the services of the mortgage loan originator.

CP-3 Position Statement Concerning Commission Rule E-13

Commission Rule E-13, commonly referred to as the "sign-crossing" rule, states as follows:

"A real estate licensee shall not negotiate a sale, exchange, lease or listing contract of real property directly with an owner for compensation from such owner if such licensee knows that such owner has a written unexpired contract in connection with such property which grants to another licensee an exclusive right to sell or lease or which grants an exclusive agency right to sell or lease. However, when a licensee is contacted by an owner regarding the sale, exchange, lease or listing of

property that is exclusively listed with another broker, and the licensee has not initiated the discussion, the licensee may negotiate the terms upon which the licensee might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing."

The Commission's intent in promulgating Rule E-13 was (1) to prevent brokers from interfering with existing listing contracts to the detriment of the owner and (2) to protect the owner from possible claims that two commissions are owed.

Many owners are extremely dependent on the expertise of the licensee. They may sincerely believe an existing listing contract is not in effect when, in fact, it is. The burden of inquiry is on the licensee.

Earlier versions of E-13 had been criticized for being too restrictive. The current rule still provides that licensees shall not negotiate directly with an owner if they know that the owner has a written unexpired Exclusive Right to Sell or Lease. However, the licensee is now allowed to negotiate the terms for a future listing or take a listing effective upon expiration of a current listing so long as the licensee is first contacted by the owner.

This recognizes the fact that an owner with property currently listed may initiate the negotiations concerning a future listing. In addition, the current rule recognizes that in some instances owners become dissatisfied with the services of the broker with whom they have a listing and wish to cancel the listing. If a knowledgeable and informed seller wishes to cancel a listing and list with another company, this cannot be prevented. Of course, the seller runs the risk that improper cancellation of a listing contract can result in legal consequences. Brokers should never independently advise a seller in this area. Instead, an inquiring seller should be advised to seek legal counsel to explain the consequences of canceling an unexpired listing.

If the rule is followed closely it will provide greater opportunities for licensees to negotiate listings where a seller does not wish to re-list with the same broker while maintaining the integrity of the principal/agent brokerage relationship.

CP-4 Commission Position on Interest Bearing Trust Accounts

(Revised Position 8-04)

Section 12-61-113 (l)(g.5) C.R.S. permits brokers to place entrusted money in an interest bearing account.

The Commission has taken the position that in the absence of a contract signed by the proper parties to the contrary, any interest accumulating on a trust account does not belong to the broker who is acting as escrow agent. (This position is based upon 12-61-113(l)(q) and upon the well-established tenet of agency that the agent may not profit personally from the agency relationship except for agreed upon compensation.)

Contracts calling for large earnest money deposits or other payments should contain a provision specifying which party is entitled to interest earned and under what conditions. In the absence of such a provision, accrued interest normally belongs to the seller if the contract is consummated or if the seller is successful in declaring a forfeiture. The entrusted money normally belongs to the purchaser if the contract fails.

In a property management trust account, the accrued interest on that portion of rental money received that belongs to the lessor beneficiary (landlord), would belong to the lessor beneficiary. The accrued interest on security deposits would belong to the respective tenants unless the lessor can establish a right to the security deposit (in the absence of a contract to the contrary).

However, in the case of the property management of mobile homes, by Colorado statute, the interest earned on security deposits may be retained by the landlord of a mobile home park as compensation for administering the trust account. (38-12-209(2)(b) C.R.S.)

Nothing in this position statement precludes a real estate broker from voluntarily transferring interest earned on a trust account to a fund established for the purpose of providing affordable housing to Colorado residents if such a fund is established.

CP-5 Commission Position on Advance Rentals and Security Deposits

Pursuant to C.R.S. 12-61-113 (l)(g.5) and Commission Rule E-l and E-16, all money belonging to others which is received by a broker must be placed in an escrow or trust account. This applies to tenant security deposits and advance rental deposits, including credit card receipts, held by a broker.

A broker may not deliver a security deposit to an owner unless notice is given to the tenant in the lease, rental agreement, or in a separate written notice that the security deposit will be held by the owner. Such notice must be given in a manner so that the tenant will know who is holding the security deposit, and shall include either the true' name and current mailing address of the owner or the true name and current mailing address of a person authorized to receive legal notices on behalf of such owner, along with specific requirements for how the tenant is to request return of the deposit.

If, after receipt by the broker, the security deposit is to be transferred to the owner or used for the owner's benefit, the broker, in addition to properly notifying the tenant, must secure the consent of the owner to assume full financial responsibility for the return of any deposit which may be refundable to the tenant. The broker shall not withhold the identity of the owner from the tenant if demand for the return of the deposit is properly made according to the lease, rental agreement, or separate notice, and the owner has refused to return the security deposit. The lease, rental agreement, or separate notice may also give notice that the security deposit will be transferred upon the happening of certain events, *e.g*., sale of the property or the naming of a new property manager.

Delivery of the security deposit to the owner or to anyone (including a succeeding broker/manager of the property) without proper notice to the tenant, in addition to subjecting the broker to possible civil liability, will constitute a violation of the license law escrow statute cited above. The licensee must retain copies of such notices for inspection by the Commission.

Under a property management contract, the broker must transfer all escrowed money belonging to the owner of the property at reasonable and agreed upon intervals and with proper accounting pursuant to statutory requirements and Commission Rules E-l and E-2. If advance rental money is held by a broker but is subject to recall by the tenant or occupant, it must be escrowed until such time as it is earned and rightfully transferred or credited to the owner. A broker has no claim on or right to use advance deposits which are subject to recall by a tenant or prospective occupant. Deposits which are not subject to recall are the property of the owner and may not be transferred to the broker's account or used for the broker's benefit unless specifically authorized and agreed to by the owner in the management agreement.

If litigation concerning escrow money commences, the money may be placed with the court. The jurisdiction of the court will, of course, supersede the statutory requirement for escrowing money belonging to others.

CP-6 Commission Position on Release of Earnest Money Deposits

(Revised Position 8-6-2008)

Rule E-15 states in part that: "When for any reason the owner fails, refuses, neglects or is unable to consummate the transaction as provided for in the contract, and through no fault or neglect of the purchaser the real estate transaction cannot be completed, . . . the deposit should be returned to the purchaser at once . . ."

The Commission will not pursue disciplinary action against a broker for refusal to disburse disputed funds when the broker is acting in accordance with the language of the appropriate Commission-approved contract to buy and sell. It is clear in the contract to buy and sell real estate that the broker holds the earnest money on behalf of <u>both</u> buyer and seller. If there is no dispute, the broker should disburse to the appropriate party immediately.

Some brokers unnecessarily require a signed release by both parties even when there is no disagreement. Audits have disclosed many instances where brokers have held deposits for extended periods just because one or both parties will not sign a release. While good judgment is always urged, releases are not a requirement of the Real Estate Commission. In addition, where one party has given written authorization for the release of a deposit to another, a written release by the other party is not required.

Exculpatory provisions holding the broker harmless do not belong in an agreement for the release of earnest money and should not be used to relieve the broker from liability unrelated to earnest money.

In the case of a dispute between the parties, the broker is authorized by the contract to buy and sell to obtain mutual written instructions (such as a release) before turning a deposit over to a party. The Commission has approved an optional use "Earnest Money Release" form when such a written release might help facilitate expeditious disbursement.

Unless otherwise indicated in the Commission-approved contract to buy and sell, a broker is not required to take any action regarding the release of the earnest money deposit when there is a controversy. If the following provisions are included in the contract, the broker may exercise three options in the event of an earnest money dispute, if the broker is the holder of the earnest money deposit. One option is that the broker may await any proceeding between the parties. Another option for the broker is to interplead all parties and deposit the earnest money into a court of competent jurisdiction. If included in the contract to buy and sell, the broker is entitled to recover court costs and reasonable attorney and legal fees. However, if this provision is struck from the contract to buy and sell, the broker may not be entitled to recover those costs. A third option available to the broker is to provide notice to the buyer and seller that unless the broker receives a copy of the Summons and Complaint or Claim (between the buyer and seller) containing a case number of the lawsuit within one hundred twenty (120) days of the broker's notice to the parties, the broker will be authorized to return the earnest money to the buyer.

If the broker is unable to locate the party due the refund, the broker may be required to transfer the deposit to the Colorado State Treasurer under the provisions of the Colorado "Unclaimed Property Act" C.R.S. 38-13-101. Notice of funds held is published in local newspapers under the "Great Colorado Payback Program" each year. Further information and reporting forms may be obtained from that office.

CP-7 Commission Position on Closing Costs

In the past, the Commission's position had been that real estate licensees were responsible for all costs of closing. This position has been modified after a re-examination of the Colorado Supreme Court case of Conway-Bogue vs. The Denver Bar Association and after the adoption of Rule E-37.

Commission Rule E-37 states:

> "There is no obligation for a licensee to prepare any legal documents as part of a real estate transaction. However, if a licensee or the licensee's agent prepares any legal document, the licensee or the licensee's agent may not charge a separate fee for preparation of such documents. A licensee shall not be responsible for fees charged for the preparation of legal documents where they are prepared by an attorney representing the purchaser or seller. Costs of closing not related to preparation of legal documents may be paid by the licensee or by any other person. A broker who closes transactions and charges separately for costs of closing not related to the preparation of legal documents must specify the costs and obtain the written consent of the parties to be charged."

Based on the new rule the position is as follows:

1. Licensees are still responsible for paying the costs of legal document preparation when they are preparing such documents for their clients. If the broker delegates this function to an agent (title company or closing service) the broker is still responsible for bearing the cost.

2. Other costs associated with closings can be paid for by the licensee or any other party. The Commission will no longer require that licensees bear these costs. Licensees are urged to use the Closing Instructions and Earnest Money Receipt form developed by the Commission.
3. It is now permissible for brokers to close their own transactions and make additional charges for providing closing services so long as the charges are not tied to legal document preparation. If a licensee does this it must be with the consent of the parties and all charges must be specified. This consent may be obtained through the Listing Contract, the Contract to Buy and Sell, the Closing Instructions and Earnest Money Receipt form, or otherwise.
4. Licensees are not responsible for bearing the cost of legal document preparation where the documents are prepared by an attorney representing the parties to the transaction. However, the broker should not designate the broker's own attorney to prepare legal documents for the parties and then charge as if the attorney had prepared the documents on behalf of a client.
5. The broker must still provide accurate closing statements.

Particular note should be paid to the first sentence of the rule. While there is no legal obligation for a broker to prepare the legal documents in a transaction the Commission strongly advises that licensees make this clear in the Listing Contract. Many persons, purchasers and sellers alike, normally look to the broker for the preparation of these documents. If the broker has not made it clear that the broker's company will not undertake the preparation of legal documents, the parties might well assume that the broker will do so at the broker's cost.

CP-8 Commission Position on Assignment of Contracts and Escrowed Funds

Assignments of contracts and escrowed funds usually occur when one real estate company is purchased or taken over by another real estate company.

The following reflects the general position of the Commission concerning the assignment of contracts and escrowed funds as it concerns the brokers.

1. All parties to a contract must be informed of assignments and all beneficiaries of escrowed funds must be informed of any transfer of escrowed funds.
2. Listing contracts may not be assigned by the listing broker to another broker (without the consent of the owner), because the listing contract is a personal contract of a type which would not be entered into except when the owner relies on the personal skills and expertise of the broker.
3. The broker concerned with an executory contract is not a party principal to the contract itself and, therefore, has no voice in its assignment. The broker signs the sales contract only as the receipting agent.
4. The right of entitlement of a broker to a commission, pursuant to a contract between the broker and a seller, is assignable. In the Commission approved form of executory contract, the agreement of the seller in regard to a commission is placed outside the body of the contract between the purchaser and seller.
5. The contract between the seller and the broker concerning commissions does not affect the contract between the principal parties in the sale.
6. Earnest money taken pursuant to an executory contract is money belonging to others and falls within the purview of 12-61-113(l)(g) and (g.5), C.R.S. Earnest money being held by the broker is not transferable to any party except to a closing agent as immediately prior to closing as is practicable.
7. The maintenance of earnest money held in escrow must be pursuant to the rules of the Commission. The broker may, for convenience, authorize other persons to withdraw money from this escrow account (see Commission Rule E-l(a)), but the withdrawal must be pursuant to law and Commission rules.

8. Unless contracted to the contrary, the mechanical act of closing the transaction may be performed by any qualified person or persons with the agreement of the principal parties to the contract.
9. The absence of the closing broker or the Broker's agent will not relieve such broker from the broker's responsibilities of approving the Statement of Settlement. (See Commission Rule E-5). However, the absence of the broker cannot impede the closing of the transaction pursuant to the executory contract.
10. If a licensed broker receipts for earnest money pursuant to an executory contract and then transfers such earnest money to an unauthorized person, who is also a licensed broker, the licensed transferee, (as well as the transferor), is also subject to the law and rules of the Commission in regard to money belonging to others. Such licensed transferee is obligated to retain such money in a trust account until the transaction is consummated, defeated, or settlement has occurred, or unless directed otherwise by a court of law. If litigation concerning escrowed money commences, the money may be placed with the court. The jurisdiction of the court will supersede the statutory requirements and the Commission Rules.
11. If the seller and the buyer, who are the sole beneficiaries of the escrowed money, both agree that such escrowed money be transferred, then settlement has occurred and the broker must transfer the money according to the wishes of the beneficiaries. This does not defeat the broker's right to a commission whether by original contract with the seller or by assignment of such contract right.

CP-9 Commission Position on Record Keeping by Brokers

The Commission is often asked what documents must be kept in the broker's files which concern a particular transaction.

A duplicate means photocopy, carbon copy, or facsimile, or electronic copies which contain a digital or electronic signature as defined in 24-71-101(1) C.R.S. Pursuant to Rule E-4 and E-5, a broker shall maintain a duplicate of the original of any document (except deeds, notes and trust deeds or mortgages prepared for the benefit of third party lenders) which was prepared by or on behalf of the licensee and pertains to the consummation of the leasing, purchase, sale or exchange of real property in which the broker participates as a broker. The payoff statement and new loan statement monetarily affect the settlement statements and should be retained by the respective broker concerned. Cooperating brokers, including brokers acting as agents for buyers in a specific real estate transaction, shall have the same requirements for retention of duplicate records as is stated above, except that a cooperating broker who is not a party to the listing contract need not retain a copy of the listing contract or the seller's settlement statement. A broker is not required to obtain and retain copies of existing public records, title commitments, loan applications, lender required disclosures or related affirmations from independent third party closing entities after the settlement date. The broker shall retain documents bearing a duplicate signature for the disclosures required by Commission Rule F-7. The broker engaged by a party shall insure that the final sales agreement, settlement statement, or amendment of the settlement, delivered at closing for that party's tax reporting or future use, shall bear duplicate signatures as authorized by the parties concerned.

A complete listing of the documents normally required by the Commission for sales transactions and management activities can be found in the current edition of the Colorado Real Estate Manual, Chapter 20, and at the website address: http://www.dora.state.co.us/real-estate.

CP-10 Commission Position on Compensation Agreements Between Employing and Employed Brokers

In regard to an employed broker's claim for compensation from an employing broker, the Real Estate Commission has no legal authority to render a monetary judgment in a money dispute nor will it arbitrate such a matter. A broker's failure to pay an employee does not warrant disciplinary action.

The Commission's position is:

1. An employed broker is an employee of the employing broker.
2. That an employed broker may not accept a commission or valuable consideration for the sale of real property except from his or her employing broker. (12-61-117 C.R.S.)
3. That a commission or compensation paid to the employing or independent broker for real estate services is money belonging to such broker and is not money belonging to others as defined in 12- 61-113(l)(g) and (g.5) C.R.S.
4. That a claim by an employed licensee for money allegedly owed by an employing broker must be decided by the civil courts on the basis of contract or "quantum merit."
5. That an employing broker pays their licensed or unlicensed employees pursuant to an oral or written employment contract.

Therefore, the contractual relationship between employing and employed brokers, as well as the office policy manual, should adequately cover the compensation of employed brokers.

CP-11 Commission Position on Assignments of Broker's Rights to a Commission

The Real Estate Commission recognizes and will enforce the statutory obligation of employed licensees as described in (12-61-113(1), C.R.S.), and more particularly:

> "12-61-113(l)(f) C.R.S. In the case 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."

The Commission recognizes and will enforce the prohibition described in 12-61-117 C.R.S.:

> "12-61-117 C.R.S. It is unlawful for a real estate 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 employer, who shall be a licensed real estate broker."

However: If a broker is entitled to a commission pursuant to 12-61, Part 2, C.R.S., or, a broker is entitled to a commission in a transaction and title has passed from a seller to a buyer, the broker may assign any or all legal rights to such commission to any person including employed licensees and no disciplinary action will be invoked against such broker for having made such an assignment.

CP-12 Commission Position on the Broker's Payment or Rebating a Portion of an Earned Commission

The License Law forbids a broker from paying a commission or valuable consideration for performing brokerage functions to any person who is not licensed as a real estate broker. Thus, "referral fees" or "finder's fees" paid as the result of performing brokerage activities are prohibited.

The question of whether or not a broker may make payments from their earned commission to a buyer or a seller in a particular transaction will arise because usually neither the buyer nor the seller is licensed.

However, the License Law also permits any person to sell or acquire real property on such person's own account.

In a listing contract, the broker is principal party to the contract and the consideration offered is the brokerage services. The broker may add to this consideration the payment of money to the property owner in order to secure the listing. This is not a violation of the License Law.

Also, in a particular real estate transaction, the broker may pay a portion of commission to the unlicensed seller. This is merely a reduction in the amount of the earned commission and does not violate the License Law.

Payment to the unlicensed purchaser is often referred to as "rebating" and the intention to pay money to the purchaser is sometimes advertised and promoted as a sales inducement. The payment to the purchaser in itself is not a violation of the License Law because the broker is licensed to negotiate and the purchaser may negotiate on their own account. However, a broker representing the seller in a transaction should take care to insure that such payments do not conflict with fiduciary duties. For example, the "rebate" of a portion of a commission to a purchaser to be used by the purchaser as a down payment could distort the purchaser's financial qualifications and ultimately harm the seller. Additionally, a purchaser who does not receive a promised rebate of a partial commission may try to hold the seller liable for the wrongdoing of the broker on the theory of respondent superior. The Commission recommends that brokers disclose such payments to the seller and obtain the seller's consent prior to acceptance of any offer to purchase.

Gratuitous gifts to a purchaser subsequent to closing and not promised or offered as an inducement to buy would also be allowed (*i.e.*, a door knocker or dinner). Such gifts would not require disclosure and consent inasmuch as fiduciary duties would not be involved.

CP-13 Commission Policy on Single-Party Listings

Brokers often secure single-party listings because they have what they believe to be a good prospect for purchase. These listings are usually only for a few days, but occasionally the broker wishes to be protected for a longer period while the broker is negotiating with a particular prospective purchaser.

A single-party listing, when placed on a Commission approved form for an Exclusive Right to Sell or Exclusive Agency, results in greater protection to the broker than the broker needs to have and the owner is placed in a position which is unfair. The owner may not realize that if the owner signs a listing contract with another broker, the owner may become liable for the payment of two commissions even though the owner has excepted a sale to the person mentioned in a single-party listing contract.

In any and all contracting, the intent of the parties is paramount in its importance, in a listing contract, a broker is dealing with those less informed than the broker, and the broker has a duty to disclose the true meaning of the listing contract.

The Commission does not wish to limit any owner of the freedom to contract. However, the broker should fully disclose to the owner the effect of the exclusive right to sell listing contract or the exclusive agency contract.

Usually, when an owner signs an exclusive right to sell or exclusive agency agreement concerning a single party, the owner wishes to limit the rights of the broker under the listing contract. Therefore, in the space provided for additional provisions, one, two, or all of the following limitations should be inserted in this space:

1. The provisions of this listing contract shall apply only in the event a sale is made to _____.
2. The termination date shall not be extended by the "Holdover Period" of this listing contract.
3. In the event a sale is made by the owner or their broker to any other party than the above names, this listing contract is void.

If an owner is misled to their disadvantage, the broker may be found guilty of endangering the public.

CP-14 Commission Position on Sale of Modular Homes by Licensees

The Commission is aware that many services rendered by licensees may or may not, in themselves, require licensing. Such services as collection of rents on real property, subdivision development services other than sales, or the general management of real property not involving renting or leasing may all be performed independently by an unlicensed person. When performed by a

licensee, these services are all so integrated with real estate brokerage that all money received in connection therewith must be held or disbursed according to the law and rules of the Real Estate Commission.

Therefore, it is the position of the Commission that a licensee who sells land and a modular home to be affixed to the land, to the purchaser in concurrent or an arranged or pre-arranged or packaged transaction, is subject to the laws and rules of the Commission. Consequently, all money received concerning the integrated transaction, including the modular home, should be processed through the broker or the employing broker pursuant to 12-61-117, C.R.S. and 12-61-113(l)(f), C.R.S. and Commission Rules E-l and E-5.

It is also the position of the Commission that if a licensee sells to an owner of land, a modular home to be affixed to the land, and there has been no brokerage relationship between the owners of the land and the licensee, such licensee in such a sale will not be required to comply with the requirements of 12-61-117, C.R.S. or 12-61-113(l)(f), C.R.S. or Commission Rules E-l and E-5.

CP-15 Commission Position on Sale of Items Other Than Real Estate

Inquiries have been made to the Commission as to the proper handling of sales, made by licensees, of items or services other than real estate. The following is the position of the Commission:

If the item, appliance, repair, remodeling or installation is performed in conjunction with a management contract or lease for a particular party or pursuant to an oral or written contingency in a specific executed contract of sale of the property, the employed licensee must process any fees or commissions received from the vendor or contractor through the employing broker. Also, disclosure must be made by the licensee to both the buyer and the seller of the property that the licensee is compensated by the vendor or contractor.

It is also the position of the Commission that if the sale of the item, appliance, repair, remodeling or installation is performed pursuant to a separate contract, and without reference to a specific contract of sale of the property, then the employed licensee may receive compensation directly from the vendor, or contractor and payment need not be made through the employing broker. However, if the sale of items or services is made to a buyer of real property during the term of the brokerage agreement with the seller of such property, then disclosure must be made by the licensee to both the buyer and the seller of the property that the licensee is compensated by the vendor or contractor.

The Commission takes no position when the licensee engages in selling items or services unconnected with real estate sales.

In any of the above situations the employed licensee may be subject to any requirements or prohibitions imposed by the employment agreement with the employing broker.

CP-16 Commission Position on Access to Properties Offered for Sale

(Revised November 1, 2005)

The Commission approved listing agreements (LC series) include a section titled OTHER BROKERAGE FIRMS ASSISTANCE – MULTIPLE LISTING SERVICE – MARKETING.

Provisions of this section allow the seller and listing broker to agree on whether or not to submit the property to a multiple listing service, information exchange, and whether there are limitations on the methods of marketing the property.

The provisions of the section also allow for discussion and the establishment of “Other Instructions” regarding access to the property by other brokerage firms such as through a lock box, for example.

It is the position of the Commission that the access information, and adherence to the Other Instructions, whether through lock box code or other means, is the responsibility of the listing broker. Listing brokers should take every effort to safeguard the access information on behalf of the seller. The listing agreements also include a section titled MAINTENANCE OF THE PROPERTY, which

addresses the broker's liability for damage of any kind occurring to the property caused by the broker's negligence. Brokers are advised that failure to safeguard the access information and adhere to the instructions of the Seller related to access by other brokerage firms could result in a claim of negligence brought against the listing broker.

Selling brokers who obtain access information should safeguard that information at all times. At no time should a selling broker share the access information with a third party (inspector, appraiser, buyer, etc.) without the listing broker's authorization. Selling brokers are reminded that pursuant to the Contract to Buy and Sell, the Buyers indemnify the Seller against damage to the property in connection with the property inspection provision.

CP-18 Commission Position on Payments to a Wholly Owned Employee's Corporation

The Commission has received several inquiries concerning the payment of commissions or fees by an employing broker to a corporation that is wholly owned by an employed licensee.

12-61-103(9) which prohibits the licensing of an employed broker as a corporation, partnership or limited liability company and the limitations on the payment or receipt of real estate fees, as described in 12-61-113(l)(j) and 12-61-117, are recognized by the Commission; however, it is the position of the Commission that:

An employing broker's payment of earned real estate fees to a corporation which is solely owned by an employed licensee of such employing broker shall not be considered by the Commission as a violation of 12-61-113(l)(j) or 12-61-117; however, a contract between the employing broker and such corporation or employed licensee shall not relieve the broker of any obligation to supervise such employed licensee or any other requirement of the licensing statute and Commission rules. It is not the intent of this position statement that the employed licensee be relieved from personal civil responsibility for any licensed activities by interposing the corporate form.

It must be stressed that the above position statement does not allow such corporations to be licensed under a broker and specifically refers only to corporations which are owned solely by the employed licensee.

CP-19 Commission Position on Short Term Occupancy Agreements

The Commission has been asked for its position concerning the need for a real estate broker to escrow funds coming into their possession involving short-term occupancies.

A short-term occupancy can be distinguished from a lease in that it is in the nature of a hotel reservation and a license to use. Short-term occupancy agreements, if properly treated, are not considered lease agreements. Activities relating to these agreements are exempt from the definition of real estate brokerage. Concerns arise when a licensed real estate broker wants to engage in short term occupancy activities either exclusively or as part of their separate brokerage practice. In some instances brokers have objected to holding money belonging to others in their trust accounts or accounting for these funds if the activity itself is exempt.

C.R.S. 12-61-113(l)(g) subjects a licensee to disciplinary action for "Failing to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession that belong to others, whether acting as real estate brokers or otherwise, and failing to keep records relative to said moneys...." In addition, the case of Seibel vs. Colorado Real Estate Commission, 533 P.2nd 1290, gives the Commission jurisdiction over the acts of a licensed broker even where those acts would otherwise exempt the person from original licensure.

Based on the above, it is the position of the Commission that a licensed real estate broker engaging in short term occupancy agreements must escrow and account for funds coming into their possession which belong to others. To hold otherwise, would be to invite further confusion and mistrust on the part of the public in an already confusing real estate related practice. It has been the Commission's experience that most brokerage companies engaging in short term occupancy activities

combine those activities with those requiring a license (*i.e*., long term rental and lease agreements, sales). In addition, brokers continually hold themselves out to the public as being both licensed and professional. The public does not distinguish between an activity technically exempt from licensure and the overall business practices of a licensed real estate broker.

CP-20 Commission Position Statement on Personal Assistants

(Revised October 2, 2012)

Personal assistants ("assistants") are generally thought of as employees or independent contractors ("employees") that perform various functions, including clerical duties, on behalf of a licensed real estate broker ("broker"). Assistants can be grouped into two separate categories: unlicensed assistants and licensed assistants. An unlicensed assistant cannot perform the same duties that a licensed assistant can perform. A broker needs to be cognizant of these differences, along with the broker's individual supervision responsibilities to the assistant. If a "licensed" assistant's broker's license is currently on inactive or expired status, the assistant is limited to performing only those tasks that may be completed by an unlicensed assistant.

§12-61-118, C.R.S. mandates that a broker can be held liable for any unlawful act or violations of the license law committed by an employee of a broker, if the broker had actual knowledge of the unlawful act or violation or had been negligent in the supervision of such employees. Commission Rule E-29 clarifies that employees include "but are not limited to, secretaries, bookkeepers and personal assistants..." Employing brokers that employ assistants, or allow their employed brokers to employ assistants, need to include procedures on the use of licensed and/or unlicensed assistants in the office policy manual.

The license law prohibits unlicensed persons, including unlicensed assistants, from practicing real estate brokerage, which includes negotiating the sale, exchange or lease of real property on behalf of another person. An unlicensed assistant should promptly disclose to brokers, other industry professionals (i.e. loan originators, lenders, appraisers, property inspectors, etc.) and consumers that he or she is not a broker, and disclose the name of the broker for whom the assistant works. An unlicensed assistant may complete the following tasks:

1. Complete forms prepared for, and as directed by a broker. Unlicensed assistants cannot independently draft legal documents such as listing or sales contracts, and they cannot offer opinions, advice or interpretations of these documents.
2. Distribute preprinted, objective information prepared by the broker about a property listed for sale.
3. Perform clerical duties, including gathering information for a listing.
4. If authorized by the seller, provide access to property, conduct showings or open houses.
5. Deliver paperwork to other brokers, buyers or sellers.
6. Deliver paperwork that requires signatures in regard to financing documents that are prepared by lending institutions.
7. Prepare market analyses on behalf of the broker, if the analyses are approved and submitted by the broker to the client with a disclosure that the market analyses were prepared by the unlicensed assistant. The broker must ensure that market analyses comply with Commission Rule E-42.
8. Collect and receipt for earnest money deposits, security deposits or rents.
9. Schedule property repairs on behalf of the broker, if there is an existing agreement that authorizes the broker to make repairs to the property.

The broker should inquire as to whether any of the unlicensed assistant's activities are covered by the broker's errors and omissions insurance policy. Furthermore, licensed assistants may need their own separate errors and omissions insurance policy to cover the acts they perform on behalf of the broker.

CP-21 Commission Position on Office Policy Manuals

(Revised and Adopted 4-1-2003)

12-61-Part 8 C.R.S. and Commission Rules E-29, E-30, E-31 E-32, E38 and E29 set out a broker's supervising responsibilities. (See Rules E-29, E-30, E-31 and Rule E-32 in chapter 2 of this manual.) In order to help brokers comply with the rules it is suggested that a policy manual contain procedures for at least the following:

1) typical real estate transactions
   a) review of contracts
   b) handling of earnest money deposits, including the release thereof
   c) back-up contracts
   d) closings
2) non-qualifying assumptions and owner financing
3) guaranteed buyouts
4) investor purchases
5) identifying brokerage relationships offered to public (required by 12-61-808 C.R.S.)
6) procedures for designation of brokers who are to work with a seller, landlord, buyer or tenant, individually or in teams (required by Rule E-38) (Does not apply to brokerage firms that consist of only one licensed natural person.)
7) identify and provide adequate means and procedures for the maintenance and protection of confidential information (required by Rule E-39)
8) licensee's purchase and sale of property
9) monitoring of license renewals and transfers
10) delegation of authority
11) property management
12) property listing procedures, including release of listings
13) training
   a) dissemination of information
   b) staff meetings
14) use of personal assistants
15) fair housing/affirmative action marketing

Brokers are encouraged to add other policies as appropriate to their practice.

In the event that one or several of these suggested topics (*e.g.*, guaranteed buyouts) are not applicable in a particular office, they should be addressed by stating that the office does not participate in that activity.

The Commission does not become involved in matters relating to independent contractor agreements, and disputes over earned commissions. Office policies in these areas do not fall within the purview of Commission rules.

(See additional discussion of office policy manuals in Chapter 20)

CP-22 Commission Position Statement on Handling of Confidential Information in Real Estate Brokerage

(Adopted October 1, 2003)

Prior to designated brokerage, it was common for brokers to share the motivations of a buyer or seller during office sales meetings, for example. Under designated brokerage, the law specifically

prohibits sharing of such information. Confidential information, and the broker responsibility thereto, are defined in C.R.S. 12-61-804 (2), 12-61-805 (2), 12-61-807 (3), and Rules E-32 and E-39. Confidential information can include, but is not limited to, motivation of the parties.

Brokers are required to have a written office policy that identifies and provides adequate means and procedures for the maintenance and protection of confidential information. Situations where inadvertent disclosure of confidential information may occur, include, but are not limited to:

- sales meetings or marketing sessions,
- shared fax or copy machines,
- shared computer networks, printers and file directories,
- in-office mail boxes,
- hand written telephone messages,
- phone conversations or meetings with clients,
- relocation, divorce, pending foreclosure and other sensitive documents,
- conversations with affiliated business providers,
- production boards,
- social functions

Brokers must develop office policies and procedures to address the handling of confidential information. For example, some offices may have "locked" transaction files that include confidential information and other offices may elect not to include confidential information in transaction files.

A designated broker is permitted to share confidential information with a supervising broker without changing or extending the brokerage relationship beyond the designated broker. Brokers may want to consult legal counsel regarding the necessity of securing the authorization of the party to whom the information is confidential before the designated broker shares that confidential information with the supervising broker. Such advice could include modifications to the listing agreement or buyer agreement that create such authorization.

CP-23 Commission Position on Use of "Licensee Buyout Addendum"

(Revised January 17, 2006)

Rule F-7 requires real estate licensees to use the Commission approved "Licensee Buyout Addendum to Contract to Buy and Sell Real Estate", when purchasing certain listed properties.

It is the Commission's position that Rule F-7 requires use of the Buyout Addendum under the following circumstances:

1. When a licensee enters into a contract to purchase a property concurrent with the listing of such property.
2. When a licensee enters into a contract to purchase a property as an inducement or to facilitate the property owner's purchase of another property, the purchase or sale of which will generate a commission or fee to the licensee.
3. When a licensee enters into a contract to purchase a property from an owner but continues to market that property on behalf of the owner under an existing listing contract.

Unless one of the above situations exists, licensees are not required to use the Buyout Addendum.

The term "licensee", as used above, refers to the individual licensee who has personally taken a listing or to the listing broker or brokerage entity if the buyout is to be accomplished by that broker or brokerage entity. If the listing licensee or broker desires to acquire a listed property solely for personal use or future resale and not as an inducement to the owner, the licensee or broker is advised to (1) clearly sever their agency or listing relationship in writing; (2) renounce the right to any

commission, fee or compensation in conjunction with acquisition of the listed property; and, (3) advise the owner to seek other assistance, representation or legal advice.

Future resale of a purchased property, as referred to above, means resale to a third party purchaser with whom the licensee has not negotiated during the listing period. Resale to a person with whom a licensee has conducted previous negotiations concerning the subject property during the listing period (often referred to as a "pocket buyer"), would constitute a violation of 12-61-113(l)(n) in the absence of full written disclosure and acknowledgment by the owner.

CP-24 Commission Position on Preparation of Market Analyses and Real Estate Evaluations Used for Loan Purposes

The Colorado Real Estate Appraiser Licensing Act contains special provisions which allow licensed real estate brokers to perform certain real estate valuation related activities without being registered, licensed or certified as real estate appraisers. These provisions are found in Sections 12-61-702 and 12-61-718, C.R.S.

The first of these allows a broker to prepare an "estimate of value" which is not represented as an appraisal and is not used to obtain financing. The position of the Commission is that this provision allows a broker to prepare a market analysis for use in the real estate brokerage process and to offer their estimate as to the value or market price of real estate for court testimony or tax purposes.

The second provision allows a broker to prepare what are termed "evaluations" in federal banking regulations. These evaluations may be used for lending purposes. This provision is very narrow in scope—a broker may prepare such an evaluation only for a federally regulated bank, savings and loan or credit union with whom they have a contract. The loan amount must be below the threshold which invokes the requirement for a true appraisal.

As the authority to prepare such estimates of value and evaluations is tied to the holding of a Colorado real estate broker license, the Colorado Real Estate Commission has jurisdiction over the activities of brokers engaged in such activities. The Commission will consider the conduct of licensees who prepare estimates of value and evaluations in light of Sections 12-61-113(l)(n) and (t), which speak to unworthiness, incompetency and dishonest dealing.

It is the position of the Commission that the mere holding of a broker license does not in itself assure the competency necessary to prepare more complex estimates of value or evaluations. Licensees preparing estimates of value and evaluations have a responsibility to possess training and experience commensurate with the complexity of the assignment undertaken.

Investigations undertaken by the Commission relating to unworthiness, incompetency and dishonest dealing will take into account the following:

- Brokers preparing estimates of value and evaluations must act independently at all times. The estimate or evaluation must be unbiased.
- The broker preparing an estimate or evaluation must not represent themselves as an appraiser, nor represent the work product as being an appraisal.
- The broker preparing an estimate or evaluation must at all times comply with the statutory requirement in Sections 12-61-702 and 12-61-718, Colorado Revised Statutes, for a written notice that they are not an appraiser. The wording and use of the written notice are specified in Chapter 15 of the Rules of the Board of Real Estate Appraisers. The required wording is:

  "NOTICE: The preparer of this appraisal is not registered, licensed or certified as a real estate appraiser by the State of Colorado".
- The broker must not prepare an estimate of value or evaluation of real property which requires a level of competency beyond the level of training and experience possessed by the licensee.

CP-25 Commission Position on Recording Contracts

Over the years the Commission has received many inquiries and complaints concerning the recording of listing contracts to protect claims for commissions. In addition, some licensees have attempted more "creative" ways of holding up a closing, such as filing mechanics liens or notices of lis pendens, as well as recording demand letters or purchase contracts. The end result is usually a cloud on the title and sometimes a slander of title action.

Some states have passed statutes authorizing the filing of such liens. Colorado has not. Filings and recordings such as these are inappropriate and will result in Commission action.

Here is a typical scenario: Broker lists a property at $125,000 for 120 days and actively markets it. No offers come in during the first 30 days. Broker advises her seller to lower the price by $5,000 to encourage some activity. The seller is adamant that the property is worth the list price and refuses. After another 15 days with no offers, the seller reluctantly lowers the price. He also tells the broker that he doesn't feel she is trying hard enough to sell the property and he's going to take it off the market if nothing happens.

A week later an offer for $100,000 comes in from another company, which is presented and rejected. The seller is quite upset at the low offer and demands to be released from the listing. There is no further communication between the parties, but the listing is never formally terminated. Three weeks later the broker learns that the seller has entered into a contract with the same buyer for $110,000 and closing is set. The broker is very upset and wants to protect her commission. What can she do?

1. File a mechanics lien?

   ANS: No. Real estate licensees are not a protected class of lien claimant under the statute except as provided in C.R.S. 38-22.5 (Commerical Real Estate Brokers Commission Security Act).

2. File a lis pendens (notice of pending lawsuit)?

   ANS: No. A lis pendens relates to a title or ownership dispute involving the land itself. The broker has no legal interest in the real estate.

3. Record the listing contract?

   ANS: No. This will usually have the effect of clouding title to the property, which in turn affects the closing between buyer and seller. The broker should not interfere in the process of transferring title to property.

4. Escrow the disputed commission?

   ANS: Maybe. This is a touchy area. If the broker makes demand on the seller for the commission prior to closing and states her possible rights (mediation; arbitration; civil action) the parties may agree to an escrow pending settlement of the dispute. However, there is no legal requirement that the closing entity escrow funds absent an agreement.

5. Commence mediation, arbitration or civil action (as appropriate).

   ANS: Yes. Nothing prevents a licensee from asserting any legal claim against a principal.

A commission dispute is an emotional issue. Sometimes a licensee has put in considerable time on a listing only to be faced with a seller who refuses to pay, attempts to renegotiate or is outright deceitful. On the other side, the Commission has witnessed instances in which the licensee had no legitimate right to a commission and was using superior knowledge and scare tactics to force payment. Clearly this is a time to consult a good real estate attorney and avoid the risk of a complaint based on a hasty decision.

CP-26 Commission Position on Auctioning

(Adopted 5-1-97)

Real estate experts predict that the next decade will see a significant increase in the sale of real estate through auctions. For many years auctioning was associated with rural or distressed properties. However, forecasts are for a proliferation of sales activity in both residential and commercial real estate. Sales by auction are already occurring in the residential market in Colorado and other parts of the country.

The brokers act requires that real estate auctions be conducted by a licensed broker and defines the activity as ". . .offering, attempting or agreeing to auction real estate, or interest therein, or improvements affixed thereon. . ." (CRS 12-61-101(2)(VI)).

A long-standing Attorney General's opinion allows an unlicensed auctioneer to "cry" the bid at a real estate auction in the presence of a broker or seller. However, the control of the sale, including listing, advertising, showing the property and writing contracts must remain with the broker or the auctioneer will be violating the law.

Based on the statute and Attorney General's opinion, the following guidelines are established for unlicensed persons involved in the auction process:

1. Auctioneers should never hold themselves out as providing real estate brokerage services to the public (*e.g*., listing, advertising, negotiating, contracting, legal document preparation);
2. Inquiries from sellers should be referred to a licensed broker or attorney;
3. Inquiries from buyers should be referred to the seller, listing broker or sellers attorney;
4. Only auctioning services should be advertised to buyers and sellers;
5. A potential buyer may be chauffeured to a property, so long as the property is shown by the seller or a licensed broker;
6. Information on listed properties may be distributed when such information has been prepared by a broker;
7. Auctioneers may "cry" the sale, but may not engage in subsequent negotiations, document drafting and the handling of earnest money;
8. Payment should be based on auctioning services performed regardless of the success of a sale.

* CP-27 Commission Position on the Performance of Residential Leasing and Property Management Functions

(Adopted August 1998 – Revised August 2013)

Property management is one of the leading sources of complaints received by the Commission. This position statement is designed to identify common issues found during the course of a complaint investigation or an audit; however it does not encompass all of the potential issues associated with property management. Any licensed real estate broker ("Broker") interested in performing property management duties are strongly encouraged to complete educational offerings specific to property management, train with a Broker experienced in property management, and develop a strong familiarity with the Colorado Real Estate Manual chapters titled Escrow Records, and Property Management and Leases.

License Requirements

Pursuant to C.R.S. §12-61-101(2)(a)&(b), the leasing and subsequent management of real estate for a fee or compensation, is included among the activities for which a license is required. As a result of the complaints received and issues identified in Commission investigations and audits, the Commission considers property management to be a complex area of practice. C.R.S. §12-61-113(1)(n) requires that a Broker be competent and worthy in the performance of their duties so as to

not endanger the interest of the public. Furthermore, it is the Commission's position that prior to performing any acts that require a Broker's license, a Broker should determine whether he or she possesses the knowledge, experience and/or training necessary to perform the terms of the transaction and to maintain compliance with the applicable federal, state or local laws, rules, regulations, or ordinances. If the Broker does not have the requisite knowledge, experience and/or training necessary to fulfill the terms of the agreement, the Broker should either decline to provide brokerage services or seek the assistance of another Broker who does have the necessary experience, training and/or knowledge. A Broker who agrees to lease property, or perform ongoing property management duties, needs to ensure that he or she is competent to perform the duties he or she agrees to undertake and must have permission from the Broker's employing broker. Similarly, the employing broker has the responsibility to ensure that he or she is competent to supervise a broker that performs leasing or property management duties.

Leasing v. Property Management

While leasing and property management are similar, they are two distinctively different services. Leasing is a onetime activity in which the broker acts as a special agent, while property management is an ongoing relationship in which the broker is a general agent. If a Broker is performing leasing, the Broker may list a property for lease, advertise the property, help screen tenants and/or help negotiate a lease. Once the lease is signed by the landlord and tenant, the Broker's duty to the landlord or tenant is complete. With property management, a broker's obligations continue beyond the formation of the lease. A Broker performing property management duties may also perform leasing duties; where a Broker only performing leasing duties is not performing property management duties.

Generally, a Broker will function in one of three capacities with regards to rental properties. The Broker may provide leasing services only for a landlord, where the broker is involved in procuring a tenant and negotiating the lease terms. Alternatively, the broker may provide leasing services on behalf of the tenant in locating a suitable rental property and negotiating a lease. In the first two scenarios, the Broker's duties are fulfilled once the lease is executed and the broker is not involved in the transaction any further. In the third scenario, the Broker agrees not only to provide leasing services, but is also responsible for one or more of the following: maintaining the property's physical condition, communicating with tenants, collecting rent and/or collecting security deposits. In this scenario, the Broker's duties are ongoing; therefore the Broker is conducting property management services. Regardless of whether the Broker is working with the landlord or the tenant, the Broker must establish clear expectations regarding the services the Broker agrees to provide and communicate these expectations to the consumer.

Supervision

Before engaging in property management or leasing, the Broker should discuss with the employing broker whether the Broker is capable of and allowed to perform property management or leasing duties. The employing broker is responsible for maintaining all trust accounts and all transaction records, and the employing broker is responsible for exercising authority, direction and control over the Broker's conformance to statutes and Commission rules (Rules E-29 and E-30). This includes reviewing all contracts to ensure competent preparation and reviewing all transaction files to ensure that required documents exist (Rule E-31). If the employing broker does not allow Brokers to perform leasing and/or property management duties, the Broker needs to refrain from leasing and/or property management activities or seek employment elsewhere. If the real estate brokerage firm does allow leasing and/or property management, regardless of how minor, the employing broker must ensure that the office policy manual addresses these activities, including management of the Broker's own property. Both the Broker and the employing broker need to be aware of state and local laws that impact the performance of property management duties, which include, but are not limited to, laws pertaining to security deposits, habitability, carbon monoxide alarms, asbestos, lead-based paint, handling of confidential information, zoning and agency.

Forms

C.R.S. §12-61-803(4) indicates that a Broker may complete standard forms including those promulgated by the Commission. Forms that are not promulgated by the Commission must be drafted by an attorney. When the Broker provides leasing services for a tenant, the Broker should complete the Exclusive Tenant Listing Contract. When the Broker provides ONLY leasing services for the landlord, the Broker should complete the Commission-approved Exclusive Right to Lease Listing Contract. If the Broker also will be providing property management services in addition to leasing services for the landlord, a Broker should use the Brokerage Duties Addendum to Property Management Agreement with a property management agreement drafted by an attorney. Under Rule E-4, the Broker must provide a copy of any executed contracts to the consumer. While not all property managers provide a physical copy of the lease to the landlord, because sometimes it is executed by the Broker on behalf of the landlord, the Broker should make the document available to the landlord upon request.

If the Broker is going to provide property management services, the Broker needs to provide a property management agreement. The property management agreement must be drafted by an attorney. The property management agreement should outline the duties and responsibilities of both parties. The property management agreement should, at the very minimum, address:

- Duration of the relationship;
- The parties;
- Identify the property to be managed;
- General duties performed by the Broker, including the signing of leases.
- Fees for the manager's services, including disclosure of any mark-ups (Commission Rule E-1 (p)(8)). Before a mark-up can be charged, the Broker must obtain prior written consent to assess and receive mark-ups and/or other compensation for services performed by any third party or affiliated business entity;
- Tenant selection criteria. If the decision to lease will be based on criminal history or financial worthiness, the property management agreement should indicate who is responsible for collecting this data and what sources will be used. Additionally, the Broker must ensure compliance with the Fair Housing and Fair Credit Acts.
- Posting of eviction notices. If a Forcible Entry and Detainer (a/k/a eviction) is necessary, an attorney should represent the landlord in the filing of the Forcible Entry and Detainer. A Broker that files a Forcible Entry and Detainer without the assistance of an attorney may be practicing law without a license;
- Ownership Interest. The Broker must disclose a Broker's direct or indirect ownership interest in any company which will be providing maintenance or other services to the landlord, and any other conflicts of interest (Rule E-25);
- Identity of the entity responsible for holding the security deposit, and if interest is earned on security deposit escrow accounts, who benefits from such interest and consent to transfer the interest to the beneficiary;
- Process to be followed for any subsequent transfer of the landlord's monies, security deposits, keys and documents (Rule E-l6); and,
- Requirement that the landlord receive regular monthly accounting of all funds received and disbursed.

While these general duties should be addressed in the property management agreement, it is not an all inclusive list of all the duties that may be performed by a property manager or that should be addressed within the property management agreement. Brokers are encouraged to pay close attention not only to Commission rules and regulations, but also the "Property Management and Leases" chapter in the Colorado Real Estate Manual.

Regardless of whether the Broker is acting as a leasing agent or a property manager, prior to engaging in any of the activities that require a real estate broker's license, the Broker is required to disclose in writing the different brokerage relationships that are available to the tenant (Rule E-35). The Commission-approved Brokerage Disclosure to Tenant form should be used to disclose the brokerage relationships available.

In Colorado there is not an approved lease form. Therefore, prior to a tenant being procured, the Broker must: 1) hire an attorney to draft a lease form for the Broker to use; or 2) the landlord will need to designate a lease. The terms of the lease need to be clear and in writing. A Broker may choose to limit which lease is used to only the lease form provided by their attorney so long as the landlord authorizes the Broker to use their attorney prepared lease form in the property management agreement.

Trust Accounts and Record Keeping

Any Broker performing property management duties in which the Broker is responsible for the collection and distribution of rent or security deposits needs to be especially cognizant of the Commission rules and regulations pertaining to the management of funds of others and records retention. Brokers should pay close attention to the chapters titled "Escrow Records" and "Property Management and Leases" in the Colorado Real Estate Manual. C.R.S §12-61-113(1)(g) requires that a Broker account for and remit, within a reasonable time, any moneys coming into the Broker's possession that belong to others. Rule E-1(g) defines money belonging to others as including, but not limited to, funds received by a Broker in connection with property management agreements, rent or lease contracts, and money belonging to others that is collected for future investment or other purposes. All money belonging to others which is received by a Broker acting as a property manager must be deposited in the Broker's escrow or trust account within five (5) business days of receipt (Rule E-1(n)).

If a Broker is going to deposit rent or security deposits into the employing broker's trust account(s), the Broker is required to keep records relative to these monies. Rule E-1 requires that all money belonging to others that is accepted by Broker be deposited in one or more accounts separate from money belonging to the Broker, employing broker or brokerage entity. Separate trust accounts must be maintained in the name of the employing broker, or the employing broker and the licensed business entity, and the maintenance of the separate accounts is the responsibility of the employing broker (Rule E-1(a) and (c)). This includes rent checks. A Broker who manages fewer than seven residences may deposit rental receipts and security deposits, and disburse money for such purposes, in the "sales escrow" account (Rule E-1(i)), although this is not recommended. A better practice is to maintain separate accounts for property management. At a minimum, a Broker is recommended to have two trust accounts for property management; one for security deposits and one for operating trust monies. As an alternative to trust accounts, a Broker may deposit rent monies or security deposits directly into an account owned and controlled by the landlord.

Rule E-16 prohibits a Broker who receipts for security deposits from delivering such deposits to a landlord, unless the tenant's written authorization is given in the lease or written notice is given to the tenant by first-class mail. The notice must identify who is holding the security deposit and the procedure the tenant must follow to request the return of the deposit. If the security deposit is held by or transferred to the landlord, the property management agreement must specify that the landlord is responsible for the security deposit's return and that, in the event of a dispute, the Broker is authorized to reveal the true name and current mailing address of the landlord. The Broker may not use any portion of the security deposit for the Broker's benefit.

Pursuant to Rule E-1(p), a Broker is required to supervise and maintain a record keeping system, at the Broker's licensed place of business that consists of an "escrow or trust account journal", a "ledger" and a "bank reconciliation worksheet". The Broker must also maintain supporting records that detail all cash received and disbursed under the terms of the management and rental agreements. If a Broker has deposited personal funds into the trust account to open and maintain the trust account,

the journal and "broker's ledger record" must contain entries documenting this money. The Broker's personal funds must also be included in the bank reconciliation worksheet. All deposits of funds into an escrow or trust account must be documented, as must all disbursements of funds from an escrow or trust account.

Absent a written agreement that indicates otherwise, the "cash basis" of accounting is required for maintaining all required escrow or trust accounts and records. Funds from one owner cannot be used to supplement operating capital, or to finance expenditures of other owners or the Broker (C.R.S. §§12-61-113(1)(g) and (g.5) and Rules E-1(f), (g), (p), and (q), E-29 and E-30). The Broker is required to retain accurate, on-going records which verify disclosure of and consent to any mark-ups assessed or received, and fully account for the amounts or percentage of compensation assessed or received (Rule E-1(p)(8)). For Commission purposes, brokers may maintain their records in electronic format as long as the records are stored in a format that can be continually retrieved and legibly printed (Rule E-6). C.R.S. §12-61-113(1)(i) requires Brokers to maintain possession of their records for four (4) years.

Security Deposits

Brokers have to be very careful how they handle security deposits. The security deposit law is complicated and legal assistance is advisable. Wrongful withholding of a security deposit may result in the landlord, and the Broker as the landlord's agent, being liable for treble the amount wrongfully withheld, plus reasonable attorneys' fees and court costs. C.R.S. §38-12-103 requires that the security deposit be returned to the tenant within one month after a lease is terminated or the premises have been vacated and accepted, whichever occurs last. The lease may indicate a longer period of time to return the security deposit to the tenant; however state law does not allow this extension of time to exceed sixty days. Security deposits cannot be retained to cover normal wear and tear. C.R.S. §38-12-102 defines normal wear and tear as:

> "deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or their invitees or guests."

Normal wear and tear is at the core of most security deposits lawsuits. Security deposits may be retained for nonpayment of rent, abandonment of the premises, or nonpayment of utility charges, repairs or cleaning contracted for by the tenant in the lease. If there is cause to retain any portion of the security deposit, the tenant must be provided with a written statement listing the exact reasons why all or a portion of the security deposit is being retained. The statement must be delivered with the difference between the amount of the security deposit and the amount retained. The Broker or the landlord is deemed to have complied with this requirement by mailing the statement and payment to the tenant's last known address. If the Broker or the landlord fails to provide the statement to the tenant within 30 days (or the alternative deadline specified in the lease) of the lease terminating or the surrender and acceptance of the premises, whichever occurs last, the landlord or the Broker may forfeit his right to retain any portion of the security deposit to offset amounts owed. The landlord does not lose the right to pursue amounts due, they just lose the right to utilize the security deposit to offset amounts owed. Furthermore, if the tenant pursues court action regarding any portion of the security deposit being retained, the landlord or the Broker bears the burden to prove that retention of any portion of the security deposit was not wrongful.

In the rare event that a lease is nullified and voided due to the landlord's failure to repair a hazardous condition attributed to a gas appliance, piping, or other gas equipment, the landlord or the Broker must deliver all, or the appropriate portion of, the security deposit plus any rent rebate owed to the tenant for the time period that the tenant vacated the premises. Payment must be made to the tenant within 72 hours of the tenant vacating the premises. If the 72nd hour falls on a Saturday, Sunday, or legal holiday, the security deposit, and any rent rebate due, must be delivered to the tenant by noon on the next day that is not a Saturday, Sunday, or legal holiday. If a portion of the security deposit is retained, the tenant must be provided with a written statement listing the exact reasons why

all or a portion of the security deposit is being retained and payment of the remaining balance of the security deposit. If the tenant does not receive all or a portion of the security deposit with the statement within the required deadlines, the tenant may be entitled to three times the amount of the security deposit and reasonable attorney fees (C.R.S. §38-12-104).

Transfer of Services

If a Broker no longer will be managing a property, the Broker must transfer a copy of the entire file to the landlord or, upon written authorization from the landlord, to the new Broker engaged to perform the property management. At a minimum, the entire file should include:

(a) Copy of existing lease
(b) Copy of check-in condition report
(c) Keys
(d) Outstanding tenant balances
(e) Tenant(s) security deposit(s)
(f) Owner's funds (subject to outstanding obligations)

Although the Commission rules do not specifically address the transfer of management duties, there should be no delay in transferring the tenant's security deposit to either the landlord or the new Broker. The Broker must give written notice by first class mail to the tenant that the security deposit has been transferred to the landlord or new Broker along with the landlord's or new Broker's contact information. The notice must indicate who is holding the security deposit and the specific requirements for the procedure in which the tenant may request return of the deposit [reference Rule E-16 and C.R.S. §38-12-103(4)]. Timely transfer of the deposit protects the Broker from getting caught between the landlord and the tenant regarding the accounting of the deposit. The Broker must also provide the landlord with a final accounting of all trust funds held by the Broker. Although the Broker may delay the transfer of the landlord's funds until all outstanding invoices or debts have been resolved, the transfer of the landlord's funds needs to occur within a reasonable amount of time. A Broker that fails to transfer funds in a reasonable amount of time may be subject to discipline by the Commission for unworthiness or incompetency, C.R.S. §12-61-113(1)(n).

Managing Broker's Own Property

Brokers are subject to the license law and Commission rules when they participate in real estate matters as principals, including managing the Broker's own property. See Seibel v. Colorado Real Estate Commission, 34 Colo. App. 415, 530 P.2d 1290 (1974). A Broker who manages his or her own rental property needs to disclose known conflicts of interest and that the Broker possesses a Colorado real estate broker's license (Rule E-25). The Broker also needs to use a lease drafted by an attorney for the transaction, along with disclosing in writing to the tenant the brokerage relationships under Colorado law (Rule E-35).

If the Broker has an employing broker, it is important for the Broker to consult with the employing broker regarding the brokerage firm's requirements or limitations regarding managing a Broker's own property. When a Broker personally receipts for a security deposit on his or her own property, the license law does not require that the security deposit be placed in an escrow account. Additionally, a Broker cannot deposit rental proceeds into the brokerage firm's escrow account(s) for properties owned by the Broker [Rule E-1(f)].

CP-28 Commission Position on Showing Properties

(Adopted March 4th 1999)

The Real Estate Commission reminds licensees that the Brokerage Relationships Act imposes duties on agents to promote the interests of their buyers or sellers with the utmost good faith as well as to counsel their principals on material benefits or risks of a transaction. A transaction-broker must exercise reasonable skill and care, advise the parties and keep the parties fully informed regarding the transaction. Whether working as an agent or a transaction-broker, these duties include disclosing the accessibility of and actual access to a property or properties.

Working With a Seller: Pursuant to the section in the various listing contracts entitled, "OTHER BROKERS, ASSISTANCE", the licensee should advise the seller of the advantages and disadvantages of using multiple listing services and other methods of making the property accessible by other brokers (*e.g*., using lock boxes, by appointment only showings, etc.). If applicable, it should be explained that some methods may limit the ability of a selling broker to access and show a particular property. The chosen methods of cooperating with other brokers should be included in the listing agreement.

Working With a Buyer: A licensee working with a buyer has an obligation to explain the possible methods used by a listing broker and seller to show a particular property. These methods may include limitations on the buyer and selling broker being able to access a property due to the type of lock box placed on the property, the seller's choice to have the property shown by appointment only, etc. The selling broker should include such showing limitations in the Exclusive Right to Buy Contract (agency or transaction-broker).

There should be no instances of a listing broker refusing to allow a property to be shown, unless the seller has given prior explicit, written authorization to do so.

CP-29 Commission Position on "Megan's Law"

(Adopted July 1, 1999)

The Commission has been asked for its position as to the disclosure requirements for real estate licensees with regard to "Megan's Law." In 1994, and primarily as a response to the murders of two young girls, a federal law was passed creating a registration and notification procedure to alert the public as to the presence of certain types of convicted sex offenders living in a neighborhood. This is commonly referred to as "Megan's Law." Identified sex offenders are required to register with local law enforcement officials. The federal law also required states to establish registries of convicted sex offenders. It contains no disclosure requirements for real estate licensees when working with the public.

In compliance with federal law, Colorado enacted legislation that sets procedures and timeframes for local registration. The office of chief of police is the designated place of registration for those offenders residing within any city, town or city and county. The office of the county sheriff is the designated place of registration for those living outside any city, town or city and county, in addition, the law enforcement agency is required to release information regarding registered persons. However, the duty to release information may differ depending on whether the inquiring party does or does not live within that jurisdiction.

While legislation in a few states has specifically imposed disclosure requirements on real estate licensees working with buyers and sellers, Colorado's legislation imposes no such requirements. Colorado's legislation clearly places the duty to release information on the local law enforcement agency, after considering a request.

It is the position of the Real Estate Commission that all real estate licensees should inform a potential buyer to contact local law enforcement officials for further information if the presence of a registered sex offender is a matter of concern to the buyer.

Editor's Note:

C.R.S. 18-3-412.5 requires the Colorado Bureau of Investigation to post on the Internet identifying information, including a picture, of each sex offender:

- *Sentenced as a sexually violent predator; or*
- *Convicted of a sexual offense involving children*

CP-30 State of Colorado Real Estate Commission and Board of Real Estate Appraisers Joint Position Statement

(Revised January 8, 2009)

The Colorado Real Estate Commission and the Colorado Board of Real Estate Appraisers have issued this Joint Position Statement to address mutual concerns pertaining to practices of real estate brokers and real estate appraisers with regard to residential sales transactions involving seller assisted down payments, seller concessions, personal property transferred with real property and other items of value included in the sale of residential real property.

A residential real estate transaction has a life well beyond closing and possession of the property. Accurate sales data is crucial for appraisals and comparative market analysis (CMA) work products. Both appraisers and real estate brokers can effectively work together to maintain the safeguards that accurate sold data affords.

A **real estate broker** can facilitate these safeguards by adherence to the following:

- Note the amount of any seller paid costs (including a seller assisted down payment or fee paid to a charitable organization on behalf of the buyer) or other seller concession in the proper transaction documents, including the Buy/Sell Contract, Closing Statements, and Real Property Transfer Declaration.
- Utilize all available fields in the multiple listing service to report sold information including all transaction terms and seller concessions. Sold information should be entered promptly following closing and be specific and detailed particularly when the sold price includes a seller assisted down payment or concessions.
- Advise buyers and sellers to consult legal and tax counsel for advice on tax consequences of seller contributions and inducements to purchase.
- Cooperate with appraisers as they perform their due diligence in asking questions about sales.

An **appraiser** can facilitate these safeguards by adherence to the following:

- Research and confirm subject property and comparable sales, including obtaining details of the contract and financing terms.
- Research and confirm all relevant information about a transaction, including determination of seller paid costs.
- Utilize all available data search tools, including the listing history and seller contributions features of multiple listing services.
- Make appropriate adjustments to comparables with seller contributions and inducements to purchase when developing work products.
- Comply with the applicable provisions of the Ethics Rule and Standards 1 & 2 of the Uniform Standards of Professional Appraisal Practice.
- Comply with any scope of work requirements required by agencies such as the Federal Housing Administration.

CP-31 Commission Position on Acting as a Transaction Broker or Agent in Particular Types of Transactions

(Adopted 9-8-04)

The public may enter into either a Transaction-Broker relationship or an Agency relationship with a Broker. Fundamental among the differences between Agency and Transaction-Brokerage is that an Agent is an advocate with fiduciary duties, while a Transaction-Broker should remain neutral, not advocate. However, in some situations the relationship of the Broker with a particular party or property may make a particular relationship inappropriate or problematic.

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 then make the necessary disclosures. Some examples of these situations include:

1. Selling or purchasing for one's own account (whether the property is solely or partially owned or to be acquired by the Broker), (See Rule E-25 regarding proper disclosures);
2. Selling or purchasing for the account of a spouse or family member of the Broker;
3. Selling or purchasing for the account of a close personal friend, business associate, or other person where it would be difficult for the Broker to remain neutral; or
4. Selling or purchasing for the account of a repeat or regular client/party where it would be difficult for the Broker to remain neutral (*i.e*., undertaking as a Transaction-Broker the listing of multiple units, lots or properties such as listing a real estate development or condominium complex for a single developer, listing multiple residential or commercial properties for the same seller that will be sold to different buyers, or listing for lease a multiple unit residential or commercial property that will be leased to different tenants).

An agency relationship between a Broker and a seller or landlord, buyer or tenant, requires a written agency agreement. The duties of an agent go beyond facilitation of the transaction as a neutral party and require representing the interests of the Broker's principal over the interests of the other party. In certain circumstances, fulfilling the duties of an Agent including acting as an advocate may be difficult. A Broker who enters into an agency relationship must fulfill the duties of advocacy, fidelity, loyalty and other fiduciary duties associated with a single agency relationship. In circumstances where the Broker may not be able to fulfill the duties imposed on an agent the Broker should consider whether the agency arrangement is appropriate, consult with the Broker's supervising Broker and act accordingly.

This Position Statement applies to relationships where Brokers are working with landlords or tenants, as well as sellers and buyers. It applies equally to residential and commercial transactions.

CP-32 Commission Position on Brokerage Disclosures

(Adopted 9-8-04)

The Commission believes that a broker who intends to act as a buyer's or tenant's agent in a transaction should attempt to secure a written agency agreement as early in the brokerage relationship as possible. However, the Commission also recognizes that in some instances, the buyer or tenant will not immediately execute such a written agency agreement.

In these situations, the broker should initially function as a transaction-broker by either entering into:

BC 60: Exclusive Right-to-Buy Contract (All Types of Properties); or
LC 57: Exclusive Right-to-Lease Listing Contract (All Types of Properties; or
ETC 59: Exclusive Tenant Contract (All Types of Properties)

With any of the three forms the broker should check the box "Transaction-Brokerage" whereby only the brokerage services and duties contained in Section 4 of the agreement would apply; or present a buyer or tenant with BD24 Brokerage Disclosure to Buyer.

The broker may then engage as a transaction-broker and may perform any of the activities enumerated in section 12-61-101 (2), C.R.S., which are the acts of real estate brokerage.

However, **before** the broker begins to work as the buyer's or tenant's **agent** and advocate to secure the best possible price or lease rate and terms for the buyer or tenant, the parties must execute one of the above listed agreements with the "Agency" box checked. In an agency relationship the broker has the duties and responsibilities contained in Section 4 of the agreement, and the additional duties of an agent contained in Section 5 of the agreement.

CP-33 Joint Position Statement from the Division of Real Estate and Division of Insurance Concerning Application of the Good Funds Laws

Issued: July 10, 2002

I. Background and Purpose

The purpose for this bulletin is to clarify the Division of Insurance and the Division of Real Estate's position with respect to application of Colorado's good funds laws to real estate transactions involving regulated entities. In particular, there is confusion in the industry regarding reconciliation of § 38-35-125, C.R.S., Colorado's good funds laws, with Division of Insurance regulation 3-5-1(6)(F) and the current practice of disbursing cashier's checks drawn on a title entity's account, pursuant to instructions of the parties and in connection with closing a real estate transaction.

Bulletins are the agencies' interpretations of existing laws or general statements of policy. Bulletins themselves establish neither binding norms nor finally determine issues or rights.

II. Applicability and Scope

This bulletin concerns all title insurance entities and real estate licensees involved in real estate closings.

III. Position Statement

The good funds statute provides, in relevant part:

> *No person or entity that provides closing and settlement services for a real estate transaction shall disburse funds as a part of such services until those funds have been* ***received*** *and are either:* ***available for immediate withdrawal as a matter of right*** *from the financial institution in which the funds have been deposited; or available for immediate withdrawal as a consequence of an agreement of a financial institution in which the funds are to be deposited or a financial institution upon which the funds are to be drawn.*

§ 38-35-125(2), C.R.S. The same statute defines funds "available for immediate withdrawal as a matter of right" to include any wire transfer or any certified check, cashier's check or teller's check. Thus, a cashier's check or wired funds (most typically used) that have been received by the entity providing closing and settlement services are considered "good funds".

Division of Insurance regulation 3-5-1(6)(F) parallels § 38-35-125, C.R.S. and provides that "All title insurance entities shall comply with the 'good funds law'." In addition, Division of Insurance regulation 3-5-1(5)(A)(3) specifies that failure to comply with the good funds laws constitutes an unlawful inducement for the referral of title insurance business proscribed by § 10-11-108, C.R.S.

The federal courts interpreted Colorado's good funds laws in *Guardian Title v. Matrix*, 141 F.Supp.2d 1277 (D.Colo. 2001). The court held that good funds laws govern title entities that engage in closing and settlement services. *See id*. at 1279. Failure to comply with the good funds statute is a deceptive trade practice and violates insurance regulation 3-5-1. *See id*. at 1280-81. The court stated: "The Good Funds law was developed as a solution to 'the need to insure that the title company or other party responsible for real estate closings has 'good funds' **in hand** before closing the transactions'". *Id*. at 1281.

Based on the above, it is the position of the Division of Real Estate and Division of Insurance that Colorado's good funds law and insurance regulation 3-5-1(6)(F) require that a title entity must have good funds **"in hand"** (*e.g*., wired funds, certified check, cashier's check, tellers check) **before it disburses funds** as part of its settlement services.

Further, it is the position of the Division of Real Estate and Division of Insurance that a title company which withdraws funds from its account in the form of a cashier's check, but (1) maintains complete control and possession of the check; and (2) does not disburse (pay out)

until **delivery** and receipt of "good funds" relating to the specific transaction, complies with the good funds laws.

By way of example, it is common in a real estate transaction for funds to come to the closing from at least two sources, the buyer and the lender. It is also common for a seller to ask for closing proceeds in the form of a cashier's check, drawn on the title entity's account. Applying the 'good funds' law and insurance regulation 3-5-1, the title company could cause a cashier's check to be issued from its account and have the check available for the seller at closing. The title entity could not disburse to the seller until "good funds" were received or "in hand" from the buyer and lender. "In hand" means that a cashier's check has been received by the title entity or, in the case of a wire transfer, has been wired into the title entity's account.

Once the transaction closes and the cashier's check is paid to the seller, the title entity is responsible for immediately depositing the buyer's "good funds" into its account. If the transaction does not close, the title entity is responsible for immediately redepositing its cashier's check into its account. In that manner, no other customer of the title entity is harmed.

IV. For more information:

Division of Insurance
1560 Broadway, Suite 850
Denver CO 80202
Phone: 303-894-7499
Internet:
www.dora.state.co.us/insurance

Division of Real Estate
1560 Broadway, Suite 925
Denver CO 80202
Phone: 303-894-2166
Internet:
http://www.dora.state.co.us/real-estate

CP-34 Commission Position on Settlement Service Provider Selection, Closing Instructions and Earnest Money Deposits (revised 08/07/2012)

The Commission issues this position statement to clarify how settlement service providers are selected, when closing instructions must be completed by a real estate broker ("broker") and how earnest money is to be handled.

Selection of settlement service providers

Regardless of whether a broker is acting as a single agent or transaction broker, all brokers acting in their licensed capacities are required to advise their clients to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of the broker. See C.R.S. 12-61-804(1)(c)(V), 12-61-805(1)(c)(V), and 12-61-807(2)(b)(II). Expert advice includes, but is not limited to, the brokering of a mortgage, performing title searches and issuing insurance, appraising real property, surveying and issuing improvement location certificates, performing property inspections and other due diligence (including environmental) and practicing law (which also includes analyzing the legal implications of the foregoing). Brokers need to ensure that they perform the acts required by the real estate brokerage practice act, based on the capacity in which they have agreed to practice, i.e. as a single agent or transaction broker. A common standard of practice amongst brokers is to provide the names of three settlement services providers in a specific area of practice and allow the consumer to choose. The Commission understands that there are occasions when a broker cannot provide the names of three separate settlement service providers that practice in one specific area, but regardless of how many names may be provided, it is imperative that final selection of the settlement service provider be left to the consumer, not the broker.

Closing Instructions

The purpose of closing instructions is for the consumer to engage the company that will be responsible for ultimately closing the sales transaction. In most transactions, the company responsible for closing the transaction is a title company, although there are brokers that provide these services. As stated above, the consumer is responsible for the selection of settlement service providers, including the individual or company that performs the closing services. If the broker is performing the

closing services, including the preparation, delivery and recording of closing documents and the disbursement of funds, the broker is the "Closing Company" and thereby is responsible for completing the Commission-approved Closing Instructions at the time that the Contract to Buy and Sell Real Estate is executed by the buyer and seller. As required by Commission Rule E-4 and C.R.S. 12-61-113(i), the broker shall retain a copy of the Closing Instructions for future use or inspection by an authorized representative of the Real Estate Commission.

If a title company is engaged to perform the closing services, the Division of Insurance requires that a title entity provide closing and settlement services only when there are written instructions from all necessary parties. See Division of Insurance Rule 3-5-1. All amendments to existing written instructions with a title entity must also be in writing. If a title company is engaged to provide the closing services, it is the "Closing Company" and it is the responsibility of the title company to complete the closing instructions as required by the Division of Insurance. The broker should make a reasonable effort to obtain a copy of the closing instructions from the title entity for the broker's transaction file, to ensure compliance with Commission Rule E-4 and C.R.S. 12-61-113(i) as stated above.

Earnest Money Deposits

Commission Rule E-1(o) requires the selling broker to deliver the contract and the earnest money to the listing broker, unless the parties have otherwise agreed in writing. The listing broker is required to deposit the money in the broker's escrow or trust account in a recognized depository no later than the third business day following the day on which the broker receives notice of contract acceptance. If the selling broker receipts for a promissory note, or thing of value, such note or thing of value must be delivered with the contract to the listing broker to be held by the listing broker. Any check or note must be payable, or assigned, to the listing broker. Upon receipt of the earnest money, the listing broker must complete the Earnest Money Receipt as the Earnest Money Holder. A copy of the receipt must be retained by the broker to ensure compliance with Commission Rule E-4 and C.R.S. 12-61-113(i).

If the buyer and seller have agreed in writing that a third party or entity will hold the earnest money, the listing broker must deliver the earnest money to the third party or entity. The listing broker must obtain a dated and signed Earnest Money Receipt from the third party or entity upon delivery of the earnest money. For record keeping purposes, the broker must retain a copy of the Earnest Money Receipt and a copy of the earnest money check, note or other thing of value as required by Commission Rule E-4 and C.R.S. 12-61-113(i).

CP-35 Commission Position on Brokers as Principals

The Commission regularly receives public complaints regarding real estate transactions involving a licensed real estate broker acting as a principal. Predominantly these complaints allege that the broker, who is a principal to the transaction, and may or may not also be serving as a broker in the transaction, has failed to disclose an adverse material fact; has failed to disclose brokerage relationships (when acting as more than a principal); has failed to ensure that the contract documents and/or settlement statements accurately reflect the terms of the transaction; has filed a document that unlawfully clouds the title to the property; has failed to disclose the broker's licensed status; has mismanaged funds belonging to others; and/or has falsified information used for the purpose of obtaining financing.

The Commission reminds licensees that the Commission may investigate and discipline a license if a licensee is acting in the capacity of a principal in a real estate transaction and violations of the license law occur. The Commission's authority to investigate and impose discipline in these transactions was determined by the Colorado Court of Appeals. See *Seibel v. Colorado Real Estate Commission*, 34 Colo.App. 415, 530 P.2d 1290 (1974). The court's decision affirmed that licensed real estate brokers are subject to the real estate brokers licensing act and rules adopted by the Commission when they participate in real estate matters as principals. In such cases, licensees need to

be mindful of Rule E-25 (regarding conflict of interest and license status disclosures) and position statement CP-31 (regarding acting as a transaction broker).

CP-36 Commission Position on Minimum Service Requirements

The Commission has received numerous inquiries regarding the minimum services that brokers must provide to buyers or sellers of real property. §12-61-803, C.R.S. requires that any broker performing the activities requiring a real estate broker's license as set forth in §12-61-101(2), C.R.S., act in the capacity of either a transaction broker or a single agent in the transaction. The minimum duties required to be performed by a real estate broker acting in the capacity of a single agent are set forth in §§12-61-804 and 12-61-805, C.R.S. §12-61-804, C.R.S. Single agent engaged by seller or landlord states, in part:

(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.

§12-61-805, C.R.S. Single agent engaged by buyer or tenant states, in part:

(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.

The minimum duties required to be performed by a real estate broker acting in the capacity of a transaction broker are set forth in §12-61-807, C.R.S. which states, in part:

(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 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 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 a 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.

§12-61-803, C.R.S. allows real estate brokers to perform duties in addition to those established in §§12-61-804, 12-61-805 and 12-61-807, C.R.S. The additional duties may include, but are not limited to, holding open houses, property showings, providing a lockbox, use of multiple listing services or other information exchanges, etc. Additional services that brokers agree to provide their clients must be documented in writing. A broker is not allowed to solely perform "additional" services which require a real estate broker's license, i.e. offering the real property of another for sale through advertisements, without providing the minimum duties required by single agency or transaction brokerage. The Commission does not regulate the fees or commissions charged by brokers for minimum or additional services provided. Fees and commissions are negotiable between the broker and the principal.

CP-37 Commission Position on Survey and Lease Objections to the Contract to Buy and Sell Real Estate

The intention of the Commission in adopting the Contract to Buy and Sell Real Estate (CBS1-8-10 and the other versions of the Contract) is set forth below.

1. As background, under Section 8.1, Buyer has the right to object to title matters up to the **Title Objection Deadline**. Under Section 8.5, Seller has the obligation and right to use reasonable efforts to correct such objections and bear nominal expense prior to Closing. If any unsatisfactory title condition is not corrected prior to Closing, Buyer may either terminate the Contract or waive objection to any unsatisfactory title condition prior to Closing.
2. Under Section 8.2, if Buyer objects to any off-record matter on or before the **Off-Record Matters Objection Deadline**, the Contract will terminate. Seller has no right to cure such off-record matters. Seller does not have a right to cure any objection to existing surveys or leases under Section 8.2. Section 8.5 does not apply to objections under Section 8.2.
3. Under Section 7.3, Buyer may obtain a new, updated or recertified Survey (Current Survey) on or before the **Survey Deadline**. Current Surveys are different than existing surveys, surveys which are <u>not</u> current and which may be delivered to Buyer under Section 8.2 as an off-record matter; objections to existing surveys must be made on or before the **Off-Record Matters Objection Deadline**. Buyer may object to the Current Survey on or before the **Survey Objection Deadline**. If Buyer timely objects to the Current Survey, the Contract will terminate. Buyer's objection to the Current Survey is governed by Section 8.3.2, and Seller has no right to cure any objection to the Survey. Section 8.5 does not apply to objections under Section 8.3.2.
4. Under Sections 10.8.2 (Survey) and 10.8.3 (Leases) Buyer has a right to "terminate" the Contract. Seller has no right to cure any such objection. Section 8.5 does not apply to objections under Sections 10.8.2 and 10.8.3.

Conclusion: Buyer has a right terminate the Contract due to objections with any Survey (Existing or Current) or to any Lease. Seller has no right to cure any objection to the Survey or Lease (whether such objection is based on Section 7, 8 or 10 as Section 8.5 does not apply to Survey or Lease objections).

CP-38 Commission Position on Disclosure of Affiliated Business Arrangements and Conflicts of Interest (4-5-2011)

This statement supplements Rule E-46 Affiliated Business Arrangements. §12-61-113.2, C.R.S. *Affiliated Business Arrangements* was enacted in Colorado to provide transparency, accountability, and consumer protection through disclosure and consistency concerning affiliated business arrangements. Affiliated business arrangements have also been regulated for many years by the Real Estate Settlement Procedures Act (RESPA). RESPA was precipitated by significant reforms identified by Congress as necessary to ensure that consumers did not pay disproportionately high settlement costs as the result of certain deleterious business practices by settlement service providers. RESPA is applicable to any residential mortgage transaction involving a federally related mortgage loan. However, Colorado law requires disclosure of affiliated business arrangements to consumers even if the transaction does not involve a federally related residential mortgage loan.

Colorado law C.R.S. 12-61-113.2(1)(a) defines an "affiliated business arrangement" as an arrangement in which:

> *"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 the provider directly or indirectly refers business to the other provider or affirmatively influences the selection of another provider of settlement services.

It is the Commission's position that real estate brokers must disclose affiliated business arrangements to consumers in all transactions intended to result in the transfer of title from one party to another. RESPA requires that affiliated business arrangements be disclosed before or at the time a referral is made to a provider of settlement services. Colorado law requires a licensee to disclose any affiliated business arrangement when an offer to purchase real property is fully executed. In Colorado, the disclosure is required to be in writing, must be given to both agents and transaction brokers, must comply with RESPA and Colorado law, and must be made using the Federal RESPA disclosure form. Colorado law requires real estate brokers to disclose their affiliated business arrangements to all parties to the real estate transaction and all parties are expected to sign the disclosure form. The Commission recommends that real estate brokers disclose their affiliated business arrangements to the party with whom they are working early in their relationship, i.e. at the time brokerage relationships are disclosed or when the listing contract or buyer broker agreement is negotiated. In those transactions where the broker does not deal with another party until the time of contracting written disclosure should be made to all parties at the time the purchase contract is fully executed.

Additionally, real estate brokers are required to make certain disclosures to the Division of Real Estate regarding their affiliated business arrangements. Colorado law requires every licensee to disclose to the Commission when they enter into or change an affiliated business arrangement. All affiliated business arrangements to which the licensee is a party must be disclosed. Disclosure is required at the time of a new application for licensure or at the time of activation of an inactive license. The disclosure must include the physical location of the affiliated business. Employing brokers are required to disclose the names of all affiliated business arrangements to which the employing broker is a party on an annual basis, at the least. The disclosure must include the physical location of the affiliated businesses. The Commission has determined that these disclosures shall be made electronically through the Division of Real Estate's website at www.dora.state.co.us/pls/real/AFB_Web.Logon?p_div=REC.

It is the Commission's position that Rule E-25 *Continuing duty to disclose conflict of interest and license status*, applies to all licensees including real estate brokers who perform licensed property management services and are affiliated with businesses or vendors that provide services applicable to lease transactions. For example, a real estate broker acting on behalf of a landlord is required to disclose to the landlord that the real estate broker has partial ownership of the maintenance company

that the real estate broker utilizes for the landlord's property repairs. The Commission strongly recommends that this type of information be disclosed to the principal early in the business relationship, i.e. at the time brokerage relationships are disclosed or when the listing contract is negotiated. Additionally, this disclosure should be made in writing.

CP-39 Commission Position on Lease Options, Lease Purchase Agreements and Installment Land Contracts (4-5-2011)

The Commission recognizes that in order to maintain the resilience of the real estate market during times when conventional lending requirements are rigorous, alternative funding practices are utilized to sustain the market conditions of supply and demand. The Commission has received and investigated numerous complaints pertaining to lease options, lease purchase agreements and installment land contracts. Although the Commission does not have the authority to prohibit the types of real estate transactions that real estate brokers participate in, the Commission strongly cautions real estate brokers to utilize the services of an attorney licensed to practice law within the State of Colorado. It has been the Commission's observation, based on complaints received, that lease option and lease purchase transactions are complex and generally contain provisions with significant financial risk posed to the prospective buyer and seller. Installment land contracts and the other transactions mentioned in this position statement afford buyers the opportunity to take possession of the real property and make installment payments to the seller. There is a significant potential for harm to the seller, buyer or assignee if the installment land contract is not properly drafted. In all of the above transactions, the seller retains legal title to the property while the buyer may acquire equitable title. The Commission does not have an approved contract form necessary to memorialize the terms and nuances related to these complex transactions, or any jurisdictional regulations that may be germane. Pursuant to Rule F, the appropriate provisions of the license law and the brokerage relationship act (§§12-61-113, 12-61-804, 805 and 807, C.R.S.), real estate brokers are prohibited from drafting a contract document that would reflect the terms of such a transaction as it would exceed their level of competency and is a matter requiring the expertise and advice of an attorney. Additionally, such behavior may be construed as the unauthorized practice of law by the real estate broker and subject to civil penalties. The contracts for these transactions should not be prepared by a real estate broker; rather, the documents should be drafted by a licensed Colorado attorney-at-law engaged for each particular transaction.

CP-40 Commission Position on Teams (4-5-2011)

The Commission recognizes that there are benefits to both real estate brokers and consumers in the usage of real estate broker teams. Teams may be formed within a licensed brokerage firm with the approval of the employing broker. Real estate brokers operating as teams need to ensure that they are compliant with Commission rules regarding advertising, name usage and supervision.

Advertising and name usage:

While there is no prohibition of teams, real estate brokers need to ensure that they do not advertise in a manner that misleads the public as to the identity of the brokers' licensed brokerage. Real estate brokers that function as teams should not advertise teams using the terms "realty", "real estate", "company", "corporation", "corp.", "inc.", "LLC" or other similar language that would indicate a company other than the employing brokerage firm. Advertising includes, but is not limited to, websites, signage, property flyers, mailings, business cards, letterhead and contracts. The advertising of team names should never give the impression that the team is an entity separate from the licensed real estate brokerage. If the identity of the employing broker or the brokerage firm is difficult for the public or the Commission to ascertain, the team may be in violation of Rule E-8 Advertising.

Supervision:

In addition to the supervision requirements set forth in Rules E-31 and E-32, Rule E-30 Employing broker responsibilities requires that the broker designated to act as the broker for any partnership, limited liability company or corporation, i.e. the employing broker, fulfill the following duties:

1) Maintain all trust accounts and trust account records;
2) Maintain all transaction records;
3) Develop an office policy manual and periodically review office policies with all employees;
4) Provide for a high level of supervision for newly licensed persons pursuant to Rule-32;
5) Provide for a reasonable level of supervision for experienced licensees pursuant to Rule E-31;
6) Take reasonable steps to ensure that violations of statutes, rules and office policies do not occur or reoccur;
7) Provide for adequate supervision of all offices operated by the broker, whether managed by licensed or unlicensed persons.

Pursuant to §12-61-118, C.R.S. and Rule E-29, employing brokers are also responsible for providing supervision over such activities with reference to the licensing statutes and Commission rules for all brokerage employees, including but not limited to administrative assistants, bookkeepers and personal assistants of licensed employees. Thus, employing brokers are responsible for the actions of unlicensed persons who perform functions within the real estate broker team. Employing brokers need to ensure that any unlicensed person acting within the team is not engaged in practices that require a real estate broker's license. Employing brokers also need to establish that the compensation paid to an unlicensed person for services provided is not in the form of a commission. Compensation paid to an unlicensed person is not required to to be paid solely by the employing broker. However, §12-61-117, C.R.S. requires that all licensee compensation or valuable consideration for the performance of any acts requiring a broker's license is paid solely by the employing broker.

CP-41 Commission Position on Competency (December 6, 2011)

Pursuant to sections 12-61-804, 12-61-805 and 12-61-807, C.R.S., which are the laws that govern the duties of a real estate broker acting in the capacity of a single agent or transaction broker, real estate brokers are required to perform the terms of written or oral agreements they make with certain parties to a real estate transaction. Pursuant to sections 12-61-804 and 12-61-805, C.R.S., real estate brokers acting in the capacity of a single agent have a duty to promote the interests of their clients with the utmost good faith, loyalty, and fidelity. Pursuant to section 12-61-113(1)(n), C.R.S., it is a violation of the license law if a licensee demonstrates unworthiness or incompetency to act as a real estate broker by conducting business in such a manner as to endanger the interest of the public.

Prior to performing any acts that require a real estate broker's license, a broker should determine whether he or she possesses the knowledge, experience, and/or training necessary to perform the terms of the transaction and maintain compliance with the applicable federal, state or local laws, rules, regulations, or ordinances. If the broker does not have the requisite knowledge, experience and/or training necessary to consummate the terms of the agreement, the broker should either decline to provide brokerage services or seek the assistance of another real estate broker who does have the necessary experience, training, and/or knowledge. The Commission will have grounds to discipline a broker's license if a broker fails to take the measures necessary to gain competence and violations of the license law are substantiated.

CP-42 Commission Position on Apartment Building or Complex Management

The Commission recognizes that owners of apartment buildings or complexes will engage the services of real estate brokerages or unlicensed, on-site managers, or both. An "owner" includes

either a person or an entity recognized under Colorado law. The owner must have a controlling interest in the entity formed by the owner to manage the apartment building or complex. In the instance of an entity, the "owner" may form a separate entity to manage the apartment building or complex. The ownership entity and the entity formed by the owner to manage the apartment building or complex must be under the control of the same person or persons.

Pursuant to §12-61-101(2)(b)(XII), C.R.S., a regularly salaried employee of the owner of an apartment building or complex is permitted to perform customary duties for his or her employer without a real estate broker's license. The unlicensed, on-site manager must either report directly to the owner or to the real estate broker, if a real estate broker is engaged to manage the property. The Commission views the following to be customary duties of an unlicensed, on-site manager:

1. Performance of clerical duties, including gathering information about competing projects.
2. Obtain information necessary to qualify perspective tenants for a lease. This includes obtaining and verifying information regarding employment history, credit information, references and personal information as necessary.
3. Provide access to a property available for lease and distribute preprinted, objective information prepared by a broker as long as no negotiating, offering or contracting is involved.
4. Distribute preprinted, objective information at an on-site leasing office that is prepared by an owner or broker, as long as no negotiating, offering or contracting is involved.
5. Quote the rental price established by the owner or the owner's licensed broker.
6. Act as a scrivener to the owner or the broker for purposes of completing predetermined lease terms on preprinted forms as negotiated by the owner or broker.
7. Deliver paperwork to other brokers.
8. Deliver paperwork to landlords and tenants, if such paperwork has already been reviewed by the owner, or a broker or has been prepared in accordance with the supervising broker's instructions.
9. Collect and deposit rents and security deposits in accordance with the owner's lease agreement or the brokerage firm's written office policy.
10. Schedule property maintenance in accordance with the brokerage firm's management agreement or the owner's lease agreement.

If the owner has executed a Power of Attorney form or a written delegation of authority that authorizes the unlicensed, on-site manager to sign and execute leases on behalf of the owner, the unlicensed, on-site manager may execute those without possessing a real estate broker's license. Brokers supervising unlicensed, on-site managers with this authority are expected to review the executed documents to ensure compliance with lease terms, management agreements, local, state and federal laws, including the real estate brokerage practice act and Commission rules.

Employing brokers need to be especially aware of their supervisory duties under the license law. Supervisory duties apply whether the on-site manager is an employee or independent contractor of the broker or brokerage firm, or if the on-site manager is a regularly salaried employee of the apartment building or complex owner. The employing broker should have a written office policy explaining the duties, responsibilities and limitation on the use of on-site managers. This policy should be periodically reviewed with all employees.

Chapter 4:
Subdivision Laws

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

I. Jurisdiction of Commission

A. Introduction

The Subdivision Developer's Act affects the types of subdivisions that must be registered with the Commission. The following types of subdivisions within the State of Colorado, and subdivisions located outside the state if being offered for sale in Colorado, must be registered before offering, negotiating, or agreeing to sell, lease, or transfer any portion of the subdivision:

1. Any division of real property into 20 or more interests for residential use;
2. Subdivisions consisting of 20 or more time-share interests (a time share interest includes a fee simple interest, a leasehold, a contract to use, a membership agreement, or an interest in common);
3. Subdivisions consisting of 20 or more residential units created by converting an existing structure (*e.g.*, condominium conversions); and
4. Subdivisions created by cooperative housing corporations with 20 or more shareholders with proprietary leases, whether the project is completed or not.

B. Exempt from Registration under the Subdivision Developer's Act

1. The selling of memberships in campgrounds;
2. Bulk sales and transfers between developers;
3. Property upon which there has been or upon which there will be erected residential buildings that have not been previously occupied and where the consideration paid by the purchaser for such property includes the cost of such buildings (this does not apply to conversions, time share, or cooperative housing projects);
4. Lots that, at the time of closing of a sale or occupancy under a lease, are situated on a street or road and the street or road system is improved to standards at least equal to streets and roads maintained by the county, city, or town in which the lots are located; have a feasible plan to provide potable water and sewage disposal; and have telephone and electricity facilities and systems adequate to serve the lots, which facilities and systems are installed and in place on the lots or in a street, road, or easement adjacent to the lots and which facilities and systems comply with applicable state, county, municipal, or other local laws, rules, and regulations; or any subdivision that has been or is required to be approved after September 1, 1972 by a regional, county, or municipal planning authority pursuant to Article 28 of Title 30 or Article 23 of Title 31, C.R.S.; and
5. Sales by public officials in the official conduct of their duties.

C. Additional Provisions of the Subdivision Act

1. A registration expires December 31 unless renewed. A registration that has expired may be reinstated within two years after such expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of the Act. A subdivision developer is not authorized to transact business during the period between expiration of the registration and reinstatement.
2. The Act requires a *five-day cancellation period* after the execution of a contract, which right cannot be waived, and applies to any subdivision regulated pursuant to the Subdivision Act. This cancellation period runs until midnight on the fifth day following execution of the contract.
3. Any agreement or contract for the sale or lease of a subdivision or part thereof shall be voidable by the purchaser and unenforceable by the developer unless such developer was duly registered under the provisions of the Subdivision Act when such agreement or contract was made.

* II. Subdivision Statutes

§ 12-61-401, C.R.S. Definitions.

As used in this part 4, unless the context otherwise requires:

(1) "Commission" means the real estate commission established under section 12-61-105.

(2) "Developer" means any person, as defined in section 2-4-401 (8), C.R.S., which participates as owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision or any part thereof.

(2.5) "HOA" or "homeowners' association" means an association or unit owners' association formed before, on, or after July 1, 1992, as part of a common interest community as defined in section 38-33.3-103, C.R.S.

(3) (a) "Subdivision" means any real property divided into twenty or more interests intended solely for residential use and offered for sale, lease, or transfer.

(b) (I) The term "subdivision" also includes:

(A) The conversion of an existing structure into a common interest community of twenty or more residential units, as defined in article 33.3 of title 38, C.R.S.;

(B) A group of twenty or more time shares intended for residential use; and

(C) A group of twenty or more proprietary leases in a cooperative housing corporation, as defined in article 33.5 of title 38, C.R.S.

(II) The term "subdivision" does not include:

(A) The selling of memberships in campgrounds;

(B) Bulk sales and transfers between developers;

(C) Property upon which there has been or upon which there will be erected residential buildings that have not been previously occupied and where the consideration paid for such property includes the cost of such buildings;

(D) Lots which, at the time of closing of a sale or occupancy under a lease, are situated on a street or road and street or road system improved to standards at least equal to streets and roads maintained by the county, city, or town in which the lots are located; have a feasible plan to provide potable water and sewage disposal; and have telephone and electricity facilities and systems

adequate to serve the lots, which facilities and systems are installed and in place on the lots or in a street, road, or easement adjacent to the lots and which facilities and systems comply with applicable state, county, municipal, or other local laws, rules, and regulations; or any subdivision that has been or is required to be approved after September 1, 1972, by a regional, county, or municipal planning authority pursuant to article 28 of title 30 or article 23 of title 31, C.R.S.;

(E) Sales by public officials in the official conduct of their duties.

(4) "Time share" means a time share estate, as defined in section 38-33-110 (5), C.R.S., or a time share use, but the term does not include group reservations made for convention purposes as a single transaction with a hotel, motel, or condominium owner or association. For the purposes of this subsection (4), "time share use" means a contractual or membership right of occupancy (which cannot be terminated at the will of the owner) for life or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or specific or nonspecific segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the property has been divided.

§ 12-61-402, C.R.S. Registration required.

(1) Unless exempt under the provisions of section 12-61-401 (3), a developer, before selling, leasing, or transferring or agreeing or negotiating to sell, lease, or transfer, directly or indirectly, any subdivision or any part thereof, shall register pursuant to this part 4.

(2) Upon approval by the commission, a developer who has applied for registration pursuant to section 12-61-403 may offer reservations in a subdivision during the pendency of such application and until such application is granted or denied if the fees for such reservations are held in trust by an independent third party and are fully refundable.

§ 12-61-403, C.R.S. Application for registration.

(1) Every person who is required to register as a developer under this part 4 shall submit to the commission an application which contains the information described in subsections (2) and (3) of this section. If such information is not submitted, the commission may deny the application for registration. If a developer is currently regulated in another state that has registration requirements substantially equivalent to the requirements of this part 4 or that provide substantially comparable protection to a purchaser, the commission may accept proof of such registration along with the developer's disclosure or equivalent statement from the other state in full or partial satisfaction of the information required by this section. In addition, the applicant shall be under a continuing obligation to notify the commission within ten days of any change in the information so submitted, and a failure to do so shall be a cause for disciplinary action.

(2) (a) Registration information concerning the developer shall include:

(I) The principal office of the applicant wherever situate;

(II) The location of the principal office and the branch offices of the applicant in this state;

(III) Repealed.

(IV) The names and residence and business addresses of all natural persons who have a twenty-four percent or greater financial or ultimate beneficial interest in the business of the developer, either directly or indirectly, as principal, manager, member, partner, officer, director, or stockholder, specifying each such person's capacity, title, and percentage of ownership. If no natural person has a twenty-four percent or greater financial or beneficial interest in the business of the developer,

the information required in this subparagraph (IV) shall be submitted regarding the natural person having the largest single financial or beneficial interest.

(V) The length of time and the locations where the applicant has been engaged in the business of real estate sales or development;

(VI) Any felony of which the applicant has been convicted within the preceding ten years. In determining whether a certificate of registration shall be issued to an applicant who has been convicted of a felony within such period of time, the commission shall be governed by the provisions of section 24-5-101, C.R.S.

(VII) The states in which the applicant has had a license or registration similar to the developer's registration in this state granted, refused, suspended, or revoked or is currently the subject of an investigation or charges that could result in refusal, suspension, or revocation;

(VIII) Whether the developer or any other person financially interested in the business of the developer as principal, partner, officer, director, or stockholder has engaged in any activity that would constitute a violation of this part 4.

(b) If the applicant is a corporate developer, a copy of the certificate of authority to do business in this state or a certificate of incorporation issued by the secretary of state shall accompany the application.

(3) Registration information concerning the subdivision shall include:

(a) The location of each subdivision from which sales are intended to be made;

(b) The name of each subdivision and the trade, corporate, or partnership name used by the developer;

(c) Evidence or certification that each subdivision offered for sale or lease is registered or will be registered in accordance with state or local requirements of the state in which each subdivision is located;

(d) Copies of documents evidencing the title or other interest in the subdivision;

(e) If there is a blanket encumbrance upon the title of the subdivision or any other ownership, leasehold, or contractual interest that could defeat all possessory or ownership rights of a purchaser, a copy of the instruments creating such liens, encumbrances, or interests, with dates as to the recording, along with documentary evidence that any beneficiary, mortgagee, or trustee of a deed of trust or any other holder of such ownership, leasehold, or contractual interest will release any lot or time share from the blanket encumbrance or has subordinated its interest in the subdivision to the interest of any purchaser or has established any other arrangement acceptable to the real estate commission that protects the rights of the purchaser;

(f) A statement that standard commission-approved forms will be used for contracts of sale, notes, deeds, and other legal documents used to effectuate the sale or lease of the subdivision or any part thereof, unless the forms to be used were prepared by an attorney representing the developer;

(g) A true statement by the developer that, in any conveyance by means of an installment contract, the purchaser shall be advised to record the contract with the proper authorities in the jurisdiction in which the subdivision is located. In no event shall any developer specifically prohibit the recording of the installment contract.

(h) A true statement by the developer of the provisions for and availability of legal access, sewage disposal, and public utilities, including water, electricity, gas, and telephone facilities, in the subdivision offered for sale or lease, including whether such are to be a developer or purchaser expense;

(i) A true statement as to whether or not a survey of each lot, site, or tract offered for sale or lease from such subdivision has been made and whether survey monuments are in place;

(i.5) A true statement by the developer as to whether or not a common interest community is to be or has been created within the subdivision and whether or not such common interest community is or will be a small cooperative or small and limited expense planned community created pursuant to section 38-33.3-116, C.R.S.;

(j) A true statement by the developer concerning the existence of any common interest community association, including whether the developer controls funds in such association.

(3.5) The commission may disapprove the form of the documents submitted pursuant to paragraph (f) of subsection (3) of this section and may deny an application for registration until such time as the applicant submits such documents in a form that is satisfactory to the commission.

(4) Repealed.

(5) Each registration shall be accompanied by fees established pursuant to section 12-61-111.5.

§ 12-61-404, C.R.S. Registration of developers.

(1) The commission shall register all applicants who meet the requirements of this part 4 and provide each applicant so registered with a certificate indicating that the developer named therein is registered in the state of Colorado as a subdivision developer. The developer which will sign as seller or lessor in any contract of sale, lease, or deed purporting to convey any site, tract, lot, or divided or undivided interest from a subdivision shall secure a certificate before offering, negotiating, or agreeing to sell, lease, or transfer before such sale, lease, or transfer is made. If such person or entity is acting only as a trustee, the beneficial owner of the subdivision shall secure a certificate. A certificate issued to a developer shall entitle all sales agents and employees of such developer to act in the capacity of a developer as agent for such developer. The developer shall be responsible for all actions of such sales agents and employees.

(2) All certificates issued under this section shall expire on December 31 following the date of issuance. In the absence of any reason or condition under this part 4 that might warrant the denial or revocation of a registration, a certificate shall be renewed by payment of a renewal fee established pursuant to section 12-61-111.5. A registration that has expired may be reinstated within two years after such expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of this part 4.

(3) All fees collected under this part 4 shall be deposited in accordance with section 12-61-111.

(4) With regard to any subdivision for which the information required by section 12-61-403 (3) has not been previously submitted to the commission, each registered developer shall register such subdivision by providing the commission with such information before sale, lease, or transfer, or negotiating or agreeing to sell, lease, or transfer, any such subdivision or any part thereof.

§ 12-61-405, C.R.S. Refusal, revocation, or suspension of registration – letter of admonition – probation.

(1) The commission may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; may issue a letter of admonition; may place a registrant on probation under its close supervision on such terms and for such time as it deems appropriate; and may refuse, revoke, or suspend the registration of any developer or registrant if, after an investigation and after notice and a hearing pursuant to the provisions of section 24-4-104, C.R.S., the commission determines that the developer or any director, officer, or stockholder with controlling interest in the corporation:

(a) Has used false or misleading advertising or has made a false or misleading statement or a concealment in his application for registration;

(b) Has misrepresented or concealed any material fact from a purchaser of any interest in a subdivision;

(c) Has employed any device, scheme, or artifice with intent to defraud a purchaser of any interest in a subdivision;

(d) Has been convicted of or pled guilty or nolo contendere to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing in any court;

(e) Has disposed of, concealed, diverted, converted, or otherwise failed to account for any funds or assets of any purchaser of any interest in a subdivision or any homeowners' association under the control of such developer or director, officer, or stockholder;

(f) Has failed to comply with any stipulation or agreement made with the commission;

(g) Has failed to comply with or has violated any provision of this article, including any failure to comply with the registration requirements of section 12-61-403, or any lawful rule or regulation promulgated by the commission under this article;

(h) (Deleted by amendment, L. 89, p. 740, § 17, effective July 1, 1989.)

(i) Has refused to honor a buyer's request to cancel a contract for the purchase of a time share or subdivision or part thereof if such request was made within five calendar days after execution of the contract and was made either by telegram, mail, or hand delivery. A request is considered made if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller's place of business. No developer shall employ a contract that contains any provision waiving a buyer's right to such a cancellation period.

(j) Has committed any act that constitutes a violation of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(k) Has employed any sales agent or employee who violates the provisions of this part 4;

(*l*) Has used documents for sales or lease transactions other than those described in section 12-61-403 (3) (f);

(m) Has failed to disclose encumbrances to prospective purchasers or has failed to transfer clear title at the time of sale, if the parties agreed that such transfer would be made at that time.

(1.5) A disciplinary action relating to the business of subdivision development taken by any other state or local jurisdiction or the federal government shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of registration, under this part 4. This subsection (1.5) shall apply only to such disciplinary actions as are substantially similar to those set out as grounds for disciplinary action or denial of registration under this part 4.

(2) Any hearing held under this section shall be in accordance with the procedures established in sections 24-4-105 and 24-4-106, C.R.S.

(2.5) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the commission, does not initially 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 registrant who is the subject of the complaint or investigation and a copy thereof to any person making such complaint. Such letter shall advise the registrant that he has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated against him 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.

(3) 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.

§ 12-61-406, C.R.S. Powers of commission – injunction – rules.

(1) The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this part 4, 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 therefor. 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.

(1.2) The commission may apply to a court of competent jurisdiction for the appointment of receiver if it determines that such appointment is necessary to protect the property or interests of purchasers of a subdivision or part thereof.

(1.5) The commission shall issue or deny a certificate or additional registration within sixty days from the date of receipt of the application by the commission. The commission may make necessary investigations and inspections to determine whether any developer has violated this part 4 or any lawful rule or regulation promulgated by the commission. If, after an application by a developer has been submitted pursuant to section 12-61-403 or information has been submitted pursuant to section 12-61-404, the commission determines that an inspection of a subdivision is necessary, it shall complete the inspection within sixty days from the date of filing of the application or information, or the right of inspection is waived and the lack thereof shall not be grounds for denial of a registration.

(1.6) The commission, the director for the commission, or the administrative law judge appointed for a hearing 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. Any such subpoena shall be served in the same manner as for subpoenas issued by district courts.

(2) The commission has the power to make any rules necessary for the enforcement or administration of this part 4.

(2.5) The commission shall adopt, promulgate, amend, or repeal such rules and regulations as are necessary to:

(a) Require written disclosures to any purchasers as provided in subsection (3) of this section and to prescribe and require that standardized forms be used by subdivision developers in connection with the sale or lease of a subdivision or any part thereof, except as otherwise provided in section 12-61-403 (3) (f); and

(b) Require that developers maintain certain business records for a period of at least seven years.

(3) The commission may require any developer to make written disclosures to purchasers in their contracts of sale or by separate written documents if the commission finds that such disclosures are necessary for the protection of such purchasers.

(4) The commission or its designated representative may audit the accounts of any homeowner association the funds of which are controlled by a developer.

§ 12-61-407, C.R.S. Violation – penalty.

Any person who fails to register as a developer in violation of this part 4 commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any agreement or contract for the sale or lease of a subdivision or part thereof shall be voidable by the purchaser and unenforceable by the

developer unless such developer was duly registered under the provisions of this part 4 when such agreement or contract was made. (*Ed Note: Effective July 1,1993, a class 6 felony is punishable by a minimum one year and maximum eighteen months imprisonment. (18-1.3-401 (1) (a) (V) (A), C.R.S.) The minimum fine is $1,000.00; the maximum $100,000.00. (18-1.3-401 (1) (a)(III)(A), C.R.S.))*

§ 12-61-408, C.R.S. Repeal of part.

This part 4 is repealed, effective July 1, 2017. Prior to such repeal, the provisions in this part 4 shall be reviewed as provided for in section 24-34-104, C.R.S.

* III. Rules and Regulations for Subdivision Developers

Adopted, and Published by the

COLORADO REAL ESTATE COMMISSION

Approved by the Attorney General and the Executive Director of the Department of Regulatory Agencies.

In pursuance of and in compliance with Title 12, Article 61, C.R.S. 1973, as amended, and in pursuance of and in compliance with Title 24, Article 4, C.R.S. 1973. as amended.

S-1. The Registration and Certification of Subdivision Developers under Title 12, Article 61, Part 4, C.R.S. does not exempt the subdivision developer from the requirements for the licensing of real estate brokers under Title 12, Article 61, Part 1, C.R.S. Exemptions from the licensing of real estate brokers are made only under 12-61-101(4) C.R.S.

S-2. The person, firm, partnership, joint venture, limited liability company, association, corporation or other legal entity, or combination thereof, who will sign as seller or lessor in any contract of sale, lease or on any deed purporting to convey any site, tract, lot or divided or undivided interest from a subdivision, as defined in 12-61-401(3) C.R.S., must secure a Subdivision Developer's Certificate before negotiating or agreeing to sell, lease or transfer and before any sale, lease or transfer is made. If such person is acting only as a trustee, the beneficial owner of the Subdivision must secure a Subdivision Developer's Certificate.

S-3. If an applicant is a corporation, the individual applying on behalf of the corporation shall be an officer or director authorized to apply on behalf of said corporation.

S-4. If the applicant is a partnership, one of the general partners of the partnership shall apply on behalf of the partnership.

S-5. If the applicant is a joint owner of the subdivision, such applicant may apply on behalf of all joint owners of such subdivision.

S-6. If the applicant is a limited liability company, one of the managers or member-managers shall apply on behalf of the company.

S-7. The Real Estate Commission shall issue a certificate, refuse certification or demand further information within sixty (60) days from the date or receipt of the application by the Commission.

S-8. If additional information is required by the Real Estate Commission, the Commission shall give written notice in detail of the information so required and shall allow an additional sixty (60) days to present such material before cancellation of the application, which period may be extended only upon showing of good cause.

S-9. Repealed.

S-10. Repealed.

S-11. Notification must be made to the Real Estate Commission within 10 days of any change in the principal office address of the developer or the natural person.

S-12. Pursuant to 12-61-405 C.R.S., any subdivision developer who has received written notification from the Commission that a complaint has been filed against the developer, shall submit a written answer to the Commission within a reasonable time set by the Commission.

S-13. Repealed.

S-14. Failure to submit any written response required by S-12 shall be grounds for disciplinary action unless the Commission has granted an extension of time or, unless such answer would subject such person to a criminal penalty.

S-15. Records as required under Title 12, Article 61, Parts 1-8 C.R.S. and rules promulgated by the Commission, may be maintained in electronic format. An electronic record as defined in 24-71.7-103 C.R.S. means a record generated, communicated, received, or stored by electronic means. Such electronic records must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the Commission, or by any principal party to a transaction, printed records shall be produced.

S-16. Repealed.

S-17. In compliance with 12-61-403 the applicant for a subdivision developer's certificate shall provide the Commission with the following information concerning the subdivision(s) to be registered:

(a) The address or actual physical location of each subdivision from which sales are intended to be made.

(b) Copies of a recorded deed or other documents evidencing the title or other interest in the subdivision and a title commitment, policy or report, abstract and opinion, or other evidence acceptable to the Commission documenting the condition of such title or interest.

(c) Sample copies of contracts of sale, notes, deeds and other legal documents prepared by the developer or an attorney representing the developer which are to be used to effectuate the sale or lease. The Commission may disapprove the form of the documents submitted and may deny an application for registration until such time as the applicant submits such documents in a form that is satisfactory to the Commission.

(d) In compliance with 12-61-403(3)(e) C.R.S., a subdivision developer of time share use projects shall submit to the Commission a "Nondisturbance Agreement" by which the holder of a blanket encumbrance against the project agrees that its rights in the time share use project shall be subordinate to the rights of the purchasers. From and after the recording of a nondisturbance agreement, the person executing the same, such person's successors and assigns, and any person who acquires the property through foreclosure or by deed in lieu of foreclosure of the blanket encumbrance, shall take the time share use project subject to the rights of purchasers. Every nondisturbance agreement shall contain the covenant of the holder of the blanket encumbrance that such person or any other person acquiring through such blanket encumbrance shall not use or cause the time share use project to be used in a manner which would prevent the purchasers from using and occupying the time share use project in a manner contemplated by the time share use plan. Any other "trust" or "escrow" arrangement which fully protects the purchasers' interest in the project as contemplated by 12-61-403(3)(e) C.R.S. will be approved by the Real Estate Commission.

(e) If the developer of a subdivision is other than a natural person, proof of registration in accordance with state and local requirements shall accompany the application.

(f) Copies of the recorded declaration, covenants, filed articles of incorporation and bylaws of any owners association.

S-18. Repealed (1-1-95)

S-19. Repealed (1-1-95)

S-20. Pursuant to 12-61-403(3)(e) C.R.S. where a subdivision developer receives cash or receivables from a purchaser for an uncompleted project, the Commission will register such developer only after:

(a) The developer establishes an escrow account, with an independent escrow agent, of all funds and receivables received from purchasers: or,

(b) The developer obtains a letter of credit or bond payable to an independent escrow agent or any other financial arrangement, the purpose of which is to ensure completion of accommodations and facilities and to protect the purchaser's interest in the accommodations and facilities.

S-21. A subdivision developer shall furnish to the Commission such additional information as the Commission shall from time to time deem necessary for the enforcement of Title 12, Article 61, Part four C.R.S.

S-22. Renewal of the registration and certification as a subdivision developer can be executed only on the renewal application provided by the Commission accompanied by the proper fees by December 31st of each year.

S-23. Pursuant to 12-61-406(2.5)(a) C.R.S. and 12-61-406(3) C.R.S., subdivision developers shall supply the following information to the Commission in addition to the requirements of 12-61-403 C.R.S. and 404(4) C.R.S. and prior to contracting with the public shall disclose to prospective purchasers in the sales contract or in a separate written disclosure document, the following:

(a) The name and address of the developer and of the subdivision lots or units;

(b) An explanation of the type of ownership or occupancy rights being offered;

(c) A general description of all amenities and accommodations. The description must include the specific amenities promised, ownership of such amenities, the projected completion date of any amenities to be constructed, and a statement setting forth the type of financial arrangements established in compliance with Rule S-20;

(d) In compliance with 12-61-405(1)(i), a statement in bold print immediately prior to the purchaser's signature line on the sales contract disclosing the rescission right available to purchasers and that the rescission right cannot be waived; the minimum allowable rescission period in Colorado is five days;

(e) A general description of all judgments and administrative orders issued against the seller, developer, homeowners association or managing entity which are material to the subdivision plan;

(f) Any taxes or assessments, existing or proposed, to which the purchaser may be subject or which are unpaid at the time of contracting, including obligations to special taxing authorities or districts;

(g) A statement that sales will be made by brokers licensed by the State of Colorado unless specifically exempted pursuant to C.R.S. 12-61-101(4) and the sales contract shall disclose the name of the real estate brokerage firm and the name of the broker establishing a brokerage relationship with the developer;

(h) When a separate document is used to make any of the disclosures required in this Rule S-23, this statement must appear in bold print on the first page of the document and preceding the disclosure: **The State of Colorado has not prepared or issued this document nor has it passed on the merits of the subdivision described herein**;

(i) A statement that all funds paid by the purchaser prior to delivery of deed will be held in trust by the licensed real estate broker named in the contract or a clear statement specifically setting forth who such funds shall be delivered to, when such delivery will occur, the use of said funds and whether or not there is any restriction on the use of such funds (This must be disclosed in contract);

(j) A statement that immediately following the date of closing, the purchaser's deed will be delivered to the Clerk and Recorder's office for recording or a clear statement specifically setting forth when such delivery will occur; for the purposes of this Rule, the date of closing is defined as the date the purchaser has either paid the full cash purchase price or has made partial cash payment and executed a promissory note or other evidence of indebtedness for the balance (See Rule S-30) (This must be disclosed in the contract);

(k) A statement that a title insurance policy, at no expense to the purchaser, will be delivered within sixty days following recording of deed unless specifically agreed to the contrary in the contracting instrument (See Rule S-31) (This must be disclosed in contract);

(*l*) Where an installment contract is used:

(i.) Whether or not the purchaser's deed is escrowed with an independent escrow agent and if so the name and address of the escrow agent (This must be disclosed in contract);

(ii.) The amount of any existing encumbrance(s), the name and address of the encumbrancer, and the conditions, if any, under which a purchaser may cure a default caused by non-payment;

(iii.) A clear statement that a default on any underlying encumbrance(s) could result in the loss of the purchaser's entire interest in the property; and

(iv.) A clear statement advising the purchaser to record the installment contract.

(v.) Pursuant to 12-61-403(3)(e) C.R.S., an agreement by which the holder of any blanket encumbrance against the project agrees that its rights and the rights of its successors or assigns in the project shall be subordinate to the rights of purchasers, or any other "trust", "escrow" or release arrangement which fully protects the purchasers' interest in the project.

(m) The provisions for and availability of legal access, roads, sewage disposal, public utilities, including water, electricity, gas, telephone and other promised facilities in the subdivision, and whether these are to be an expense of the developer, the purchaser or a third party;

(n) If the subdivision has a homeowners or similar association:

(i.) Whether membership in such association is mandatory;

(ii.) An estimate of association dues and fees which are the responsibility respectively of the purchaser and the developer;

(iii.) A description of the services provided by the association;

(iv.) Whether the developer has voting control of the association and the manner in which such control can or will be transferred; and

(v.) Whether the developer has any financial interest in or will potentially derive any income or profit from such association, including the developer's right to borrow or authorize borrowing from the association.

(o) In addition to the disclosures in (a) through (n) above, if sales are to be made from a time share project as defined in 12-61-401(4):

(i.) A description of the time share units including the number of time share units, the length and number of time share interests in each unit, and the time share periods constituting the time share plan;

(ii.) The name and business address of the managing entity under the time share plan, a description of the services that the managing entity will provide, and a statement as to whether the developer has any financial interest in or will

potentially derive any income or profit from such managing entity, and the manner, if any, by which the purchaser or developer may change the managing entity or transfer the control of the managing entity;

(iii.) An estimate of the dues, maintenance fees, real property taxes and similar periodic expenses which are the responsibility respectively of the purchaser and the developer and a general statement of the conditions under which future changes or additions may be imposed. Such estimate will include a statement as to whether a maintenance reserve fund has been or will be established; the manner in which such reserve fund is financed if not cash funded; an accounting of any outstanding obligations either in favor of or against the fund; the developer's right to borrow or authorize borrowing from the fund; and the method of periodic accounting which will be provided to the purchaser;

(iv.) A description of any insurance coverage provided for the benefit of purchasers; and

(v.) That mechanic's liens law may authorize enforcement of the lien by selling the entire time share unit.

(p) In addition to the disclosures in (a) through (o) above, if sales are to be made from a time share use project as defined in 12-61-401(4):

(i.) The specific term of the contract to use and what will happen to a purchaser's interest upon termination of said contract;

(ii.) A statement as to the effect a voluntary sale, by the developer to a third party, will have on the contractual rights of time share owners;

(iii.) A statement that an involuntary transfer by bankruptcy of the developer may have a negative effect on the rights of the time share owners; and

(iv.) A statement that a Federal tax lien could be enforced against the developer by compelling the sale of the entire time share project.

(q) If time shares, as defined in 12-61-401(4), are to be sold from a subdivision which: (1) contains two or more component sites situated at different geographic locations or governed by separate sets of declarations, by-laws or equivalent documents; and (2) does not include, subject to agreed upon rules and conditions, a guaranteed, recurring right of use or occupancy at a single component site:

(i) For each component site, the information and disclosures required by Rule S-23(a) through (p);

(ii) A general description of the subdivision;

(iii) For each term of usage or interest offered for sale, the total annual number of available daily use periods within the entire subdivision and within each component site for that term, regardless of whether such use periods are offered to a purchaser by days, weeks, points or otherwise, and a calculation represented on a chart or grid showing each component site's annual daily use periods as a percentage of the entire subdivision's annual daily use periods;

(iv) A clear description in the sales contract of the interest and term of usage being purchased and a definite date of termination of the purchaser's interest in the subdivision, which date will be not later than the termination date of the subdivision's interest in a specifically identified component site;

(v) A clear disclosure and description of any component site which is not legally guaranteed to be available for the purchaser's use, subject to the by-laws and rules of the subdivision, for the full term of the purchaser's usage interest;

(vi) The system and method in place to assure maintenance of no more than a one-to-one ratio of purchasers' use rights to the number of total use rights in the subdivision for each term of usage being offered for sale, including provisions for compensation to purchasers resulting from destruction of a component site or loss of use rights to any component site;

(vii) Whether the developer maintains any type of casualty insurance for the component sites in addition to that maintained by the site owners association or other interested parties, including the manner of disposition of any proceeds of such insurance resulting from the destruction or loss of use rights to any component site;

(viii) A description of the system or program by which a purchaser obtains a recurring right to use and occupy accommodations and facilities in any component site through use of a reservation system or otherwise, including any restrictions on such rights or any method by which a purchaser is denied an equal right with all other users to obtain the use of any accommodation in the subdivision;

(ix) A description of the management and ownership of such reservation system or program, whether through the developer, an owners association, a club or otherwise, including the purchaser's direct or indirect ownership interest or rights of control in such reservation system;

(x) Whether the developer, club or association which controls the reservation system or any other person has or is granted any interest in unsold, non-reserved or unused use rights and whether the developer, club, association or other person may employ such rights to compete with purchasers for use of accommodations in the subdivision or any component site and, if so, the nature and specifics of those rights, including the circumstances under which they may be employed;

(xi) The method and frequency of accounting for any income derived from unsold, non-reserved or unused use rights in which the purchaser, either directly or indirectly, has an interest;

(xii) The system and method in place, including business interruption insurance or bonding, to provide secure back-up or replacement of the reservation system in the event of interruption, discontinuance or failure;

(xiii) The amount and details of any component site, reservation system or other periodic expense required to be paid by a purchaser, the name of the person or entity to which such payments shall be made, and the method by which the purchaser shall receive a regular periodic accounting for such payments;

(xiv) If component site expenses are included in those periodic payments made by a purchaser, a statement for each component site from the owners association or other responsible agency acknowledging that payment of such expenses as taxes, insurance, dues and assessments are current and are being made in the name of the subdivision;

(xv) Evidence that an escrow system with an independent escrow agent is in place for receipt and disbursement of all moneys collected from purchasers that are necessary to pay such expenses as taxes, insurance and common expenses and assessments owing to component site owners associations or others or a clear description of the method by which such funds will be paid, collected, held, disbursed and accounted for;

(xvi) A clear statement in the sales contract as to whether a purchaser's rights, interests or terms of usage for any component site within the subdivision can subsequently

be modified from those terms originally represented and a description of the method by which such modification may occur;

(xvii) If the subdivision documents allow additions or substitutions of accommodations or component sites, a clear description of the purchaser's rights and obligations concerning such additions or substitutions and the method by which such additions or substitutions will comply with the provisions of this rule;

(xviii) A clear description of any existing incidental benefits or amenities which are available to the purchaser at the time of sale but to which the purchaser has no guaranteed right of recurring use or enjoyment during the purchaser's full term of interest in the subdivision.

S-24. A time share developer shall disclose to the public whether or not a time share plan involves an exchange program and, if so, shall disclose and deliver to prospective purchasers, a separate written document, which may be provided by an exchange company if the document discloses the following information:

(a) The name and the business address of the exchange company;

(b) Whether the purchaser's contract with the exchange program is separate and distinct from the purchaser's contract with the time share developer;

(c) Whether the purchaser's participation in the exchange program is dependent upon the time share developer's continued affiliation with the exchange program;

(d) Whether or not the purchaser's participation in the exchange program is voluntary;

(e) The specific terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes, if any, may be made in the terms and conditions of such contractual relationship;

(f) The procedure of applying for and effecting changes;

(g) A complete description of all limitations, restrictions, accrual rights, or priorities employed in the operation of the exchange program, including but not limited to limitations on exchanges based on seasonability, unit size, or levels of occupancy; and if the limitations, restrictions or priorities are not applied uniformly by the exchange program, a complete description of the manner of their application;

(h) Whether exchanges are arranged on a space-available basis or whether guarantees of fulfillment of specific requests for exchanges are made by the exchanging company;

(i) Whether and under what conditions, a purchaser may, in dealing with the exchange program, lose the use and occupancy of the time share period in any properly applied for exchange without being offered substitute accommodations by the exchange program;

(j) The fees for participation in the exchange program, whether the fees may be altered and the method of any altering;

(k) The name and location of each accommodation or facility, including the time sharing plans participating in the exchange program.

S-25. All approvals for the use of reservation agreements issued pursuant to 12-61-402(2) C.R.S. shall expire on December 31 following the date of issuance. Approval shall be renewed, except as provided in section 12-61-405 C.R.S., by payment of a renewal fee established pursuant to section 12-61-111.5 and completion of a renewal application.

S-26. Upon request of the Commission pursuant to an investigation, a subdivision developer shall file with the Real Estate Commission an audited financial statement in conformity with accepted accounting principles, and sworn to by the developer as an accurate reflection of the financial condition of the developer and/or the owners association controlled by the developer.

S-27. Any adverse order, judgment, or decree entered in connection with the subdivided lands by any regulatory authority or by any court of appropriate jurisdiction shall be filed with the Real Estate Commission by the developer within thirty (30) days of such order, judgment or decree being final.

S-28. (a) A subdivision developer is not required to file amendments to its registration filed with the Real Estate Commission when revisions are made to documents previously submitted to the Commission so long as the revised documents continue to (i) comply with title 12, article 61, part 4 C.R.S. and the rules and regulations promulgated thereunder; and (ii) to reflect accurately the subdivision offering.

(b) Notwithstanding the above, and in addition to the notice requirements under ruleS-11 and rule S-27, subdivision developers shall provide the Commission with notice of the following events within ten (10) days after such event, unless otherwise provided below:

(1) A change in the information provided in the registration pursuant to sections 12-61-403 (2)(a)(iv), (vi), (vii) or (viii) C.R.S.;

(2) A change in the terms of any non-disturbance agreements or partial release provisions in connection with any documents previously submitted to the Commission pursuant to section 12-61-403 (3)(e) C.R.S. and rule S-17 (d);

(3) Any new lien encumbering the subdivision or any part thereof other than encumbrances created or permitted by purchasers;

(4) The termination or transfer of any escrow account, letter of credit, bond, or other financial assurance approved by the Commission pursuant to rule S-20, notice of which shall be filed with the Commission prior to the effective date of such termination or transfer;

(5) Cancellation, revocation, suspension, or termination of the subdivision developer's authority to do business in this state; and

(6) Any lis pendens, lawsuit or other proceeding filed against the subdivision or subdivision developer affecting the subdivision developer's ability (i) to convey marketable title to the registered subdivision or any interest therein or (ii) to perform the subdivision developer's obligations in connection with the registered subdivision.

(c) Notification under this rule S-28 shall be made on a form approved by the Commission. The subdivision developer shall have a period of ten (10) days after receipt of notice to take such action as may be required by the Commission in connection with any filings made under this rule S-28.

(d) Within ten (10) days after receipt of a written request from the Commission, a subdivision developer shall have the duty to provide to the Commission copies of all documents then in use at the subdivision.

S-29. No subdivision developer shall make misrepresentations regarding future availability or costs of services, utilities, character and/or use of real property for sale or lease of the surrounding area.

S-30. (a) Unless sale is by means of an installment contract the delivery of deed shall be made within sixty days after closing. For the purposes of this Rule, the date of closing is defined as the date the purchaser has either paid the full cash purchase price or has made partial cash payment and executed a promissory note or other evidence of indebtedness for the balance (This must be disclosed in the contract).

(b) If sale is by means of an installment contract, the delivery of deed shall be made within sixty days after completion of payments. A contract which requires the execution of a promissory note or other evidence of indebtedness that accrues interest and/or requires

payments prior to the recording of a deed shall be deemed to be an installment contract pursuant to 12-61-403(3)(g) C.R.S. and Commission S-23.

S-31. An abstract of title or title insurance policy shall be delivered within a reasonable time after completion of payments by a purchaser. Any period of time exceeding sixty days shall be deemed unreasonable for purposes of this rule. The parties may contract to eliminate this requirement, but such waiver must be in writing and in a conspicuous manner and/or print. The presence of waiver on the back of a contract shall not be deemed conspicuous for purposes of this rule.

S-32. All developers shall provide a title insurance commitment or other evidence of title approved by the Commission within a reasonable time after execution of any contract to purchase. Any period of time in excess of ninety (90) days shall be deemed unreasonable for purposes of this rule. This requirement may be waived by the parties in writing if the waiver is made in a conspicuous manner and/or print. The presence of the waiver on the back of a contract shall not be deemed conspicuous for purposes of this rule.

S-33. Declaratory Orders

1. Any person [1] may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission.

   [1] refers to existing definition of "person" in APA, rule or statute, if any.

2. The Commission will determine, in its discretion and without prior notice to the petitioner, whether to rule upon any such petition. If the Commission determines it will not rule upon such a petition, the Commission shall issue its written order disposing of the same, stating therein its reasons for such action. A copy of such order shall forthwith be transmitted to the petitioner.

3. In determining whether to rule upon a petition filed pursuant to this rule, the Commission will consider the following matters, among others:

   (a) whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Commission;

   (b) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission;

   (c) whether the petition involves any subject, question or issue which is the subject of a formal matter or investigation currently pending before the Commission or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission and in which petitioner may intervene;

   (d) whether the petition seeks a ruling on a moot or hypothetical question and will result in merely an advisory ruling or opinion;

   (e) whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

4. Any petition filed pursuant to this rule shall set forth the following:

(a) the name and address of the petitioner and whether the petitioner is licensed pursuant to C.R.S. 1973, 12-61-401, *et seq.*

(b) the statute, rule or order to which the petition relates;

(c) a concise statement of all the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

5. If the Commission determines that it will rule on the petition, the following procedures shall apply:

(a) the Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:

(1) any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition;

(2) the Commission may order the petitioner to file a written brief, memorandum or statement of position;

(3) the Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing;

(4) the Commission may dispose of the petition on the sole basis of the matters set forth in the petition;

(5) the Commission may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition;

(6) the Commission may take administrative notice of facts pursuant to the Administrative Procedure Act (C.R.S. 1973, 24-4-105(8)) and utilize its experience, technical competence and specialized knowledge in the disposition of the petition;

(7) if the Commission rules upon the petition without a hearing, it shall issue its written order, stating therein its basis for the order. A copy of such order shall forthwith be transmitted to the petitioner.

(b) The Commission may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to petitioner and any other facts the petitioner desires the Commission to consider.

6. The parties to any proceeding pursuant to this rule shall be the Commission and the petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition to intervene shall set forth the same matters as required by section 4 of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Commission.

7. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to C.R.S. 1973, 24-4-106.

S-34. Repealed.

S-35. Failure to disclose to subdivision purchasers the availability of legal access, sewage disposal, public utilities, including water, electricity, gas and telephone facilities in the subdivision and at whose expense, when proven, is a violation of C.R.S. 12-61-405(1) (b). (Statement of Basis and Purpose as adopted by the Real Estate Commission on October 5, 1988.)

S-36. Pursuant to 12-61-405(1)(e) C.R.S., 12-61-406(2.5) (b) C.R.S. and 12-61-406(4) C.R.S., a developer shall maintain in a Colorado place of business, and produce for inspection upon reasonable request by an authorized representative of the Commission, copies of the following documents and business records:

(1) The sales contract, transfer or lease agreement, installment sale agreement, financing agreement, buyer and seller settlement statement, title policy or commitment, trust deed, escrow agreement, and other documents executed by the parties or on behalf of the developer in the sale, lease or transfer of any interest in a subdivision.

(2) Records showing the receipt and disbursement of any money or assets received or paid on behalf of any homeowner or similar association managed or controlled by a developer.

* IV. Licensee's Responsibilities

A real estate licensee cannot be expected to be completely familiar with all county and municipal planning laws, regulations, ordinances, and zoning requirements. However, the licensee in negotiations should be very much aware of the existence of these laws, ordinances, zoning requirements, etc. It is very easy to misrepresent property through ignorance. If uninformed, the licensee should seek the information from the proper source before making a representation, or refer prospective clients to the proper source of the information.

Some facts should be known to the licensee through reading or logic, such as:

1. The sale of a portion of a seller's land divides the land into two parcels and a subdivision is created that must be approved by the proper authorities.
2. If a structure is suitable for conversion into a duplex and/or a four-plex, it does not in itself mean that such a conversion does not violate the law.
3. If an area is zoned for keeping horses, it does not necessarily follow that the acreage of the property is great enough for this purpose.
4. Even if an area is zoned for a home business, there may be a prohibition against having employees. Other complexities may also arise through various branches of local government involving utilities existent and future utilities. Representations concerning future services, zoning variances, etc. may endanger both the public and the licensee.

The following may also be subdivisions under county planning laws: the conversion of an existing building into a common interest community complex or the division of a single condominium unit into "time shares" or "interval estates." These are subdivisions as defined in § 12-61-401(3), C.R.S., and are subject to the registration requirements of §§ 12-61-401, *et seq.*, C.R.S.

A stock cooperative or cooperative housing corporation is defined in this chapter, and in Colorado is considered a subdivision of real estate. The sale of these "apartments" is accomplished by transfer of a stock certificate, together with a proprietary lease. In most

states, the sale of the stock, together with the lease, would be considered the sale of a security and would fall under the jurisdiction of the division of securities. In Colorado, such sales are exempt from the Securities Act and are declared real estate (see §§ 38-33.5-101, *et seq.*, C.R.S., printed in this chapter). Therefore, such cooperatives must be registered as subdivisions, and the sale of the stock and proprietary leases must be performed by licensed real estate brokers. The act also provides that commercial banks and savings and loan associations may make a first mortgage loan on the stock and proprietary lease of each "apartment" owner.

* V. Municipal Planning and Zoning Laws

Sections 31-23-101 through -313, C.R.S., address municipal planning and zoning in incorporated areas of the state. A "subdivision" also is defined as a division of a parcel of land into two or more parcels. The definition includes condominiums, apartments, and multiple-dwelling units.

Sections 31-23-201, *et seq.*, C.R.S., authorize the creation of a municipal planning commission, which must make or adopt a master plan that, among other things, includes a zoning plan. This planning commission has all the powers of a zoning commission.

The zoning commission must approve subdivisions. Developers who sell land from an unapproved subdivision are subject to a financial penalty, and the zoning commission may also enjoin any such sale. Note that even though the Subdivision Act, in § 12-61-402(2), C.R.S., allows for the use of a reservation agreement prior to final approval by the Real Estate Commission, the developer should check with the municipality regarding the use of reservation agreements. The governing body of a municipality provides for the appointment of a board of adjustment that hears appeals made from any ordinance or order of any administrative official. This board may grant variances from an ordinance or reverse an order.

* VI. County Planning Laws

In addition to the provisions of the Subdivision Act, jurisdiction concerning the use of land within Colorado also falls within the powers of the county commissioners of each county. The county commissioners have the authority to enact zoning law for un-incorporated areas, and many counties have done so. Prior to surveying and offering subdivided property, a developer or real estate licensee should contact the county planning and zoning department regarding compliance with the county's requirements.

In regard to a county commissioner's jurisdiction, §§ 30-28-101 through -209, C.R.S., define a subdivision as any parcel of land that is divided into two or more parcels, separate interests, or interests in common. "Interests" means interests in surface land or in the air above the surface of the land, but excludes sub-surface interests. Divisions of land that create parcels of 35 acres or more and of which none is intended for use by multiple owners are exempt.

Condominiums, apartments, and multiple dwellings are included in the definition, unless they had been previously included in a filing with substantially the same density.

Subdivisions must submit the following information to the county authorities before sales within the subdivision are made:

1. Survey and ownership;
2. Site characteristics, such as topography;
3. A plat showing the plan of development and plan of the completed development;
4. Estimates of the water and sewage requirements, streets, utilities, and related facilities and estimated construction cost;
5. Evidence to ensure an adequate supply of potable water; and
6. Dedication of areas for public facilities.

Upon request of a complete preliminary plan, copies will be distributed to 10 interested public agencies for recommendations. An approved plat must be recorded before any lots are sold.

No plat will be approved until the subdivision has submitted a subdivision improvement contract agreeing to construct the required improvements, accompanied by collateral sufficient to ensure completion of the improvements.

The county commissioners must approve a final plat of the subdivision before it can be filed and recorded. Violations by a subdivider or agent of a subdivider are punishable by a fine of up to $1,000 for each parcel sold or offered for sale by a subdivider or agent of a subdivider. A sale made before a final plat is approved is considered prima facie evidence of a fraudulent sale and is grounds for the purchaser voiding the sale. The county commissioners also have the power to bring an action to enjoin any subdivider from offering to sell undivided land before a final plat has been approved.

* VII. Special Types of Subdivisions

A. Condominiums as Subdivisions

"Estates above the surface" may be created in areas above the surface of the ground, and title to such "air rights" may be conveyed separate from title to the surface of the ground.

It follows that a division of air rights is a subdivision under county planning laws. A declaration must be recorded with the county and must be approved by county authorities. The declaration must provide for the recording of a map properly locating the condominium units. It is similar to the filing of a plat of surface land insofar as it describes each unit. The division however, is a division of the air space.

The conversion of an existing building into a condominium complex or the division of a single condominium unit into "time shares" or "interval estates" also may be a subdivision under county planning laws, and are considered a subdivision as defined in § 12-61-401(3), C.R.S., and subject to the registration requirements of §§ 12-61-401, *et seq.*, C.R.S.

* VIII. Condominium Ownership Act – Referenced in Chapter 5, Common Interest Communities, pages 5-6 to 5-12

* IX. Colorado Common Interest Ownership Act – Referenced in Chapter 5, Common Interest Communities, pages 5-12 to 5-53

* X. Management of the Common Interest Community – Referenced in Chapter 5, Common Interest Communities, pages 5-53 to 5-75

* XI. Cooperative Housing Corporations

§ 38-33.5-101, C.R.S. Method of formation – purpose.

Cooperative housing corporations may be formed by any three or more adult residents of this state associating themselves to form a cooperative or nonprofit corporation, pursuant to article 55, 56, or 58 of title 7, C.R.S., or the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S. The specified purpose of the entity must be to provide each stockholder in or member of the entity with the right to occupy, for dwelling purposes, a house or an apartment in a building owned or leased by the entity.

§ 38-33.5-102, C.R.S. Requirements for articles of incorporation of cooperative housing corporations.

(1) In addition to any other requirements for articles of incorporation imposed by the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., such articles of incorporation shall, in the case of cooperative housing corporations, include the following provisions:

(a) That the corporation shall have only one class of stock outstanding;

(b) That each stockholder is entitled, solely by reason of his ownership of stock in the corporation, to occupy, for dwelling purposes, a house or an apartment in a building owned or leased by the corporation;

(c) That the interest of each stockholder in the corporation shall be inseparable from and appurtenant to the right of occupancy, and shall be deemed an estate in real property for all purposes, and shall not be deemed personal property;

(d) That no stockholder is entitled to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation.

§ 38-33.5-103, C.R.S. Provisions relating to taxes, interest, and depreciation on corporate property.

(1) The bylaws of a cooperative housing corporation shall provide that no less than eighty percent of the gross income of the corporation in any taxable year shall be derived from payments from tenant-stockholders. For the purposes of this article, "tenant-stockholder" means an individual who is a stockholder in the corporation and whose stock is fully paid when measured by his proportionate share of the value of the corporation's equity in the property.

(2) The bylaws shall further provide that each tenant-stockholder shall be credited with his proportionate payment of real estate taxes paid or incurred in any year on the buildings and other improvements owned or leased by the corporation in which the tenant-stockholder's living quarters are located, together with the land to which such improvements are appurtenant, and likewise with respect to interest paid or incurred by the corporation as well as depreciation on real and personal property which are proper deductions related to the said lands and improvements thereon for purposes of state and federal income taxation.

§ 38-33.5-104, C.R.S. Financing of cooperative housing – stock certificates held by tenant stockholders.

Stock certificates or membership certificates issued by cooperative housing corporations to tenant-stockholders shall be valid securities for investment by savings and loan associations, when the conditions imposed by section 11-41-119 (13), C.R.S., are met.

§ 38-33.5-105, C.R.S. Provisions to be included in proprietary lease or right of tenancy issued by corporation.

(1) Every stockholder of a cooperative housing corporation shall be entitled to receive from the corporation a proprietary lease or right of tenancy document which shall include the following provisions:

   (a) That no sublease in excess of one year, amendment, or modification to such proprietary lease or right of tenancy in the property shall be permitted or created without the lender's prior written consent; and

   (b) That the security for a loan against the tenant-stockholder's interest shall be in the nature of a real property security interest, and any default of such loan shall entitle the lender to treat such default in the same manner as a default of a loan secured by real property.

§ 38-33.5-106, C.R.S. Exemption from securities laws.

Any stock certificate or other evidence of membership issued by a cooperative housing corporation as an investment in its stock or capital to tenant-stockholders of such corporation is exempt from securities laws contained in article 51 of title 11, C.R.S.

Chapter 5:
Common Interest Communities

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

* I. HOA Information and Resource Center

* The HOA Information and Resource Center ("Office") was created in 2010 by the Colorado Legislature, pursuant to HB10-1278, as codified in §12-61-406.5(1), C.R.S., effective January 1, 2011. The Office is organized within the Division of Real Estate under the Department of Regulatory Agencies ("DORA").

* The Office collects information via registrations directly from unit owners' associations ("HOAs") and from inquiries and complaints filed by unit owners. The Office provides education, assistance and information to unit owners, HOA boards, declarants and other interested parties concerning their rights and responsibilities as enumerated in the Colorado Common Interest Ownership Act ("CCIOA"), § 38-33.3-101, C.R.S., *et. seq.*

* The HOA Information Officer administers the Office, and reviews, analyzes, and reports the data and information compiled in an Annual Report to the Director of the Division of Real Estate, pursuant to § 12-61-406.5(3)(c), C.R.S.

* II. HOA Registration

* Every unit owners' association shall register annually with the Director of the Division of Real Estate and shall submit with its annual registration and basic association information, a fee in the amount set by the Director of the Division of Real Estate. The association must complete an initial registration and renew their registration on an annual basis, as well as updating any relevant information within ninety (90) days of any change, as per § 38-33.3-401, C.R.S.

* As part of the registration process, associations indicate whether they collect over $5,000. Associations that collect greater than $5,000 in annual dues are required to pay the annual registration fee. Associations that are not authorized to make assessments and do not have any revenue, or that collect $5,000 or less in annual revenue are not required under the statute to pay the registration fee, however, this provision does not absolve any such association from still registering.

* Section 38-33.3-401(3), C.R.S., states that the right of an association that fails to register, or whose annual registration has expired, to impose or enforce a lien for assessments under § 38-33.3-316 C.R.S., or to pursue an action or employ an enforcement mechanism otherwise available to it under § 38-33.3-123 C.R.S., is suspended until the association is validly registered. A lien for assessments previously recorded during a period in which the association was validly registered or before registration was required is not extinguished by a lapse in the association's registration, but a pending enforcement proceeding related to the lien is suspended, and an applicable time limit is tolled, until the association is validly registered. An association's registration in compliance with the statute revives a previously suspended right without penalty to the association.

* III. HOA Statutes

§ 12-61-401, C.R.S. Definitions. – Referenced in Chapter 4 Subdivision Laws, pages 4-2to 4-3.

§ 12-61-406.5, C.R.S. HOA information and resource center – creation – duties – rules – cash fund – repeal.

(1) There is hereby created, within the division of real estate, the HOA information and resource center, the head of which shall be the HOA information officer. The HOA information officer shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution.

(2) The HOA information officer shall be familiar with the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., also referred to in this section as the "act". No person who is or, within the immediately preceding ten years, has been licensed by or registered with the division of real estate or who owns stocks, bonds, or any pecuniary interest in a corporation subject in whole or in part to regulation by the division of real estate shall be appointed as HOA information officer. In addition, in conducting the search for an appointee, the executive director of the division of real estate shall place a high premium on candidates who are balanced, independent, unbiased, and without any current financial ties to an HOA board or board member or to any person or entity that provides HOA management services. After being appointed, the HOA information officer shall refrain from engaging in any conduct or relationship that would create a conflict of interest or the appearance of a conflict of interest.

* (3) (a) The HOA information officer shall act as a clearing house for information concerning the basic rights and duties of unit owners, declarants, and unit owners' associations under the act by:

* (I) Compiling a database about registered associations, including the name; address; email address, if any; web site, if any; and telephone number of each;

* (II) Coordinating and assisting in the preparation of educational and reference materials, including materials to assist unit owners, executive boards, board members, and association managers in understanding their rights and responsibilities with respect to:

* (A) Open meetings;

* (B) Proper use of executive sessions;

* (C) Removal of executive board members;

* (D) Unit owners' right to speak at meetings of the executive board;

* (E) Unit owners' obligation to pay assessments and the association's rights and responsibilities in pursuing collection of past-due amounts; and

* (F) Other educational or reference materials that the HOA information officer deems necessary or appropriate;

* (III) Monitoring changes in federal and state laws relating to common interest communities and providing information about the changes on the division of real estate's web site; and

* (IV) Providing information, including a "frequently asked questions" resource, on the division of real estate's web site.

* (b) The HOA information officer may:

* (I) Employ one or more assistants as may be necessary to carry out his or her duties; and

* (II) Request certain records from associations as necessary to carry out the HOA information officer's duties as set forth in this section.

* (c) The HOA information officer shall track inquiries and complaints and report annually to the director of the division of real estate regarding the number and types of inquiries and complaints received.

(4) The operating expenses of the HOA information and resource center shall be paid from the HOA information and resource center cash fund, which fund is hereby created in the state treasury. The fund shall consist of annual registration fees paid by unit owners' associations and collected by the division of real estate pursuant to section 38-33.3-401, C.R.S. Interest earned on moneys in the fund shall remain in the fund, and any unexpended and unencumbered moneys in the fund at the end of any fiscal year shall not revert to the general fund or any other fund. Payments from the fund shall be subject to annual appropriation.

(5) The director of the division of real estate may adopt rules as necessary to implement this section and section 38-33.3-401, C.R.S. This subsection (5) shall not be construed to confer additional rule-making authority upon the director for any other purpose.

(6) This section is repealed, effective September 1, 2020. Prior to such repeal, the HOA information and resource center and the HOA information officer's powers and duties under this section shall be reviewed in accordance with section 24-34-104, C.R.S.

* ***§ 12-61-406.7, C.R.S. Study of comparable HOA information and resource centers – recommendations – report – repeal.***

* (1) (a) The director of the division of real estate or his or her designee shall conduct a study of the functions and duties of other states' HOA offices, including:

* (I) The Nevada office of the ombudsman for owners in common-interest communities and condominium hotels, or its successor office;

* (II) The Virginia office of the common interest community ombudsman, or its successor office; and

* (III) The Florida office of the condominium ombudsman, or its successor office.

* (b) The study of other states' HOA offices must include an assessment of the structure, costs, funding, and success of the following functions and duties if performed by any of the other states' HOA offices:

* (I) Filing, investigation, verification, and resolution of complaints;

* (II) Offering to mediate complaints;

* (III) Mandating mediation of complaints;

* (IV) Referring disputes arising between or among unit owners, executive boards or boards of directors, board members, and association managers to alternative dispute resolution services;

* (V) Providing unit owners with an expedited and inexpensive administrative hearing process specific to HOA-related disputes;

* (VI) With regard to HOA elections:

* (A) Monitoring and reviewing of an HOA's procedures and any election-related disputes that arise;

* (B) Reporting of alleged election-related misconduct; and

* (C) When requested by a threshold number of voting interests in an HOA, appointing an election monitor to conduct the HOA's election;

* (VII) Determining a per-unit fee upon which to calculate HOA registration fees;

* (VIII) Providing regulatory oversight over declarant-controlled boards to ensure that the boards are complying with:

* (A) Their fiduciary duties to the association;

* (B) The requirements of the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., relating to transition;

* (IX) Providing regulatory oversight to protect executive boards, directors, homeowners, and residents from threats or defamatory conduct arising in relation to HOA matters; and

* (X) Any other relevant HOA function or duty that the director of the division of real estate or his or her designee deems necessary to study.

* (c) With respect to any functions listed in paragraph (b) of this subsection (1) that would be provided on an individual basis, including mediation services, alternative dispute resolution referrals, and elections monitoring, the director of the division of real estate or his or her designee shall determine:

* (I) The number of times per year that the function is provided in each other state providing the function;

* (II) Whether the other states providing the function:

* (A) Directly charge the parties utilizing the function and, if so, how the other states determine the amount to charge the parties and the apportionment of the amount between the parties; and

* (B) Include the cost of the function in the HOA registration fees charged to all HOAs paying a registration fee and, if so, how the other states determine the amount to charge each HOA for the function.

* (d) If any of the duties and functions listed in paragraph (b) of this subsection (1) are not performed by any other state's HOA office, the director of the division of real estate or his or her designee shall present a plan that includes:

* (I) An assessment of the need for the duty or function;

* (II) A plan for implementing the duty or function; and

* (III) A projection of the costs to perform the duty or function.

* (e) On or before December 31, 2013, the director of the division of real estate or his or her designee shall prepare a report of the findings and conclusions of the study and shall present the report, including his or her recommendations based on the study and a review of Colorado's experience, to the business, labor, economic, and workforce development committee of the house of representatives and the local government committee of the senate, or their successor committees, during the second regular session of the sixty-ninth general assembly.

* (2) This section is repealed, effective July 1, 2014.

* ***§ 38-12-601, C.R.S. Unreasonable restrictions on electric vehicle charging systems – definitions. – Referenced in Chapter 21Property Management and Leases, pages 21-25 to 21-27.***

§ 38-33.3-401, C.R.S. Registration – annual fees.

* (1) Every unit owners' association shall register annually with the director of the division of real estate, in the form and manner specified by the director.

* (2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), the unit owners' association shall submit with its annual registration a fee in the amount set by the director

in accordance with section 12-61-111.5, C.R.S., and shall include the following information, updated within ninety days after any change:

* (I) The name of the association, as shown in the Colorado secretary of state's records;

* (II) The name of the association's management company, managing agent, or designated agent, which may be the association's registered agent, as shown in the Colorado secretary of state's records, or any other agent that the executive board has designated for purposes of registration under this section;

* (III) The physical address of the HOA;

* (IV) A valid address; email address, if any; web site, if any; and telephone number for the association or its management company, managing agent, or designated agent; and

* (V) The number of units in the association.

* (b) A unit owners' association is exempt from the fee, but not the registration requirement, if the association:

* (I) Has annual revenues of five thousand dollars or less; or

* (II) Is not authorized to make assessments and does not have revenue.

* (3) A registration is valid for one year. The right of an association that fails to register, or whose annual registration has expired, to impose or enforce a lien for assessments under section 38-33.3-316 or to pursue an action or employ an enforcement mechanism otherwise available to it under section 38-33.3-123 is suspended until the association is validly registered pursuant to this section. A lien for assessments previously recorded during a period in which the association was validly registered or before registration was required pursuant to this section is not extinguished by a lapse in the association's registration, but a pending enforcement proceeding related to the lien is suspended, and an applicable time limit is tolled, until the association is validly registered pursuant to this section. An association's registration in compliance with this section revives a previously suspended right without penalty to the association.

* (4) (a) A registration is valid upon the division of real estate's acceptance of the information required by paragraph (a) of subsection (2) of this section and the payment of applicable fees.

* (b) An association's registration number, and an electronic or paper confirmation issued by the division of real estate, are prima facie evidence of valid registration.

* (c) The director of the division of real estate's final determinations concerning the validity or timeliness of registrations under this section are subject to judicial review pursuant to section 24-4-106 (11), C.R.S.; except that the court shall not find a registration invalid based solely on technical or typographical errors.

IV. Condominium Ownership Act

Title 38, Article 33, C.R.S. – Condominium Ownership Act

Also see Colorado Common Interest Ownership Act in Part V of this chapter

Note: The portions printed below are only those portions of the old condominium act that pertain to timeshare and conversion projects and that are still in place. This Condominium Act was *superseded* by the Colorado Common Interest Ownership Act July 1, 1992.

§ 38-33-101, C.R.S. Short title.

This article shall be known and may be cited as the "Condominium Ownership Act".

§ 38-33-102, C.R.S. Condominium ownership recognized.

Condominium ownership of real property is recognized in this state. Whether created before or after April 30, 1963, such ownership shall be deemed to consist of a separate estate in an individual air space unit of a multi-unit property together with an undivided interest in common elements. The separate estate of any condominium owner of an individual air space unit and his common ownership of such common elements as are appurtenant to his individual air space unit by the terms of the recorded declaration are inseparable for any period of condominium ownership that is prescribed by the recorded declaration. Condominium ownership may exist on land owned in fee simple or held under an estate for years.

§ 38-33-103, C.R.S. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Condominium unit" means an individual air space unit together with the interest in the common elements appurtenant to such unit.

(2) "Declaration" is an instrument recorded pursuant to section 38-33-105 and which defines the character, duration, rights, obligations, and limitations of condominium ownership.

(3) Unless otherwise provided in the declaration or by written consent of all the condominium owners, "general common elements" means: The land or the interest therein on which a building or buildings are located; the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of such building or buildings; the basements, yards, gardens, parking areas, and storage spaces; the premises for the lodging of custodians or persons in charge of the property; installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, central air conditioning, and incinerating; the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; such community and commercial facilities as may be provided for in the declaration; and all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

(4) "Individual air space unit" consists of any enclosed room or rooms occupying all or part of a floor or floors in a building of one or more floors to be used for residential, professional, commercial, or industrial purposes which has access to a public street.

(5) "Limited common elements" means those common elements designated in the declaration as reserved for use by fewer than all the owners of the individual air space units.

§ 38-33-104, C.R.S. Assessment of condominium ownership.

Whenever condominium ownership of real property is created or separate assessment of condominium units is desired, a written notice thereof shall be delivered to the assessor of the county in which said real property is situated, which notice shall set forth descriptions of the condominium units. Thereafter all taxes, assessments, and other charges of this state or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each condominium unit, each of which shall be carried on the tax books as a separate and distinct parcel for that purpose and not on the building or property as a whole. The valuation of the general and limited common elements shall be assessed proportionately upon the individual air space unit in the manner provided in the declaration. The lien for taxes assessed to any individual condominium owner shall be confined to his condominium unit and to his undivided interest in the general and limited common elements. No forfeiture or sale of any condominium unit for delinquent taxes, assessments, or charges shall divest or in any way affect the title of other condominium units.

§ 38-33-105, C.R.S. Recording of declaration — certain rules and laws to apply.

(1) The declaration shall be recorded in the county where the condominium property is located. Such declaration shall provide for the filing for record of a map properly locating condominium units. Any instrument affecting the condominium unit may legally describe it by the identifying condominium unit number or symbol as shown on such map. If such declaration provides for the disposition of condominium units in the event of the destruction or obsolescence of buildings in which such units are situate and restricts partition of the common elements, the rules or laws known as the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall not be applied to defeat or limit any such provisions.

(2) To the extent that any such declaration contains a mandatory requirement that all condominium unit owners be members of an association or corporation or provides for the payment of charges assessed by the association upon condominium units or the appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence, any rule of law to the contrary notwithstanding, the same shall be considered as covenants running with the land binding upon all condominium owners and their successors in interest. Any common law rule terminating agency upon death or disability of a principal shall not be applied to defeat or limit any such provisions.

§ 38-33-105.5, C.R.S. Contents of declaration.

(1) The declaration shall contain:

(a) The name of the condominium property, which shall include the word “condominium” or be followed by the words “a condominium”;

(b) The name of every county in which any part of the condominium property is situated;

(c) A legally sufficient description of the real estate included in the condominium property;

(d) A description or delineation of the boundaries of each condominium unit, including its identifying number;

(e) A statement of the maximum number of condominium units that may be created by the subdivision or conversion of units in a multiple-unit dwelling owned by the declarant;

(f) A description of any limited common elements;

(g) A description of all general common elements;

(h) A description of all general common elements which may be conveyed to any person or entity other than the condominium unit owners;

(i) A description of all general common elements which may be allocated subsequently as limited common elements, together with a statement that they may be so allocated, and a description of the method by which the allocations are to be made;

(j) An allocation to each condominium unit of an undivided interest in the general common elements, a portion of the votes in the association, and a percentage or fraction of the common expenses of the association;

(k) Any restrictions on the use, occupancy, or alienation of the condominium units;

(*l*) The recording data for recorded easements and licenses appurtenant to, or included in, the condominium property or to which any portion of the condominium property is or may become subject;

(m) Reasonable provisions concerning the manner in which notice of matters affecting the condominium property may be given to condominium unit owners by the association or other condominium unit owners; and

(n) Any other matters the declarant deems appropriate.

(2) This section shall apply to any condominium ownership of property created on or after July 1, 1983.

§ 38-33-106, C.R.S. Condominium bylaws — contents — exemptions.

(1) Unless exempted, the administration and operation of multi-unit condominiums shall be governed by the declaration.

(2) At or before the execution of a contract for sale and, if none, before closing, every initial bona fide condominium unit buyer shall be provided by the seller with a copy of the bylaws, with amendments, if any, of the unit owners' association or corporation, and such bylaws and amendments shall be of a size print or type to be clearly legible.

(3) The bylaws shall contain or provide for at least the following:

(a) The election from among the unit owners of a board of managers, the number of persons constituting such board, and that the terms of at least one-third of the members of the board shall expire annually; the powers and duties of the board; the compensation, if any, of the members of the board; the method of removal from office of members of the board; and whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board may be delegated by the board to either or both of them; however, the board when so delegating shall not be relieved of its responsibility under the declaration;

(b) The method of calling meetings of the unit owners; the method of allocating votes to unit owners; what percentage of the unit owners, if other than a majority, constitutes a quorum; and what percentage is necessary to adopt decisions binding on all unit owners;

(c) The election of a president from among the board of managers, who shall preside over the meetings of the board of managers and of the unit owners;

(d) The election of a secretary, who shall keep the minutes of all meetings of the board of managers and of the unit owners and who, in general, shall perform all the duties incident to the office of secretary;

(e) The election of a treasurer, who shall keep the financial records and books of account. The treasurer may also serve as the secretary.

(f) The authorization to the board of managers to designate and remove personnel necessary for the operation, maintenance, repair, and replacement of the common elements;

(g) A statement that the unit owners and their mortgagees, if applicable, may inspect the records of receipts and expenditures of the board of managers pursuant to section 38-33-107 at convenient weekday business hours, and that, upon ten days' notice to the manager or board of managers and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner;

(h) A statement as to whether or not the condominium association is a not for profit corporation, an unincorporated association, or a corporation;

(i) The method of adopting and of amending administrative rules and regulations governing the operation and use of the common elements;

(j) The percentage of votes required to modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws;

(k) The maintenance, repair, replacement, and improvement of the general and limited common elements and payments therefor, including a statement of whether or not such work requires prior approval of the unit owners' association or corporation when it would involve a large expense or exceed a certain amount;

(*l*) The method of estimating the amount of the budget; the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses and of any other expenses lawfully agreed upon; and a statement concerning the division, if any, of the assessment charge between general and limited common elements and the amount or percent of such division;

(m) A list of the services provided by the unit owners' association or corporation which are paid for out of the regular assessment;

(n) A statement clearly and separately indicating what assessments, debts, or other obligations are assumed by the unit owner on his condominium unit;

(o) A statement as to whether or not additional liens, other than mechanics' liens, assessment liens, or tax liens, may be obtained against the general or limited common elements then existing in which the unit owner has a percentage ownership;

(p) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the general and limited common elements as are designed to prevent unreasonable interference with the use of their respective units and said common elements by the several unit owners;

(q) Such restrictions on and requirements concerning the sale or lease of a unit including rights of first refusal on sale and any other restraints on the free alienability of the unit;

(r) A statement listing all major recreational facilities and to whom they are available and clearly indicating whether or not fees or charges, if any, in conjunction therewith, are in addition to the regular assessment;

(s) A statement relating to new additions of general and limited common elements to be constructed, including but not limited to:

(I) The effect on a unit owner in reference to his obligation for payment of the common expenses, including new recreational facilities, costs, and fees, if any;

(II) The effect on a unit owner in reference to his ownership interest in the existing general and limited common elements and new general and limited common elements;

(III) The effect on a unit owner in reference to his voting power in the association.

(4) Any declaration recorded on or after January 1, 1976, shall not conflict with the provisions of this section or bylaws made in accordance with this section. The requirements contained in paragraphs (k) to (s) of subsection (3) of this section need not be included in the bylaws if they are set forth in the declaration.

(5) This section shall not apply to:

(a) Commercial or industrial condominiums or any other condominiums not used for residential use;

(b) Condominiums of ten units or less;

(c) Condominiums established by a declaration recorded prior to January 1, 1976.

§ 38-33-107, C.R.S. Records of receipts and expenditures — availability for examination.

The manager or board of managers, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the general and limited common elements. Such records authorizing the payments shall be available for examination by the unit owners at convenient weekday business hours.

§ 38-33-108, C.R.S. Violations — penalty.

Any person who knowingly and willfully violates the provisions of section 38-33-106 or 38-33-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

§ 38-33-109, C.R.S. Unit owners' liability.

In any suit or arbitration against a condominium unit owners' association wherein damages are awarded or settlement is made, the individual unit owner's liability in his capacity as a percentage owner of the general or limited common elements or as a member of the condominium association shall not exceed the amount of damages or settlement multiplied by his percentage ownership in the general or limited common elements, as the case may be. In the case of incorporation by unit owners, their liability as stockholders shall be determined as any other corporate stockholder.

§ 38-33-110, C.R.S. Time-sharing – definitions.

As used in this section and section 38-33-111, unless the context otherwise requires:

(1) (a) "Interval estate" means a combination of:

(I) An estate for years terminating on a date certain, during which years title to a time share unit circulates among the interval owners in accordance with a fixed schedule, vesting in each such interval owner in turn for a period of time established by the said schedule, with the series thus established recurring annually until the arrival of the date certain; and

(II) A vested future interest in the same unit, consisting of an undivided interest in the remainder in fee simple, the magnitude of the future interest having been established by the time of the creation of the interval estate either by the project instruments or by the deed conveying the interval estate. The estate for years shall not be deemed to merge with the future interest, but neither the estate for years nor the future interest shall be conveyed or encumbered separately from the other.

(b) "Interval estate" also means an estate for years as described in subparagraph (I) of paragraph (a) of this subsection (1) where the remainder estate, as defined either by the project instruments or by the deed conveying the interval estate, is retained by the developer or his successors in interest.

(2) "Interval owner" means a person vested with legal title to an interval estate.

(3) "Interval unit" means a unit the title to which is or is to be divided into interval estates.

(4) "Project instruments" means the declaration, the bylaws, and any other set of restrictions or restrictive covenants, by whatever name denominated, which limit or restrict the use or occupancy of condominium units. "Project instruments" includes any lawful amendments to such instruments. "Project instruments" does not include any ordinance or other public regulation governing subdivisions, zoning, or other land use matters.

(5) "Time share estate" means either an interval estate or a time-span estate.

(6) "Time share owner" means a person vested with legal title to a time share estate.

(7) "Time share unit" means a unit the title to which is or is to be divided either into interval estates or time-span estates.

(8) "Time-span estate" means a combination of:

(a) An undivided interest in a present estate in fee simple in a unit, the magnitude of the interest having been established by the time of the creation of the time-span estate either by the project instruments or by the deed conveying the time-span estate; and

(b) An exclusive right to possession and occupancy of the unit during an annually recurring period of time defined and established by a recorded schedule set forth or referred to in the deed conveying the time-span estate.

(9) "Time-span owner" means a person vested with legal title to a time-span estate.

(10) "Time-span unit" means a unit the title to which is or is to be divided into time-span estates.

(11) "Unit owner" means a person vested with legal title to a unit, and, in the case of a time share unit, "unit owner" means all of the time share owners of that unit. When an estate is subject to a deed of trust or a trust deed, "unit owner" means the person entitled to beneficial enjoyment of the estate and not to any trustee or trustees holding title merely as security for an obligation.

§ 38-33-111, C.R.S. Special provisions applicable to time share ownership.

(1) No time share estates shall be created with respect to any condominium unit except pursuant to provisions in the project instruments expressly permitting the creation of such estates. Each time share estate shall constitute for all purposes an estate or interest in real property, separate and distinct from all other time share estates in the same unit or any other unit, and such estates may be separately conveyed and encumbered.

(2) Repealed.

(3) With respect to each time share unit, each owner of a time share estate therein shall be individually liable to the unit owners' association or corporation for all assessments, property taxes both real and personal, and charges levied pursuant to the project instruments against or with respect to that unit, and such association or corporation shall be liable for the payment thereof, except to the extent that such instruments provide to the contrary. However, with respect to each other, each time share owner shall be responsible only for a fraction of such assessments, property taxes both real and personal, and charges proportionate to the magnitude of his undivided interest in the fee to the unit.

(4) No person shall have standing to bring suit for partition of any time share unit except in accordance with such procedures, conditions, restrictions, and limitations as the project instruments and the deeds to the time share estates may specify. Upon the entry of a final order in such a suit, it shall be conclusively presumed that all such procedures, conditions, restrictions, and limitations were adhered to.

(5) In the event that any condemnation award, any insurance proceeds, the proceeds of any sale, or any other sums shall become payable to all of the time share owners of a unit, the portion payable to each time share owner shall be proportionate to the magnitude of his undivided interest in the fee to the unit.

§ 38-33-112, C.R.S. Notification to residential tenants.

(1) A developer who converts an existing multiple-unit dwelling into condominium units, upon recording of the declaration as required by section 38-33-105, shall notify each residential tenant of the dwelling of such conversion.

(2) Such notice shall be in writing and shall be sent by certified or registered mail, postage prepaid, and return receipt provided. Notice is complete upon mailing to the tenant at the tenant's last known address. Notice may also be made by delivery in person to the tenant of a copy of such written notice, in which event notice is complete upon such delivery.

(3) Said notice constitutes the notice to terminate the tenancy as provided by section 13-40-107, C.R.S.; except that no residential tenancy shall be terminated prior to the expiration date of the existing lease agreement, if any, unless consented to by both the tenant and the developer. If the term of the lease has less than ninety days remaining when notification is mailed or delivered, as the case may be, or if there is no written lease agreement, residential tenancy may not be terminated by the developer less than ninety days after the date the notice is mailed or

delivered, as the case may be, to the tenant, unless consented to by both the tenant and the developer. The return receipt shall be prima facie evidence of receipt of notice. If the term of the lease has less than ninety days remaining when notification is mailed or delivered, as the case may be, the tenant may hold over for the remainder of said ninety-day period under the same terms and conditions of the lease agreement if the tenant makes timely rental payments and performs other conditions of the lease agreement.

(4) The tenancy may be terminated within the ninety days prescribed in subsection (3) of this section upon agreement by the tenant in consideration of the payment of all moving expenses by the developer or for such other consideration as mutually agreed upon. Such tenancy may also be terminated within the ninety days prescribed in subsection (3) of this section upon failure by the tenant to make timely rental or lease payments.

(5) Any person who applies for a residential tenancy after the recording of the declaration shall be informed of this recording at the time of application, and any leases executed after such recording may provide for termination within less than ninety days provided that the terms of the lease conspicuously disclose the intention to convert the property containing the leased premises to condominium ownership.

(6) The general assembly hereby finds and declares that the notification procedure set forth in this section is a matter of statewide concern. No county, municipality, or other political subdivision whether or not vested with home rule powers under article XX of the Colorado constitution, shall adopt or enforce any ordinance, rule, regulation, or policy which conflicts with the provisions of this section.

§ 38-33-113, C.R.S. License to sell condominiums and time-shares.

The general assembly hereby finds and declares that the licensing of persons to sell condominiums and time shares is a matter of statewide concern.

V. Colorado Common Interest Ownership Act

§ 38-33.3-101, C.R.S. Short title.

This article shall be known and may be cited as the “Colorado Common Interest Ownership Act”.

§ 38-33.3-102, C.R.S. Legislative declaration.

(1) The general assembly hereby finds, determines, and declares, as follows:

(a) That it is in the best interests of the state and its citizens to establish a clear, comprehensive, and uniform framework for the creation and operation of common interest communities;

(b) That the continuation of the economic prosperity of Colorado is dependent upon the strengthening of homeowner associations in common interest communities financially through the setting of budget guidelines, the creation of statutory assessment liens, the granting of six months’ lien priority, the facilitation of borrowing, and more certain powers in the association to sue on behalf of the owners and through enhancing the financial stability of associations by increasing the association’s powers to collect delinquent assessments, late charges, fines, and enforcement costs;

(c) That it is the policy of this state to give developers flexible development rights with specific obligations within a uniform structure of development of a common interest community that extends through the transition to owner control;

(d) That it is the policy of this state to promote effective and efficient property management through defined operational requirements that preserve flexibility for such homeowner associations;

(e) That it is the policy of this state to promote the availability of funds for financing the development of such homeowner associations by enabling lenders to extend the financial services to a greater market on a safer, more predictable basis because of standardized practices and prudent insurance and risk management obligations.

§ 38-33.3-103, C.R.S. Definitions.

As used in the declaration and bylaws of an association, unless specifically provided otherwise or unless the context otherwise requires, and in this article:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person: Is a general partner, officer, director, or employee of the declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the declarant; controls in any manner the election of a majority of the directors of the declarant; or has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant: Is a general partner, officer, director, or employee of the person; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the person; controls in any manner the election of a majority of the directors of the person; or has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection (1) are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit:

(a) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association;

(b) In a cooperative, the common expense liability and the ownership interest and votes in the association; and

(c) In a planned community, the common expense liability and votes in the association.

(2.5) "Approved for development" means that all or some portion of a particular parcel of real property is zoned or otherwise approved for construction of residential and other improvements and authorized for specified densities by the local land use authority having jurisdiction over such real property and includes any conceptual or final planned unit development approval.

(3) "Association" or "unit owners' association" means a unit owners' association organized under section 38-33.3-301.

(4) "Bylaws" means any instruments, however denominated, which are adopted by the association for the regulation and management of the association, including any amendments to those instruments.

(5) "Common elements" means:

(a) In a condominium or cooperative, all portions of the condominium or cooperative other than the units; and

(b) In a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 38-33.3-207.

(7) "Common expenses" means expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves.

(8) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real

estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. Ownership of a unit does not include holding a leasehold interest in a unit of less than forty years, including renewal options. The period of the leasehold interest, including renewal options, is measured from the date the initial term commences.

(9) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(10) "Cooperative" means a common interest community in which the real property is owned by an association, each member of which is entitled by virtue of such member's ownership interest in the association to exclusive possession of a unit.

(11) "Dealer" means a person in the business of selling units for such person's own account.

(12) "Declarant" means any person or group of persons acting in concert who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such declarant's interest in a unit not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any special declarant right.

(13) "Declaration" means any recorded instruments however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps.

(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:

(a) Add real estate to a common interest community;

(b) Create units, common elements, or limited common elements within a common interest community;

(c) Subdivide units or convert units into common elements; or

(d) Withdraw real estate from a common interest community.

(15) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(16.5) "Horizontal boundary" means a plane of elevation relative to a described bench mark that defines either a lower or an upper dimension of a unit such that the real estate respectively below or above the defined plane is not a part of the unit.

(17) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.

(17.5) "Large planned community" means a planned community that meets the criteria set forth in section 38-33.3-116.3 (1).

(18) "Leasehold common interest community" means a common interest community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.

(19) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 38-33.3-202 (1) (b) or (1) (d) for the exclusive use of one or more units but fewer than all of the units.

(19.5) "Map" means that part of a declaration that depicts all or any portion of a common interest community in three dimensions, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real

estate records in every county in which any portion of the common interest community is located. A map is required for a common interest community with units having a horizontal boundary. A map and a plat may be combined in one instrument.

(20) "Master association" means an organization that is authorized to exercise some or all of the powers of one or more associations on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities.

(21) "Person" means a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof.

(21.5) "Phased community" means a common interest community in which the declarant retains development rights.

(22) "Planned community" means a common interest community that is not a condominium or cooperative. A condominium or cooperative may be part of a planned community.

(22.5) "Plat" means that part of a declaration that is a land survey plat as set forth in section 38-51-106, depicts all or any portion of a common interest community in two dimensions, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located. A plat and a map may be combined in one instrument.

(23) "Proprietary lease" means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

(24) "Purchaser" means a person, other than a declarant or a dealer, who by means of a transfer acquires a legal or equitable interest in a unit, other than:

(a) A leasehold interest in a unit of less than forty years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

(b) A security interest.

(25) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without horizontal boundaries and spaces that may be filled with air or water.

(26) "Residential use" means use for dwelling or recreational purposes but does not include spaces or units primarily used for commercial income from, or service to, the public.

(27) "Rules and regulations" means any instruments, however denominated, which are adopted by the association for the regulation and management of the common interest community, including any amendment to those instruments.

(28) "Security interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to perform the following acts as specified in parts 2 and 3 of this article: To complete improvements indicated on plats and maps filed with the declaration; to exercise any development right; to maintain sales offices, management offices, signs advertising the common interest community, and models; to use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community; to make the common interest community subject to a

master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the association or any executive board member during any period of declarant control.

(30) "Unit" means a physical portion of the common interest community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the declaration. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(31) "Unit owner" means the declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the common interest community but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person; in a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated pursuant to section 38-33.3-207 until that unit has been conveyed to another person, who may or may not be a declarant under this article.

(32) "Vertical boundary" means the defined limit of a unit that is not a horizontal boundary of that unit.

* (33) "Xeriscape" means the combined application of the seven principles of landscape planning and design, soil analysis and improvement, hydro zoning of plants, use of practical turf areas, uses of mulches, irrigation efficiency, and appropriate maintenance under section 38-35.7-107 (1) (a) (III) (A).

§ 38-33.3-104, C.R.S. Variation by agreement.

Except as expressly provided in this article, provisions of this article may not be varied by agreement, and rights conferred by this article may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this article or the declaration.

§ 38-33.3-105, C.R.S. Separate titles and taxation.

(1) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is personal property, that interest is real estate for all purposes.

(2) In a condominium or planned community with common elements, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate and must be separately assessed and taxed. The valuation of the common elements shall be assessed proportionately to each unit, in the case of a condominium in accordance with such unit's allocated interests in the common elements, and in the case of a planned community in accordance with such unit's allocated common expense liability, set forth in the declaration, and the common elements shall not be separately taxed or assessed. Upon the filing for recording of a declaration for a condominium or planned community with common elements, the declarant shall deliver a copy of such filing to the assessor of each county in which such declaration was filed.

(3) In a planned community without common elements, the real estate comprising such planned community may be taxed and assessed in any manner provided by law.

§ 38-33.3-106, C.R.S. Applicability of local ordinances, regulations, and building codes.

(1) A building code may not impose any requirement upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership; except that a minimum one hour fire wall may be required between units.

(2) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

§ 38-33.3-106.5, C.R.S. Prohibitions contrary to public policy – patriotic and political expression – emergency vehicles – fire prevention – renewable energy generation devices – affordable housing – definitions.

(1) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit any of the following:

(a) The display of the American flag on a unit owner's property, in a window of the unit, or on a balcony adjoining the unit if the American flag is displayed in a manner consistent with the federal flag code, Pub.L. 94-344; 90 stat. 810; 4 U.S.C. secs. 4 to 10. The association may adopt reasonable rules regarding the placement and manner of display of the American flag. The association rules may regulate the location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

(b) The display of a service flag bearing a star denoting the service of the owner or occupant of the unit, or of a member of the owner's or occupant's immediate family, in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the unit. The association may adopt reasonable rules regarding the size and manner of display of service flags; except that the maximum dimensions allowed shall be not less than nine inches by sixteen inches.

(c) (I) The display of a political sign by the owner or occupant of a unit on property within the boundaries of the unit or in a window of the unit; except that:

(A) An association may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day; and

(B) An association may regulate the size and number of political signs in accordance with subparagraph (II) of this paragraph (c).

(II) The association shall permit at least one political sign per political office or ballot issue that is contested in a pending election. The maximum dimensions of each sign may be limited to the lesser of the following:

(A) The maximum size allowed by any applicable city, town, or county ordinance that regulates the size of political signs on residential property; or

(B) Thirty-six inches by forty-eight inches.

(III) As used in this paragraph (c), "political sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue.

(d) The parking of a motor vehicle by the occupant of a unit on a street, driveway, or guest parking area in the common interest community if the vehicle is required to be available

at designated periods at such occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

(I) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;

(II) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;

(III) The vehicle bears an official emblem or other visible designation of the emergency service provider; and

(IV) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other unit owners or occupants to use streets, driveways, and guest parking spaces within the common interest community.

(e) The removal by a unit owner of trees, shrubs, or other vegetation to create defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the Colorado state forest service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the association before the commencement of work. The association may require changes to the plan if the association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable association standards regarding slash removal, stump height, revegetation, and contractor regulations.

(f) (Deleted by amendment, L. 2006, p. 1215, § 2, effective May 26, 2006.)

(g) Reasonable modifications to a unit or to common elements as necessary to afford a person with disabilities full use and enjoyment of the unit in accordance with the federal "Fair Housing Act of 1968", 42 U.S.C. sec. 3604 (f) (3) (A).

(h) (I) The right of a unit owner, public or private, to restrict or specify by deed, covenant, or other document:

(A) The permissible sale price, rental rate, or lease rate of the unit; or

(B) Occupancy or other requirements designed to promote affordable or workforce housing as such terms may be defined by the local housing authority.

(II) (A) Notwithstanding any other provision of law, the provisions of this paragraph (h) shall only apply to a county the population of which is less than one hundred thousand persons and that contains a ski lift licensed by the passenger tramway safety board created in section 25-5-703 (1), C.R.S.

(B) The provisions of this paragraph (h) shall not apply to a declarant-controlled community.

(III) Nothing in subparagraph (I) of this paragraph (h) shall be construed to prohibit the future owner of a unit against which a restriction or specification described in such subparagraph has been placed from lifting such restriction or specification on such unit as long as any unit so released is replaced by another unit in the same common interest community on which the restriction or specification applies and the unit subject to the restriction or specification is reasonably equivalent to the unit being released in the determination of the beneficiary of the restriction or specification.

(IV) Except as otherwise provided in the declaration of the common interest community, any unit subject to the provisions of this paragraph (h) shall only be occupied by the owner of the unit.

* (i) (I) The use of xeriscape or drought-tolerant vegetative landscapes to provide ground covering to property owned by the unit owner. Associations may adopt and enforce design or aesthetic guidelines or rules that require drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on the unit owner's property or property for which the unit owner is responsible.

* (II) This paragraph (i) does not supersede any subdivision regulation of a county, city and county, or other municipality.

(1.5) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit renewable energy generation devices, as defined in section 38-30-168.

(2) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not require the use of cedar shakes or other flammable roofing materials.

§ 38-33.3-106.7, C.R.S. Unreasonable restrictions on energy efficiency measures – definitions.

(1) (a) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit the installation or use of an energy efficiency measure.

(b) As used in this section, "energy efficiency measure" means a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a residence or business located on the real property. "Energy efficiency measure" is further limited to include only the following types of devices or structures:

(I) An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

(II) A garage or attic fan and any associated vents or louvers;

(III) An evaporative cooler;

(IV) An energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device; and

(V) A retractable clothesline.

(2) Subsection (1) of this section shall not apply to:

(a) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an energy efficiency measure. In creating reasonable aesthetic provisions, common interest communities shall consider:

(I) The impact on the purchase price and operating costs of the energy efficiency measure;

(II) The impact on the performance of the energy efficiency measure; and

(III) The criteria contained in the governing documents of the common interest community.

(b) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property.

(3) This section shall not be construed to confer upon any property owner the right to place an energy efficiency measure on property that is:

(a) Owned by another person;

(b) Leased, except with permission of the lessor;

(c) Collateral for a commercial loan, except with permission of the secured party; or

(d) A limited common element or general common element of a common interest community.

* ***§ 38-33.3-106.8, C.R.S. Unreasonable restrictions on electric vehicle charging systems – legislative declaration – definitions.***

* (1) The general assembly finds, determines, and declares that:

* (a) The widespread use of plug-in electric vehicles can dramatically improve energy efficiency and air quality for all Coloradans and should be encouraged wherever possible;

* (b) Most homes in Colorado, including the vast majority of new homes, are in common interest communities;

* (c) The primary purpose of this section is to ensure that common interest communities provide their residents with at least a meaningful opportunity to take advantage of the availability of plug-in electric vehicles rather than create artificial restrictions on the adoption of this promising technology; and

* (d) The general assembly encourages common interest communities not only to allow electric vehicle charging stations in accordance with this section, but also to apply for grants from the electric vehicle grant fund, created in section 24-38.5-103, C.R.S., or otherwise fund the installation of charging stations on common property as an amenity for residents and guests.

* (2) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, and except as provided in subsection (3) or (3.5) of this section, an association shall not:

* (a) Prohibit a unit owner from using, or installing at the unit owner's expense for the unit owner's own use, a level 1 or level 2 electric vehicle charging system on or in a unit; or

* (b) Assess or charge a unit owner any fee for the placement or use of an electric vehicle charging system on or in the unit owner's unit; except that the association may require reimbursement for the actual cost of electricity provided by the association that was used by the charging system or, alternatively, may charge a reasonable fee for access. If the charging system is part of a network for which a network fee is charged, the association's reimbursement may include the amount of the network fee. Nothing in this section requires an association to impose upon a unit owner any fee or charge other than the regular assessments specified in the declaration, bylaws, or rules and regulations of the association.

* (3) Subsection (2) of this section does not apply to:

* (a) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property;

* (b) A requirement that the charging system be registered with the association within thirty days after installation; or

* (c) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an electric vehicle charging system.

* (3.5) This section does not apply to a unit, or the owner thereof, if the unit is a time share unit, as defined in section 38-33-110 (7).

* (4) An association shall consent to a unit owner's placement of an electric vehicle charging system on a limited common element parking space, carport, or garage owned by the unit owner or otherwise assigned to the owner in the declaration or other recorded document if:

* (a) Notwithstanding any existing ban on electric vehicle charging systems, the system otherwise complies with the declaration, bylaws, and rules and regulations of the association; and

* (b) The unit owner agrees in writing to:

* (I) Comply with the association's design specifications for the installation of the system;

* (II) Engage the services of a duly licensed and registered electrical contractor familiar with the installation and code requirements of an electric vehicle charging system;

* (III) Bear the expense of installation, including costs to restore any common elements disturbed in the process of installing the system; and

* (IV) (A) Provide, within the time specified in sub-subparagraph (B) of this subparagraph (IV), a certificate of insurance naming the association as an additional insured on the homeowner's insurance policy for any claim related to the installation, maintenance, or use of the system or, if the system is located on a common element, reimbursement to the association for the actual cost of any increased insurance premium amount attributable to the system, notwithstanding any provision to the contrary in the association's declaration, bylaws, or rules and regulations.

* (B) A certificate of insurance under sub-subparagraph (A) of this subparagraph (IV) must be provided within fourteen days after the unit owner receives the association's consent for the installation. Reimbursement for an increased insurance premium amount under sub-subparagraph (A) of this subparagraph (IV) must be provided within fourteen days after the unit owner receives the association's invoice for the amount attributable to the system.

* (5) If the association consents to a unit owner's installation of an electric vehicle charging system on a limited common element, including a parking space, carport, or garage stall, then, unless otherwise specified in a written contract or in the declaration, bylaws, or rules and regulations of the association:

* (a) The unit owner, and each successive unit owner with exclusive rights to the limited common element where the charging system is installed, is responsible for any costs for damages to the system, any other limited common element or general common element of the common interest community, and any adjacent units, garage stalls, carports, or parking spaces that arise or result from the installation, maintenance, repair, removal, or replacement of the system;

* (b) Each successive unit owner with exclusive rights to the limited common element shall assume responsibility for the repair, maintenance, removal, and replacement of the charging system until the system has been removed;

* (c) The unit owner and each successive unit owner with exclusive rights to the limited common element shall at all times have and maintain an insurance policy covering the obligations of the unit owner under this subsection (5), is subject to all obligations specified under subparagraph (IV) of paragraph (b) of subsection (4) of this section, and shall name the association as an additional insured under the policy; and

* (d) The unit owner and each successive unit owner with exclusive rights to the limited common element is responsible for removing the system if reasonably necessary or convenient for the repair, maintenance, or replacement of the limited common elements or general common elements of the common interest community.

* (6) A charging system installed at the unit owner's cost is property of the unit owner. Upon sale of the unit, if the charging system is removable, the unit owner may either remove it or sell it to

the buyer of the unit or to the association for an agreed price. Nothing in this subsection (6) requires the buyer or the association to purchase the charging system.

* (7) As used in this section:

* (a) "Electric vehicle charging system" or "charging system" means a device that is used to provide electricity to a plug-in electric vehicle or plug-in hybrid vehicle, is designed to ensure that a safe connection has been made between the electric grid and the vehicle, and is able to communicate with the vehicle's control system so that electricity flows at an appropriate voltage and current level. An electric vehicle charging system may be wall-mounted or pedestal style and may provide multiple cords to connect with electric vehicles. An electric vehicle charging system must be certified by underwriters laboratories or an equivalent certification and must comply with the current version of article 625 of the national electrical code.

* (b) "Level 1" means a charging system that provides charging through a one-hundred-twenty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

* (c) "Level 2" means a charging system that provides charging through a two-hundred-eight to two-hundred-forty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

* (8) This section applies only to residential units.

§ 38-33.3-107, C.R.S. Eminent domain.

(1) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking. Any remnant of a unit remaining after part of a unit is taken under this subsection (1) is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration; and

(b) The portion of allocated interests divested from the partially acquired unit is automatically reallocated to that unit and to the remaining units in proportion to the respective interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by eminent domain, that portion of any award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition. For the purposes of acquisition of a part of the common elements other than the limited common elements under this subsection (3), service of process on the association shall constitute sufficient notice to all unit owners, and service of process on each individual unit owner shall not be necessary.

(4) The court decree shall be recorded in every county in which any portion of the common interest community is located.

(5) The reallocations of allocated interests pursuant to this section shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

§ 38-33.3-108, C.R.S. Supplemental general principles of law applicable.

The principles of law and equity, including, but not limited to, the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this article, except to the extent inconsistent with this article.

§ 38-33.3-109, C.R.S. Construction against implicit repeal.

This article is intended to be a unified coverage of its subject matter, and no part of this article shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§ 38-33.3-110, C.R.S. Uniformity of application and construction.

This article shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

§ 38-33.3-111, C.R.S. Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and, to this end, the provisions of this article are severable.

§ 38-33.3-112, C.R.S. Unconscionable agreement or term of contract.

(1) The court, upon finding as a matter of law that a contract or contract clause relating to a common interest community was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause relating to a common interest community is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

   (a) The commercial setting of the negotiations;

   (b) Whether the first party has knowingly taken advantage of the inability of the second party reasonably to protect such second party's interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

   (c) The effect and purpose of the contract or clause; and

   (d) If a sale, any gross disparity at the time of contracting between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

§ 38-33.3-113, C.R.S. Obligation of good faith.

Every contract or duty governed by this article imposes an obligation of good faith in its performance or enforcement.

§ 38-33.3-114, C.R.S. Remedies to be liberally administered.

(1) The remedies provided by this article shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this article or by other rule of law.

(2) Any right or obligation declared by this article is enforceable by judicial proceeding.

§ 38-33.3-115, C.R.S. Applicability to new common interest communities.

Except as provided in section 38-33.3-116, this article applies to all common interest communities created within this state on or after July 1, 1992. The provisions of sections 38-33-101 to 38-33-109 do not apply to common interest communities created on or after July 1, 1992. The provisions of sections 38-33-110 to 38-33-113 shall remain in effect for all common interest communities.

§ 38-33.3-116, C.R.S. Exception for new small cooperatives and small and limited expense planned communities.

(1) If a cooperative created in this state on or after July 1, 1992, but prior to July 1, 1998, contains only units restricted to nonresidential use or contains no more than ten units and is not subject to any development rights, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable. If a planned community created in this state on or after July 1, 1992, but prior to July 1, 1998, contains no more than ten units and is not subject to any development rights or if a planned community provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed three hundred dollars, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable.

(2) If a cooperative or planned community created in this state on or after July 1, 1998, contains only units restricted to nonresidential use, or contains no more than twenty units and is not subject to any development rights, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable. If a planned community created in this state after July 1, 1998, provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable.

(3) The four-hundred-dollar limitation set forth in subsection (2) of this section shall be increased annually on July 1, 1999, and on July 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar year decreased.

§ 38-33.3-116.3, C.R.S. Large planned communities – exemption from certain requirements.

(1) A planned community shall be exempt from the provisions of this article as specified in subsection (3) of this section or as specifically exempted in any other provision of this article, if, at the time of recording the affidavit required pursuant to subsection (2) of this section, the real estate upon which the planned community is created meets both of the following requirements:

(a) It consists of at least two hundred acres;

(b) It is approved for development of at least five hundred residential units, excluding any interval estates, time-share estates, or time-span estates but including any interval units created pursuant to sections 38-33-110 and 38-33-111, and at least twenty thousand square feet of commercial use.

(c) (Deleted by amendment, L. 95, p. 236, § 2, effective July 1, 1995.)

(2) For an exemption authorized in subsection (1) of this section to apply, the property must be zoned within each county in which any part of such parcel is located, and the owner of the parcel shall record with the county clerk and recorder of each county in which any part of such parcel is located an affidavit setting forth the following:

(a) The legal description of such parcel of land;

(b) A statement that the party signing the affidavit is the owner of the parcel in its entirety in fee simple, excluding mineral interests;

(c) The acreage of the parcel;

(d) The zoning classification of the parcel, with a certified copy of applicable zoning regulations attached; and

(e) A statement that neither the owner nor any officer, director, shareholder, partner, or other entity having more than a ten-percent equity interest in the owner has been convicted of a felony within the last ten years.

(3) A large planned community for which an affidavit has been filed pursuant to subsection (2) of this section shall be exempt from the following provisions of this article:

(a) Section 38-33.3-205 (1) (e) to (1) (m);

(b) Section 38-33.3-207 (3);

(c) Section 38-33.3-208;

(d) Section 38-33.3-209 (2) (b) to (2) (d), (2) (f), (2) (g), (4), and (6);

(e) Section 38-33.3-210;

(f) Section 38-33.3-212;

(g) Section 38-33.3-213;

(h) Section 38-33.3-215;

(i) Section 38-33.3-217 (1);

(j) Section 38-33.3-304.

(4) Section 38-33.3-217 (4) shall be applicable as follows: Except to the extent expressly permitted or required by other provisions of this article, no amendment may create or increase special declarant rights, increase the number of units or the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(5) (a) The exemption authorized by this section shall continue for the large planned community so long as the owner signing the affidavit is the owner of the real estate described in subsection (2) of this section; except that:

(I) Upon the sale, conveyance, or other transfer of any portion of the real estate within the large planned community, the portion sold, conveyed, or transferred shall become subject to all the provisions of this article;

(II) Any common interest community created on some but not all of the real estate within the large planned community shall be created pursuant to this article; and

(III) When a planned community no longer qualifies as a large planned community, as described in subsection (1) of this section, the exemptions authorized by this section shall no longer be applicable.

(b) Notwithstanding the provisions of subparagraph (III) of paragraph (a) of this subsection (5), all real estate described in a recorded declaration creating a large planned community shall remain subject to such recorded declaration.

(6) The association established for a large planned community shall operate with respect to large planned community-wide matters and shall not otherwise operate as the exclusive unit owners' association with respect to any unit.

(7) The association established for a large planned community shall keep in its principal office and make reasonably available to all unit owners, unit owners' authorized agents, and prospective purchasers of units a complete legal description of all common elements within the large planned community.

§ 38-33.3-117, C.R.S. Applicability to preexisting common interest communities.

* (1) Except as provided in section 38-33.3-119, the following sections apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 1992:

(a) 38-33.3-101 and 38-33.3-102;

(b) 38-33.3-103, to the extent necessary in construing any of the other sections of this article;

(c) 38-33.3-104 to 38-33.3-111;

(d) 38-33.3-114;

(e) 38-33.3-118;

(f) 38-33.3-120;

(g) 38-33.3-122 and 38-33.3-123;

(h) 38-33.3-203 and 38-33.3-217 (7);

(i) 38-33.3-302 (1) (a) to (1) (f), (1) (j) to (1) (m), and (1) (o) to (1) (q);

(i.5) 38-33.3-221.5;

(i.7) 38-33.3-303 (1) (b) and (3) (b);

(j) 38-33.3-311;

(k) 38-33.3-316;

* (k.5) 38-33.3-316.3; and

(*l*) 38-33.3-317, as it existed prior to January 1, 2006, 38-33.3-318, and 38-33.3-319.

* (1.5) Except as provided in section 38-33.3-119, the following sections apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after January 1, 2006:

(a) (Deleted by amendment, L. 2006, p. 1217, § 3, effective May 26, 2006.)

(b) 38-33.3-124;

(c) 38-33.3-209.4 to 38-33.3-209.7;

(d) 38-33.3-217 (1);

(e) (Deleted by amendment, L. 2006, p. 1217, § 3, effective May 26, 2006.)

(f) 38-33.3-301;

(g) 38-33.3-302 (3) and (4);

(h) 38-33.3-303 (1) (b), (3) (b), and (4) (b);

(i) 38-33.3-308 (1), (2) (b), (2.5), and (4.5);

(j) 38-33.3-310 (1) and (2);

(k) 38-33.3-310.5;

* (*l*) 38-33.3-315 (7);

* (m) 38-33.3-317; and

* (n) 38-33.3-401.

(1.7) Except as provided in section 38-33.3-119, section 38-33.3-209.5 (1) (b) (IX) shall apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 2010.

(2) The sections specified in paragraphs (a) to (j) and (l) of subsection (1) of this section shall be applied and construed to establish a clear, comprehensive, and uniform framework for the operation and management of common interest communities within this state and to supplement the provisions of any declaration, bylaws, plat, or map in existence on June 30, 1992. Except for section 38-33.3-217 (7), in the event of specific conflicts between the provisions of the sections specified in paragraphs (a) to (j) and (l) of subsection (1) of this section, and express requirements or restrictions in a declaration, bylaws, a plat, or a map in existence on June 30, 1992, such requirements or restrictions in the declaration, bylaws, plat, or map shall control, but only to the extent necessary to avoid invalidation of the specific requirement or restriction in the declaration, bylaws, plat, or map. Sections 38-33.3-217 (7) and 38-33.3-316 shall be applied and construed as stated in such sections.

(3) Except as expressly provided for in this section, this article shall not apply to common interest communities created within this state before July 1, 1992.

(4) Section 38-33.3-308 (2) to (7) shall apply to all common interest communities created within this state before July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date. In addition, said section 38-33.3-308 (2) to (7) shall apply to all common interest communities created on or after July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date.

§ 38-33.3-118, C.R.S. Procedure to elect treatment under the "Colorado Common Interest Ownership Act".

(1) Any organization created prior to July 1, 1992, may elect to have the common interest community be treated as if it were created after June 30, 1992, and thereby subject the common interest community to all of the provisions contained in this article, in the following manner:

(a) If there are members or stockholders entitled to vote thereon, the board of directors may adopt a resolution recommending that such association accept this article and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders entitled to vote thereon, which may be either an annual or special meeting. The question shall also be submitted whenever one-twentieth, or, in the case of an association with over one thousand members, one-fortieth, of the members or stockholders entitled to vote thereon so request. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider electing to be treated as a common interest community organized after June 30, 1992, and thereby accepting the provisions of this article, together with a copy of this article, shall be given to each person entitled to

vote at the meeting within the time and in the manner provided in the articles of incorporation, declaration, bylaws, or other governing documents for such association for the giving of notice of meetings to members. Such election to accept the provisions of this article shall require for adoption at least sixty-seven percent of the votes that the persons present at such meeting in person or by proxy are entitled to cast.

(b) If there are no persons entitled to vote thereon, the election to be treated as a common interest community under this article may be made at a meeting of the board of directors pursuant to a majority vote of the directors in office.

(2) A statement of election to accept the provisions of this article shall be executed and acknowledged by the president or vice-president and by the secretary or an assistant secretary of such association and shall set forth:

(a) The name of the common interest community and association;

(b) That the association has elected to accept the provisions of this article;

(c) That there were persons entitled to vote thereon, the date of the meeting of such persons at which the election was made to be treated as a common interest community under this article, that a quorum was present at the meeting, and that such acceptance was authorized by at least sixty-seven percent of the votes that the members or stockholders present at such meeting in person or by proxy were entitled to cast;

(d) That there were no members or stockholders entitled to vote thereon, the date of the meeting of the board of directors at which election to accept this article was made, that a quorum was present at the meeting, and that such acceptance was authorized by a majority vote of the directors present at such meeting;

(e) (Deleted by amendment, L. 93, p. 645, § 7, effective April 30, 1993.)

(f) The names and respective addresses of its officers and directors; and

(g) If there were no persons entitled to vote thereon but a common interest community has been created by virtue of compliance with section 38-33.3-103 (8), that the declarant desires for the common interest community to be subject to all the terms and provisions of this article.

(3) The original statement of election to be treated as a common interest community subject to the terms and conditions of this article shall be duly recorded in the office of the clerk and recorder for the county in which the common interest community is located.

(4) Upon the recording of the original statement of election to be treated as a common interest community subject to the provisions of this article, said common interest community shall be subject to all provisions of this article. Upon recording of the statement of election, such common interest community shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though it had been created after June 30, 1992.

(5) Notwithstanding any other provision of this section, and with respect to a common interest community making the election permitted by this section, this article shall apply only with respect to events and circumstances occurring on or after July 1, 1992, and does not invalidate provisions of any declaration, bylaws, or plats or maps in existence on June 30, 1992.

§ 38-33.3-119, C.R.S. Exception for small preexisting cooperatives and planned communities.

If a cooperative or planned community created within this state before July 1, 1992, contains no more than ten units and is not subject to any development rights, it is subject only to sections 38-33.3-105 to 38-33.3-107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section 38-33.3-

120, in which case all the sections enumerated in section 38-33.3-117 apply to that planned community.

§ 38-33.3-120, C.R.S. Amendments to preexisting governing instruments.

(1) In the case of amendments to the declaration, bylaws, or plats and maps of any common interest community created within this state before July 1, 1992, which has not elected treatment under this article pursuant to section 38-33.3-118:

(a) If the substantive result accomplished by the amendment was permitted by law in effect prior to July 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this article; and

(b) If the substantive result accomplished by the amendment is permitted by this article, and was not permitted by law in effect prior to July 1, 1992, the amendment may be made under this article.

(2) An amendment to the declaration, bylaws, or plats and maps authorized by this section to be made under this article must be adopted in conformity with the procedures and requirements of the law that applied to the common interest community at the time it was created and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers, or privileges permitted by this article, all correlative obligations, liabilities, and restrictions in this article also apply to that person.

(3) An amendment to the declaration may also be made pursuant to the procedures set forth in section 38-33.3-217 (7).

§ 38-33.3-120.5, C.R.S. Extension of declaration term.

(1) If a common interest community has a declaration in effect with a limited term of years that was recorded prior to July 1, 1992, and if, before the term of the declaration expires, the unit owners in the common interest community have not amended the declaration pursuant to section 38-33.3-120 and in accordance with any conditions or fixed limitations described in the declaration, the declaration may be extended as provided in this section.

(2) The term of the declaration may be extended:

(a) If the executive board adopts a resolution recommending that the declaration be extended for a specific term not to exceed twenty years and directs that the question of extending the term of the declaration be submitted to the unit owners, as members of the association; and

(b) If an extension of the term of the declaration is approved by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies.

(3) Except for the extension of the term of a declaration as authorized by this section, no other provision of a declaration may be amended pursuant to the provisions of this section.

(4) For any meeting of unit owners at which a vote is to be taken on a proposed extension of the term of a declaration as provided in this section, the secretary or other officer specified in the bylaws shall provide written notice to each unit owner entitled to vote at the meeting stating that the purpose, or one of the purposes, of the meeting is to consider extending the term of the declaration. The notice shall be given in the time and manner specified in section 38-33.3-308 or in the articles of incorporation, declaration, bylaws, or other governing documents of the association.

(5) The extension of the declaration, if approved, shall be included in an amendment to the declaration and shall be executed, acknowledged, and recorded by the association in the records of the clerk and recorder of each county in which any portion of the common interest community is located. The amendment shall include:

(a) A statement of the name of the common interest community and the association;

(b) A statement that the association has elected to extend the term of the declaration pursuant to this section and the term of the approved extension;

(c) A statement that indicates that the executive board has adopted a resolution recommending that the declaration be extended for a specific term not to exceed twenty years, that sets forth the date of the meeting at which the unit owners elected to extend the term of the declaration, and that declares that the extension was authorized by a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies;

(d) A statement of the names and respective addresses of the officers and executive board members of the association.

(6) Upon the recording of the amendment required by subsection (5) of this section, and subject to the provisions of this section, a common interest community is subject to all provisions of the declaration, as amended.

§ 38-33.3-121, C.R.S. Applicability to nonresidential planned communities.

This article does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the article does apply to that planned community. This article applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted, only if the declaration so provides or the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

§ 38-33.3-122, C.R.S. Applicability to out-of-state common interest communities.

This article does not apply to common interest communities or units located outside this state.

§ 38-33.3-123, C.R.S. Enforcement – limitation.

(1) (a) If any unit owner fails to timely pay assessments or any money or sums due to the association, the association may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

(b) For any failure to comply with the provisions of this article or any provision of the declaration, bylaws, articles, or rules and regulations, other than the payment of assessments or any money or sums due to the association, the association, any unit owner, or any class of unit owners adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding.

(c) In any civil action to enforce or defend the provisions of this article or of the declaration, bylaws, articles, or rules and regulations, the court shall award reasonable attorney fees, costs, and costs of collection to the prevailing party.

(d) Notwithstanding paragraph (c) of this subsection (1), in connection with any claim in which a unit owner is alleged to have violated a provision of this article or of the declaration, bylaws, articles, or rules and regulations of the association and in which the court finds that the unit owner prevailed because the unit owner did not commit the alleged violation:

(I) The court shall award the unit owner reasonable attorney fees and costs incurred in asserting or defending the claim; and

(II) The court shall not award costs or attorney fees to the association. In addition, the association shall be precluded from allocating to the unit owner's account with the

association any of the association's costs or attorney fees incurred in asserting or defending the claim.

(e) A unit owner shall not be deemed to have confessed judgment to attorney fees or collection costs.

(2) Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of the declaration, bylaws, articles, or rules and regulations or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

§ 38-33.3-124, C.R.S. Legislative declaration – alternative dispute resolution encouraged – policy statement required.

(1) (a) (I) The general assembly finds and declares that the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving neighborhood disputes. Therefore, common interest communities are encouraged to adopt protocols that make use of mediation or arbitration as alternatives to, or preconditions upon, the filing of a complaint between a unit owner and association in situations that do not involve an imminent threat to the peace, health, or safety of the community.

(II) The general assembly hereby specifically endorses and encourages associations, unit owners, managers, declarants, and all other parties to disputes arising under this article to agree to make use of all available public or private resources for alternative dispute resolution, including, without limitation, the resources offered by the office of dispute resolution within the Colorado judicial branch through its web site.

(b) On or before January 1, 2007, each association shall adopt a written policy setting forth its procedure for addressing disputes arising between the association and unit owners. The association shall make a copy of this policy available to unit owners upon request.

(2) (a) Any controversy between an association and a unit owner arising out of the provisions of this article may be submitted to mediation by agreement of the parties prior to the commencement of any legal proceeding.

(b) The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice.

(c) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

(3) The declaration, bylaws, or rules of the association may specify situations in which disputes shall be resolved by binding arbitration under the uniform arbitration act, part 2 of article 22 of title 13, C.R.S., or by another means of alternative dispute resolution under the "Dispute Resolution Act", part 3 of article 22 of title 13, C.R.S.

A. Creation, Alteration, and Termination

§ 38-33.3-201, C.R.S. Creation of common interest communities.

(1) A common interest community may be created pursuant to this article only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be recorded in every

county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

(2) In a common interest community with horizontal unit boundaries, a declaration, or an amendment to a declaration, creating or adding units shall include a certificate of completion executed by an independent licensed or registered engineer, surveyor, or architect stating that all structural components of all buildings containing or comprising any units thereby created are substantially completed.

§ 38-33.3-202, C.R.S. Unit boundaries.

(1) Except as provided by the declaration:

(a) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(c) Subject to the provisions of paragraph (b) of this subsection (1), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

§ 38-33.3-203, C.R.S. Construction and validity of declaration and bylaws.

(1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, or rules and regulations.

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails, except to the extent the declaration is inconsistent with this article.

(4) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this article. Whether a substantial failure impairs marketability is not affected by this article.

§ 38-33.3-204, C.R.S. Description of units.

A description of a unit may set forth the name of the common interest community, the recording data for the declaration, the county in which the common interest community is located, and the identifying number of the unit. Such description is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. It shall not be necessary to use the term "unit" as a part of a legally sufficient description of a unit.

§ 38-33.3-205, C.R.S. Contents of declaration.

(1) The declaration must contain:

(a) The names of the common interest community and the association and a statement that the common interest community is a condominium, cooperative, or planned community;

(b) The name of every county in which any part of the common interest community is situated;

(c) A legally sufficient description of the real estate included in the common interest community;

(d) A statement of the maximum number of units that the declarant reserves the right to create;

(e) In a condominium or planned community, a description, which may be by plat or map, of the boundaries of each unit created by the declaration, including the unit's identifying number; or, in a cooperative, a description, which may be by plat or map, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(f) A description of any limited common elements, other than those specified in section 38-33.3-202 (1) (b) and (1) (d) or shown on the map as provided in section 38-33.3-209 (2) (j) and, in a planned community, any real estate that is or must become common elements;

(g) A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in section 38-33.3-202 (1) (b) and (1) (d), together with a statement that they may be so allocated;

(h) A description of any development rights and other special declarant rights reserved by the declarant, together with a description sufficient to identify the real estate to which each of those rights applies and the time limit within which each of those rights must be exercised;

(i) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(I) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards; and

(II) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(j) Any other conditions or limitations under which the rights described in paragraph (h) of this subsection (1) may be exercised or will lapse;

(k) An allocation to each unit of the allocated interests in the manner described in section 38-33.3-207;

(*l*) Any restrictions on the use, occupancy, and alienation of the units and on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community or on termination of the common interest community;

(m) The recording data for recorded easements and licenses appurtenant to, or included in, the common interest community or to which any portion of the common interest community is or may become subject by virtue of a reservation in the declaration;

(n) All matters required by sections 38-33.3-201, 38-33.3-206 to 38-33.3-209, 38-33.3-215, 38-33.3-216, and 38-33.3-303 (4);

(o) Reasonable provisions concerning the manner in which notice of matters affecting the common interest community may be given to unit owners by the association or other unit owners;

(p) A statement, if applicable, that the planned community is a large planned community and is exercising certain exemptions from the "Colorado Common Interest Ownership Act" as such a large planned community;

(q) In a large planned community:

(I) A general description of every common element that the declarant is legally obligated to construct within the large planned community together with the approximate date by which each such common element is to be completed. The declarant shall be required to complete each such common element within a reasonable time after the date specified in the declaration, unless the declarant, due to an act of God, is unable to do so. The declarant shall not be legally obligated with respect to any common element not identified in the declaration.

(II) A general description of the type of any common element that the declarant anticipates may be constructed by, maintained by, or operated by the association. The association shall not assess members for the construction, maintenance, or operation of any common element that is not described pursuant to this subparagraph (II) unless such assessment is approved by the vote of a majority of the votes entitled to be cast in person or by proxy, other than by declarant, at a meeting duly convened as required by law.

(2) The declaration may contain any other matters the declarant considers appropriate.

(3) The plats and maps described in section 38-33.3-209 may contain certain information required to be included in the declaration by this section.

(4) A declarant may amend the declaration, a plat, or a map to correct clerical, typographical, or technical errors.

(5) A declarant may amend the declaration to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association.

§ 38-33.3-206, C.R.S. Leasehold common interest communities.

(1) Any lease, the expiration or termination of which may terminate the common interest community or reduce its size, must be recorded. In a leasehold condominium or leasehold planned community, the declaration must contain the signature of each lessor of any such lease in order for the provisions of this section to be effective. The declaration must state:

(a) The recording data for the lease;

(b) The date on which the lease is scheduled to expire;

(c) A legally sufficient description of the real estate subject to the lease;

(d) Any rights of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or state that they do not have those rights;

(e) Any rights of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease or state that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal or state that they do not have those rights.

(2) After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(3) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(4) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests shall be reallocated in accordance with section 38-33.3-107 (1), as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

§ 38-33.3-207, C.R.S. Allocation of allocated interests.

(1) The declaration must allocate to each unit:

(a) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association;

(b) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association;

(c) In a planned community, a fraction or percentage of the common expenses of the association and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association; except that, in a large planned community, the common expenses of the association may be paid from assessments and allocated as set forth in the declaration and the votes in the association may be allocated as set forth in the declaration.

(2) The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(3) If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

(4) (a) The declaration may provide:

(I) That different allocations of votes shall be made to the units on particular matters specified in the declaration;

(II) For cumulative voting only for the purpose of electing members of the executive board;

(III) For class voting on specified issues affecting the class, including the election of the executive board; and

(IV) For assessments including, but not limited to, assessments on retail sales and services not to exceed six percent of the amount charged for the retail sale or service, and real estate transfers not to exceed three percent of the real estate sales price or its equivalent.

(b) A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this article, nor may units constitute a class because they are owned by a declarant.

(c) Assessments allowed under subparagraph (IV) of paragraph (a) of this subsection (4) shall be entitled to the lien provided for under section 38-33.3-316 (1) but shall not be entitled to the priority established by section 38-33.3-316 (2) (b).

(d) Communities with classes for voting specified in the declaration as allowed pursuant to subparagraph (III) of paragraph (a) of this subsection (4) may designate classes of members on a reasonable basis which do not allow the declarant to control the association beyond the period provided for in section 38-33.3-303, including, without limitation, residence owners, commercial space owners, and owners of lodging space and to elect members to the association executive board from such classes.

(5) Except for minor variations due to the rounding of fractions or percentages, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units shall each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(6) In a condominium, the common elements are not subject to partition except as allowed for in section 38-33.3-312, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements not allowed for in section 38-33.3-312, that is made without the unit to which that interest is allocated is void.

(7) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

§ 38-33.3-208, C.R.S. Limited common elements.

(1) Except for the limited common elements described in section 38-33.3-202 (1) (b) and (1) (d), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

(2) Subject to any provisions of the declaration, a limited common element may be reallocated between or among units after compliance with the procedure set forth in this subsection (2). In order to reallocate limited common elements between or among units, the unit owners of those units, as the applicants, must submit an application for approval of the proposed reallocation to the executive board, which application shall be executed by those unit owners and shall include:

(a) The proposed form for an amendment to the declaration as may be necessary to show the reallocation of limited common elements between or among units;

(b) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(c) Such other information as may be reasonably requested by the executive board. No reallocation shall be effective without the approval of the executive board. The reallocation shall be effectuated by an amendment signed by the association and by those unit owners between or among whose units the reallocation is made, which amendment shall be recorded as provided in section 38-33.3-217 (3). All costs and attorney fees incurred by the association as a result of the application shall be the sole obligation of the applicants.

(3) A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with section 38-33.3-205 (1)

(g). The allocations must be made by amendments to the declaration prepared, executed, and recorded by the declarant.

§ 38-33.3-209, C.R.S. Plats and maps.

(1) A plat or map is a part of the declaration and is required for all common interest communities except cooperatives. A map is required only for a common interest community with units having a horizontal boundary. The requirements of this section shall be deemed satisfied so long as all of the information required by this section is contained in the declaration, a map or a plat, or some combination of any two or all of the three. Each plat or map must be clear and legible. When a map is required under any provision of this article, the map, a plat, or the declaration shall contain a certification that all information required by this section is contained in the declaration, the map or a plat, or some combination of any two or all of the three.

(2) In addition to meeting the requirements of a land survey plat as set forth in section 38-51-106, each map shall show the following, except to the extent such information is contained in the declaration or on a plat:

(a) The name and a general schematic plan of the entire common interest community;

(b) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(c) A legally sufficient description, which may be of the whole common interest community or any portion thereof, of any real estate subject to development rights and a description of the rights applicable to such real estate;

(d) The extent of any existing encroachments across any common interest community boundary;

(e) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;

(f) The location and dimensions of the vertical boundaries of each unit and that unit's identifying number;

(g) The location, with reference to established data, of the horizontal boundaries of each unit and that unit's identifying number;

(g.5) Any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately;

(h) A legally sufficient description of any real estate in which the unit owners will own only an estate for years;

(i) The distance between noncontiguous parcels of real estate comprising the common interest community; and

(j) The approximate location and dimensions of limited common elements, including porches, balconies, and patios, other than the limited common elements described in section 38-33.3-202 (1) (b) and (1) (d).

(3) (Deleted by amendment, L. 93, p. 648, § 12, effective April 30, 1993.)

(4) (Deleted by amendment, L. 2007, p. 1799, § 1, effective July 1, 2007.)

(5) Unless the declaration provides otherwise, the horizontal boundaries of any part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and maps.

(6) Upon exercising any development right, the declarant shall record an amendment to the declaration with respect to that real estate reflecting change as a result of such exercise necessary to conform to the requirements of subsections (1), (2), and (4) of this section or new

certifications of maps previously recorded if those maps otherwise conform to the requirements of subsections (1), (2), and (4) of this section.

(7) Any certification of a map required by this article must be made by a registered land surveyor.

(8) The requirements of a plat or map under this article shall not be deemed to satisfy any subdivision platting requirement enacted by a county or municipality pursuant to section 30-28-133, C.R.S., part 1 of article 23 of title 31, C.R.S., or a similar provision of a home rule city, nor shall the plat or map requirements under this article be deemed to be incorporated into any subdivision platting requirements enacted by a county or municipality.

(9) Any plat or map that was recorded on or after July 1, 1998, but prior to July 1, 2007, and that satisfies the requirements of this section in effect on July 1, 2007, is deemed to have satisfied the requirements of this section at the time it was recorded.

§ 38-33.3-209.4, C.R.S. Public disclosures required – identity of association – agent – manager – contact information.

(1) Within ninety days after assuming control from the declarant pursuant to section 38-33.3-303 (5), the association shall make the following information available to unit owners upon reasonable notice in accordance with subsection (3) of this section. In addition, if the association's address, designated agent, or management company changes, the association shall make updated information available within ninety days after the change:

(a) The name of the association;

(b) The name of the association's designated agent or management company, if any; *(Ed. Note: This version of paragraph (b) is effective until January 1, 2015.)*

* (b) The name of the association's designated agent or management company, if any, together with the agent's or management company's license number if the agent or management company is subject to licensure under part 10 of article 61 of title 12, C.R.S.; *(Ed. Note: This version of paragraph (b) is effective January 1, 2015.)*

(c) A valid physical address and telephone number for both the association and the designated agent or management company, if any;

(d) The name of the common interest community;

(e) The initial date of recording of the declaration; and

(f) The reception number or book and page for the main document that constitutes the declaration.

(2) Within ninety days after assuming control from the declarant pursuant to section 38-33.3-303 (5), and within ninety days after the end of each fiscal year thereafter, the association shall make the following information available to unit owners upon reasonable notice in accordance with subsection (3) of this section:

(a) The date on which its fiscal year commences;

(b) Its operating budget for the current fiscal year;

(c) A list, by unit type, of the association's current assessments, including both regular and special assessments;

(d) Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;

(e) The results of its most recent available financial audit or review;

(f) A list of all association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.

(g) All the association's bylaws, articles, and rules and regulations;

(h) The minutes of the executive board and member meetings for the fiscal year immediately preceding the current annual disclosure; and

(i) The association's responsible governance policies adopted under section 38-33.3-209.5.

(3) It is the intent of this section to allow the association the widest possible latitude in methods and means of disclosure, while requiring that the information be readily available at no cost to unit owners at their convenience. Disclosure shall be accomplished by one of the following means: Posting on an internet web page with accompanying notice of the web address via first-class mail or e-mail; the maintenance of a literature table or binder at the association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

* (4) Notwithstanding section 38-33.3-117 (1.5) (c), this section shall not apply to a unit, or the owner thereof, if the unit is a time-share unit, as defined in section 38-33-110 (7).

§ 38-33.3-209.5, C.R.S. Responsible governance policies – due process for imposition of fines.

(1) To promote responsible governance, associations shall:

(a) Maintain accurate and complete accounting records; and

(b) Adopt policies, procedures, and rules and regulations concerning:

(I) Collection of unpaid assessments;

(II) Handling of conflicts of interest involving board members, which policies, procedures, and rules and regulations must include, at a minimum, the criteria described in subsection (4) of this section;

(III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;

(IV) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;

(V) Inspection and copying of association records by unit owners;

(VI) Investment of reserve funds;

(VII) Procedures for the adoption and amendment of policies, procedures, and rules;

(VIII) Procedures for addressing disputes arising between the association and unit owners; and

(IX) When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.

(2) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary, the association may not fine any unit owner for an alleged violation unless:

(a) The association has adopted, and follows, a written policy governing the imposition of fines; and

(b) (I) The policy includes a fair and impartial fact-finding process concerning whether the alleged violation actually occurred and whether the unit owner is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the unit owner notice and an opportunity to be heard before an impartial decision maker.

(II) As used in this paragraph (b), "impartial decision maker" means a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association.

(3) If, as a result of the factfinding process described in subsection (2) of this section, it is determined that the unit owner should not be held responsible for the alleged violation, the association shall not allocate to the unit owner's account with the association any of the association's costs or attorney fees incurred in asserting or hearing the claim. Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, a unit owner shall not be deemed to have consented to pay such costs or fees.

(4) (a) The policies, procedures, and rules and regulations adopted by an association under subparagraph (II) of paragraph (b) of subsection (1) of this section must, at a minimum:

(I) Define or describe the circumstances under which a conflict of interest exists;

(II) Set forth procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed and whether a board member must recuse himself or herself from discussing or voting on the issue; and

(III) Provide for the periodic review of the association's conflict of interest policies, procedures, and rules and regulations.

(b) The policies, procedures, or rules and regulations adopted under this subsection (4) must be in accordance with section 38-33.3-310.5.

* (5) (a) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary or the absence of a relevant provision in the declaration, bylaws, articles, or rules or regulations, the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, may not use a collection agency or take legal action to collect unpaid assessments unless the association or a holder or assignee of the association's debt has adopted, and follows, a written policy governing the collection of unpaid assessments. The policy must, at a minimum, specify:

* (I) The date on which assessments must be paid to the entity and when an assessment is considered past due and delinquent;

* (II) Any late fees and interest the entity is entitled to impose on a delinquent unit owner's account;

* (III) Any returned-check charges the entity is entitled to impose;

* (IV) The circumstances under which a unit owner is entitled to enter into a payment plan with the entity pursuant to section 38-33.3-316.3 and the minimum terms of the payment plan mandated by that section;

* (V) That, before the entity turns over a delinquent account of a unit owner to a collection agency or refers it to an attorney for legal action, the entity must send the unit owner a notice of delinquency specifying:

* (A) The total amount due, with an accounting of how the total was determined;

* (B) Whether the opportunity to enter into a payment plan exists pursuant to section 38-33.3-316.3 and instructions for contacting the entity to enter into such a payment plan;

* (C) The name and contact information for the individual the unit owner may contact to request a copy of the unit owner's ledger in order to verify the amount of the debt; and

* (D) That action is required to cure the delinquency and that failure to do so within thirty days may result in the unit owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the unit owner's property, or other remedies available under Colorado law;

* (VI) The method by which payments may be applied on the delinquent account of a unit owner; and

* (VII) The legal remedies available to the entity to collect on a unit owner's delinquent account pursuant to the governing documents of the entity and Colorado law.

* (b) As used in this subsection (5), "entity" means an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person.

§ 38-33.3-209.6, C.R.S. Executive board member education.

The board may authorize, and account for as a common expense, reimbursement of board members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of unit owners' associations. The course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of this article.

§ 38-33.3-209.7, C.R.S. Owner education.

(1) The association shall provide, or cause to be provided, education to owners at no cost on at least an annual basis as to the general operations of the association and the rights and responsibilities of owners, the association, and its executive board under Colorado law. The criteria for compliance with this section shall be determined by the executive board.

(2) Notwithstanding section 38-33.3-117 (1.5) (c), this section shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

§ 38-33.3-210, C.R.S. Exercise of development rights.

(1) To exercise any development right reserved under section 38-33.3-205 (1) (h), the declarant shall prepare, execute, and record an amendment to the declaration and, in a condominium or planned community, comply with the provisions of section 38-33.3-209. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection (3) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 38-33.3-208.

(2) Additional development rights not previously reserved may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by section 38-33.3-205 or 38-33.3-206, as the case may be, and, in a condominium or planned community, the plats and maps include all matters required by section 38-33.3-209. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 38-33.3-205 (1) (h).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to section 38-33.3-205, that all or a portion of the real estate is subject to a right of withdrawal:

(a) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(b) If any portion of the real estate is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

(5) If a declarant fails to exercise any development right within the time limit and in accordance with any conditions or fixed limitations described in the declaration pursuant to section 38-33.3-205 (1) (h), or records an instrument surrendering a development right, that development right shall lapse unless the association, upon the request of the declarant or the owner of the real estate subject to development right, agrees to an extension of the time period for exercise of the development right or a reinstatement of the development right subject to whatever terms, conditions, and limitations the association may impose on the subsequent exercise of the development right. The extension or renewal of the development right and any terms, conditions, and limitations shall be included in an amendment executed by the declarant or the owner of the real estate subject to development right and the association.

§ 38-33.3-211, C.R.S. Alterations of units.

(1) Subject to the provisions of the declaration and other provisions of law, a unit owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the common interest community;

(b) May not change the appearance of the common elements without permission of the association; or

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the common interest community. Removal of partitions or creation of apertures under this paragraph (c) is not an alteration of boundaries.

§ 38-33.3-212, C.R.S. Relocation of boundaries between adjoining units.

(1) Subject to the provisions of the declaration and other provisions of law, and pursuant to the procedures described in section 38-33.3-217, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units.

(2) In order to relocate the boundaries between adjoining units, the owners of those units, as the applicant, must submit an application to the executive board, which application shall be executed by those owners and shall include:

(a) Evidence sufficient to the executive board that the applicant has complied with all local rules and ordinances and that the proposed relocation of boundaries does not violate the terms of any document evidencing a security interest;

(b) The proposed reallocation of interests, if any;

(c) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers;

(d) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(e) Such other information as may be reasonably requested by the executive board.

(3) No relocation of boundaries between adjoining units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).

(4) All costs and attorney fees incurred by the association as a result of an application shall be the sole obligation of the applicant.

§ 38-33.3-213, C.R.S. Subdivision of units.

(1) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, and pursuant to the procedures described in this section, a unit owner may apply to the association to subdivide a unit.

(2) In order to subdivide a unit, the unit owner of such unit, as the applicant, must submit an application to the executive board, which application shall be executed by such owner and shall include:

(a) Evidence that the applicant of the proposed subdivision shall have complied with all building codes, fire codes, zoning codes, planned unit development requirements, master plans, and other applicable ordinances or resolutions adopted and enforced by the local governing body and that the proposed subdivision does not violate the terms of any document evidencing a security interest encumbering the unit;

(b) The proposed reallocation of interests, if any;

(c) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the units which are created by the subdivision and their dimensions, and identifying numbers;

(d) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(e) Such other information as may be reasonably requested by the executive board.

(3) No subdivision of units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).

(4) All costs and attorney fees incurred by the association as a result of an application shall be the sole obligation of the applicant.

§ 38-33.3-214, C.R.S. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and maps.

§ 38-33.3-215, C.R.S. Use for sales purposes.

A declarant may maintain sales offices, management offices, and models in the common interest community only if the declaration so provides. Except as provided in a declaration, any real estate in a common interest community used as a sales office, management office, or model and not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, such declarant ceases to have any rights with regard to any real estate used as a sales office, management office, or model, unless it is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common interest community. This section is subject to the provisions of other state laws and to local ordinances.

§ 38-33.3-216, C.R.S. Easement rights.

(1) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this article or reserved in the declaration.

(2) In a planned community, subject to the provisions of the declaration and the ability of the association to regulate and convey or encumber the common elements as set forth in sections 38-33.3-302 (1) (f) and 38-33.3-312, the unit owners have an easement:

  (a) In the common elements for the purpose of access to their units; and

  (b) To use the common elements and all other real estate that must become common elements for all other purposes.

§ 38-33.3-217, C.R.S. Amendment of declaration.

(1) (a) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), the declaration, including the plats and maps, may be amended only by the affirmative vote or agreement of unit owners of units to which more than fifty percent of the votes in the association are allocated or any larger percentage, not to exceed sixty-seven percent, that the declaration specifies. Any provision in the declaration that purports to specify a percentage larger than sixty-seven percent is hereby declared void as contrary to public policy, and until amended, such provision shall be deemed to specify a percentage of sixty-seven percent. The declaration may specify a smaller percentage than a simple majority only if all of the units are restricted exclusively to nonresidential use. Nothing in this paragraph (a) shall be construed to prohibit the association from seeking a court order, in accordance with subsection (7) of this section, to reduce the required percentage to less than sixty-seven percent.

  (II) If the declaration provides for an initial period of applicability to be followed by automatic extension periods, the declaration may be amended at any time in accordance with subparagraph (I) of this paragraph (a).

  (III) This paragraph (a) shall not apply:

    (A) To the extent that its application is limited by subsection (4) of this section;

    (B) To amendments executed by a declarant under section 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210, or 38-33.3-222;

    (C) To amendments executed by an association under section 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and (12);

(D) To amendments executed by the district court for any county that includes all or any portion of a common interest community under subsection (7) of this section; or

(E) To amendments that affect phased communities or declarant-controlled communities.

(b) (I) If the declaration requires first mortgagees to approve or consent to amendments, but does not set forth a procedure for registration or notification of first mortgagees, the association may:

(A) Send a dated, written notice and a copy of any proposed amendment by certified mail to each first mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof; and

(B) Cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice, on separate occasions at least one week apart, in a newspaper of general circulation in the county in which the common interest community is located.

(II) A first mortgagee that does not deliver to the association a negative response within sixty days after the date of the notice specified in subparagraph (I) of this paragraph (b) shall be deemed to have approved the proposed amendment.

(III) The notification procedure set forth in this paragraph (b) is not mandatory. If the consent of first mortgagees is obtained without resort to this paragraph (b), and otherwise in accordance with the declaration, the notice to first mortgagees shall be considered sufficient.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the amendment.

(4) (a) Except to the extent expressly permitted or required by other provisions of this article, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit or the allocated interests of a unit in the absence of a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(b) The sixty-seven-percent maximum percentage stated in paragraph (a) of subsection (1) of this section shall not apply to any common interest community in which one unit owner, by virtue of the declaration, bylaws, or other governing documents of the association, is allocated sixty-seven percent or more of the votes in the association.

(4.5) Except to the extent expressly permitted or required by other provisions of this article, no amendment may change the uses to which any unit is restricted in the absence of a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(5) Amendments to the declaration required by this article to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the

association designated for that purpose or, in the absence of designation, by the president of the association.

(6) All expenses associated with preparing and recording an amendment to the declaration shall be the sole responsibility of:

(a) In the case of an amendment pursuant to sections 38-33.3-208 (2), 38-33.3-212, and 38-33.3-213, the unit owners desiring the amendment; and

(b) In the case of an amendment pursuant to section 38-33.3-208 (3), 38-33.3-209 (6), or 38-33.3-210, the declarant; and

(c) In all other cases, the association.

(7) (a) The association, acting through its executive board pursuant to section 38-33.3-303 (1), may petition the district court for any county that includes all or any portion of the common interest community for an order amending the declaration of the common interest community if:

(I) The association has twice sent notice of the proposed amendment to all unit owners that are entitled by the declaration to vote on the proposed amendment or are required for approval of the proposed amendment by any means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, C.R.S., of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S.;

(II) The association has discussed the proposed amendment during at least one meeting of the association; and

(III) Unit owners of units to which are allocated more than fifty percent of the number of consents, approvals, or votes of the association that would be required to adopt the proposed amendment pursuant to the declaration have voted in favor of the proposed amendment.

(b) A petition filed pursuant to paragraph (a) of this subsection (7) shall include:

(I) A summary of:

(A) The procedures and requirements for amending the declaration that are set forth in the declaration;

(B) The proposed amendment to the declaration;

(C) The effect of and reason for the proposed amendment, including a statement of the circumstances that make the amendment necessary or advisable;

(D) The results of any vote taken with respect to the proposed amendment; and

(E) Any other matters that the association believes will be useful to the court in deciding whether to grant the petition; and

(II) As exhibits, copies of:

(A) The declaration as originally recorded and any recorded amendments to the declaration;

(B) The text of the proposed amendment;

(C) Copies of any notices sent pursuant to subparagraph (I) of paragraph (a) of this subsection (7); and

(D) Any other documents that the association believes will be useful to the court in deciding whether to grant the petition.

(c) Within three days of the filing of the petition, the district court shall set a date for hearing the petition. Unless the court finds that an emergency requires an immediate hearing, the hearing shall be held no earlier than forty-five days and no later than sixty days after the date the association filed the petition.

(d) No later than ten days after the date for hearing a petition is set pursuant to paragraph (c) of this subsection (7), the association shall:

(I) Send notice of the petition by any written means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, C.R.S., of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., to any unit owner, by first-class mail, postage prepaid or by hand delivery to any declarant, and by first-class mail, postage prepaid, to any lender that holds a security interest in one or more units and is entitled by the declaration or any underwriting guidelines or requirements of that lender or of the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, or the government national mortgage corporation to vote on the proposed amendment. The notice shall include:

(A) A copy of the petition which need not include the exhibits attached to the original petition filed with the district court;

(B) The date the district court will hear the petition; and

(C) A statement that the court may grant the petition and order the proposed amendment to the declaration unless any declarant entitled by the declaration to vote on the proposed amendment, the federal housing administration, the veterans administration, more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment, or more than thirty-three percent of the lenders that hold a security interest in one or more units and are entitled by the declaration to vote on the proposed amendment file written objections to the proposed amendment with the court prior to the hearing;

(II) File with the district court:

(A) A list of the names and mailing addresses of declarants, unit owners, and lenders that hold a security interest in one or more units and that are entitled by the declaration to vote on the proposed amendment; and

(B) A copy of the notice required by subparagraph (I) of this paragraph (d).

(e) The district court shall grant the petition after hearing if it finds that:

(I) The association has complied with all requirements of this subsection (7);

(II) No more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment have filed written objections to the proposed amendment with the court prior to the hearing;

(III) Neither the federal housing administration nor the veterans administration is entitled to approve the proposed amendment, or if so entitled has not filed written objections to the proposed amendment with the court prior to the hearing;

(IV) Either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to a declarant or no declarant has filed written objections to the proposed amendment with the court prior to the hearing;

(V) Either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to any lenders that hold security interests in one or more units and that are entitled by the declaration to vote on the proposed amendment or no more than thirty-three percent of such lenders have filed written objections to the proposed amendment with the court prior to the hearing; and

(VI) The proposed amendment would neither terminate the declaration nor change the allocated interests of the unit owners as specified in the declaration, except as allowed pursuant to section 38-33.3-315.

(f) Upon granting a petition, the court shall enter an order approving the proposed amendment and requiring the association to record the amendment in each county that includes all or any portion of the common interest community. Once recorded, the amendment shall have the same legal effect as if it were adopted pursuant to any requirements set forth in the declaration.

§ 38-33.3-218, C.R.S. Termination of common interest community.

(1) Except in the case of a taking of all the units by eminent domain, or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, a common interest community may be terminated only by agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the common interest community are restricted exclusively to nonresidential uses.

(1.5) No planned community that is required to exist pursuant to a development or site plan shall be terminated by agreement of unit owners, unless a copy of the termination agreement is sent by certified mail or hand delivered to the governing body of every municipality in which a portion of the planned community is situated or, if the planned community is situated in an unincorporated area, to the board of county commissioners for every county in which a portion of the planned community is situated.

(2) An agreement of unit owners to terminate must be evidenced by their execution of a termination agreement or ratifications thereof in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(3) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to the sale.

(5) Subject to the provisions of a termination agreement described in subsections (3) and (4) of this section, the association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community following termination, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all the powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in accordance with subsections (8), (9), and (10) of this section, taking into account the value of property owned or distributed that is not sold so as to preserve the proportionate interests of each unit owner with respect to all property cumulatively. Unless otherwise specified in the termination agreement, as long as the association holds title to the

real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this article or the declaration.

(6) (a) In a planned community, if all or a portion of the common elements are not to be sold following termination, title to the common elements not sold vests in the unit owners upon termination as tenants in common in fractional interests that maintain, after taking into account the fair market value of property owned and the proceeds of property sold, their respective interests as provided in subsection (10) of this section with respect to all property appraised under said subsection (10), and liens on the units shift accordingly.

(b) In a common interest community, containing units having horizontal boundaries described in the declaration, title to the units not to be sold following termination vests in the unit owners upon termination as tenants in common in fractional interests that maintain, after taking into account the fair market value of property owned and the proceeds of property sold, their respective interests as provided in subsection (10) of this section with respect to all property appraised under said subsection (10), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted such unit.

(7) Following termination of the common interest community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

(8) Upon termination of a condominium or planned community, creditors of the association who obtain a lien and duly record it in every county in which any portion of the common interest community is located are to be treated as if they had perfected liens on the units immediately before termination or when the lien is obtained and recorded, whichever is later.

(9) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, upon termination, creditors of the association who obtain a lien and duly record it in every county in which any portion of the cooperative is located are to be treated as if they had perfected liens against the cooperative immediately before termination or when the lien is obtained and recorded, whichever is later. Unless the declaration provides that all creditors of the association have that priority:

(a) The lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(b) Any other creditor of the association who obtains a lien and duly records it in every county in which any portion of the cooperative is located is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination or when the lien is obtained and recorded, whichever is later;

(c) The amount of the lien of an association's creditor described in paragraphs (a) and (b) of this subsection (9) against each unit owner's interest must be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(d) The lien of each creditor of each unit owner which was perfected before termination continues as a lien against that unit owner's unit as of the date the lien was perfected; and

(e) The assets of the association must be distributed to all unit owners and all lienholders as their interests may appear in the order described above. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(10) The respective interests of unit owners referred to in subsections (5) to (9) of this section are as follows:

(a) Except as provided in paragraph (b) of this subsection (10), the respective interests of unit owners are the combined fair market values of their units, allocated interests, any limited common elements, and, in the case of a planned community, any tenant in common interest, immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are:

(I) In a condominium, their respective common element interests immediately before the termination;

(II) In a cooperative, their respective ownership interests immediately before the termination; and

(III) In a planned community, their respective common expense liabilities immediately before the termination.

(11) In a condominium or planned community, except as provided in subsection (12) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community. Foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community other than withdrawable real estate does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment to the declaration excluding the real estate from the common interest community prepared, executed, and recorded by the association.

(12) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community. The board of directors shall reallocate interests as if the foreclosed section were taken by eminent domain by an amendment to the declaration prepared, executed, and recorded by the association.

§ 38-33.3-219, C.R.S. Rights of secured lenders.

(1) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

(a) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or

(b) Prevent the association or the executive board from commencing, intervening in, or settling any solicitation or proceeding; or

(c) Prevent any insurance trustee or the association from receiving and distributing any insurance proceeds pursuant to section 38-33.3-313.

§ 38-33.3-220, C.R.S. Master associations.

(1) If the declaration provides that any of the powers of a unit owners' association described in section 38-33.3-302 are to be exercised by or may be delegated to a master association, all provisions of this article applicable to unit owners' associations apply to any such master association except as modified by this section.

(2) Unless it is acting in the capacity of an association described in section 38-33.3-301, a master association may exercise the powers set forth in section 38-33.3-302 (1) (b) only to the extent such powers are expressly permitted to be exercised by a master association in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(3) If the declaration of any common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 38-33.3-303, 38-33.3-308, 38-33.3-309, 38-33.3-310, and 38-33.3-312 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this article.

(5) Even if a master association is also an association described in section 38-33.3-301, the articles of incorporation and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, must provide that the executive board of the master association be elected after the period of declarant control, if any, in one of the following ways:

(a) All unit owners of all common interest communities subject to the master association may elect all members of the master association's executive board.

(b) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.

(c) All unit owners of each common interest community subject to the master association may elect specified members of the master association's executive board.

(d) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.

§ 38-33.3-221, C.R.S. Merger or consolidation of common interest communities.

(1) Any two or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the preexisting common interest communities, and the operations and activities of all associations of the preexisting common interest communities are merged or

consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either by stating the reallocations or the formulas upon which they are based.

§ 38-33.3-221.5, C.R.S. Withdrawal from merged common interest community

(1) A common interest community that was merged or consolidated with another common interest community, or is party to an agreement to do so pursuant to section 38-33.3-221, may withdraw from the merged or consolidated common interest community or terminate the agreement to merge or consolidate, without the consent of the other common interest community or communities involved, if the common interest community wishing to withdraw meets all of the following criteria:

(a) It is a separate, platted subdivision;

(b) Its unit owners are required to pay into two common interest communities or separate unit owners' associations;

(c) It is or has been a self-operating common interest community or association continuously for at least twenty-five years;

(d) The total number of unit owners comprising it is fifteen percent or less of the total number of unit owners in the merged or consolidated common interest community or association;

(e) Its unit owners have approved the withdrawal by a majority vote and the owners of units representing at least seventy-five percent of the allocated interests in the common interest community wishing to withdraw participated in the vote; and

(f) Its withdrawal would not substantially impair the ability of the remainder of the merged common interest community or association to:

(I) Enforce existing covenants;

(II) Maintain existing facilities; or

(III) Continue to exist.

(2) If an association has met the requirements set forth in subsection (1) of this section, it shall be considered withdrawn as of the date of the election at which its unit owners voted to withdraw.

§ 38-33.3-222, C.R.S. Addition of unspecified real estate.

In a common interest community, if the right is originally reserved in the declaration, the declarant, in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration to add additional real estate to the common interest community without describing the location of that real estate in the original declaration; but the area of real estate added to the common interest community pursuant to this section may not exceed ten percent of the total area of real estate described in section 38-33.3-205 (1) (c) and (1) (h), and the declarant may not in any event increase the number of units in the common interest community beyond the number

stated in the original declaration pursuant to section 38-33.3-205 (1) (d), except as provided in section 38-33.3-217 (4).

§ 38-33.3-223, C.R.S. Sale of unit – disclosure to buyer. (Repealed)

* VI. Management of the Common Interest Community

§ 38-33.3-301, C.R.S. Organization of unit owners' association.

A unit owners' association shall be organized no later than the date the first unit in the common interest community is conveyed to a purchaser. The membership of the association at all times shall consist exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 38-33.3-218, or their heirs, personal representatives, successors, or assigns. The association shall be organized as a nonprofit, not-for-profit, or for-profit corporation or as a limited liability company in accordance with the laws of the state of Colorado; except that the failure of the association to incorporate or organize as a limited liability company will not adversely affect either the existence of the common interest community for purposes of this article or the rights of persons acting in reliance upon such existence, other than as specifically provided in section 38-33.3-316. Neither the choice of entity nor the organizational structure of the association shall be deemed to affect its substantive rights and obligations under this article.

§ 38-33.3-302, C.R.S. Powers of unit owners' association.

(1) Except as provided in subsections (2) and (3) of this section, and subject to the provisions of the declaration, the association, without specific authorization in the declaration, may:

- (a) Adopt and amend bylaws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (c) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, subject to the following exceptions:
  - (I) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 38-33.3-312; and
  - (II) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section 38-33.3-312;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements;
- (j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in section 38-33.3-202 (1) (b) and (1) (d);
- * (k) (I) Impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessments and other actions to enforce the

power of the association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association.

* (II) The association may not levy fines against a unit owner for violations of declarations, bylaws, or rules of the association for failure to adequately water landscapes or vegetation for which the unit owner is responsible when water restrictions or guidelines from the local water district or similar entity are in place and the unit owner is watering in compliance with such restrictions or guidelines. The association may require proof from the unit owner that the unit owner is watering the landscape or vegetation in a manner that is consistent with the maximum watering permitted by the restrictions or guidelines then in effect.

(*l*) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments;

(m) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(o) Exercise any other powers conferred by the declaration or bylaws;

(p) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(q) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(3) (a) Any managing agent, employee, independent contractor, or other person acting on behalf of the association shall be subject to this article to the same extent as the association itself would be.

(b) Decisions concerning the approval or denial of a unit owner's application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth in the declaration or in duly adopted rules and regulations or bylaws of the association, and shall not be made arbitrarily or capriciously.

(4) (a) The association's contract with a managing agent shall be terminable for cause without penalty to the association. Any such contract shall be subject to renegotiation.

(b) Notwithstanding section 38-33.3-117 (1.5) (g), this subsection (4) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

§ 38-33.3-303, C.R.S. Executive board members and officers.

(1) (a) Except as provided in the declaration, the bylaws, or subsection (3) of this section or any other provisions of this article, the executive board may act in all instances on behalf of the association.

(b) Notwithstanding any provision of the declaration or bylaws to the contrary, all members of the executive board shall have available to them all information related to the responsibilities and operation of the association obtained by any other member of the executive board. This information shall include, but is not necessarily limited to, reports of detailed monthly expenditures, contracts to which the association is a party, and copies of communications, reports, and opinions to and from any member of the executive board or any managing agent, attorney, or accountant employed or engaged by the executive board to whom the executive board delegates responsibilities under this article.

(2) Except as otherwise provided in subsection (2.5) of this section:

(a) If appointed by the declarant, in the performance of their duties, the officers and members of the executive board are required to exercise the care required of fiduciaries of the unit owners.

(b) If not appointed by the declarant, no member of the executive board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions.

(2.5) With regard to the investment of reserve funds of the association, the officers and members of the executive board shall be subject to the standards set forth in section 7-128-401, C.R.S.; except that, as used in that section:

(a) "Corporation" or "nonprofit corporation" means the association.

(b) "Director" means a member of the association's executive board.

(c) "Officer" means any person designated as an officer of the association and any person to whom the executive board delegates responsibilities under this article, including, without limitation, a managing agent, attorney, or accountant employed by the executive board.

(3) (a) The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(b) Committees of the association shall be appointed pursuant to the governing documents of the association or, if the governing documents contain no applicable provisions, pursuant to section 7-128-206, C.R.S. The person appointed after August 15, 2009, to preside over any such committee shall meet the same qualifications as are required by the governing documents of the association for election or appointment to the executive board of the association.

(4) (a) Within ninety days after adoption of any proposed budget for the common interest community, the executive board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the bylaws. The executive board shall give notice to the unit owners of the meeting as allowed for in the bylaws. Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners, or if permitted in the declaration, a majority of a class of unit owners, or any larger percentage specified in the declaration, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners.

(b) (I) At the discretion of the executive board or upon request pursuant to subparagraph (II) or (III) of this paragraph (b) as applicable, the books and records of the association shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the board. Such person need not be a certified public accountant except in the case of an audit. A person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall

cover the association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

(II) An audit shall be required under this paragraph (b) only when both of the following conditions are met:

(A) The association has annual revenues or expenditures of at least two hundred fifty thousand dollars; and

(B) An audit is requested by the owners of at least one-third of the units represented by the association.

(III) A review shall be required under this paragraph (b) only when requested by the owners of at least one-third of the units represented by the association.

(IV) Copies of an audit or review under this paragraph (b) shall be made available upon request to any unit owner beginning no later than thirty days after its completion.

(V) Notwithstanding section 38-33.3-117 (1.5) (h), this paragraph (b) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

(5) (a) Subject to subsection (6) of this section:

(I) The declaration, except a declaration for a large planned community, may provide for a period of declarant control of the association, during which period a declarant, or persons designated by such declarant, may appoint and remove the officers and members of the executive board. Regardless of the period of declarant control provided in the declaration, a period of declarant control terminates no later than the earlier of sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant, two years after the last conveyance of a unit by the declarant in the ordinary course of business, or two years after any right to add new units was last exercised.

(II) The declaration for a large planned community may provide for a period of declarant control of the association during which period a declarant, or persons designated by such declarant, may appoint and remove the officers and members of the executive board. Regardless of the period of declarant control provided in the declaration, a period of declarant control terminates in a large planned community no later than the earlier of sixty days after conveyance of seventy-five percent of the maximum number of units that may be created under zoning or other governmental development approvals in effect for the large planned community at any given time to unit owners other than a declarant, six years after the last conveyance of a unit by the declarant in the ordinary course of business, or twenty years after recordation of the declaration.

(b) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of the period of declarant control, but, in that event, the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(c) If a period of declarant control is to terminate in a large planned community pursuant to subparagraph (II) of paragraph (a) of this subsection (5), the declarant, or persons designated by the declarant, shall no longer have the right to appoint and remove the officers and members of the executive board unless, prior to the termination date, the association approves an extension of the declarant's ability to appoint and remove no more than a majority of the executive board by vote of a majority of the votes entitled to be cast in person or by proxy, other than by the declarant, at a meeting duly convened as required by law. Any such approval by the association may contain conditions and

limitations. Such extension of declarant's appointment and removal power, together with any conditions and limitations approved as provided in this paragraph (c), shall be included in an amendment to the declaration previously executed by the declarant.

(6) Not later than sixty days after conveyance of twenty-five percent of the units that may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units that may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the executive board must be elected by unit owners other than the declarant.

(7) Except as otherwise provided in section 38-33.3-220 (5), not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners other than the declarant or designated representatives of unit owners other than the declarant. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a vote of sixty-seven percent of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant or a member elected pursuant to a class vote under section 38-33.3-207 (4).

(9) Within sixty days after the unit owners other than the declarant elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including without limitation the following items:

(a) The original or a certified copy of the recorded declaration as amended, the association's articles of incorporation, if the association is incorporated, bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;

(b) An accounting for association funds and financial statements, from the date the association received funds and ending on the date the period of declarant control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the association.

(c) The association funds or control thereof;

(d) All of the declarant's tangible personal property that has been represented by the declarant to be the property of the association or all of the declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties;

(e) A copy, for the nonexclusive use by the association, of any plans and specifications used in the construction of the improvements in the common interest community;

(f) All insurance policies then in force, in which the unit owners, the association, or its directors and officers are named as insured persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the common interest community;

(h) Any other permits issued by governmental bodies applicable to the common interest community and which are currently in force or which were issued within one year prior to the date on which unit owners other than the declarant took control of the association;

(i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) A roster of unit owners and mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records;

(k) Employment contracts in which the association is a contracting party;

(*l*) Any service contract in which the association is a contracting party or in which the association or the unit owners have any obligation to pay a fee to the persons performing the services; and

(m) For large planned communities, copies of all recorded deeds and all recorded and unrecorded leases evidencing ownership or leasehold rights of the large planned community unit owners' association in all common elements within the large planned community.

§ 38-33.3-303.5, C.R.S. Construction defect actions – disclosure.

(1) (a) In the event the executive board, pursuant to section 38-33.3-302 (1) (d), institutes an action asserting defects in the construction of five or more units, the provisions of this section shall apply. For purposes of this section, "action" shall have the same meaning as set forth in section 13-20-803 (1), C.R.S.

(b) The executive board shall substantially comply with the provisions of this section.

(2) (a) Prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the executive board shall mail or deliver written notice of the commencement or anticipated commencement of such action to each unit owner at the last known address described in the association's records.

(b) The notice required by paragraph (a) of this subsection (2) shall state a general description of the following:

(I) The nature of the action and the relief sought; and

(II) The expenses and fees that the executive board anticipates will be incurred in prosecuting the action.

(3) Nothing in this section shall be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the executive board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

§ 38-33.3-304, C.R.S. Transfer of special declarant rights.

(1) A special declarant right created or reserved under this article may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon such transferor by this article. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the common interest community.

(c) If a transferor retains any special declarant rights but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this article or by the declaration relating to the retained special declarant rights and arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy or receivership proceedings of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold succeeds to only those special declarant rights related to that property held by that declarant which are specified in a written instrument prepared, executed, and recorded by such person at or about the same time as the judgment or instrument or by which such person obtained title to all of the property being foreclosed or sold.

(4) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy act or receivership proceedings of all interests in a common interest community owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control terminates unless the instrument which is required by subsection (3) of this section to be prepared, executed, and recorded at or about the same time as the judgment or instrument conveying title provides for transfer of all special declarant rights to a successor declarant.

(5) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on any declarant by this article or by the declaration.

(b) A successor to any special declarant right, other than a successor described in paragraph (c) or (d) of this subsection (5) or a successor who is an affiliate of a declarant, is subject to all obligations and liabilities imposed by this article or the declaration:

(I) On a declarant which relate to the successor's exercise or nonexercise of special declarant rights; or

(II) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the common interest community was created;

(C) Breach of any fiduciary obligation by any previous declarant or such declarant's appointees to the executive board; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, if such successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant.

(d) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to the instrument prepared, executed, and recorded by such person pursuant to the provisions of subsection (3) of this section may declare such successor's intention in such recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right held by such successor's transferor to control the executive board in accordance with the provisions of section 38-33.3-303 (5) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection (5), such successor declarant is not subject to any liability or obligation as a declarant, other than liability for the successor's acts and omissions under section 38-33.3-303 (4).

(6) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this article or the declaration.

§ 38-33.3-305, C.R.S. Termination of contracts and leases of declarant.

(1) The following contracts and leases, if entered into before the executive board elected by the unit owners pursuant to section 38-33.3-303 (7) takes office, may be terminated without penalty by the association, at any time after the executive board elected by the unit owners pursuant to section 38-33.3-303 (7) takes office, upon not less than ninety days' notice to the other party:

(a) Any management contract, employment contract, or lease of recreational or parking areas or facilities;

(b) Any other contract or lease between the association and a declarant or an affiliate of a declarant; or

(c) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

(2) Subsection (1) of this section does not apply to any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section or a proprietary lease.

§ 38-33.3-306, C.R.S. Bylaws.

(1) In addition to complying with applicable sections, if any, of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., or the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., if the common interest community is organized pursuant thereto, the bylaws of the association must provide:

(a) The number of members of the executive board and the titles of the officers of the association;

(b) Election by the executive board of a president, a treasurer, a secretary, and any other officers of the association the bylaws specify;

(c) The qualifications, powers and duties, and terms of office of, and manner of electing and removing, executive board members and officers and the manner of filling vacancies;

(d) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(e) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(f) A method for amending the bylaws.

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) (a) If an association with thirty or more units delegates powers of the executive board or officers relating to collection, deposit, transfer, or disbursement of association funds to other persons or to a managing agent, the bylaws of the association shall require the following:

(I) That the other persons or managing agent maintain fidelity insurance coverage or a bond in an amount not less than fifty thousand dollars or such higher amount as the executive board may require;

(II) That the other persons or managing agent maintain all funds and accounts of the association separate from the funds and accounts of other associations managed by the other persons or managing agent and maintain all reserve accounts of each association so managed separate from operational accounts of the association;

(III) That an annual accounting for association funds and a financial statement be prepared and presented to the association by the managing agent, a public accountant, or a certified public accountant.

(b) Repealed.

§ 38-33.3-307, C.R.S. Upkeep of the common interest community.

(1) Except to the extent provided by the declaration, subsection (2) of this section, or section 38-33.3-313 (9), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of such owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through such owner's unit reasonably necessary for those purposes. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or expense to avoid damage, or the association if it is responsible, is liable for the cost of prompt repair.

(1.5) Maintenance, repair, or replacement of any drainage structure or facilities, or other public improvements required by the local governmental entity as a condition of development of the common interest community or any part thereof shall be the responsibility of the association, unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement or unless such maintenance, repair, or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.

(2) In addition to the liability that a declarant as a unit owner has under this article, the declarant alone is liable for all expenses in connection with real estate within the common interest community subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant. If the declarant fails to pay all expenses in connection with real estate within the common interest community subject to development rights, the association may pay such expenses, and such expenses shall be assessed as a common expense against the real estate subject to development rights, and the association may enforce the assessment pursuant to section 38-33.3-316 by treating such real estate as if it were a unit. If the association acquires title to the real estate subject to the development rights through foreclosure or otherwise, the development rights shall not be extinguished thereby, and, thereafter, the association may succeed to any special declarant rights specified in a written instrument

prepared, executed, and recorded by the association in accordance with the requirements of section 38-33.3-304 (3).

(3) In a planned community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

§ 38-33.3-308, C.R.S. Meetings.

(1) Meetings of the unit owners, as the members of the association, shall be held at least once each year. Special meetings of the unit owners may be called by the president, by a majority of the executive board, or by unit owners having twenty percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten nor more than fifty days in advance of any meeting of the unit owners, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting of the unit owners shall be physically posted in a conspicuous place, to the extent that such posting is feasible and practicable, in addition to any electronic posting or electronic mail notices that may be given pursuant to paragraph (b) of subsection (2) of this section. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove an officer or member of the executive board.

(2) (a) All regular and special meetings of the association's executive board, or any committee thereof, shall be open to attendance by all members of the association or their representatives. Agendas for meetings of the executive board shall be made reasonably available for examination by all members of the association or their representatives.

(b) (I) The association is encouraged to provide all notices and agendas required by this article in electronic form, by posting on a web site or otherwise, in addition to printed form. If such electronic means are available, the association shall provide notice of all regular and special meetings of unit owners by electronic mail to all unit owners who so request and who furnish the association with their electronic mail addresses. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four hours before the meeting.

(II) Notwithstanding section 38-33.3-117 (1.5) (i), this paragraph (b) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7), C.R.S.

(2.5) (a) Notwithstanding any provision in the declaration, bylaws, or other documents to the contrary, all meetings of the association and board of directors are open to every unit owner of the association, or to any person designated by a unit owner in writing as the unit owner's representative.

(b) At an appropriate time determined by the board, but before the board votes on an issue under discussion, unit owners or their designated representatives shall be permitted to speak regarding that issue. The board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the board shall provide for a reasonable number of persons to speak on each side of the issue.

(c) Notwithstanding section 38-33.3-117 (1.5) (i), this subsection (2.5) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

(3) The members of the executive board or any committee thereof may hold an executive or closed door session and may restrict attendance to executive board members and such other persons requested by the executive board during a regular or specially announced meeting or a part

thereof. The matters to be discussed at such an executive session shall include only matters enumerated in paragraphs (a) to (f) of subsection (4) of this section.

(4) Matters for discussion by an executive or closed session are limited to:

(a) Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;

(b) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) Investigative proceedings concerning possible or actual criminal misconduct;

(d) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(e) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;

(f) Review of or discussion relating to any written or oral communication from legal counsel.

(4.5) Upon the final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

(5) Prior to the time the members of the executive board or any committee thereof convene in executive session, the chair of the body shall announce the general matter of discussion as enumerated in paragraphs (a) to (f) of subsection (4) of this section.

(6) No rule or regulation of the board or any committee thereof shall be adopted during an executive session. A rule or regulation may be validly adopted only during a regular or special meeting or after the body goes back into regular session following an executive session.

(7) The minutes of all meetings at which an executive session was held shall indicate that an executive session was held and the general subject matter of the executive session.

§ 38-33.3-309, C.R.S. Quorums.

(1) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent, or, in the case of an association with over one thousand unit owners, ten percent, of the votes which may be cast for election of the executive board are present, in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting or grant their proxy, as provided in section 7-128-205 (4), C.R.S.

§ 38-33.3-310, C.R.S. Voting – proxies.

(1) (a) If only one of the multiple owners of a unit is present at a meeting of the association, such owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) (I) (A) Votes for contested positions on the executive board shall be taken by secret ballot. This sub-subparagraph (A) shall not apply to an association whose governing documents provide for election of positions on the executive board by delegates on behalf of the unit owners.

(B) At the discretion of the board or upon the request of twenty percent of the unit owners who are present at the meeting or represented by proxy, if a quorum has been achieved, a vote on any matter affecting the common interest community on which all unit owners are entitled to vote shall be by secret ballot.

(C) Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be unit owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting. The volunteers shall not be board members and, in the case of a contested election for a board position, shall not be candidates.

(D) The results of a vote taken by secret ballot shall be reported without reference to the names, addresses, or other identifying information of unit owners participating in such vote.

(II) Notwithstanding section 38-33.3-117 (1.5) (j), this paragraph (b) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

(2) (a) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A proxy shall not be valid if obtained through fraud or misrepresentation. Unless otherwise provided in the declaration, bylaws, or rules of the association, appointment of proxies may be made substantially as provided in section 7-127-203, C.R.S.

(b) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months after its date, unless it provides otherwise.

(c) The association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the unit owner.

(d) The association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

(e) Any action of the association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

(3) (a) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(I) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners;

(II) Unit owners who have leased their units to other persons may not cast votes on those specified matters; and

(III) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(b) Unit owners must also be given notice, in the manner provided in section 38-33.3-308, of all meetings at which lessees are entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast.

§ 38-33.3-310.5, C.R.S. Executive board – conflicts of interest – definitions.

(1) Section 7-128-501, C.R.S., shall apply to members of the executive board; except that, as used in that section:

(a) "Corporation" or "nonprofit corporation" means the association.

(b) "Director" means a member of the association's executive board.

(c) "Officer" means any person designated as an officer of the association and any person to whom the board delegates responsibilities under this article, including, without limitation, a managing agent, attorney, or accountant employed by the board.

§ 38-33.3-311, C.R.S. Tort and contract liability.

(1) Neither the association nor any unit owner except the declarant is liable for any cause of action based upon that declarant's acts or omissions in connection with any part of the common interest community which that declarant has the responsibility to maintain. Otherwise, any action alleging an act or omission by the association must be brought against the association and not against any unit owner. If the act or omission occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for all tort losses not covered by insurance suffered by the association or that unit owner and all costs that the association would not have incurred but for such act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section by being a unit owner or a member or officer of the association.

(2) The declarant is liable to the association for all funds of the association collected during the period of declarant control which were not properly expended.

§ 38-33.3-312, C.R.S. Conveyance or encumbrance of common elements.

(1) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; except that all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(2) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; except that, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of

the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made in compliance with section 38-33.3-218, is void.

(3) An agreement to convey, or subject to a security interest, common elements in a condominium or planned community, or, in a cooperative, an agreement to convey, or subject to a security interest, any part of a cooperative, must be evidenced by the execution of an agreement, in the same manner as a deed, by the association. The agreement must specify a date after which the agreement will be void unless approved by the requisite percentage of owners. Any grant, conveyance, or deed executed by the association must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(4) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (1) of this section, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section and executed and ratified pursuant to subsection (3) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(5) Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale, or other transfer of common elements or any other part of a cooperative is void.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of ingress and egress of the unit and support of the unit.

(7) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(8) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

§ 38-33.3-313, C.R.S. Insurance.

(1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the common elements and, in a planned community, also on property that must become common elements, for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements, and, in cooperatives, also of all units, in an amount, if any, specified by the common interest community instruments or otherwise deemed sufficient in the judgment of the executive board but not less than any amount specified in the association documents, insuring the executive board, the unit owners' association, the management agent, and their respective employees, agents, and all persons acting as agents. The declarant shall be included as an additional insured in such declarant's capacity as a unit owner and board member. The unit owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements and, in cooperatives, also of all units. The insurance shall cover claims of one or more insured parties against other insured parties.

(2) In the case of a building that is part of a cooperative or that contains units having horizontal boundaries described in the declaration, the insurance maintained under paragraph (a) of subsection (1) of this section must include the units but not the finished interior surfaces of the walls, floors, and ceilings of the units. The insurance need not include improvements and

betterments installed by unit owners, but if they are covered, any increased charge shall be assessed by the association to those owners.

(3) If the insurance described in subsections (1) and (2) of this section is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate, including insurance on units it is not obligated to insure, to protect the association or the unit owners.

(4) Insurance policies carried pursuant to subsections (1) and (2) of this section must provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of such unit owner's interest in the common elements or membership in the association;

(b) The insurer waives its rights to subrogation under the policy against any unit owner or member of his household;

(c) No act or omission by any unit owner, unless acting within the scope of such unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(5) Any loss covered by the property insurance policy described in paragraph (a) of subsection (1) and subsection (2) of this section must be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (9) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, unit owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the common interest community is terminated.

(6) The association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the association settles claims for damages to real property, it shall have the authority to assess negligent unit owners causing such loss or benefiting from such repair or restoration all deductibles paid by the association. In the event that more than one unit is damaged by a loss, the association in its reasonable discretion may assess each unit owner a pro rata share of any deductible paid by the association.

(7) An insurance policy issued to the association does not obviate the need for unit owners to obtain insurance for their own benefit.

(8) An insurer that has issued an insurance policy for the insurance described in subsections (1) and (2) of this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, and each unit owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

(9) (a) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless:

(I) The common interest community is terminated, in which case section 38-33.3-218 applies;

(II) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(III) Sixty-seven percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild; or

(IV) Prior to the conveyance of any unit to a person other than the declarant, the holder of a deed of trust or mortgage on the damaged portion of the common interest community rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, as follows:

(I) In a condominium, in proportion to the common element interests of all the units; and

(II) In a cooperative or planned community, in proportion to the common expense liabilities of all the units; except that, in a fixed or limited equity cooperative, the unit owner may not receive more of the proceeds than would satisfy the unit owner's entitlements under the declaration if the unit owner leaves the cooperative. In such a cooperative, the proceeds that remain after satisfying the unit owner's obligations continue to be held in trust by the association for the benefit of the cooperative. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 38-33.3-107, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

(10) If any unit owner or employee of an association with thirty or more units controls or disburses funds of the common interest community, the association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the association.

(11) Any person employed as an independent contractor by an association with thirty or more units for the purposes of managing a common interest community must obtain and maintain fidelity insurance in an amount not less than the amount specified in subsection (10) of this section, unless the association names such person as an insured employee in a contract of fidelity insurance, pursuant to subsection (10) of this section.

(12) The association may carry fidelity insurance in amounts greater than required in subsection (10) of this section and may require any independent contractor employed for the purposes of managing a common interest community to carry more fidelity insurance coverage than required in subsection (10) of this section.

(13) Premiums for insurance that the association acquires and other expenses connected with acquiring such insurance are common expenses.

§ 38-33.3-314, C.R.S. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of or provision for reserves shall be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

§ 38-33.3-315, C.R.S. Assessments for common expenses.

(1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the association.

(2) Except for assessments under subsections (3) and (4) of this section and section 38-33.3-207 (4) (a) (IV), all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 38-33.3-207 (1) and (2). Any past-due common expense assessment or installment thereof shall bear interest at the rate established by the association not exceeding twenty-one percent per year.

(3) To the extent required by the declaration:

   (a) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

   (b) Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and

   (c) The costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage.

(4) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit.

(5) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(6) Each unit owner is liable for assessments made against such owner's unit during the period of ownership of such unit. No unit owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made.

(7) Unless otherwise specifically provided in the declaration or bylaws, the association may enter into an escrow agreement with the holder of a unit owner's mortgage so that assessments may be combined with the unit owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the federal housing administration, department of housing and urban development, veterans' administration, or other government agency.

§ 38-33.3-316, C.R.S. Lien for assessments.

(1) The association, if such association is incorporated or organized as a limited liability company, has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, attorney fees, fines, and interest charged pursuant to section 38-33.3-302 (1) (j), (1) (k), and (1) (l), section 38-33.3-313 (6), and section 38-33.3-315 (2) are enforceable as assessments under this article. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a

lien from the time it becomes due, including the due date set by any valid association's acceleration of installment obligations.

(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except:

(I) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to;

(II) A security interest on the unit which has priority over all other security interests on the unit and which was recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a security interest encumbering only the unit owner's interest which has priority over all other security interests on the unit and which was perfected before the date on which the assessment sought to be enforced became delinquent; and

(III) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:

(I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315 (1) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(II) (Deleted by amendment, L. 93, p. 653, § 21, effective April 30, 1993.)

(c) This subsection (2) does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of part 2 of article 41 of this title or to the provisions of section 15-11-201, C.R.S.

(d) The association shall have the statutory lien described in subsection (1) of this section for any assessment levied or fine imposed after June 30, 1992. Such lien shall have the priority described in this subsection (2) if the other lien or encumbrance is created after June 30, 1992.

(3) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(4) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required.

(5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of assessments become due.

(6) This section does not prohibit actions or suits to recover sums for which subsection (1) of this section creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(7) The association shall be entitled to costs and reasonable attorney fees incurred by the association in a judgment or decree in any action or suit brought by the association under this section.

(8) The association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen calendar days after receipt of the request

and is binding on the association, the executive board, and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request.

(9) In any action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner to collect all sums alleged to be due from the unit owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pending of the action to the extent of the association's common expense assessments.

(10) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

(11) The association's lien may be foreclosed by any of the following means:

* (a) In a condominium or planned community, the association's lien may be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

* (I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

* (II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

* (b) In a cooperative whose unit owners' interests in the units are real estate as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

* (I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

* (II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(c) In a cooperative whose unit owners' interests in the units are personal property, as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed as a security interest under the "Uniform Commercial Code", title 4, C.R.S.

* ***§ 38-33.3-316.3, C.R.S. Collections — limitations.***

* (1) In collecting past-due assessments and other delinquent payments under this article, an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, shall:

* (a) Adopt and comply with a collections policy that meets the requirements of section 38-33.3-209.5 (5); and

* (b) Make a good-faith effort to coordinate with the unit owner to set up a payment plan that meets the requirements of this section; except that:

* (I) This section does not apply if the unit owner does not occupy the unit and has acquired the property as a result of:

* (A) A default of a security interest encumbering the unit; or

* (B) Foreclosure of the association's lien; and

* (II) The association or a holder or assignee of the association's debt is not obligated to negotiate a payment plan with a unit owner who has previously entered into a payment plan under this section.

* (2) A payment plan negotiated between the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, and the unit owner pursuant to this section must permit the unit owner to pay off the deficiency in equal installments over a period of at least six months. Nothing in this section prohibits an association or a holder or assignee of the association's debt from pursuing legal action against a unit owner if the unit owner fails to comply with the terms of his or her payment plan. A unit owner's failure to remit payment of an agreed-upon installment, or to remain current with regular assessments as they come due during the six-month period, constitutes a failure to comply with the terms of his or her payment plan.

* (3) For purposes of this section, "assessments" includes regular and special assessments and any associated fees, charges, late charges, attorney fees, fines, and interest charged pursuant to section 38-33.3-315 (2).

§ 38-33.3-316.5, C.R.S. Time share estate – foreclosure – definitions.

(1) As used in this section, unless the context otherwise requires:

(a) “Junior lienor” has the same meaning as set forth in section 38-38-100.3 (12), C.R.S.

(b) “Obligor” means the person liable for the assessment levied against a time share estate pursuant to section 38-33.3-316 or the record owner of the time share estate.

(c) “Time share estate” has the same meaning as set forth in section 38-33-110 (5).

(2) A plaintiff may commence a single judicial foreclosure action pursuant to section 38-33.3-316 (11), joining as defendants multiple obligors with separate time share estates and the junior lienors thereto, if:

(a) The judicial foreclosure action involves a single common interest community;

(b) The declaration giving rise to the right of the association to collect assessments creates default and remedy obligations that are substantially the same for each obligor named as a defendant in the judicial foreclosure action;

(c) The action is limited to a claim for judicial foreclosure brought pursuant to section 38-33.3-316 (11); and

(d) The plaintiff does not allege, with respect to any obligor, that the association’s lien is prior to any security interest described in section 38-33.3-316 (2) (a) (II), even if such a claim could be made pursuant to section 38-33.3-316 (2) (b) (I).

(3) In a judicial foreclosure action in which multiple obligors with separate time share estates and the junior lienors thereto have been joined as defendants in accordance with this section:

(a) In addition to any other circumstances where severance is proper under the Colorado rules of civil procedure, the court may sever for separate trial any disputed claim or claims;

(b) If service by publication of two or more defendants is permitted by law, the plaintiff may publish a single notice for all joined defendants for whom service by publication is permitted, so long as all information that would be required by law to be provided in the published notice as to each defendant individually is included in the combined published notice. Nothing in this paragraph (b) shall be interpreted to allow service by publication of any defendant if service by publication is not otherwise permitted by law with respect to that defendant.

(c) The action shall be deemed a single action, suit, or proceeding for purposes of payment of filing fees, notwithstanding any action by the court pursuant to paragraph (a) of this subsection (3), so long as the plaintiff complies with subsection (2) of this section.

(4) Notwithstanding that multiple obligors with separate time share estates may be joined in a single judicial foreclosure action, unless otherwise ordered by the court, each time share estate foreclosed pursuant to this section shall be subject to a separate foreclosure sale, and any cure or redemption rights with respect to such time share estate shall remain separate.

(5) The plaintiff in an action brought pursuant to this section is deemed to waive any claims against a defendant for a deficiency remaining after the foreclosure of the lien for assessment and for attorney fees related to the foreclosure action.

§ 38-33.3-317, C.R.S. Association records.

(1) In addition to any records specifically defined in the association's declaration or bylaws or expressly required by section 38-33.3-209.4 (2), the association must maintain the following, all of which shall be deemed to be the sole records of the association for purposes of document retention and production to owners:

(a) Detailed records of receipts and expenditures affecting the operation and administration of the association;

(b) Records of claims for construction defects and amounts received pursuant to settlement of those claims;

(c) Minutes of all meetings of its unit owners and executive board, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by any committee of the executive board;

(d) Written communications among, and the votes cast by, executive board members that are:

(I) Directly related to an action taken by the board without a meeting pursuant to section 7-128-202, C.R.S.; or

(II) Directly related to an action taken by the board without a meeting pursuant to the association's bylaws;

(e) The names of unit owners in a form that permits preparation of a list of the names of all unit owners and the physical mailing addresses at which the association communicates with them, showing the number of votes each unit owner is entitled to vote; except that this paragraph (e) does not apply to a unit, or the owner thereof, if the unit is a time-share unit, as defined in section 38-33-110 (7);

(f) Its current declaration, covenants, bylaws, articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity, rules and regulations, responsible governance policies adopted pursuant to section 38-33.3-209.5, and other policies adopted by the executive board;

(g) Financial statements as described in section 7-136-106, C.R.S., for the past three years and tax returns of the association for the past seven years, to the extent available;

(h) A list of the names, electronic mail addresses, and physical mailing addresses of its current executive board members and officers;

(i) Its most recent annual report delivered to the secretary of state, if any;

(j) Financial records sufficiently detailed to enable the association to comply with section 38-33.3-316 (8) concerning statements of unpaid assessments;

(k) The association's most recent reserve study, if any;

(*l*) Current written contracts to which the association is a party and contracts for work performed for the association within the immediately preceding two years;

(m) Records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners;

(n) Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate;

(o) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members; and

(p) All written communications within the past three years to all unit owners generally as unit owners.

(2) (a) Subject to subsections (3), (3.5), and (4) of this section, all records maintained by the association must be available for examination and copying by a unit owner or the owner's authorized agent. The association may require unit owners to submit a written request, describing with reasonable particularity the records sought, at least ten days prior to inspection or production of the documents and may limit examination and copying times to normal business hours or the next regularly scheduled executive board meeting if the meeting occurs within thirty days after the request. Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations of the association to the contrary, the association may not condition the production of records upon the statement of a proper purpose.

(b) (I) Notwithstanding paragraph (a) of this subsection (2), a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a unit owner's interest as a unit owner without consent of the executive board.

(II) Without limiting the generality of subparagraph (I) of this paragraph (b), without the consent of the executive board, a membership list or any part thereof may not be:

(A) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the unit owners in an election to be held by the association;

(B) Used for any commercial purpose; or

(C) Sold to or purchased by any person.

(3) Records maintained by an association may be withheld from inspection and copying to the extent that they are or concern:

(a) Architectural drawings, plans, and designs, unless released upon the written consent of the legal owner of the drawings, plans, or designs;

(b) Contracts, leases, bids, or records related to transactions to purchase or provide goods or services that are currently in or under negotiation;

(c) Communications with legal counsel that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;

(d) Disclosure of information in violation of law;

(e) Records of an executive session of an executive board;

(f) Individual units other than those of the requesting owner; or

(g) The names and physical mailing addresses of unit owners if the unit is a time-share unit, as defined in section 38-33-110 (7), C.R.S.

(3.5) Records maintained by an association are not subject to inspection and copying, and must be withheld, to the extent that they are or concern:

(a) Personnel, salary, or medical records relating to specific individuals; or

(b) Personal identification and account information of members, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers.

(4) The association may impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for copies of association records. The charge may not exceed the estimated cost of production and reproduction of the records.

(5) A right to copy records under this section includes the right to receive copies by photocopying or other means, including the receipt of copies through an electronic transmission if available, upon request by the unit owner.

(6) An association is not obligated to compile or synthesize information.

(7) Association records and the information contained within those records shall not be used for commercial purposes.

§ 38-33.3-318, C.R.S. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has the power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

§ 38-33.3-319, C.R.S. Other applicable statutes.

To the extent that provisions of this article conflict with applicable provisions in the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., the "Uniform Partnership Law", article 60 of title 7, C.R.S., the "Colorado Uniform Partnership Act (1997)", article 64 of title 7, C.R.S., the "Colorado Uniform Limited Partnership Act of 1981", article 62 of title 7, C.R.S., article 1 of this title, article 55 of title 7, C.R.S., article 33.5 of this title, and section 39-1-103 (10), C.R.S., and any other laws of the state of Colorado which now exist or which are subsequently enacted, the provisions of this article shall control.

Chapter 11:
Appraiser Regulation

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

I. The Colorado Board of Real Estate Appraisers

* The Colorado Board of Real Estate Appraisers ("Board") meets every other month and consists of seven members who are appointed by the Governor. The overall objective of the Board is to protect the public. In order to do so, the Colorado legislature has granted the Board rulemaking authority for matters related to the profession of real estate appraisers, and Appraisal Management Companies (AMC). Rules are made after notice and public hearings in which all interested parties may participate.

The Division of Real Estate ("Division") is part of the Department of Regulatory Agencies and is responsible for budgeting, purchasing, and related management functions. The director of the Division is an administrative officer who executes the directives of the Board and is given statutory authority in all matters delegated by the Board. The Board exercises its duties and authority through licensing, certification, and enforcement.

II. Appraiser Licensing and Certification

In 1990, the legislature passed laws governing the practice of real estate appraisal in Colorado in response to the federal "Financial Institutions Reform, Recovery and Enforcement Act of 1989" ("FIRREA"). This enabling legislation has been amended several times since being adopted. The full text of the statutes, §§ 12-61-701 through 12-61-721, C.R.S., are reprinted in this chapter.

* The Colorado Board of Real Estate Appraisers is composed of three appraisers, a county assessor, a commercial banker with real estate lending experience, a public member, and an AMC representative. The Board has statutory authority to implement Colorado law in a manner consistent with federal regulations, including rule-making and imposing discipline for violations of appraiser license law.

* Unless a specific exemption applies, any person acting as a real estate appraiser in this state must be licensed as provided by §§ 12-61-701, *et seq.* Among other things, any person who performs real estate appraisals for federally related loans in Colorado and who is not licensed or certified by the Division is subject to criminal sanctions in terms of § 12-61-712. Exceptions to the definition of "real estate appraiser" are found in § 12-61-702(5)(b), C.R.S., and include, among others, licensed real estate brokers who perform broker price opinions and competitive market analyses that are not represented as appraisals and are not used for purposes of obtaining financing. Other exceptions are provided for corporations valuing property they own, may purchase or sell, and for appraisers of personal property, water or mineral rights. State, county and city right-of-way agents are exempt when they value properties worth $5,000 or less.

* Colorado appraisal licensing and certification law, rules, and practices are reviewed and approved by the Federal Appraisal Subcommittee (ASC). The ASC oversees the real estate

appraisal process as it relates to federally related transactions. The Appraisal Foundation (TAF), a private non-profit appraisal organization, is charged with developing the qualifications for appraisers and standards for appraisals through two of its independent Boards, the Appraisal Qualifications Board (AQB) and the Appraisal Standards Board (ASB). In general, the standards for the development and reporting of an appraisal are those of the Uniform Standards of Professional Appraisal Practice (USPAP) as developed, interpreted, and amended by the ASB. The AQB and ASB have no legislative power, but their recommendations have been adopted through statute and rules.

* Federal financial regulatory agencies have developed rules as to the appraiser and appraisal related requirements that must be met for valuation of properties in "federally related transactions." Additional standards are imposed by federal and/or state law for real estate appraisals, in particular, for eminent domain, conservation easements and appraisals used for income tax purposes.

III. Levels of Appraiser Licensure

* Colorado appraiser law and Board rules establish four levels of licensure, summarized in more detail below. A license or certification is issued when an individual meets the education, examination, and experience requirements for their level of licensure. The level of licensure determines what properties an appraiser, if competent for the assignment, may appraise.

* **Registered Appraiser:** This level of licensure is only utilized for appraiser employees of county tax assessment offices. Although the registered credential is the minimum level of licensure available for appraiser employees, these individuals may also qualify for and hold a licensed or certified credential. The State is developing education and examination requirements for the registered credential held by county assessor employees

* **Licensed Appraiser**: The licensed credential allows the appraiser to appraise non-complex 1-4 unit residential properties having a transaction value of less than $1 million and complex 1-4 unit residential properties having a transaction value of less than $250,000. The terms "Complex Residential Property" and "Transaction Value" are defined by Board Rule and the Real Property Appraiser Qualification Criteria of the AQB.

* **Certified Residential Appraiser**: The certified residential credential allows the appraiser to appraise 1-4 unit residential properties without regard to transaction value or complexity. The credential includes the appraisal of vacant or unimproved land that is utilized for 1-4 family purposes or for which the highest and best use is for 1-4 family purposes, but does not include land for which a subdivision analysis is necessary.

* **Certified General Appraiser**: The certified general credential allows the appraiser to appraise all types of real property.

IV. Requirements for Appraiser Licensure

* In general, there are three requirements that must be met for appraiser licensure: education, examination, and experience. The specific requirements in these areas for the licensed and certified credentials are detailed under Board Rules 2.2, 2.3 and 2.4. The State is currently developing education and examination requirements for the registered credential held by appraiser employees of county assessor offices.

* **Effective January 1, 2015, new academic requirements will be implemented for licensed and certified credentials. These requirements can be found in the AQB section of The Appraisal Foundation website (www.appraisalfoundation.org).**

V. Continuing Education Requirements

* An initial license or certification issued to an appraiser is valid through December 31 of the year issued. Appraisers who obtain their initial license or certification prior to July 1 of any calendar year must complete at least 14 hours of approved appraiser continuing education before December 31. Appraisers who renew their credential will be issued a three-year license and must complete at least 42 hours of approved appraiser continuing education during the three-year renewal cycle.

* At a minimum, appraisers must successfully complete the 7-hour National Uniform Standards of Professional Appraisal Practice (USPAP) Update Course every two calendar years. The update course will be credited towards the required 42 hours of continuing education for the renewal cycle. Please note that the 15-hour National USPAP course cannot be substituted for the required 7-hour National USPAP update course. Continuing education requirements are more fully detailed in Chapter 7 of the Board Rules.

* VI. Appraisal Management Companies

* In accordance with the Dodd–Frank Wall Street Reform and Consumer Protection Act, the Colorado legislature passed HB 12-1110 which requires appraisal management companies (AMCs) to be licensed in the state of Colorado as of July 1, 2013. Each appraisal management company must designate a Controlling Appraiser to supervise all licensed activities that occur in the state. The Board of Real Estate Appraisers shall not issue a license to an AMC until the Controlling Appraiser and each individual that owns more than 10% of the company establishes that he or she is truthful and honest and has good moral character and has submitted a set of fingerprints to the Colorado Bureau of Investigations. Each AMC must maintain a surety bond for a minimum of $25,000.

Title 12, Article 61, Part 7, Colorado Revised Statutes – Real Estate Appraisers

§ 12-61-701, C.R.S. Legislative declaration.

* The general assembly finds, determines, and declares that sections 12-61-702 to 12-61-718 are enacted pursuant to the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended. The general assembly further finds, determines, and declares that sections 12-61-702 to 12-61-718 are intended to implement the requirements of federal law in the least burdensome manner to real estate appraisers and appraisal management companies. Licensed ad valorem appraisers licensed under this article are not regulated by the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351.

§ 12-61-702, C.R.S. Definitions.

As used in this part 7, unless the context otherwise requires:

* (1) "Appraisal", "appraisal report", or "real estate appraisal" means a written or oral analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate that is transmitted to the client upon the completion of an assignment. These terms include a valuation, which is an opinion of the value of real estate, and an analysis, which is a general study of real estate not specifically performed only to determine value; except that the terms include a valuation completed by an appraiser employee of a county assessor as defined in section 39-1-102 (2), C.R.S. The terms do not include an analysis, valuation, opinion, conclusion, notation, or compilation of data by an officer, director, or regular salaried employee of a financial institution or its affiliate, made for internal use only by the financial institution or affiliate, concerning an interest in real estate that is owned or held as collateral by the financial institution or affiliate and that is not represented or deemed to be an appraisal except to the financial institution, the agencies regulating the financial institution, and any secondary markets that purchase real estate secured loans. An appraisal prepared by an officer, director, or regular salaried employee of a financial institution who is not licensed or certified under this part 7 shall contain a written notice that the preparer is not licensed or certified as an appraiser under this part 7.

(1.5) (a) "Appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor in a consumer credit transaction secured by a consumer's principal dwelling that oversees a network or panel of licensed or certified appraisers or by an underwriter of, or other principal in, the secondary mortgage markets that oversees a network or panel of licensed or certified appraisers.

(b) "Appraisal management company" does not include:

(I) A corporation, limited liability company, sole proprietorship, or other entity that directly performs appraisal services;

(II) A corporation, limited liability company, sole proprietorship, or other entity that does not contract with appraisers for appraisal services, but solely distributes orders to a client-selected panel of appraisers; and

(III) A mortgage company, or its subsidiary, that manages a panel of appraisers who are engaged to provide appraisal services on mortgage loans either originated by the mortgage company or funded by the mortgage company with its own funds.

(2) "Board" means the board of real estate appraisers created in section 12-61-703.

(2.1) "Client" means the party or parties who engage an appraiser or an appraisal management company for a specific assignment.

(2.3) "Commission" means the conservation easement oversight commission created in section 12-61-721 (1).

(2.5) "Consulting services" means services performed by an appraiser that do not fall within the definition of an "independent appraisal" in subsection (4.5) of this section. "Consulting services" includes, but is not limited to, marketing, financing and feasibility studies, valuations, analyses, and opinions and conclusions given in connection with real estate brokerage, mortgage banking, and counseling and advocacy in regard to property tax assessments and appeals thereof; except that, if in rendering such services the appraiser acts as a disinterested third party, the work shall be deemed an independent appraisal and not a consulting service. Nothing in this subsection (2.5) shall be construed to preclude a person from acting as an expert witness in valuation appeals.

(3) "Director" means the director of the division of real estate.

(4) "Division" means the division of real estate.

* (4.3) "Financial institution" means any "bank" or "savings association", as such terms are defined in 12 U.S.C. sec. 1813, any state bank incorporated under title 11, C.R.S., any state or federally chartered credit union, or any company that has direct or indirect control over any of such entities.

(4.5) "Independent appraisal" means an engagement for which an appraiser is employed or retained to act as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of identified real estate.

(5) (a) "Real estate appraiser" or "appraiser" means a person who provides an estimate of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and includes one who estimates value and who possesses the necessary qualifications, ability, and experience to execute or direct the appraisal of real property.

(b) "Real estate appraiser" does not include:

(I) Any person who conducts appraisals strictly of personal property;

(II) Any person licensed as a broker pursuant to part 1 of this article who provides an opinion of value that is not represented as an appraisal and is not used for purposes of obtaining financing;

(III) Any person licensed as a certified public accountant pursuant to article 2 of this title, and otherwise regulated, provided such opinions of value for real estate are not represented as an appraisal;

(IV) Any corporation, which is acting through its officers or regular salaried employees, when conducting a valuation of real estate property rights owned, to be purchased, or sold by the corporation;

(V) Any person who conducts appraisals strictly of water rights or of mineral rights;

(VI) Any right-of-way acquisition agent employed by a public entity who provides an opinion of value that is not represented as an appraisal when the property being valued is five thousand dollars or less;

(VII) Any officer, director, or regular salaried employee of a financial institution or its affiliate who makes, for internal use only by the said financial institution or affiliate, an analysis, evaluation, opinion, conclusion, notation, or compilation of data with respect to an appraisal so long as such person does not make a written adjustment of the appraisal's conclusion as to the value of the subject real property;

(VIII) Any officer, director, or regular salaried employee of a financial institution or its affiliate who makes such an internal analysis, valuation, opinion, conclusion, notation, or compilation of data concerning an interest in real estate that is owned or held as collateral by the financial institution or its affiliate.

(6) (Deleted by amendment, L. 2000, p. 177, § 1, effective August 2, 2000.)

12-61-703, C.R.S. Board of real estate appraisers – creation – compensation – immunity – repeal of part.

(1) There is hereby created in the division a board of real estate appraisers consisting of seven members appointed by the governor with the consent of the senate. Of the members, three shall be licensed or certified appraisers, one of whom shall have expertise in eminent domain matters, one shall be a county assessor in office, one shall be an officer or employee of a commercial bank experienced in real estate lending, one shall be an officer or employee of an appraisal management company, and one shall be a member of the public at large not engaged in any of the businesses represented by the other members of the board. Members of the board shall hold office for terms of three years. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor has the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) The board shall exercise its powers and perform its duties and functions under the division as if transferred thereto by a **type 1** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2.5) (a) The general assembly finds, determines, and declares that the organization of the board under the division as a **type 1** agency will provide the autonomy necessary to avoid potential conflicts of interest between the responsibility of the board in the regulation of real estate appraisers and the responsibility of the division in the regulation of real estate brokers and salesmen. The general assembly further finds, determines, and declares that the placement of the board as a **type 1** agency under the division is consistent with the organizational structure of state government.

(b) and (c) (Deleted by amendment, L. 96, p. 1190, § 3, effective July 1, 1996.)

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations 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 12-61-705.

(4) Members of the board, consultants, and expert witnesses shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 7.

(5) A majority of the board shall constitute a quorum for the transaction of all business, and actions of the board shall require a vote of a majority of such members present in favor of the action taken.

(6) This part 7 is repealed, effective July 1, 2013. Prior to such repeal, the board of real estate appraisers shall be reviewed as provided in section 24-34-104, C.R.S.

§ 12-61-704, C.R.S. Powers and duties of the board.

(1) In addition to all other powers and duties imposed upon it by law, the board has the following powers and duties:

* (a) To promulgate and amend, as necessary, rules pursuant to article 4 of title 24, C.R.S., for the implementation and administration of this part 7 and as required to comply with the

federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", and with any requirements imposed by amendments to such federal law. The board shall not establish any requirements that are more stringent than the requirements of any applicable federal law. Licensed ad valorem appraisers are not regulated by the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989". The board shall adopt rules regarding minimum qualifications and standards of practice for licensed ad valorem appraisers.

* (b) To charge application, examination, and license and certificate renewal fees established pursuant to section 12-61-111.5 from all applicants for licensure, certification, examination, and renewal under this part 7. No fees received from applicants seeking licensure, certification, examination, or renewal shall be refunded.

(c) (I) (Deleted by amendment, L. 2012.)

(II) The board is not required to maintain or preserve licensing history records of a person licensed or certified under this part 7 for a period of time longer than seven years. Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and subject to sections 24-72-203 and 24-72-204, C.R.S.

(d) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this part 7. Such administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

* (e) To issue, deny, or refuse to renew a license or certificate pursuant to this part 7;

(f) To take disciplinary actions in conformity with this part 7;

(g) To delegate to the director the administration and enforcement of this part 7 and the authority to act on behalf of the board on such occasions and in such circumstances as the board directs;

(h) (I) To develop, purchase, or contract for any examination required for the administration of this part 7, to offer each such examination at least twice a year or, if demand warrants, at more frequent intervals, and to establish a passing score for each examination that reflects a minimum level of competency;

(II) If study materials are developed by a testing company or other entity, the board shall make such materials available to persons desiring to take examinations pursuant to this part 7. The board may charge fees for such materials to defray any costs associated with making such materials available.

(i) In compliance with the provisions of article 4 of title 24, C.R.S., to make investigations, subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed, hold hearings, and take evidence in all matters relating to the exercise of the board's power under this part 7;

(j) Pursuant to sec. 1119 (b) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", to apply, if necessary, for a federal waiver of the requirement relating to certification or licensing of a person to perform appraisals and to make the necessary written determinations specified in said section for purposes of making such application.

(k) If the board has reasonable cause to believe that a person, partnership, limited liability company, or corporation is violating this part 7, to enter an order requiring the individual or appraisal management company to cease and desist the violations.

* (*l*) To establish classroom education and experience requirements for an appraiser who prepares an appraisal for a conservation easement for which a tax credit is claimed pursuant to section 39-22-522, C.R.S. Such requirements must ensure that appraisers have a sufficient amount of training and expertise to accurately prepare appraisals that comply with the uniform standards of professional appraisal practice and any other provision of law related to the appraisal of conservation easements for which a tax credit is claimed. A tax credit certificate for a conservation easement shall not be given in accordance with sections 12-61-722 and 12-61-723 unless the appraiser who prepared the appraisal of the easement met all requirements established in accordance with this paragraph (l) in effect at the time the appraisal was completed.

§ 12-61-705, C.R.S. Fees, penalties and fines collected under part 7.

All fees, penalties, and fines collected pursuant to this part 7, not including fees retained by contractors pursuant to contracts entered into in accordance with section 12-61-103, 12-61-706, 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, created in section 12-61-111.5.

§ 12-61-706, C.R.S. Qualifications for registration, licensing, and certification of appraisers – continuing education – rules.

* (1) (a) The board shall, by rule, prescribe requirements for the initial licensing or certification of persons under this part 7 to meet the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, and shall develop, purchase, or contract for examinations to be passed by applicants. The board shall not establish any requirements for initial licensing or certification that are more stringent than the requirements of any applicable federal law; except that all applicants shall pass an examination offered by the board. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

* (b) The four levels of appraiser licensure, pursuant to paragraph (a) of this subsection (1), are defined as follows:

(I) "Certified general appraiser" means an appraiser meeting the requirements set by the board for general certification;

(II) "Certified residential appraiser" means an appraiser meeting the requirements set by the board for residential certification;

* (III) "Licensed ad valorem appraiser" means an appraiser meeting the requirements set by the board for ad valorem appraiser certification;

* (IV) "Licensed appraiser" means an appraiser meeting the requirements set by the board for a license.

* (c) A county assessor or employee of a county assessor's office who is a licensed ad valorem appraiser may not perform real estate appraisals outside of his or her official duties.

* (d) The board shall transfer persons employed in a county assessor's office or in the division of property taxation in the department of local affairs who are registered appraisers as of July 1, 2013, to the category of licensed ad valorem appraiser. The board shall allow these persons until December 31, 2015, to meet any additional requirements imposed by the board pursuant to section 12-61-704 (1) (a), as amended.

* (2) (a) The board shall, by rule, prescribe continuing education requirements for persons licensed or certified as certified general appraisers, certified residential appraisers, or licensed appraisers as needed to meet the requirements of the "Real Estate Appraisal

Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended. The board shall not establish any continuing education requirements that are more stringent than the requirements of any applicable law; except that all persons licensed or certified under this part 7 are subject to continuing education requirements. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

* (b) The board shall, by rule, prescribe continuing education requirements for licensed ad valorem appraisers.

* (3) Any provision of this section to the contrary notwithstanding, the criteria established by the board for the licensing or certification of appraisers pursuant to this part 7 shall not include membership or lack of membership in any appraisal organization.

(4) (Deleted by amendment, L. 96, p. 1192, § 5, effective July 1, 1996.)

* (5) (a) Subject to section 12-61-714 (2), all appraiser employees of county assessors shall be licensed or certified as provided in subsections (1) and (2) of this section. Obtaining and maintaining a license or certificate under any one of said subsections (1) and (2) shall entitle an appraiser employee of a county assessor to perform all real estate appraisals required to fulfill such person's official duties.

* (b) Appraiser employees of county assessors who are employed to appraise real property shall be subject to all provisions of this part 7; except that appraiser employees of county assessors who are employed to appraise real property shall not be subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties. County assessors, if licensed or certified as provided in subsections (1) and (2) of this section, shall not be subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties.

* (c) All reasonable costs incurred by an appraiser employee of a county assessor to obtain and maintain a license or certificate pursuant to this section shall be paid by the county.

(6) to (8) (Deleted by amendment, L. 96, p. 1192, § 5, effective July 1, 1996.)

* (9) The board shall not issue an appraiser's license as referenced in subparagraph (IV) of paragraph (b) of subsection (1) of this section unless the applicant has at least twelve months appraisal experience.

* (10) (a) The board shall not issue a license or certification until the applicant establishes that he or she is truthful and honest and submits 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. Each person submitting a set of fingerprints 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 board. The board may require a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The board may deny an application for licensure or certification based on the outcome of the criminal history record check and may establish criminal history requirements more stringent than those established by any applicable federal law.

* (b) An applicant for certification as a licensed ad valorem appraiser is not subject to the fingerprinting and criminal background check requirements of paragraph (a) of this subsection (10).

§ 12-61-706.3, C.R.S. Appraisal management companies – application for license – exemptions.

(1) An applicant shall apply for a license as an appraisal management company, or as a controlling appraiser, to the board in a manner prescribed by the board.

(2) The board may grant appraisal management company licenses to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or corporation, in its application for a license, shall designate a controlling appraiser who is actively certified in a state recognized by the appraisal subcommittee of the federal financial institutions examinations council or its successor entity. The controlling appraiser is responsible for the licensed practices of the partnership, limited liability company, or corporation and all persons employed by the entity. The application of the partnership, limited liability company, or corporation and the application of the appraiser designated by it as the controlling appraiser shall be filed with the board. The board has jurisdiction over the appraiser so designated and over the partnership, limited liability company, or corporation.

(3) The board shall not issue a license to any partnership, limited liability company, or corporation unless and until the appraiser designated by the partnership, limited liability company, or corporation as controlling appraiser and each individual that owns more than ten percent of the entity establishes that he or she is truthful and honest and has good moral character and submits 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. Each person submitting a set of fingerprints 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 board. The board may require a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The board may deny an application for licensure or refuse to renew a license based on the outcome of the criminal history record check. The board may require criminal history requirements more stringent than those established by any applicable federal law.

(4) The board shall not issue a license to any partnership, limited liability company, or corporation if the appraiser designated by the entity as controlling appraiser has previously had, in any state, an appraiser registration, license, or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a registration, license, or certification as an appraiser registered, licensed, or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(5) The board shall not issue a license to any partnership, limited liability company, or corporation if it is owned, in whole or in part, directly or indirectly, by any person who has had, in any state, an appraiser license, registration, or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a license, registration, or certification as an appraiser licensed, registered, or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(6) The board may deny an application for a license for any partnership, limited liability company, or corporation if the partnership, limited liability company, or corporation has previously had a license surrendered in lieu of revocation or revoked. A disciplinary action resulting in the surrender in lieu of revocation or the revocation of a license as an appraisal management

company under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons may be deemed to be prima facie evidence of grounds for denial of a license by the board.

(7) Each appraisal management company must maintain a definite place of business. If the appraisal management company is domiciled in another state, the appraiser designated by the appraisal management company as controlling appraiser is responsible for supervising all licensed activities that occur in Colorado. All licensed actions occurring within the state of Colorado must occur under the name under which the appraisal management company is licensed or its trade name adopted in accordance with Colorado law.

(8) An application that is submitted for an appraisal management company that is:

(a) A partnership must be properly registered with the Colorado department of revenue or properly filed with the Colorado secretary of state and in good standing, proof of which shall be included in the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado department of revenue or filed and accepted by the Colorado secretary of state, proof of which will be included with the application.

(b) A limited liability company must be properly registered with the Colorado secretary of state and in good standing, proof of which must be included with the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado secretary of state, proof of which must be included with the application.

(c) A corporation must be registered as a foreign corporation or properly incorporated with the Colorado secretary of state and in good standing, proof of which must be included with the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado secretary of state, proof of which must be included with the application.

(9) Financial institutions and appraisal management company subsidiaries that are owned and controlled by the financial institution and regulated by a federal financial institution regulatory agency are not required to register with or be licensed by the board. This exemption includes a panel of appraisers who are engaged to provide appraisal services and are administered by a financial institution regulated by a federal financial regulatory agency.

§ 12-61-706.5, C.R.S. Errors and omissions insurance – duties of the division – certificate of coverage – group plan made available – rules.

(1) Every licensee under this part 7, except an appraiser who is employed by a state or local governmental entity or an inactive appraiser or appraisal management company, shall maintain errors and omissions insurance to cover all activities contemplated under this part 7. The division 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. A group policy obtained by the division shall be available to all licensees with no right on the part of the insurer to cancel any licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division 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 division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms

and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part 7, the board is authorized and directed to adopt such rules as it deems necessary or proper to carry out the provisions of this section.

§ 12-61-706.7, C.R.S. Bond required.

(1) An applicant for an appraisal management company license shall post with the board a surety bond in the amount of twenty-five thousand dollars before a license may be issued by the board. A licensed appraisal management company shall maintain the required bond at all times.

(2) The surety bond shall require the surety to provide notice to the board within thirty days if payment is made from the surety bond or if the bond is cancelled.

§ 12-61-707, C.R.S. Expiration of licenses – renewal – penalties.

* (1) (a) All licenses or certificates shall expire pursuant to a schedule established by the director and shall be renewed or reinstated pursuant to this section. Upon compliance with this section and any applicable rules of the board regarding renewal, including the payment of a renewal fee plus a reinstatement fee established pursuant to paragraph (b) of this subsection (1), the expired license or certificate shall be reinstated. No real estate appraiser's license or certificate that has not been renewed for a period greater than two years shall be reinstated, and such person shall be required to make new application for licensure or certification.

* (b) A person who fails to renew his or her license or certificate before the applicable renewal date may have it reinstated if the person does any one of the following:

* (I) Makes proper application, within thirty-one days after the date of expiration, by payment of the regular 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 renewal fee and payment of a reinstatement fee equal to one-third the regular renewal fee; or

* (III) If proper application is made more than one year, but within two years, after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to two-thirds the regular renewal fee.

* (2) If the federal registry fee collected by the board and transmitted to the federal financial institutions examination council is adjusted during the period prior to expiration of a license or certificate, the board shall collect the amount of the increase in such fee from the holder of the license or certificate and forward the amount to the council annually. The federal registry fee does not apply to licensed ad valorem appraisers licensed under this article.

(3) (a) If the applicant has complied with this section and any applicable rules and regulations of the board regarding renewal, except for the continuing education requirements pursuant to section 12-61-706, the licensee may renew the license on inactive status. An inactive license may be activated if the licensee submits written certification of compliance with section 12-61-706 for the previous licensing period. The board may adopt rules establishing procedures to facilitate such a reactivation.

(b) The holder of an inactive license shall not perform a real estate appraisal or appraisal management duties in conjunction with a debt instrument that is federally guaranteed, in the federal secondary market, or regulated pursuant to title 12, U.S.C.

(c) The holder of an inactive license shall not hold himself or herself out as having an active license pursuant to this part 7.

(4) At the time of renewal or reinstatement, every registrant, licensee, and certificate holder, and each person or individual that owns more than ten percent of an appraisal management company, under this part 7 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, if the person has not previously done so for issuance of a registration, license, or certification by the board. Each person submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. The bureau shall forward the results to the board. The board may require a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The board may refuse to renew or reinstate a registration, license, or certification based on the outcome of the criminal history record check.

§ 12-61-708, C.R.S. Licensure or certification by endorsement – temporary practice.

* (1) The board may issue a license or certification to an appraiser by endorsement to engage in the occupation of real estate appraisal to any applicant who has a license or certification in good standing as a real estate appraiser under the laws of another jurisdiction if:

* (a) The applicant presents proof satisfactory to the board that, at the time of application for a Colorado license or certificate by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to the requirements of this part 7; or

(b) The jurisdiction that issued the applicant a license or certificate to engage in the occupation of real estate appraisal has a law similar to this subsection (1) pursuant to which it licenses or certifies persons who are licensed real estate appraisers in this state.

(1.2) The board may specify by rules and regulations what shall constitute substantially equivalent credentials and qualifications and the manner in which credentials and qualifications of an applicant will be reviewed by the board.

(2) Pursuant to section 1122 (a) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", the board shall recognize, on a temporary basis, the license or certification of an appraiser issued by another state if:

(a) (Deleted by amendment, L. 96, p. 1194, § 6, effective July 1, 1996.)

(b) The appraiser's business is of a temporary nature; and

(c) The appraiser applies for and is granted a temporary practice permit by the board.

§ 12-61-709, C.R.S. Denial of registration, license, or certificate – renewal.

* (1) The board is empowered to determine whether an applicant for licensure or certification possesses the necessary qualifications for licensure or certification required by this part 7. The board may consider such qualities as the applicant's truthfulness and honesty and whether the applicant has been convicted of a crime. As used in this subsection (1), "applicant" includes any individual who owns, in whole or in part, directly or indirectly, an appraisal management company and any appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company.

* (2) If the board determines that an applicant does not possess the applicable qualifications required by this part 7, or such applicant has violated any provision of this part 7 or the rules promulgated by the board or any board order, the board may deny the applicant a license or certificate or deny the renewal or reinstatement of a license or certificate pursuant to section 12-

61-707; and, in such instance, the board shall provide such applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications or professional competence required by this part 7. Such applicant may request a hearing on such determination as provided in section 24-4-104 (9), C.R.S.

§ 12-61-710, C.R.S. Prohibited activities – grounds for disciplinary actions – procedures – repeal.

(1) A real estate appraiser is in violation of this part 7 if the appraiser:

(a) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to act as a real property appraiser. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be conclusive evidence of such conviction or plea. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(b) Has violated, or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of this part 7 or rule or regulation promulgated pursuant to this part 7 or any order of the board established pursuant to this part 7;

(c) Has accepted any fees, compensation, or other valuable consideration to influence the outcome of an appraisal;

(d) Has used advertising which is misleading, deceptive, or false;

(e) Has used fraud or misrepresentation in obtaining a license or certificate under this part 7;

(f) Has conducted an appraisal in a fraudulent manner or used misrepresentation in any such activity;

(g) Has acted or failed to act in a manner which does not meet the generally accepted standards of professional appraisal practice as adopted by the board by rule and regulation. A certified copy of a malpractice judgment of a court of competent jurisdiction shall be conclusive evidence of such act or omission, but evidence of such act or omission shall not be limited to a malpractice judgment.

(h) Has performed appraisal services beyond his level of competency;

* (i) Has been subject to an adverse or disciplinary action in another state, territory, or country relating to a license, certificate, or other authorization to practice as an appraiser. A disciplinary action relating to a license or certificate as an appraiser licensed or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons shall be deemed to be prima facie evidence of grounds for disciplinary action or denial of licensure or certification by the board. This paragraph (i) shall apply only to violations based upon acts or omissions in such other state, territory, or country that are also violations of this part 7.

* (j) Has failed to disclose in the appraisal report the fee paid to the appraiser for a residential real property appraisal if the appraiser was engaged by an appraisal management company to complete the assignment; or

* (k) Has engaged in conduct that would be grounds for the denial of a license or certification under section 12-61-709.

* (2) If an applicant, a licensee, or a certified person has violated any of the provisions of this section, the board may deny or refuse to renew the license or certificate, or, as specified in subsections (2.5) and (5) of this section, revoke or suspend the license or certificate, issue a letter of admonition to a licensee or certified person, place a licensee or certified person on probation, or impose public censure.

* (2.5) When a complaint or an investigation discloses an instance of misconduct by a licensed or certified appraiser that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail to the appraiser against whom a complaint was made. The letter shall advise the appraiser of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based.

* (3) A proceeding for discipline of a licensee or certified person may be commenced when the board has reasonable grounds to believe that a licensee or certified person has committed any act or failed to act pursuant to the grounds established in subsection (1) of this section or when a request for a hearing is timely made under subsection (2.5) of this section.

(4) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(5) As authorized in subsection (2) of this section, disciplinary actions by the board may consist of the following:

* (a) **Revocation of a license or certificate.**

* (I) Revocation of a license or certificate by the board shall mean that the licensed or certified person shall surrender his or her license or certificate immediately to the board.

* (II) Any person whose license or certificate to practice is revoked is rendered ineligible to apply for any license or certificate issued under this part 7 until more than two years have elapsed from the date of surrender of the license or certificate. Any reapplication after such two-year period shall be treated as a new application.

(b) **Suspension of a license.** Suspension of a license or certificate by the board shall be for a period to be determined by the board.

(c) **Probationary status.** Probationary status may be imposed by the board. If the board places a licensee or certified person on probation, it may include such conditions for continued practice as the board deems appropriate to assure that the licensee or certified person is otherwise qualified to practice in accordance with generally accepted professional standards of professional appraisal practice as adopted by rule and regulation of the board, including any or all of the following:

(I) The taking by him of such courses of training or education as may be needed to correct deficiencies found in the hearing;

(II) Such review or supervision of his practice as may be necessary to determine the quality of his practice and to correct deficiencies therein; and

(III) The imposition of restrictions upon the nature of his appraisal practice to assure that he does not practice beyond the limits of his capabilities.

(d) (Deleted by amendment, L. 96, p. 1195, § 8, effective July 1, 1996.)

(e) **Public censure.** If after notice and hearing the director or the director's designee determines that the licensee has committed any of the acts specified in this section, the board may impose public censure.

(6) In addition to any other discipline imposed pursuant to this section, any person who violates the provisions of this part 7 or the rules and regulations of the board promulgated pursuant to this article may be penalized by the board upon a finding of a violation pursuant to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against any person, a fine of not less than three hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this part 7 has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars.

(7) (a) Complaints of record in the office of the board and the results of staff investigations shall be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee, except as provided by court order. Complaints of record that are dismissed by the board and the results of investigation of such complaints shall be closed to public inspection, except as provided by court order. The board's records shall be subject to sections 24-72-203 and 24-72-204, C.R.S., regarding public records and confidentiality.

(b) This subsection (7) is repealed, effective July 1, 2013.

(8) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding before the board pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(9) (a) Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact to the board and shall not vote upon such matter.

(b) This subsection (9) is repealed, effective July 1, 2013.

* (10) Any licensee or certified person having direct knowledge that any person has violated any of the provisions of this part 7 shall report such knowledge to the board.

* (11) The board, on its own motion or upon application at any time after the imposition of any discipline as provided in this section, may reconsider its prior action and reinstate or restore such license or certificate or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

§ 12-61-710.5, C.R.S. Appraisal management companies — prohibited activities — grounds for disciplinary actions — procedures — rules.

(1) The board, upon its own motion, may, and upon the complaint in writing of any person, shall, investigate the activities of a licensed appraisal management company; an appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company; or a person or entity who assumes to act in that capacity within the state. The board, upon a finding of a violation, may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and censure a licensee, place the licensee on probation and set the terms of probation, or temporarily suspend or permanently revoke a license when the licensee has performed, is performing, or is attempting to perform any of the following acts:

(a) Failing to exercise due diligence when hiring or engaging a real estate appraiser to ensure that the real estate appraiser is appropriately credentialed by the board and competent to perform the assignment;

(b) Requiring an appraiser to indemnify the appraisal management company against liability, damages, losses, or claims other than those arising out of the services performed by the appraiser, including performance or nonperformance of the appraiser's duties and obligations, whether as a result of negligence or willful misconduct;

(c) Influencing or attempting to influence the development, reporting, result, or review of a real estate appraisal or the engagement of an appraiser through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner. This

prohibition shall not be construed as prohibiting an appraisal management company from requesting an appraiser to:

(I) Consider additional, appropriate property information;

(II) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(III) Correct errors in the appraisal report.

(d) Prohibiting an appraiser, in the completion of an appraisal service, from communicating with the client, any intended users, real estate brokers, tenants, property owners, management companies, or any other entities whom the appraiser reasonably believes has information pertinent to the completion of an appraisal assignment; except that this provision does not apply to communications between an appraiser and an appraisal management company's client if such client has adopted an explicit policy prohibiting such communication. If the client has adopted an explicit policy prohibiting communication by the appraiser with the client, communication by an appraiser to the client must be made in writing and submitted to the appraisal management company.

(e) Altering or modifying a completed appraisal report without the authoring appraiser's knowledge and written consent, and the consent of the intended user, except to modify the format of the report solely for transmission to the client and in a manner acceptable to the client;

(f) Requiring an appraiser to provide access to the appraiser's electronic signature to the appraisal management company;

(g) Failing to validate or verify that the work completed by an appraiser who is hired or engaged by the appraisal management company complies with state and federal regulations, including the uniform standards of professional appraisal practice, by conducting an annual audit of a random sample of the appraisals received within the previous year by the appraisal management company. The board shall establish annual appraisal review requirements by rule and shall solicit and consider information and comments from interested persons.

(h) Failing to make payment to an appraiser within sixty days after completion of the appraisal, unless otherwise agreed or unless the appraiser has been notified in writing that a bona fide dispute exists regarding the performance or quality of the appraisal;

(i) Failing to perform the terms of a written agreement with an appraiser hired or engaged to complete an appraisal assignment;

(j) Failing to disclose to an appraiser, at the time of engagement, the identity of the client;

(k) Using an appraisal report for a client other than the one originally contracted with, without the original client's written consent;

(*l*) Failing to maintain possession of, for future use or inspection by the board, for a period of at least five years or at least two years after final disposition of any judicial proceeding in which a representative of the appraisal management company provided testimony related to the assignment, whichever period expires last, the documents or records prescribed by the rules of the board or to produce such documents or records upon reasonable request by the board;

(m) Having been convicted of, entering a plea of guilty to, entering an Alford plea, or entering a plea of nolo contendere to any misdemeanor or felony relating to the conduct of an appraisal, theft, embezzlement, bribery, fraud, misrepresentation, or deceit, 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 a plea was entered is conclusive evidence of such conviction or plea in any hearing under this part 7.

(n) Having been the subject of an adverse or disciplinary action in another state, territory, or country relating to a license, registration, certification, or other authorization to practice as an appraisal management company. A disciplinary action relating to a registration, license, or certificate as an appraisal management company under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for disciplinary action or denial of a registration, license, or certification by the board. This paragraph (n) applies only to violations based upon acts or omissions in such other state, territory, or country that would violate this part 7 if committed in Colorado.

(o) Violating the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(p) Procuring, or attempting to procure, an appraisal management company license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, an appraisal management company license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;

(q) Knowingly misrepresenting or making false promises through agents, advertising, or otherwise;

(r) Failing to disclose to a client the fee amount paid to the appraiser hired or engaged to complete the appraisal upon completion of the assignment; or

(s) Disregarding, violating, or abetting, directly or indirectly, in the violation of any provision of this part 7, any rule promulgated by the board pursuant to this part 7, or any order of the board established pursuant to this part 7.

(2) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom the complaint was made. The letter shall advise the licensee of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based.

(3) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(4) If a partnership, limited liability company, or corporation operating under the license of an appraiser designated and licensed as a controlling appraiser by the partnership, limited liability company, or corporation is guilty of any of the foregoing acts, the board may suspend or revoke the right of the partnership, limited liability company, or corporation to conduct its business under the license of the controlling appraiser, whether or not the controlling appraiser had personal knowledge thereof and whether or not the board suspends or revokes the individual license of the controlling appraiser.

(5) This part 7 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(6) A registrant, licensee, or certified person having direct knowledge that a person or licensed partnership, limited liability company, or corporation has violated this part 7 shall report such knowledge to the board.

(7) The board, on its own motion or upon application, at any time after the imposition of discipline as provided in this section, may reconsider its prior action and reinstate or restore a license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any further action or the holding of a hearing with respect to the action rests in the sole discretion of the board.

§ 12-61-711, C.R.S. Judicial review of final board actions and orders.

Final actions and orders of the board under sections 12-61-709 and 12-61-710 appropriate for judicial review shall be judicially reviewed in the court of appeals, in accordance with section 24-4-106 (11), C.R.S.

§ 12-61-712, C.R.S. Unlawful acts.

(1) It is unlawful for any person to:

* (a) Violate any provision of section 12-61-710 (1) (c), (1) (e), or (1) (f) or perform a real estate appraisal in conjunction with a debt instrument that is federally guaranteed or in the federal secondary market or regulated pursuant to title 12, U.S.C., without first having obtained a license or certificate from the board pursuant to this part 7;

(b) Accept a fee for an independent appraisal assignment that is contingent upon:

(I) The reporting of a predetermined analysis, opinion, or conclusion; or

(II) The analysis, opinion, or conclusion reached; or

(III) The consequences resulting from the analysis, opinion, or conclusion;

(c) Misrepresent a consulting service as an independent appraisal;

(d) Fail to disclose, in connection with a consulting service for which a contingent fee is or will be paid, the fact that a contingent fee is or will be paid.

(2) Any person who violates any provision of subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any person who subsequently violates any provision of subsection (1) of this section within five years after the date of a conviction for a violation of subsection (1) of this section commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) A person who represents property owners as an advocate in tax or valuation protests and appeals pursuant to title 39, C.R.S., shall be exempt from the licensing requirements of this part 7.

§ 12-61-712.5, C.R.S. Appraisal management company license required – violations – injunction.

(1) Except as provided in section 12-61-706.3 (9), it is unlawful for any person, partnership, limited liability company, or corporation to engage in the business of appraisal management in this state without first having obtained a license from the board. No person, partnership, limited liability company, or corporation shall be granted a license until compliance with this part 7 is established.

(2) The board may apply to a court of competent jurisdiction for an order enjoining an act or practice that constitutes a violation of this part 7, and, upon a showing that a person, partnership, limited liability company, or corporation is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by the court regardless of the existence of another remedy therefor. Any notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

(3) Any person, partnership, limited liability company, or corporation violating this part 7 by acting as an appraisal management company without having obtained a license or by acting as an appraisal management company after the appraisal management company's license has been revoked or during any period for which the license was 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 an entity, 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.

§ 12-61-713, C.R.S. Injunctive proceedings.

(1) The board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to perpetually enjoin a person or appraisal management company from committing an act prohibited by this part 7.

(2) Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided in this part 7.

(3) When seeking an injunction under this section, the board shall not be required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

§ 12-61-714, C.R.S. Special provision for appraiser employees of county assessors.

* (1) Except as provided in subsection (2) of this section, unless a federal waiver is applied for and granted pursuant to section 12-61-704 (1) (j), on and after July 1, 1997, any person acting as a real estate appraiser in this state in conjunction with a debt instrument that is federally guaranteed or in the federal secondary market or regulated pursuant to title 12, U.S.C., shall be licensed or certified as provided in this part 7, and, on and after said date, no person shall practice in conjunction with a debt instrument that is federally guaranteed or in the federal secondary market or regulated pursuant to title 12, U.S.C., without such a license or certificate or hold himself or herself out to the public as a licensed or certified real estate appraiser unless licensed or certified pursuant to this part 7.

* (2) Any appraiser employee of any county assessor who is employed to appraise real property shall be licensed or certified as provided in this part 7 and shall have two years from the date of taking office or the beginning of employment to comply with the provisions of this part 7.

§ 12-61-715, C.R.S. Duties of board under federal law.

(1) The board shall:

(a) Transmit to the appraisal subcommittee of the federal financial institutions examinations council or its successor entity, no less than annually, a roster listing individuals and appraisal management companies who have received a certificate or license as provided in this part 7;

(b) Collect from individuals and appraisal management companies that are licensed or certified pursuant to this part 7 an annual registry fee as prescribed by the appraisal subcommittee of the federal financial institutions examinations council or its successor entity and transmit the fee to the federal financial institutions examinations council on an annual basis; and

(c) Conduct its business and promulgate rules and regulations in a manner not inconsistent with Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended.

* (2) The board shall not collect or transmit the information required by this section for licensed ad valorem appraisers.

§ 12-61-716, C.R.S. Business entities.

* (1) A corporation, partnership, bank, savings and loan association, savings bank, credit union, or other business entity may provide appraisal services if such appraisal is prepared by a certified

general appraiser, a certified residential appraiser, or a licensed appraiser. An individual who is not a certified general appraiser, a certified residential appraiser, or a licensed appraiser may assist in the preparation of an appraisal if:

* (a) The assistant is under the direct supervision of a certified or licensed appraiser; and

* (b) The final appraisal document is approved and signed by an individual who is a certified or licensed appraiser.

§ 12-61-717, C.R.S. Provisions found not to comply with federal law null and void – severability.

(1) If any provision of this part 7 is found by a court of competent jurisdiction or by the appropriate federal agency not to comply with any provision of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, such provision is null and void, but the remaining provisions of this part 7 are valid unless the remaining provisions alone are incomplete and are incapable of being executed in accordance with the legislative intent of this part 7.

(2) If the regulation of appraisal management companies is repealed from Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, the board's jurisdiction over these entities is also repealed. Before such repeal, the division shall review the regulation of appraisal management companies as provided in section 24-34-104, C.R.S. If the board's jurisdiction is repealed, the director shall notify the revisor of statutes of the date of the repeal.

§ 12-61-718, C.R.S. Scope of article – regulated financial institutions – de minimis exemption.

(1) (a) This article shall not apply to an appraisal relating to any real estate-related transaction or loan made or to be made by a financial institution or its affiliate if such real estate-related transaction or loan is excepted from appraisal regulations established by the primary federal regulator of said financial institution and the appraisal is performed by:

(I) An officer, director, or regular salaried employee of the financial institution or its affiliate; or

(II) A real estate broker licensed under this article with whom said institution or affiliate has contracted for performance of the appraisal.

* (b) Such appraisal shall not be represented or deemed to be an appraisal except to the said financial institution, the agencies regulating the said financial institution, and any secondary markets that purchase real estate secured loans. Such appraisal shall contain a written notice that the preparer is not licensed or certified as an appraiser under this part 7. Nothing in this subsection (1) shall be construed to exempt a person licensed or certified as an appraiser under this part 7 from regulation as provided in this part 7.

(2) Nothing in this article shall be construed to limit the ability of any federal or state regulator of a financial institution to require the financial institution to obtain appraisals as specified by the regulator.

(3) Repealed.

VII. Rule Making of the Board of Real Estate Appraisers

Pursuant to § 12-61-704(1)(a), C.R.S., the Colorado Board of Real Estate Appraisers engages in rule making to implement Colorado law in a manner consistent with the requirements of Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

The rule making process is set by § 24-4-103, C.R.S., and involves notice to the public, hearing(s), adoption of rules, and publication. General notice is accomplished through filing with the Secretary of State and publication in the Colorado Register. Specific notice is provided by mail to interested parties. To request mailing of rule-making notices, send a written request for placement on the rule-making notice list to: Rule Making Notice List, Colorado Board of Appraisers, 1560 Broadway, Suite 925, Denver, CO 80202.

While rule making may occur at any time, the Board prefers to adopt new and amended rules in the fall, with January 1 of the next year as the effective date. Rules are published in the Colorado Real Estate Manual.

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2

RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS

Ed. Note: For the most current information, please refer to the Division of Real Estate website: www.dora.state.co.us/real-estate

CHAPTER 1: DEFINITIONS

1.1 The Appraisal Foundation (TAF): TAF is the organization that is the source of appraisal standards, qualifications and ethical conduct in all valuation disciplines to assure public trust in the valuation profession.

1.2 Appraisal Qualifications Board (AQB) of The Appraisal Foundation: The AQB establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certifications. In addition, the AQB performs a number of ancillary duties related to real property and personal property appraiser qualifications.

1.3 Appraiser Standards Board (ASB) of The Appraisal Foundation: The ASB develops, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP).

1.4 Examination: The examination(s) developed or contracted for by the Board and issued or approved by the AQB.

1.5 FIRREA: The Financial Institutions Reform, Recovery and Enforcement Act of 1989.

1.6 Board: The Colorado Board of Real Estate Appraisers created and further defined pursuant to §12-61-703, C.R.S.

1.7 Applicant: Any person applying for a license or temporary practice permit, or applying for renewal of a license.

1.8 Initial License: The first license granted by the Board to an applicant pursuant to §12-61-706, C.R.S. An applicant may apply for an initial license at any credential level as long as all requirements for such credential level have been met pursuant to Chapter 3 of these Rules. An initial license is valid through December 31 of the year of issue.

1.9 Colorado Real Estate Appraiser Licensing Act: That portion of Colorado statutes known as Section 12-61-701, et seq ., Colorado Revised Statutes, as amended.

1.10 Uniform Standards of Professional Appraisal Practice (USPAP): Those standards of professional practice promulgated by the Appraisal Standards Board of The Appraisal Foundation and adopted in Chapter 11 of these Rules through incorporation by reference.

1.11 Board Rules or Rules: Those rules adopted by the Colorado Board of Real Estate Appraisers pursuant to Section 12-61-704(1)(a), C.R.S., as amended.

* 1.12 Repealed.

1.13 Licensed Appraiser: A person who has been granted a license pursuant to §12-61-706(1)(b)(III), C.R.S. as a Licensed Appraiser by the Board as a result of meeting the real estate appraisal education, experience, and examination requirements established by Board Rule 2.2, the AQB, or as a result of licensure through endorsement from another state as provided by Chapter 9 of these Rules. The usual scope of practice for the Licensed Appraiser shall be, if competent for the assignment, appraisal of non-complex one to four unit residential properties having a transaction value of less than $ 1,000,000 and complex one to four unit

residential properties having a transaction value of less than $ 250,000, or as allowed by §12-61-706(5), C.R.S.

1.14 Certified Residential Appraiser: A person who has been granted a license pursuant to §12-61-706(1)(b)(II), C.R.S. as a Certified Residential Appraiser by the Board as a result of meeting the real estate appraisal education, experience, and examination requirements established by Board Rule 2.3, the AQB, or as a result of licensure through endorsement from another state as provided by Chapter 9 of these Rules. The usual scope of practice for the Certified Residential Appraiser shall be, if competent for the assignment, appraisal of one to four unit residential properties without regard to transaction value or complexity, or as allowed by §12-61-706(5), C.R.S. Such scope of practice includes vacant or unimproved land that is to be used for development for a one to four unit residential property, or vacant or unimproved land for which the highest and best use is a one to four unit residential property. The scope of practice for a Certified Residential Appraiser does not include vacant or unimproved land that has the potential for subdivision development for which the subdivision development analysis method of land valuation is necessary and applicable.

1.15 Certified General Appraiser: A person who has been granted a license pursuant to §12-61-706(1)(b)(I), C.R.S. as a Certified General Appraiser by the Board as a result of meeting the real estate appraisal education, experience, and examination requirements established by Board Rule 2.4, the AQB, or as a result of licensure through endorsement from another state as provided by Chapter 9 of these Rules. The scope of practice for the Certified General Appraiser shall be, if competent for the assignment, appraisal of all types of real property.

1.16 Residential Property: Properties comprising one to four residential units; also includes building sites suitable for development to one to four residential units. Residential property does not include land for which a subdivision analysis or appraisal is necessary.

1.17 Non-Residential Property: Properties other than those comprised of one to four residential units and building sites suitable for development to one to four residential units. Non-residential property includes, without limitation, properties comprised of five or more dwelling units, farm and ranch, retail, manufacturing, warehousing, and office properties, large vacant land parcels and other properties not within the definition of residential property.

1.18 Temporary Practice Permit: A permit issued pursuant to Section 12-61-708 (2), C.R.S., (as amended) and Chapter 10 of these rules allowing an appraiser licensed in another jurisdiction to appraise property in Colorado under certain conditions without obtaining Colorado licensure.

1.19 Title XI, FIRREA: That part of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 known as the Appraisal Reform Amendments, and also known as 12 U.S.C. Section 3331 through 12 U.S.C. Section 3351.

* 1.20 Contingent Fee: Compensation paid to a person who is licensed as a licensed or certified appraiser, as a result of reporting a predetermined value or direction of value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the appraiser's opinion and specific to the assignment's purpose. A person licensed as a licensed or certified appraiser employed by a business entity which is compensated by a contingent fee is considered to be compensated by a contingent fee.

* 1.21 Licensee: A collective term used to refer to a person who has been licensed by the Board as a Licensed Ad Valorem Appraiser, Licensed Appraiser, Certified Residential Appraiser or Certified General Appraiser.

1.22 Distance Education: Educational methodologies and presentation techniques other than traditional classroom formats, including and without limitation, live teleconferencing, written or electronic correspondence courses, internet on-line learning, video and audio tapes.

1.23 Complex Residential Property: Properties comprising one to four residential dwelling units, or land suitable for development to one to four residential units exhibiting complex appraisal factors such as atypical form of ownership, atypical size, atypical design characteristics, atypical locational characteristics, atypical physical condition characteristics, landmark designation, non-conforming zoning, lack of appraisal data, and other similar factors. Complex residential property does not include land for which a subdivision analysis or appraisal is necessary.

1.24 Signature: As defined in the Uniform Standards of Professional Appraisal Practice incorporated by reference in Board Rule 11.1, and including all methods of indicating a signature, such as, without limitation, a handwritten mark, digitized image, coded authentication number, stamped impression, embossed or applied seal, or other means.

* 1.25 Supervisory Appraiser: Any active licensee who acts in a supervisory role in the development and reporting of appraisals, appraisal reports, and other appraisal work products. Includes without limitation, any licensee who signs a report in a manner indicating they exert control over the action of any Trainee or Licensee, or who acts to guide or manage the work of any Trainee or Licensee. A supervisory appraiser must be state-certified and in good standing in the jurisdiction in which the trainee appraiser practices for a period of a least three (3) years. Supervisory appraisers must not have been subject to any disciplinary action within any jurisdiction within the last three (3) years that affects the supervisory appraiser's legal eligibility to engage in appraisal practice.

1.26 Qualifying Education: Real estate appraisal education courses completed for credit toward the licensing requirements set forth in Chapter 2 of these Rules and meeting the requirements of Chapter 3 of these Rules. Qualifying education courses must be at least 15 classroom hours in length and must include an examination.

1.27 Continuing Education: Real estate and real estate appraisal related courses completed for credit toward meeting the continuing education requirements set forth in Chapter 7 of these Rules.

1.28 Transaction value: for purposes of these rules transaction value means:

A. For appraisal assignments carried out as part of a loan transaction, the amount of the loan; or

B. For appraisal assignments carried out for other than a loan transaction, the market value of the real property interest.

1.29 Appraisal (Valuation) Process: The analysis of economic factors that create value to develop an opinion of value. Steps in the analytical process are: defining the problem; determining an appropriate scope of work; gathering and analyzing general and specific data; applying the appropriate analyses, procedures and methodology; the application of reconciliation criteria to reach a final defined value opinion; and correctly reporting that opinion in compliance with the uniform standards of professional appraisal practice.

1.30 Accredited college, junior college, community college or university: a higher education institution accredited by the Commission on Colleges, a regional or national accreditation association, or an accrediting agency that is recognized by the U. S. Secretary of Education.

1.31 REPEALED.

1.32 2008 Real Property Appraiser Qualification Criteria: Pursuant to Section 12-61-706, (1) and (2), C.R.S. (as amended), the Board incorporates by reference in compliance with Section 24-4-103(12.5), C.R.S., the 2008 Real Property Appraiser Qualification Criteria adopted by the Appraiser Qualifications Board of The Appraisal Foundation on February 20, 2004, and as amended through May 5, 2006, including the Required Core Curricula, Guide Notes and Interpretations thereof. Amendments to the 2008 Real Property Appraiser Qualification Criteria adopted subsequent to May 5, 2006 are not included in this rule. A certified copy of the 2008 Real Property Appraiser Qualification Criteria is on file and available for public inspection with

the Program Administrator at the offices of the Board of Real Estate Appraisers at 1560 Broadway, Suite 925, Denver, Colorado. Copies of the 2008 Real Property Appraiser Qualification Criteria incorporated under this rule may be examined at any state publications depository library. The 2008 Real Property Appraiser Qualification Criteria may be examined at the Internet website of The Appraisal Foundation at www.appraisalfoundation.org, and copies may be ordered through that mechanism. The Appraisal Foundation may also be contacted at 1155 15th Street, NW, Suite 1111, Washington, DC 20005, or by telephone at (202) 347-7722 or by telefax at (202) 347-7727. The 2008 Real Property Appraiser Qualification Criteria shall go into effect on January 1, 2008.

1.33 Credential Upgrade: A licensee, who has been granted a license pursuant to §12-61-706, C.R.S., may submit an application to the Board requesting an upgrade of the licensee's credential if the licensee has completed the real estate appraisal education, experience, and examination requirements as defined in Chapter 2 of these Rules for the credential for which the licensee is applying. If the Board grants the requested credential, the upgraded license will expire on the same date of the licensee's current license cycle, prior to the upgrade.

1.34 Draft Appraisal: An appraisal that does not bear the appraiser's signature and is identified and labeled as a "draft". The purpose of issuing a draft appraisal cannot be to allow the client and/or the intended user(s) to influence the appraiser.

1.35 Amendment: A written modification of any appraisal, which is dated and signed by the appraiser, and delivered to the client. An amendment is a true and integral component of an appraisal. Amendments may also be referred to as correction pages.

* 1.36 Good Standing: Not having been subject to a stipulation or final agency order, or a final agency order, the terms of which were completed no less than three years prior, or had a license revoked or permanently surrendered for any of the violations enumerated under §§12-61- 710 or 12-61-712, C.R.S. A license will be considered to be in good standing three years following the completion of all terms of an executed stipulation and final agency order, or a final agency order. If a licensee has an executed stipulation for diversion, the license will not be in good standing with the Board until all terms of the stipulated agreement have been successfully completed.

CHAPTER 2: REQUIREMENTS FOR LICENSURE AS A REAL ESTATE APPRAISER

* 2.1 Repealed.

2.2 An applicant for licensure as a Colorado Licensed Appraiser shall successfully complete the following requirements or the substantial equivalent thereof, as set forth in the Required Core Curriculum and Guide Note 1 of the 2008 Real Property Appraiser Qualification Criteria adopted by the Appraiser Qualifications Board of the Appraisal Foundation on February 20, 2004, and amended through May 5, 2006, with an effective date of January 1, 2008, and incorporated by reference in Rule 1.32:

A. Real estate appraisal education:

1. Basic Appraisal Principles: 30 hours;
2. Basic Appraisal Procedures: 30 hours
3. 15-Hour National USPAP Course: 15 hours;
4. Residential Market Analysis and Highest and Best Use: 15 hours;
5. Residential Appraiser Site Valuation and Cost Approach: 15 hours;
6. Residential Sales Comparison and Income Approaches: 30 hours; and
7. Residential Report Writing and Case Studies: 15 hours.

B. Real estate appraisal experience: An applicant shall demonstrate to the satisfaction of the Board that the applicant completed at least 2,000 hours of appraisal experience in

conformance with the provisions of Chapter 5 of these Rules and all of the applicant's experience was obtained after January 30, 1989 and in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Pursuant to §12-61-706(9), C.R.S., real estate appraisal experience shall be gained over a period of not less than 12 months.

C. Real estate appraisal examination: Successful completion of the Licensed Appraiser examination as provided in Chapter 4 of these Rules.

2.3 An applicant for licensure as a Colorado Certified Residential Appraiser shall successfully complete the following requirements or the substantial equivalent thereof, as set forth in the Required Core Curriculum and Guide Note 1 of the 2008 Real Property Appraiser Qualification Criteria adopted by the Appraiser Qualifications Board of the Appraisal Foundation on February 20, 2004, and amended through May 5, 2006, with an effective date of January 1, 2008, and incorporated by reference in Rule 1.32:

A. Real estate appraisal education:

1. Basic Appraisal Principles: 30 hours;
2. Basic Appraisal Procedures: 30 hours;
3. 15-hour National USPAP Course: 15 hours;
4. Residential Market Analysis and Highest and Best Use: 15 hours;
5. Residential Appraiser Site Valuation and Cost Approach: 15 hours;
6. Residential Sales Comparison and Income Approaches: 30 hours;
7. Residential Report Writing and Case Studies: 15 hours;
8. Statistics, Modeling and Finance: 15 hours;
9. Advanced Residential Applications and Case Studies: 15;
10. Appraisal Subject Matter Electives: 20; and
11. hold an associate degree, or higher, from an accredited college, junior college, community college or university as defined in Board Rule 1.30; or
12. Successfully complete at least 21 semester credit hours or 32 quarter credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college or university as defined in Board Rule 1.30. Courses in all the listed topics shall be completed. No topics shall be omitted. Credits earned through the college level examination program ("CLEP") are acceptable to meet this requirement.
    A. English Composition;
    B. Principles of Economics;
    C. Finance;
    D. Algebra, Geometry or Higher Mathematics;
    E. Statistics;
    F. Computer Science; and
    G. Business or Real Estate Law.

B. Real estate appraisal experience:

An applicant for licensure as a Colorado Certified Residential Appraiser shall demonstrate to the satisfaction of the Board that the applicant completed at least 2,500 hours of appraisal experience in conformance with the provisions of Chapter 5 of these Rules and all of the applicant's experience was obtained after January 30, 1989 and in compliance with the Uniform Standards of Professional Appraisal

Practice (USPAP). Real estate appraisal experience shall have been gained across a period of not less than 24 months.

C. Real estate appraisal examination: Successful completion of the Certified Residential Appraiser examination as provided in Chapter 4 of these Rules.

2.4 An applicant for licensure as a Colorado Certified General Appraiser shall successfully complete the following requirements or the substantial equivalent thereof, as set forth in the Required Core Curriculum and Guide Note 1 of the 2008 Real Property Appraiser Qualification Criteria adopted by the Appraiser Qualifications Board of the Appraisal Foundation on February 20, 2004, and amended through May 5, 2006, with an effective date of January 1, 2008, as incorporated by reference in Rule 1.32:

A. Real estate appraisal education:

1. Basic Appraisal Principles: 30 hours;
2. Basic Appraisal Procedures: 30 hours;
3. 15-hour National USPAP Course: 15 hours;
4. General Appraiser Market Analysis and Highest and Best Use: 30 hours;
5. Statistics, Modeling and Finance: 15 hours;
6. General Appraiser Sales Comparison Approach: 30 hours;
7. General Appraiser Site Valuation and Cost Approach: 30 hours;
8. General Appraiser Income Approach: 60 hours;
9. General Appraiser Report Writing and Case Studies: 30 hours;
10. Appraisal Subject Matter Electives: 30 hours; and
11. hold a bachelor's degree or higher from an accredited college or university as defined in Board Rule 1.30, or
12. successfully complete not less than 30 semester credit hours or 45 quarter credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college or university as defined in Board Rule 1.30. Courses in all of the listed topics shall be successfully completed. No topics shall be omitted. Credits earned through the college level examination program ("CLEP") are acceptable to meet this requirement.

    A. English Composition;
    B. Macro Economics;
    C. Micro Economics;
    D. Finance;
    E. Algebra, Geometry or Higher Mathematics;
    F. Statistics;
    G. Computer Science;
    H. Business or Real Estate Law; and
    I. Two elective courses in Accounting, Geography, Agricultural Economics, Business Management or Real Estate.

B. Real estate appraisal experience:

An applicant submitting an application received in the offices of the Board for licensure as a Colorado Certified General Appraiser shall demonstrate to the satisfaction of the Board that the applicant completed at least 3,000 hours of appraisal experience in conformance with the provisions of Chapter 5 of these Rules and all of the applicant's experience was obtained after January 30, 1989 and in compliance with the Uniform Standards of Professional Appraisal Practice

(USPAP). Real estate appraisal experience shall have been gained across a period of not less than 30 months and shall include at least 1,500 hours of appraisal of non-residential property, as defined in Chapter 1 of these Rules.

C. Real estate appraisal examination: Successful completion of the Certified General Appraiser examination as provided in Chapter 4 of these Rules.

2.5 REPEALED.

2.6 REPEALED.

2.7 REPEALED.

* 2.8 An applicant for an Ad Valorem License must be a County Assessor, an employee of a County Assessor's Office or an employee of the Division of Property Taxation in the Department of Local Affairs.

CHAPTER 3: STANDARDS FOR REAL ESTATE APPRAISAL QUALIFYING EDUCATION PROGRAMS

3.1 REPEALED.

3.2 Qualifying appraisal education shall be taken from providers approved by the Board. In order to be approved, qualifying education courses and the providers shall meet the following standards at the time it is offered:

A. Course content was developed by persons qualified in the subject matter and instructional design;

B. Course content is current and corresponds with the current body of knowledge;

C. The instructor is qualified with respect to content and teaching methods, and the body of knowledge;

D. The number of participants and the physical facilities are consistent with the teaching method;

E. An examination is included for measuring the information learned; and

F. The educational offering shall be developed and communicated in a manner as to promote and maintain a high level of public trust in appraisal practice.

3.3 The following may be approved as providers of qualifying appraisal education provided that the standards set forth in Rule 3.2 are maintained and the education providers have complied with all other requirements of the State of Colorado:

A. Universities, colleges, junior colleges or community colleges accredited by a regional accrediting body accredited by the council on post secondary accreditation;

B. Professional appraisal and real estate related organizations;

C. State or federal government agencies;

D. Proprietary schools holding valid certificates of approval from the Colorado Division of Private Occupational Schools, Department of Higher Education;

E. Providers approved by other jurisdictions, provided the jurisdiction's appraiser regulation program has been determined to be in compliance with FIRREA;

F. Providers approved under the Course Approval Program of The Appraisal Foundation; and

G. Such other providers as the Board may approve upon petition of the provider or the applicant in a form acceptable to the Board.

3.4 On or after January 1, 1991, in order to be approved by the Board, each education provider shall maintain, and provide to the Board upon request, information regarding the qualifying education course offerings including, but not limited to the following:

A. Outline or syllabus;

B. All texts, workbooks, hand outs or other course materials;

C. Instructors and their qualifications, including selection, training and evaluation criteria;

D. Course examinations;

E. Dates and locations of course offerings; and

F. Student attendance logs.

3.5 The number of hours credited shall be equivalent to the actual number of contact hours of in-class instruction and testing. An hour of education is defined as at least 50 minutes of instruction out of each 60-minute segment. For distance education, the number of hours credited shall be that number of hours allowed by the Course Approval Program of The Appraisal Foundation.

3.6 Each qualifying education course offering must be at least 15 hours in duration, include an examination pertinent to the material covered, and be comprised of segments of not less than one classroom hour.

3.7 Qualifying education courses and corresponding examinations must be successfully completed by the applicant. Successful completion means the applicant has attended the offering, participated in course activities and achieved a passing score on the course examination.

3.8 REPEALED.

3.9 It is the applicant's responsibility to verify that a qualifying educational course offering has been approved by the board, if the applicant wishes to claim credit for the course.

3.10 Each applicant shall provide a signed statement, under penalty of perjury, attesting to the successful completion of the required hours of qualifying appraisal education on a form prescribed by the Board. The Board reserves the right to require an applicant or licensee to provide satisfactory documentary evidence of completion of appropriate qualifying education course work.

* 3.11 Hours of qualifying education accepted in satisfaction of the education requirement of one level of licensure or certification may be applied toward the requirement for another level and need not be repeated. Applicants are responsible for demonstrating coverage of the required topics.

3.12 The following factors shall be used to convert university, college, junior college and community college course credits into qualifying education hours:

A. Semester Credits x 15.00 = Hours

B. Quarter Credits x 10.00 = Hours

3.13 Applicants shall successfully complete qualifying appraisal education which builds upon and augments previous courses. Qualifying education courses which substantially repeat or duplicate other course work in terms of content and level of instruction will not be accepted. The Board will give appropriate consideration to courses where substantive changes in content have occurred.

3.14 To be acceptable for qualifying appraisal education, distance education offerings must incorporate methods and activities that promote active student engagement and participation in the learning process. Among those methods and activities acceptable are written exercises which are graded and returned to the student, required responses to computer based presentations, provision for students to submit questions during teleconferences, and examinations proctored by an independent third party, who is an official approved by the college or university, or by the sponsoring organization. Simple reading, viewing or listening to materials without active student engagement and participation in the learning process is not sufficient to satisfy the requirements of this rule.

3.15 As to qualifying education courses completed in other jurisdictions with appraiser regulatory programs established in conformance with Title XI, FIRREA, the Board will accept the number of hours of education accepted by that jurisdiction.

3.16 To be acceptable for qualifying real estate appraisal education, distance education courses shall meet the other requirements of this Chapter 3, and shall include a written, closed book final examination proctored by an independent third party, or other final examination testing procedure acceptable to the Board. Examples of acceptable examination proctors include public officials who do not supervise the student, secondary and higher education school officials, and public librarians. Failure to observe this requirement may result in rejection of the course and/or course provider by the Board for that applicant, and may result in the Board refusing or withdrawing approval of any courses offered by the provider.

3.17 All qualifying education courses in the Uniform Standards of Professional Appraisal Practice begun on and after January 1, 2003 shall be in the form of a course approved under the course approval program of the Appraiser Qualifications Board of The Appraisal Foundation, and taught by an instructor certified by the Appraiser Qualifications Board of The Appraisal Foundation and who is a state certified appraiser.

3.18 Course providers shall provide each student who successfully completes a qualifying real estate appraisal education course in the manner prescribed in Board Rule 3.7 a course completion certificate. The Board will not mandate the exact form of course certificates, however, the following information shall be included:

A. Name of course provider;

B. Course title, which shall describe topical content, or 2008 Real Property Appraiser Qualification Criteria Core Curriculum module title;

C. Course number, if any;

D. Course dates;

E. Number of approved education hours;

F. Statement that the required examination was successfully completed;

G. Course location, which for distance education modalities shall be the principal place of business of the course provider;

H. Name of student; and

I. For all Uniform Standards of Professional Appraisal Practice courses begun on and after January 1, 2003, the name(s) and Appraiser Qualifications Board Uniform Standards of Professional Appraisal Practice instructor certification number(s) of the instructor(s).

Licensees are required to provide copies of course certificates to the Board upon request.

3.19 The provisions of Board Rule 3.3 notwithstanding, qualifying education courses begun on and after January 1, 2004 and offered through distance education modalities must be approved through the Course Approval Program of The Appraisal Foundation. The Board will not accept distance education courses begun on and after January 1, 2004 that have not been approved through the Course Approval Program of The Appraisal Foundation.

3.20 All qualifying education courses in the Uniform Standards of Professional Appraisal Practice (USPAP) shall be presented using the most recent edition of the Uniform Standards of Professional Appraisal Practice and the most recent version of the National USPAP Course (real property) or equivalent as approved by the Course Approval Program of The Appraisal Foundation, with the exception that courses begun in the three months preceding the effective date of a new edition may be presented using the next succeeding USPAP edition and course version, if available from The Appraisal Foundation.

3.21 All qualifying education courses begun on or after January 1, 2008 must be approved through the Course Approval Program of the Appraiser Qualifications Board of the Appraisal Foundation, except as otherwise may be approved in advance and in writing by the Director of the Colorado Division of Real Estate (the "Director") on a limited case by case basis where the Director determines that the public would not be served if course approval were required

through the Course Approval Program of the Appraiser Qualifications Board of the Appraisal Foundation for a particular course. Course providers seeking approval of qualifying education courses that have not been approved through the Course Approval Program of the Appraiser Qualifications Board of the Appraisal Foundation shall provide the Director with all requested information the Director deems necessary.

3.22 By offering real estate appraiser qualifying education in the state of Colorado, each provider agrees to comply with the relevant statutes and board rules and to permit the Board to audit said courses at any time and at no cost.

CHAPTER 4: STANDARDS FOR REAL ESTATE APPRAISAL LICENSING EXAMINATIONS

* 4.1 Any person wishing to apply for any appraiser's license shall register for and achieve a passing score on the appropriate level of examination with the testing service designated by the Board. No other examination results will be accepted. The appropriate levels of examination for the respective levels of licensure are as follows:

License Level	Examination
Licensed Appraiser	Licensed Appraiser
Certified Residential Appraiser	Certified Residential Appraiser
Certified General Appraiser	Certified General Appraiser

4.2 Examinees shall comply with the standards of test administration established by the Board and the testing service.

4.3 A passing score on an examination shall be valid for two years from the examination date. Failure to file a complete application within the two year period will result in the examination grade being void.

4.4 Examinations will be given only to duly qualified applicants for an appraiser's license; however, one instructor from each appraisal qualifying education course provider approved pursuant to Rule 3.3 may take the examination one time during any 12 month period in order to conduct research for course content.

4.5 Each examination for a license may, as determined by the Board, be a separate examination.

4.6 Examinations developed or contracted for by the Board for licensed and certified appraisers shall comply with Title XI, FIRREA.

4.7 Repealed

4.8 Examinees may use financial calculators during the examination process. The memory functions of any such calculator shall be cleared by the testing service staff prior to the beginning and after the conclusion of the examination.

CHAPTER 5: STANDARDS FOR REAL ESTATE APPRAISAL EXPERIENCE

5.1 Acceptable experience includes appraisal, appraisal review, appraisal consulting and mass appraisal experience where the appraiser demonstrates proficiency in the development and reporting of the assignment results utilizing recognized appraisal principles and methodology during the appraisal process as defined by Board Rule 1.29. The Board may consider other experience upon petition by the applicant.

5.2 REPEALED.

5.3 Reports or file memoranda claimed as evidence of meeting experience requirements shall have been prepared in conformance with the edition of the Uniform Standards of Professional Appraisal Practice in effect as of the date of the appraisal report.

5.4 REPEALED.

5.5 The Board reserves the right to verify an applicant's or licensee's evidence of appraisal experience by such means as it deems necessary, including, but not limited to requiring the following:

A. Submission of a detailed log of appraisal activity on the form or in the manner specified by the Board;

B. Submission of appraisal reports, workfiles or file memoranda;

C. Employer affidavits or interviews;

D. Client affidavits or interviews; and

E. Submission of appropriate business records.

5.6 Repealed.

5.7 REPEALED.

* 5.8 Real estate appraisal experience gained by an unlicensed person shall be gained under the following conditions:

* A. The unlicensed person shall be under the active, diligent and personal supervision of a Certified Residential Appraiser as defined by Board Rule 1.14, or a Certified General Appraiser as defined by Board Rule 1.15;

B. The Certified Residential Appraiser or Certified General Appraiser acting as supervisor shall be in good standing with the Board, as defined by Board Rule 1.36;

* C. The Certified Residential Appraiser or Certified General Appraiser acting as supervisor shall not supervise more than three (3) unlicensed persons at one time and will be required to:

1. Review the Trainee appraisal reports;

2. Accept responsibility for the appraisal by signing and certifying the appraisal complies with the Uniform Standards of Professional Appraisal Practice; and

3. Personally inspect each appraised property with the Trainee appraiser until the supervisory appraiser determines the Trainee appraiser is competent to inspect the property, in accordance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice for the property type; and

4. Jointly maintain an appraisal experience log with the Trainee appraiser. It will be the responsibility of both the supervisory appraiser and the Trainee appraiser to ensure that the experience log is accurate, current and complies with the requirements of the Board. At a minimum, the appraisal log requirements are:

A) Type of property;

B) Date of report;

C) Address of appraised property;

D) Description of work performed by the Trainee appraiser and scope of the review and supervision of the supervisory appraiser;

E) Number of actual work hours by the Trainee appraiser on the assignment;

F) The signature and state certification number of the supervisory appraiser; and

G) Separate appraisal logs shall be maintained by each supervisory appraiser, if applicable;

D. Experience shall build upon itself and need not include the entire appraisal process including arriving at an opinion of value. Experience may include one or all of the steps taken in the appraisal process as defined by Board Rule 1.29; and

E. Appraisal experience gained without a traditional client (*i.e.* a client hiring an appraiser for a business purpose) may be counted as experience for up to 50% of an applicant's total experience requirement. A non-traditional client may include practicum courses defined by the Real Property Appraiser Qualification Criteria published by the AQB or demonstration type reports.

5.9 Each application for licensure pursuant to Board Rules 2.2, 2.3, and 2.4 shall be accompanied by a log of real estate appraisal experience on a form or in the manner specified by the Board. Such log shall be subject to the following requirements:

A. The log shall include statements certifying to the accuracy and truthfulness of the information therein;

B. Signatures shall be original, individual handwritten marks. Photocopied, computer generated, stamped or other facsimile signatures are not acceptable. No one other than the applicant or supervisory appraiser shall sign the certifications.

5.10 REPEALED.

5.11 An applicant for licensure as a Colorado Licensed Appraiser, a Colorado Certified Residential Appraiser or a Colorado Certified General Appraiser must demonstrate that the applicant is capable of performing appraisals that are compliant with USPAP. In accordance with Board Rule 5.5, the Board may verify an applicant's appraisal experience by such means as it deems necessary, including but not limited to requiring the applicant to submit a detailed log of appraisal experience, appraisal reports, and/or work files. Staff within the Division or appraisers selected by the Division may review an applicant's appraisal reports and work files to determine whether the applicant is capable of performing appraisals that are compliant with USPAP and in accordance with Board Rule 13.8.

CHAPTER 6: APPLICATION FOR LICENSURE

* 6.1 An applicant for licensure as a licensed or certified appraiser shall complete all requirements prior to filing the application, including education, experience (if required) and examination.

6.2 Each applicant shall submit original documentary evidence of a passing score of the appropriate examination with the application.

6.3 An application is deemed complete at the time all required supporting documents and fees are received at the Board offices.

6.4 Repealed.

6.5 Upon receipt of a complete application, including the required fees and supporting documentation, the Board shall process and issue the license, if applicable, as soon as practical. The Board reserves the right to require additional information and documentation from an applicant, and to verify any information and documentation submitted.

6.6 Submission of an application does not guarantee issuance of a license, or issuance of a license within a specific period of time. Applicants shall observe the provisions of Section 12-61-714, C.R.S. and Board Rules Chapter 12. Applicants shall not represent themselves as being licensees of the Board until receipt of the Board issued license document.

* 6.7 Pursuant to Section 12-61-709(1), C.R.S., an applicant who has been convicted of, entered a plea of guilty to, or entered a plea of nolo contendere to a crime, shall file with his or her application an addendum to the application in a form prescribed by the Board. The Board may also evaluate an applicant's honesty and truthfulness based on the applicant's prior plea(s) of guilt, nolo contendere or conviction of a criminal offense. Such addendum shall be supported and documented by, without limitation, the following:

A. Court documents, including original charges, disposition, pre-sentencing report and certification of completion of terms of sentence;

* B. Police officer's report(s);

* C. Probation or parole officer's report(s);

D. A written personal statement explaining the circumstances surrounding each violation, and including the statement "I have no other violations either past or pending";

E. Letters of recommendation; and

F. Employment history for the preceding five years.

* 6.8 Prior to application for licensure, an individual may request that the Board issue a preliminary advisory opinion regarding the possible effect of convictions, pleas of guilt or nolo contendere for criminal offenses, including those offenses that may be indicative of a person's truthfulness and honesty. A person requesting such an opinion is not applicant for licensure. The Board may, at its sole discretion, issue such an opinion, which shall not be binding on the Board or limit the authority of the Board to investigate a later application for licensure. The issuance of such an opinion shall not prohibit a person from submitting an application for licensure. A person requesting such an opinion shall do so in a request form prescribed by the Board. Such request form shall be supported and documented by, without limitation, the following:

A. Court documents, including original charges, disposition, pre-sentencing report and certification of completion of terms of sentence;

B. Police officer's report(s);

C. Probation or parole officer's report(s);

D. A written personal statement explaining the circumstances surrounding each violation, and including the statement "I have no other violations either past or pending";

E. Letters of recommendation; and

F. Employment history for the preceding five years.

6.9 Repealed

* 6.10 Every active appraiser, or applicant for an active appraiser's credential, must have in effect a policy of errors and omissions insurance to cover all acts requiring a license.

* A. The Division will enter into a contract with a qualified insurance carrier to make available to all licensees and license applicants a group policy of insurance under the following terms and conditions:

* 1. The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state.

* 2. The insurance carrier maintains an A.M. best rating of "B" or better.

* 3. The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the Board on a timely basis and at no expense to the Board.

* 4. The insurance carrier has been selected through a competitive bidding process.

* 5. The contract and policy are in conformance with this rule and all relevant Colorado statutory requirements.

* B. The group policy shall provide, at a minimum, the following terms of coverage:

* 1. Coverage for all acts for which a real estate appraiser's 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, 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 per claim with an aggregate limit of not less than $ 300,000 per individual.

* 5. A deductible amount for each occurrence of not more than $ 1,000 for claims and no deductible for legal expenses and defense.

* 6. The obligation of the 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.

* 7. The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the group carrier as may be determined by the carrier.

* 8. The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.

* 9. 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.

* C. Licensees or applicants may obtain errors and omissions coverage independent of the group plan from any insurance carrier subject to the following terms and conditions:

* 1. The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state and is in conformance with all Colorado statutes.

* 2. The insurance carrier maintains an A.M. best rating of “B” or better.

* 3. The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in an affidavit issued to the insured licensee or applicant in a form specified by the director and agrees to immediately notify the Division of any cancellation or lapse in coverage. Independent coverage must provide, at a minimum, the following:

* a. The contract and policy are in conformance with all relevant Colorado statutory requirements.

* b. Coverage includes all acts for which an appraiser’s credential is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

* c. C overage cannot be canceled by the insurance provider, except pursuant to and in conformance with 10-4-109.7 C.R.S.

* d. Coverage is for not less than $ 100,000 per claim, with an annual aggregate limit of not less than $ 300,000 per individual.

* e. Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.

* f. The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.

* g. That the provider of the independent policy has executed an affidavit in a form or manner specified by the Board attending that the independent policy is in force and, at a minimum, complies with all relevant conditions set forth herein and that the provider will immediately notify the in writing of any cancellation or lapse in coverage of any independent policy.

* D. Applicants for licensure, activation, renewal, and reinstatement shall certify compliance with this rule and 12-61-706.5 C.R.S. on forms or in a manner prescribed by the Board.

Any active licensee who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either through the group carrier or directly to the Board, shall be placed on inactive status:

* 1. Immediately, if certification of current insurance coverage is not provided to the Board; or

* 2. Immediately upon the expiration of any current insurance when certification of continued coverage is not provided.

* E. Appraisers employed by a local, state or federal government entity are exempt from the errors and omissions insurance requirements.

CHAPTER 7: CONTINUING EDUCATION REQUIREMENTS

7.1 For initial licenses issued on or after July 1 of any year, there shall be no continuing education requirement as a condition of renewal of such initial license that expires December 31 of the year of issue as defined in Board Rule 1.8. For initial licenses issued before July 1 of any year, there shall be an obligation to complete 14 hours of continuing education as a condition of renewal before the initial license expires on December 31 of the year of issue as defined in Board Rule 1.8. Continuing education requirements established by this Chapter 7 shall apply to all other license renewals.

7.2 Except as provided under Board Rule 7.1, each applicant for renewal of a license shall complete at least 42 hours of real estate appraisal continuing education during the three-year period preceding expiration of the license to be renewed. All licensees renewing a license at the end of a three-year licensing period shall complete the National Uniform Standards of Professional Appraisal Practice Update Courses set forth in Board Rule 7.19. Continuing education requirements must be completed after the effective date of the license to be renewed and prior to the expiration of such license. Upon written request and receipt of the supporting documentation established by the Board, the Board may grant a deferral for continuing education compliance for licensees returning from active military duty. Credential holders returning from active military duty may be placed on active status for up to 90 days pending completion of all continuing education requirements established pursuant to Chapter 7.

7.3 Continuing real estate appraisal education shall be taken from providers approved by the Board. In order to be approved by the Board, continuing education shall meet the following standards:

A. It shall have been developed by persons qualified in the subject matter and instructional design;

B. It shall be current;

C. The instructor shall be qualified with respect to content and teaching methods; and

D. The number of participants and the physical facilities are consistent with the teaching method(s).

The Board, at its discretion, may require an evaluation in a manner determined by the Board of an educational offering to ensure compliance with the above standards. By offering real estate appraisal continuing education in Colorado, each provider agrees to comply with relevant statutes and Board rules and to permit Board audit of said courses at any time and at no cost. If the Board determines that the offering fails to comply with the standards set above, the Board will notify the provider of such deficiency and work with the provider to correct such deficiency prior to the next class offering. If such deficiency is not corrected, then the Board may withdraw approval of the provider, instructor and/or the class.

7.4 The following may be approved as providers of continuing appraisal education provided the standards set forth in Board Rule 7.3 are maintained and provided they have complied with all other requirements of the State of Colorado:

A. Universities, colleges, junior colleges or community colleges accredited by a regional accrediting body accredited by the Council on Post Secondary Accreditation;

B. Professional appraisal and real estate related organizations;

C. State or federal government agencies;

D. Proprietary schools holding valid certificates of approval from the Colorado Division of Private Occupational Schools, Department of Higher Education

E. Continuing education completed in other jurisdictions, providers approved by such other jurisdiction, provided that the jurisdiction's appraiser regulation program has been determined to be in compliance with Title XI, FIRREA;

F. The providers of continuing education approved under the Course Approval Program of The Appraisal Foundation; and

G. Such other providers as the Board may approve upon petition of the education provider or the applicant in a form acceptable to the Board.

7.5 Continuing education providers shall, at their own expense, maintain and provide to the Board on request, information regarding the educational offerings including, but not limited to the following:

A. Outline or syllabus;

B. All texts, workbooks, handouts or other materials;

C. Instructors and their qualifications, including selection, training and evaluation criteria;

D. Examinations (if any);

E. Dates and locations of offerings; and

F. Record of participation;

7.6 Continuing appraisal education shall be at least 2 class hours in duration including examination time (if any). Continuing appraisal education programs and courses are intended to maintain and improve the appraiser's skill, knowledge and competency. Continuing appraisal education courses and programs may include, without limitation, these real estate and real estate appraisal related topics:

A. Ad valorem taxation;

B. Arbitration;

C. Business courses related to practice of real estate appraisal;

D. Construction cost estimating;

E. Ethics and standards of professional practice;

F. Land use planning, zoning and taxation;

G. Management, leasing, brokerage and timesharing;

H. Property development;

I. Real estate appraisal (valuation/evaluation);

J. Real estate law;

K. Real estate litigation;

L. Real estate financing and investment;

M. Real estate appraisal related computer applications;

N. Real estate securities and syndication;

O. Real property exchange; and

P. Such other topics as the Board may approve, upon its own motion or upon petition by the course provider or the licensee in a form acceptable to the Board.

Failure to request and receive approval of continuing real estate appraisal education prior to commencement of the course may result in Board refusal to accept the offering for continuing education credit.

7.8 The Board may consider alternatives to continuing real estate appraisal education such as teaching, authorship of textbooks or articles, educational programs development or similar activities for up to one-half of the required continuing education. Licensees desiring continuing education credit for alternative activities must petition the Board for approval in writing and prior to commencement of the alternative activity.

7.9 The act of applying for renewal or reinstatement shall constitute a statement under penalty of perjury in the second degree that the licensee had the present intent of affirmatively stating the licensee had complied with the continuing education requirements of Colorado statutes and Board Rules. The Board reserves the right to require a renewal applicant or licensee to provide satisfactory documentary evidence of completion of continuing appraisal education requirements. The Board may at its option require such submission as part of the renewal process or subsequent to renewal.

7.10 With the exception of the 7-hour National USPAP Update Course(s), or its equivalent, required pursuant to Board Rule 7.19, applicants for renewal of a license may complete the required hours of continuing real estate appraisal education at any time during the licensing period preceding expiration.

7.11 An appraiser may repeat courses or programs previously completed, subject to the limitation that no course or program may be repeated more frequently than once every two (2) years, except as authorized by the Board. Education in appraisal ethics and the Uniform Standards of Professional Appraisal Practice are not subject to this limitation.

7.12 Continuing real estate appraisal education shall be successfully completed by the holder of the license to be renewed. Successful completion means attendance at the offering and participation in class activities. Successful completion of courses undertaken through distance education requires compliance with the provisions of Board Rule 7.14. Teaching of continuing real estate appraisal education shall constitute successful completion, however credit shall be given for only one presentation of a particular offering during each renewal period.

7.13 The number of hours credited shall be equivalent to the actual number of contact hours of in class instruction and testing. An hour of appraisal education and training is defined as at least 50 minutes of instruction out of each 60-minute segment. For distance education offerings, the number of hours credited shall be that number of hours allowed by the Course Approval Program of The Appraisal Foundation.

7.14 Distance education offerings shall include methods and activities which promote active student engagement and participation in the learning process. Among those methods and activities acceptable are written exercises which are graded and returned to the student, required responses in computer based presentations, provision for students to submit questions during teleconferences, and examinations proctored by an independent third party. Simple reading, viewing or listening to materials is not sufficient engagement in the learning process to satisfy the requirements of this rule.

7.15 As to continuing education completed in other jurisdictions with appraiser regulatory programs established in conformance with Title XI, FIRREA, the Board shall accept the number of hours of continuing education accepted by that jurisdiction.

7.16 Repealed.

7.17 REPEALED.

7.18 Continuing education content must have a clear application to real estate appraisal practice. Motivational courses, personal growth or self-improvement courses, general business courses

and general computing courses are unacceptable to satisfy the continuing education requirements established by these rules.

7.19 All licensees shall successfully complete a 7-hour National USPAP Update Course, or its equivalent, every two calendar years. Such 7-hour National USPAP Update Course shall be in the form of a course approved by the Appraiser Qualifications Board of The Appraisal Foundation, and taught by an instructor certified by the Appraiser Qualifications Board of The Appraisal Foundation and who is also a state certified appraiser. Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.

7.20 A licensee who is a resident of a jurisdiction other than the State of Colorado may comply with the continuing education requirements of this Chapter 7 by documenting, at the request of the Board, compliance with the continuing education requirements of their jurisdiction of residence. In the event the jurisdiction of residence does not impose continuing education requirements consistent with the criteria promulgated by the Appraiser Qualifications Board of The Appraisal Foundation, the licensee shall comply with the continuing education requirements established by this Chapter 7.

7.21 A licensee who renews a license subject to a continuing education requirement shall retain documentary evidence of compliance with these continuing education requirements for a period of not less than five (5) years after the expiration of the license being renewed.

7.22 Course providers shall provide each student who successfully completes a continuing education course in the manner prescribed in Board Rule 7.12 a course completion certificate. The Board will not mandate the exact form of course certificates, however, the following information shall be included:

A. Name of course provider;

B. Course title, which shall describe topical content;

C. Course number, if any;

D. Course dates;

E. Number of continuing education hours;

F. Statement that the required examination was successfully completed, if an examination is a regular part of the course;

G. Course location, which for distance education modalities shall be the principal place of business of the course provider;

H. Name of student; and

I. For Uniform Standards of Professional Appraisal Practice courses begun on and after January 1, 2003, the name and Appraiser Qualifications Board Uniform Standards of Professional Appraisal Practice instructor certification number of the instructor.

7.23 The provisions of Board Rule 7.4 notwithstanding, real estate appraisal continuing education offered through distance education must be approved through the Course Approval Program of The Appraisal Foundation, unless the provider is a government agency that has sought an exemption from the Board.

7.24 AQB certified USPAP instructors successfully completing the Instructor Recertification Course and exam, if required, within the current continuing education cycle, have satisfied the 7-Hour National USPAP Update Course continuing education requirement if equivalency has been determined by the AQB Course Approval Program or by an alternative method established by the AQB. If two 7-Hour National USPAP Update Courses are required during the current continuing education cycle, the AQB certified USPAP instructor must successfully complete one of the following:

A. Two Instructor Recertification Courses and exams, if required, within the current continuing education cycle to have satisfied the 7-Hour National USPAP Update Course requirements for the license cycle; or

B. One Instructor Recertification Course and exam, if required, within the current continuing education cycle to have satisfied the requirement of one 7-Hour National USPAP Update Course and teach the 7-Hour National Update Course within the current continuing education cycle; or

C. One Instructor Recertification Course, and exam, if required, within the current continuing education cycle to have satisfied the requirement of one 7-Hour National USPAP Update Course and complete one 7-Hour National USPAP Update course, or its equivalent.

CHAPTER 8: RENEWAL, REINSTATEMENT, INACTIVATION, SURRENDER OR REVOCATION OF LICENSURE

8.1 REPEALED.

8.2 REPEALED.

8.3 REPEALED.

8.4 REPEALED.

8.5 No holder of an expired license which may be reinstated may apply for a new license of the same type. Such person shall reinstate the expired license as provided in these rules. Nothing in this Rule 8.5 shall act to prevent a person from applying for and receiving a license or certificate with higher qualification requirements than those of the expired license.

8.6 Each licensee shall provide the Board with the following information: (1) a current mailing address and phone number for the licensee; (2) a current email address for the licensee or a letter explaining why the licensee cannot provide an email address; and (3) such other contact information as may be required by the Board from time to time. Each licensee shall inform the Board within ten (10) calendar days of any change in such contact information on a form or in the manner prescribed by the Board. A mailing address for the licensee will be posted on the Division of Real Estate's public website, and it is the licensee's responsibility to inform the Division of Real Estate of any required changes to the mailing address shown for the licensee on the Division of Real Estate's public website. The address shown for the licensee on the Division of Real Estate's public website shall be considered the licensee's address of record. A change of mailing address without notification to the Board will result in the inactivation of the appraiser's license.

8.7 Repealed.

* 8.8 The holder of a license, certificate or temporary practice permit may surrender such to the Board. The Board may deem a surrendered license, certificate or temporary practice permit as permanently relinquished. Such surrender shall not remove the holder from the jurisdiction of the Board for acts committed while holding a license, certificate or temporary practice permit. A license, certificate or temporary practice permit that is surrendered during the pendency of an investigation or a disciplinary action will be reported to the National Registry as having been surrendered in lieu of discipline. A person who surrenders a license, certificate or temporary practice permit may not reinstate the same, but must reapply and meet the current requirements for initial licensure.

8.9 Upon inactivation, revocation, suspension, surrender or expiration of a license or temporary practice permit the holder shall:

A. Immediately cease all activities requiring licensure or a temporary practice permit;

B. In the instance of revocation, suspension or surrender, immediately return the license document or temporary practice permit to the Board;

C. Immediately cease all actions which represent the holder to the public as actively being licensed or being the holder of a temporary practice permit, including, without limitation, the use of advertising materials, forms, letterheads, business cards, correspondence, internet website content, statements of qualifications and the like.

8.10 A licensee who has not completed continuing education requirements established pursuant to Chapter 7 of these rules may not renew or reinstate licensure on inactive status unless the Board determines that extenuating circumstances existed which caused the deficiency in the continuing education requirements. The Board may require a written request and supporting documentation to determine that an extenuating circumstance exists or existed. A licensee desiring to renew or reinstate licensure on inactive status must submit their renewal or reinstatement on an inactive status application to the Board.

8.11 A licensee may, without limitation, renew or reinstate licensure on inactive status for subsequent renewal periods by complying with the requirements of Rule 8.10.

8.12 REPEALED.

8.13 REPEALED.

8.14 REPEALED.

8.15 REPEALED.

8.16 REPEALED.

CHAPTER 9: LICENSURE AND CERTIFICATION BY ENDORSEMENT

9.1 Pursuant to Section 12-61-708(1), C.R.S. (as amended), licensure by endorsement shall be subject to the following restrictions and requirements:

* A. The Board may issue licenses or certifications by endorsement only to those persons holding an active license or certificate from another jurisdiction which is substantially equivalent to those described in Board Rules1.13, 1.14 or 1.15, with qualification requirements substantially equivalent to those in Board Rules 2.2, 2.3 or 2.4, respectively;

* B. The applicant must be the holder of an active license or certificate in good standing under the laws of another jurisdiction;

* C. The appraiser regulatory program of the jurisdiction where the applicant holds an active license or certificate in good standing must not have been disapproved by the appropriate authority under 12 U.S.C.A., Section 3347, FIRREA;

* D. The applicant must apply for licensure by endorsement on a form provided by the Board, pay the specified fees and meet all other Board requirements, including the submission of 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 as required by Section 12-61-706(10), C.R.S. (as amended);

* E. The applicant must apply for and be issued by the Board a license or certificate by endorsement prior to undertaking appraisal activities in Colorado that would require licensure in Colorado; and

* F. A license or certificate issued by endorsement shall be subject to the same renewal requirements as a license or certificate issued pursuant to Section 12-61-706, C.R.S. (as amended), and Board Rules Chapters 7 and 8.

CHAPTER 10: TEMPORARY PRACTICE IN COLORADO

10.1 Pursuant to Sections 12-61-701, 12-61-704(1)(a), 12-61-715(1)(c), C.R.S. (as amended) and in conformance with 12 U.S.C.A. Section 3351(a), FIRREA, a Temporary Practice Permit may be

issued to the holder of an active appraiser's license from another state. Such Temporary Practice Permit shall be subject to the following restrictions and requirements:

A. The applicant must apply for and be issued a Temporary Practice Permit prior to his or her commencement of a real property appraisal in Colorado that is part of a federally related transaction;

B. The applicant's business is temporary in nature and the applicant shall identify in writing the appraisal assignment(s) to be completed under the Temporary Practice Permit prior to being issued a Temporary Practice Permit;

C. The Temporary Practice Permit shall be valid only for the appraisal assignment(s) listed thereon;

D. The applicant must be the holder of an active license in good standing under the laws of another state;

E. The state in which the applicant holds an active license in good standing must impose licensure requirements that are in conformance with FIRREA;

F. The appraiser regulatory program of the state where the applicant holds a license in good standing must not have been disapproved by the appropriate authority under the provisions of 12 U.S.C.A. Section 3347, FIRREA;

G. The applicant must apply for a Temporary Practice Permit on a form provided by the Board, pay the specified fees, and meet all other Board requirements; and

H. Pursuant to Section 12-61-708 (1.2), C.R.S., Temporary Practice Permits are available only to persons holding active licensure in another jurisdiction at levels substantially equivalent to those defined in Board Rules 1.13, 1.14 and 1.15. Temporary Practice Permits are not available to persons holding licensure in another jurisdiction at a trainee, apprentice, associate, intern or other entry level similar to that defined in Board Rule 1.12.

10.2 No person may be issued more than two Temporary Practice Permits in any rolling twelve-month period.

10.3 A Temporary Practice Permit issued pursuant to this Chapter 10 shall be valid for the period of time necessary to complete the original assignment(s) listed thereon, including time for client conferences and expert witness testimony. A Temporary Practice Permit issued pursuant to this Chapter 10 shall not be valid for completion of additional or update assignments involving the same property or properties. Additional or update assignments involving the same property or properties are new assignments, requiring a new Temporary Practice Permit or licensure by endorsement as provided in Chapter 9 of these Rules.

CHAPTER 11: STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

* 11.1 Pursuant to Section 12-61-710(1)(g), C.R.S. (as amended), the Board adopts, and incorporates by reference in compliance with Section 24-4-103(12.5), C.R.S., as the generally accepted standards of professional appraisal practice the definitions, preamble, rules, standards and standards rules and statements of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation on January 30,1989 and amended through February 1, 2013 and known as the 2014-2015 edition. Amendments to the Uniform Standards of Professional Appraisal Practice subsequent to February 1, 2013 are not included in this Rule. A certified copy of the Uniform Standards of Professional Appraisal Practice is on file and available for public inspection at the offices of the Board of Real Estate Appraisers at 1560 Broadway, Suite 925, Denver, Colorado. Copies of the Uniform Standards of Professional Appraisal Practice adopted under this rule may be examined at any state publications depository library. The 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice may be examined at the Internet website of The Appraisal

Foundation at www.appraisalfoundation.org, and copies may be ordered through that mechanism. The Appraisal Foundation may also be contacted at 1155 15th Street, NW, Suite 1111, Washington, DC 20005, or by telephone at (202) 347-7722 or by telefax at (202) 347-7727. The 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice, incorporating the amendments made through April 8, 2011 shall remain in effect through December 31, 2013. Beginning January 1, 2014, the 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice shall be in effect.

11.2 A licensee appraiser using the services of an unlicensed assistant under the provisions of Section 12-61-716, C.R.S. (as amended), or the services of another licensee in the preparation of appraisals or other work products shall, consistent with the Uniform Standards of Professional Appraisal Practice, supervise each such assistant or licensee in an active, diligent and personal manner. When any portion of the work involves significant real property appraisal assistance, the licensee appraiser must describe and summarize the research, analysis and reporting contributions of each such assistant or other licensee within each such report or other work product in a manner specified in USPAP standard 2.

11.3 When disclosing a contingent fee arrangement pursuant to Section 12-61-702(2.5), Section 12-61-710(1)(g), and Section 12-61-712(1)(b), (c) and (d), C.R.S. (as amended), Board Rule 1.20, a licensee shall disclose the contingent compensation agreement in a clear and unequivocal manner in any oral report, and in the letter of transmittal, summary of salient facts and conclusions, statement of limiting conditions, and certifications of any written report. The licensee is not required to disclose the amount of the contingent fee, but is not prohibited from full disclosure of the amount of the contingent fee. A licensee must not have a compensation arrangement for an assignment that is based on his or her opinion of value.

CHAPTER 12: LICENSE TITLES, LICENSE DOCUMENTS, AND SIGNATURES

12.1 The descriptive license titles defined in Board Rules 1.12, 1.13, 1.14, 1.15 and 1.18 shall only be used by persons who hold such Board issued license or permit in good standing. The descriptive license titles may only be used by an individual license holder and may not be used by any other person or group of persons, including a corporation, partnership or other business entity.

12.2 REPEALED.

12.3 REPEALED.

* 12.4 In each appraisal report or other appraisal related work product the license held by the appraiser(s) shall be clearly identified by using the license titles defined in Board rules 1.13, 1.14 and 1.15 and including the license number. Such license titles and numbers shall be identified wherever the licensee signs, by any means or method, the report or other work product, including, but not limited to the:

A. Letter of transmittal;

B. Certification of the appraiser(s); and

C. Appraisal or other work product report form or document, including addenda thereto.

12.5 Repealed

12.6 An appraiser practicing in Colorado under authority of a Temporary Practice Permit shall identify the state where they hold licensure, the type of license and the license number, and shall further state they hold a Temporary Practice Permit and state the permit number in all instances where license type and number are required under this Chapter 12.

12.7 The real estate appraiser's license or temporary practice permit document and identification card issued to an initial or renewal applicant shall remain the property of the Board. Such document and card shall be surrendered to the Board immediately upon demand. The reasons

for such demand may include, but are not limited to, suspension, revocation, stipulated settlement or failure to pay required fees.

* 12.8 When complying with Rule 12.4 an appraiser shall use the full license or permit title in Rules 1.13, 1.14, 1.15, and 1.18, or shall use the appropriate abbreviation as listed below, followed by the license or permit number. Use of initials only, such as the alphabetical prefix included with each board issued license number to identify the type of license or permit is prohibited except when necessary to comply with federally implanted data collection or reporting requirements (for example FNMA ("Fannie Mae") or FHLMC ("Freddie Mac") implemented policies or guidelines).

Licensed Appraiser:	Lic. App. or Lic. Appr.
Certified Residential Appraiser:	Crt. Res. App. or Cert. Res. Appr.
Certified General Appraiser:	Crt. Gen. App. or Cert. Genl. Appr.
Temporary Practice Permit:	Temp. Prac. Pmt.

12.9 Repealed

12.10 When stating the type of license or permit held, and the number thereof, an appraiser may make use of an impression, provided such impression is legible on each copy of the appraisal report or other work product.

12.11 Where appraisal report forms or other work product forms do not allow space for placing the information required by Rule 12.4 immediately following the name and signature of the appraiser the required information shall be placed in the closest reasonable available space on the same page.

12.12 The holder of a license or permit in good standing may copy the license or permit document for inclusion in an appraisal report or other appraisal work product. Such copy shall have the word "COPY" prominently displayed so as to substantially overlay the printed portions of the license or permit document.

12.13 The requirements of this chapter shall be complied with in any electronic copy or transmittal of an appraisal report or other appraisal related work product.

12.14 No holder of a license or temporary practice permit, or any other person, shall make or cause to be made or allow to be made, any alteration to a Board-issued license or permit document or copy thereof, other than as provided in Board Rule 12.12.

12.15 No licensee may affix or allow to be affixed the name or signature of a licensee to an appraisal report or other appraisal related work product without the express permission of the licensee for that specific assignment, report or other work product. Licensees shall not give blanket permission for affixing their signature to appraisal reports or other work products and may only authorize the use of his or her signature on an assignment-by-assignment basis.

12.16 No licensee shall permit, through action or inaction, their name or signature to be affixed to an appraisal report or other appraisal related work product without their first personally examining and approving the final version of such report or other work product.

CHAPTER 13: DISCIPLINARY PROCEDURES

13.1 Complaints alleging violation of Section 12-61-701, *et seq.*, C.R.S. or the Rules of the Board of Real Estate Appraisers shall be in writing on a form or in the manner prescribed by the Board. Nothing in this rule shall act to prevent the Board from acting upon its own motion to open a complaint.

13.2 Pursuant to Section 12-61-704(1)(d), C.R.S., and Section 24-4-105(3), C.R.S., any disciplinary hearing conducted on behalf of the Board may, at the discretion of the Board, be conducted by

an Administrative Law Judge from the Office of Administrative Courts of the Department of Personnel & Administration.

* 13.3 REPEALED.

* 13.4 When a licensee has received written notification from the Board that a complaint has been filed against the licensee, the licensee must submit a written response to the Board. Failure to submit a written response within the time set by the Board in its notification shall be grounds for disciplinary action unless the Board has granted an extension of time for the response in writing and regardless of the question of whether the underlying complaint warrants further investigation or subsequent action by the Board. The licensee's written response must contain the following:

* A. A complete and specific answer to the factual recitations, allegations or averments;

* B. A complete and specific response to any additional questions, allegations or averments presented in the notification letter;

* C. Any documents or records requested in the notification letter; and

* D. Any further information relative to the complaint that the licensee believes to be relevant or material to the matters addressed in the notification letter.

* 13.5 The holder of a Board-issued license or permit, including an owner of more than ten (10) percent of a licensed appraisal management company, shall inform the Board in writing within ten (10) days of any disciplinary action taken by any other state, district, territorial, or provincial real estate appraiser or appraisal management company licensing authority. For purposes of this rule, disciplinary action shall include, without limitation, actions such as fines, required education, probation, suspension, revocation, letters of censure, debarment, required supervision, and the like.

13.6 Pursuant to Section 24-34-106, C.R.S., when a licensee is required to complete real estate appraisal education as part of a disciplinary action, no portion of any such courses or programs completed to satisfy the terms of a disciplinary action shall be creditable toward continuing education or qualifying education requirements.

* 13.7 An appraiser licensed or permitted by the Board must inform the Board in writing within ten (10) days of conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any felony, or any other like crime under Colorado law, federal law, or the laws of other states.

13.8 Board members, division staff and contractors hired by the Division of Real Estate to perform official division business are not required to comply with USPAP Standards, Standards Rules and/or Statements in performance of the following official duties:

A. Investigations;

B. Work experience reviews conducted during license application processing; or

C. The review or analysis of investigative findings, experience reviews, and/or work product reviews resulting from Board case resolutions.

An investigation or review conducted by staff, a member of the Board or a contractor hired by the Division of Real Estate is not considered an "appraisal review" or an "appraisal" as defined by USPAP.

13.9 A licensee shall respond in writing to any correspondence from the Board requiring a response. The written response shall be submitted within the time period provided by the Board. The Board shall send such correspondence to the licensee's address of record with the Board. Failure to submit a timely written response shall be grounds for disciplinary action.

13.10 Exceptions and Board Review of Initial Decisions:

a. Written form, service, and filing requirements

1. All designations of record, requests, exceptions, and responsive pleadings ("pleadings") must be in written form, mailed with a certificate of mailing to the board and the opposing party.
2. All pleadings must be filed with the board by 5:00 p.m. on the date the filing is due. These rules do not provide for any additional time for service by mail. Filing is the receipt of a pleading by the board.
3. Any pleadings must be served on the opposing party by mail or by hand delivery on the date on which the pleading is filed with the board.
4. All pleadings must be filed with the board and not the office of administrative courts. Any designations of record, requests, exceptions or responsive pleadings filed in error with the office of administrative courts will not be considered. The board's address is:

   Colorado Board of Real Estate Appraisers

   1560 Broadway, Suite 925

   Denver, CO 80202

b. Authority to Review

1. The board hereby preserves the board's option to initiate a review of an initial decision on its own motion pursuant to § 24-4-105(14)(a)(ii) and (b)(iii), C.R.S. outside of the thirty day period after service of the initial decision upon the parties without requiring a vote for each case.
2. This option to review shall apply regardless of whether a party files exceptions to the initial decision.

c. Designation of Record and Transcripts

1. Any party seeking to reverse or modify the initial decision of the administrative law judge shall file with the board a designation of the relevant parts of the record for review ("designation of record"). Designations of record must be filed with the board within twenty days of the date on which the board mails the initial decision to the parties' address of record with the board.
2. Even if no party files a designation of record, the record shall include the following:
   A. All pleadings;
   B. All applications presented or considered during the hearing;
   C. All documentary or other exhibits admitted into evidence;
   D. All documentary or other exhibits presented during the hearing;
   E. All matters officially noticed;
   F. Any findings of fact and conclusions of law proposed by any party; and
   G. Any written brief filed.
3. Transcripts: transcripts will not be deemed part of a designation of record unless specifically identified and ordered. Should a party wish to designate a transcript or portion thereof, the following procedures apply:
   A. The designation of record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, or may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript.

B. Any party who includes a transcript or a portion thereof as part of the designation of record must order the transcript or relevant portions by the date on which the designation of record must be filed (within twenty days of the date on which the board mails the initial decision to the parties).

C. When ordering the transcript, the party shall request a court reporter or transcribing service to prepare the transcript within thirty days. The party shall timely pay the necessary fees to obtain and file with the board an original transcription and one copy within thirty days.

D. The party ordering the transcript shall direct the court reporter or transcribing service to complete and file with the board the transcript and one copy of the transcript within thirty days.

E. If a party designates a portion of the transcript, the opposing party may also file a supplemental designation of record, in which the opposing party may designate additional portions of the transcript. This supplemental designation of record must be filed with the board and served on the other party within ten days after the date on which the original designation of record was due.

F. An opposing party filing a supplemental designation of record must order and pay for such transcripts and portions thereof within the deadlines set forth above. An opposing party must also cause the court reporter to complete and file with the board the transcript and one copy of the transcript within thirty days.

G. Transcripts that are ordered and not filed with the board in a timely manner by the reporter or transcription service due to non-payment, insufficient payment or failure to direct as set forth above will not be considered by the board.

D. Filing of Exceptions and Responsive Pleadings

1. Any party wishing to file exceptions shall adhere to the following timelines:

   A. If no transcripts are ordered, exceptions are due within thirty days from the date on which the board mails the initial decision to the parties. Both parties' exceptions are due on the same date.

   B. If transcripts are ordered by either party, the following procedure shall apply. Upon receipt of transcripts identified in all designations of record, the board shall mail notification to the parties stating that the transcripts have been received by the board. Exceptions are due within thirty days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.

2. Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings shall be filed within 10 days of the date on which the exceptions were filed with the board. No other pleadings will be considered except for good cause shown.

3. The board may in its sole discretion grant an extension of time to file exceptions or responsive pleadings, or may delegate the discretion to grant such an extension of time to the board's designee.

E. Request for Oral Argument

1. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings. Requests filed after this time will not be considered.

2. It is within the sole discretion of the board to grant or deny a request for oral argument. If oral argument is granted, both parties shall have the opportunity to participate.

3. Each side shall be permitted ten minutes for oral argument unless such time is extended by the board or its designee.

* 13.11 A controlling appraiser must inform the Board in writing within ten days of conviction of, entering a plea of guilty to, entering a plea of nolo contendere, or entering an alford plea to any misdemeanor or felony relating to the conduct of an appraisal, theft, embezzlement, bribery, fraud, misrepresentation, or deceit, or any other like crime under Colorado law, federal law, or the laws of other states.

* 13.12 A controlling appraiser, or an approved designee of a licensed appraisal management company, must inform the Board in writing within ten days when an owner of an appraisal management company, possessing more than ten percent ownership of the licensed entity, has been convicted of, entered a plea of guilty to, entered a plea of nolo contendere, or entered an alford plea to any misdemeanor or felony relating to the conduct of an appraisal, theft, embezzlement, bribery, fraud, misrepresentation, or deceit, or any other like crime under Colorado law, federal law, or the laws of other states.

CHAPTER 14: DECLARATORY ORDERS PURSUANT TO SECTION 24-4-105 (11), C.R.S.

14.1 Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions or of any rule or order of the Board.

14.2 The Board will determine, in its discretion and without prior notice to petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall issue its written order disposing of the same stating the reason for its action. A copy of the order shall be provided to the petitioner.

14.3 In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:

A. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Board.

B. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the petitioners.

C. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner.

D. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

E. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, C.R.C.P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

14.4 Any petition filed pursuant to this rule shall set forth the following:

A. The name and address of the petitioner and whether the petitioner holds a registration, license or certificate issued pursuant to Section 12-61-701 et. seq. C.R.S. (as amended).

B. The statute, rule or order to which the petition relates.

C. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

14.5 If the Board determines that it will rule on the petition, the following procedures shall apply:

A. The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case:

1. Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
2. The Board may order the petitioner to file a written brief, memorandum or statement of position.
3. The Board may set the petition, upon due notice to the petitioner, for a non-evidentiary hearing.
4. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.
5. The Board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.
6. The Board may take administrative notice of facts pursuant to the Administrative Procedures Act, Section 24-4-105 (8), C.R.S., (as amended), and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
7. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

B. The Board may, in its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.

14.6 The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by section 14.4 of this Rule. Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the Board.

14.7 Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute agency action subject to judicial review pursuant to Section 24-4-106, C.R.S., (as amended).

CHAPTER 15: REPEALED

15.1 REPEALED.

15.2 REPEALED.

15.3 REPEALED.

15.4 REPEALED.

15.5 REPEALED.

CHAPTER 16: CONSERVATION EASEMENT APPRAISALS

16.1 Affidavit for Conservation Easement Appraisals

Pursuant to § 12-61-719(1), C.R.S. any appraiser who conducts an appraisal for a conservation easement shall submit a copy of the completed appraisal to the Board within thirty days following signature and delivery of the appraisal to the client. The appraisal shall be accompanied by an affidavit from the appraiser. Pursuant to Section 12-61-719(2), the affidavit

submitted with a conservation easement appraisal shall be in a form approved by the Board. The form entitled, "Affidavit for Conservation Easement Appraisals" has been approved by the Board and must be submitted to the Division of Real Estate by an appraiser who conducts an appraisal for a conservation easement, together with a copy of the conservation easement appraisal. The affidavit for conservation easement appraisals is posted to the Division of Real Estate's website. Specimen forms are also available for review and inspection in the Colorado Real Estate manual and in the office of the Division of Real Estate. The Board will no longer post the form in the Code of Colorado Regulations and hereby withdraws any forms previously posted in the Code of Colorado Regulations.

16.2 A draft appraisal, as defined by board rule 1.34, does not have to be submitted to the Division of Real Estate pursuant to §12-61-719(1), C.R.S.

16.3 Pursuant to §12-61-719(1), C.R.S, the following appraisals are required to be submitted to the Division of Real Estate with the prescribed fee:

A. Any and all appraisals that assess the value of a conservation easement;

B. Any and all amendments to appraisals that assess the value of a conservation easement; or

C. Any review of an appraisal that contains an opinion of value of a conservation easement.

16.4 All licensees who prepare and sign an appraisal for a conservation easement pursuant to section 39-22-522, C.R.S., on or after July 1, 2011, shall have completed the "Conservation Easement Appraiser Update Course" once every other year. The content of the "Conservation Easement Appraiser Update Course" shall be developed by the Division of Real Estate and presented by the Division of Real Estate or a provider approved by the Division of Real Estate.

* CHAPTER 17: LICENSING REQUIREMENTS FOR APPRAISAL MANAGEMENT COMPANIES

* 17.1 Prior to application for licensure for an appraisal management company or as a controlling appraiser, a person who has been convicted of, entered a plea of guilty to, or entered a plea of nolo contendere to a misdemeanor or felony, or any like municipal code violation, may request the Board to issue a preliminary advisory opinion regarding the possible effect of such conduct on an application for licensure. A person requesting such an opinion is not an applicant for licensure. The Board may, at its sole discretion, issue such an opinion, which shall not be binding upon the Board or limit the authority of the Board to investigate a later application for licensure. The issuance of such an opinion by the Board shall not act to prohibit a person from submitting an application for licensure. A person requesting such an opinion shall do so in a request form prescribed by the Board. Such request form shall be supported and documented by, without limitation, the following:

* A. Court documents, including original charges, disposition, pre-sentencing report and certification of completion of terms of sentence;

* B. Police officer's report(s);

* C. Probation or parole officer's report(s);

* D. A written personal statement explaining the circumstances surrounding each violation, and including the statement "I have no other violations either past or pending";

* E. Letters of recommendation; and

* F. Employment history for the preceding five years.

* 17.2 Pursuant to section 12-61-706.3, C.R.S. an applicant for an appraisal management company's or a controlling appraiser's license who has been convicted of, entered a plea of guilty to, or entered a plea of nolo contendere to a misdemeanor or a felony, or any other like municipal code violation, shall, with his or her application, include an addendum to the application in a

form prescribed by the Board. Such addendum shall be supported and documented by, without limitation, the following:

* A. Court documents, including original charges, disposition, pre-sentencing report and certification of completion of terms of sentence;

* B. Police officer's report(s);

* C. Probation or parole officer's report(s);

* D. A written personal statement explaining the circumstances surrounding each violation, and including the statement "I have no other violations either past or pending";

* E. Letters of recommendation; and

* F. Employment history for the preceding five years.

* 17.3 Initial licenses will expire on December 31 [st] of the year of issue. All appraisal management company and controlling appraiser licenses expire annually on December 31 [st].

* 17.4 An appraisal management company must have a controlling appraiser, with an active controlling appraiser's license, to perform services requiring a license. If the controlling appraiser leaves the employment of the appraisal management company, the controlling appraiser or an authorized representative of the appraisal management company must notify the Board within three business days in a manner acceptable to the Board. Upon such notification or discovery by the Board, the license of the appraisal management company will be placed on inactive status unless or until a replacement controlling appraiser has been identified by the appraisal management company and approved by the Board or a temporary controlling appraiser license is timely processed by the Division.

* 17.5 The controlling appraiser license will be placed on inactive status upon notification to the Board that the controlling appraiser has left the employ of the appraisal management company. The controlling appraiser license will remain on inactive status until the license expires or the controlling appraiser is designated to be the responsible party for an appraisal management company.

* 17.6 An individual or company license cannot be transferred for use of the licensed name or license for the benefit of another person, partnership, limited liability company or corporation.

* 17.7 The controlling appraiser, or an authorized representative, must notify the Board within ten business days of a change in ownership of the appraisal management company that results in a new owner who owns more than ten (10) percent of the entity, or a change in ownership that increases an existing individual's total ownership to more than ten (10) percent.

* 17.8 The Board may refuse to issue a license to a partnership, limited liability company or corporation if the name of said corporation, partnership liability company is the same as that of any person or entity whose license has been suspended or revoked in any jurisdiction or is so similar as to be easily confused with that of the suspended or revoked person or entity by members of the general public.

* 17.9 No license will be issued to an appraisal management company under a trade name, corporate name, partnership name or limited liability company name which is identical to another licensed appraisal management company. A license will not be issued to an individual proprietorship that adopts a trade name which includes the following words: corporation, partnership, limited liability company, limited, incorporated, or the abbreviations thereof.

* 17.10 All applications will contain a certification that the controlling appraiser is responsible for the appraisal management company. All applications will require the appraisal management company to identify at least one authorized representative responsible for contacting the Board when there has been a change in the employment of the controlling appraiser or there is a change in the ownership of the entity.

* 17.11 When an application for licensure as an appraisal management company is submitted, the controlling appraiser must certify the following:

* A. If the appraisal management company is a corporation, that the corporation complies with section 12-61-706.3(8)(c), C.R.S. and that the controlling appraiser has been authorized by the corporation as the controlling appraiser for the corporation.

* B. If the appraisal management company is a partnership, that the partnership complies with section 12-61-706.3(8)(a), C.R.S. and that the controlling appraiser has been authorized by the partnership as the controlling appraiser for the partnership.

* C. If the appraisal management company is a limited liability company, that the company complies with section 12-61-706.3(8)(b), C.R.S. and that the controlling appraiser has been authorized by the company as the controlling appraiser for the limited liability company.

* 17.12 An appraisal management company is not required to be domiciled in Colorado in order to obtain a license, if the company maintains a definite place of business in another state and is registered as a foreign entity with the Colorado Secretary of State.

* 17.13 If the appraisal management company has no registered agent registered in Colorado, such registered agent is not located under its registered agent name at its registered agent address, or the registered agent cannot with reasonable diligence be served, the controlling appraiser, on behalf of the appraisal management company, may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address and to the controlling appraiser's address of record. Service is perfected at the earliest of:

* A. The date the controlling appraiser receives the process, notice, or demand;

* B. The date shown on the return receipt, if signed by or on behalf of the controlling appraiser; or

* C. Five days after mailing.

* 17.14 Applicants for licensure, activation, renewal or reinstatement as an appraisal management company shall certify compliance with section 12-61-706.7, C.R.S. in a manner prescribed by the Board. The surety bond must:

* A. Be for a minimum of $ 25,000.00;

* B. Be in conformance with all relevant Colorado statutory requirements; and

* C. Cover acts contemplated for appraisal management companies under part 7 of article 61 of title 12 during the period of licensure by the appraisal management company.

* Any licensed appraisal management company that certifies compliance and fails to maintain a surety bond, or to provide proof of continuous coverage, shall be placed on inactive status:

* A. Immediately if a current surety bond is not provided to the Board; or

* B. Immediately upon the expiration of any current surety bond when certification of continued coverage is not provided.

* 17.15 An appraisal management company or controlling appraiser whose license has been placed on inactive status must:

* A. Cease any activities requiring a license.

* B. Cease all advertising of licensed services.

* C. If an appraisal management company, inform all clients of the company's license status and inability to provide any services requiring a license.

* D. If an appraisal management company, ensure that all appraisal fees collected from the client(s) have been accounted for and dispersed pursuant to section 12-61-710.5(1)(h), C.R.S.

* E. If an appraisal management company, fees for services requiring a license can be collected for licensed services performed prior to inactivation of the license.

* 17.16 Licenses shall be issued by the Board as soon as possible after the receipt of a complete application, including required fees and all supporting documentation. The Board reserves the right to require additional information and documentation from an applicant in order to determine compliance with applicable laws and regulations, and to verify any information or documentation submitted.

* 17.17 If the fee(s) accompanying any application or registration made to the Board is paid by check and the check is not immediately drawn upon presentment to the bank upon which the check was drawn, the application will be cancelled. The application may be reinstated only at the discretion of the Board and upon full payment of any outstanding fees. A fee will be assessed that is equal to the additional bank charges incurred by the division of real estate and may include up to an additional 25% of the additional bank charges to cover the Division of Real Estate's administrative costs.

* 17.18 A temporary controlling appraiser's license maybe issued to a corporation, partnership or limited liability company to prevent hardship. No application for a temporary controlling appraiser's license will be approved unless the designated individual is a certified appraiser, in good standing. The temporary license is valid for 90 days. Upon application and showing of good cause, the Board may extend a temporary license for one additional 90 day period.

* CHAPTER 18: PROFESSIONAL STANDARDS – APPRAISAL MANAGEMENT COMPANIES

* 18.1 An appraisal management company must have and follow a written policy in place regarding the annual audit of appraisals completed for Colorado assignments during the previous year. The policy must have an effective date and memorialize the dates any modifications are made. The policy must outline, at a minimum, the following:

* A. Appraisal Selection. The audit sample must be randomly selected and consist of not less than two USPAP standard 3 reviews for each appraiser who completed Colorado appraisal assignments during the previous year. If an appraiser completed only one appraisal assignment in Colorado, the appraisal management company must complete a USPAP standard 3 review of the appraisal.

* B. Risk-Based Reviews. If an appraisal management company maintains a risk-based review process, the appraisal management company is required to comply with subsection (a) only for those appraisers for whom a USPAP standard 3 review was not performed under the risk-based appraisal review process.

* C. Review Criterion. The appraisals must be evaluated for compliance with state and federal regulations, including the Uniform Standards of Professional Appraisal Practice (USPAP).

* D. Reviewer Qualifications. The individual(s) performing the audit of the appraisals must possess a certified credential in this state or any state and be competent to appraise residential real estate.

* E. Appraisal Deficiencies. The appraisal management company must have procedures in place to address material deficiencies that affect the value conclusion or the credibility of the report with the appraiser. Material violations of USPAP or the license law must be reported to the Board.

* The Board may evaluate an appraisal management company's compliance with its own audit policies during an investigation.

* 18.2 For each Colorado appraisal assignment, an appraisal management company must maintain the following documents or records for a period of at least five years, or at least two years after the final disposition of any judicial proceeding in which a representative of the appraisal

management company provided testimony related to the assignment, which ever period expires last:

* A. Contractual agreements with clients.

* B. Any documents associated with the engagement of an appraiser used to appraise Colorado real estate.

* C. All correspondence with a client or an appraiser regarding a specific assignment, including an accounting of payments received from the client and paid to the appraiser.

* D. Appraisals, appraisal reviews, appraisal updates, recertifications of value, certificates of completion, broker price opinions or competitive market analyses, comparable property checks, rent schedules or income analyses, measurements, building sketches and any client approved forms (Colorado Real Estate only).

* E. A list of all approved appraisers for Colorado real property appraisals, including a list of all appraisers engaged during each calendar year.

* F. Copies of final appraisal reports reviewed in accordance with Board rule 18.1, findings and any subsequent correspondence with the appraiser, client or Board.

* Records may be maintained in electronic format, but must be produced upon request by the Board and must be in a format that has the continued capability to be retrieved and legibly printed. Upon request by the Board, printed records shall be produced.

* 18.3 For all Colorado appraisal assignments, an appraisal management company must disclose its Colorado license number in writing in the engagement letter with an appraiser.

VIII. Appendix – Affidavit for Conservation Easement Appraisals

For Division Use:
Date Received

AFFIDAVIT FOR CONSERVATION EASEMENT APPRAISALS

If more than one appraiser signed the certification in the appraisal, each must complete and sign a separate affidavit.

This affidavit and the appraisal for which it was completed must be submitted to the Division of Real Estate within 30 days following delivery of the signed appraisal to the client. Failure to do so may result in disciplinary action pursuant to §12-61-719(6) C.R.S.

I _____

(Full Name) (Colorado Appraiser License Number)

Do hereby affirm:

1. a. My client ❑ ***is*** the Internal Revenue Service, which precludes me from completing the remainder of this affidavit and submitting the appraisal as required by Colorado law, if my client is the Internal Revenue Service, I have attached proof of this relationship to the affidavit and the prescribed fee. OR

   b. My client ❑ ***is not*** the Internal Revenue Service.

2. The following information is accurate:

   a. Full name of any other appraiser(s) who signed the appraisal:

   _____

   b. This affidavit is for a (check one that best applies):

   ❑ First appraisal submitted for the appraised conservation easement

   ❑ Second appraisal with a different scope of work or duplicated appraisal with the same scope of work (first appraisal DRE reference **#** _____)

   ❑ Appraisal review with a value opinion (reviewed appraisal DRE reference **#** _____)

   c. Conservation easement transaction type (check one that best applies):

   ❑ Donation Only

   ❑ Purchase Only (of the conservation easement interest, not for funding of transaction costs)

   ❑ Bargain Sale (partial sale of the conservation easement interest, not for funding of transaction costs)

   d. Effective date of the appraisal (Month/Day/Year): _____

   e. Appraised Fair Market Value of the conservation easement:_____

   f. Conservation easement holder(s):_____

   g. County(ies) where conservation easement is located:_____

   h. Acres encumbered by the appraised conservation easement:_____

   i. Total acres of the appraised property:_____

   j. Grantor(s) full legal name(s):_____

   k. The full legal name(s) of the signatory(ies) for the grantor:_____

   _____

Revised on 10/28/2010 Page 1 of 4

3. The appraisal ❑ ***is*** ❑ ***is not*** for submission to the Division of Real Estate and/or the Department of Revenue as evidence of a charitable donation eligible for a state tax credit.

4. The appraisal ❑ ***is*** ❑ ***is not*** for a transaction involving a grant from the Great Outdoors Colorado Trust Fund.

5. If applicable, the increase in value of any other property owned by the donor or a related person, whether or not such property is contiguous is (i.e. "enhancement" [see Treasury Regulation §1.170A-14(h)(3)(i)]):

   $_____.

6. In estimating the value of the subject property after encumbrance by the conservation easement I ❑ ***have*** ❑ ***have not*** considered if an increase in the value of the subject property (contiguous property owned by a donor and the donors family [Treasury Regulations], larger parcel [UASFLA] or as defined in USPAP), caused by the granting of the easement has occurred.

7. If applicable, the grantor of the easement:

   a. and any family member, as defined in Section 267(c)4 of the Internal Revenue Code of 1986 as amended ❑ ***does; or*** ❑ ***does not*** own property contiguous to the property encumbered by the conservation easement;

   b. and/or a related person, as defined in Section 267(b) of the Internal Revenue Code of 1986 as amended ❑ ***does; or*** ❑ ***does not*** own any other property, whether contiguous or not to the appraised property whose value may be increased as a result of the grant of the appraised conservation easement.

   c. If I answered affirmative to part a. or b. of this question the family member(s) and/or related person(s) natural or juristic are (please provide full legal name):

   _____

8. This appraisal ❑ ***is*** ❑ ***is not*** for a conservation easement that is part of a multi-stage (increased land area or restrictions) or partial (land area) encumbrance conservation easement transaction (AKA phasing or phased conservation easement).

9. The appraised property ❑ ***has*** ❑ ***has not*** transferred ownership, been optioned or listed within three years of the effective date of the appraisal.

   a. If yes provide the following information (attached additional sheet as needed):

      i. Date of transfer, option or listing within the last three years (Month/Day/Year):_____

      ii. Consideration provided:_____

      iii. Names of parties:_____

   b. If yes, the most recent transfer, option, or listing ❑ ***was*** ❑ ***was not*** given significant weight in determining the value before the easement.

10. My opinion of the value of the property unencumbered and encumbered by the conservation easement or easements using the following approaches/techniques is (if an approach is not applicable indicate N/A).

	Value Before Easement	Value After Easement
Sales Comparison Approach	$	$
Cost Approach	$	$
Income Approach (other than the subdivision approach)	$	$
Subdivision Approach	$	$
Other (please specify)	$	$

11. In the appraisal I ❑ ***did*** ❑ ***did not*** derive and allocate separate values for sand and gravel, minerals, water, and/or improvements. If I did derive such separate values, they were allocated to each applicable item before and after the granting of the conservation easement, as follows (if no separate values were derived indicate N/A):

	Value Before Easement	Value After Easement
Sand and Gravel	$	$
Minerals	$	$
Water	$	$
Improvements	$	$

12. I signed and delivered the appraisal to my client on (Month/Day/Year) _____.

13. I last completed the *Conservation Easement Appraiser Update Course,* as required by Board Rule 16.4, on

    (Month/Day/Year) _____.

14. I ❑ ***have*** ❑ ***have not*** relinquished an appraisal license issued by any state or territory of the United States.

    Please list state or territory as applicable:_____

15. I ❑ ***have*** ❑ ***have not*** had formal disciplinary action resulting from a final judgment (all applicable appeals have been exhausted, waived or not exercised) taken against me by any regulatory body in Colorado or any other State or jurisdiction. Details of any disciplinary actions resulting from a final judgment are set out below (including but not limited to complaint number, complaint date, type of action taken and details of penalization):

    _____

    _____

16. I have conducted _____ **#** previous conservation easement appraisals.

17. Initial_____ I have complied with the education requirements established by the Colorado Board of Real Estate Appraisers for conservation easement appraisals pursuant to 39-22-522 C.R.S. and 12-61-719(7) C.R.S.

18. Initial_____ If applicable, I have met the minimum education and experience requirements as set forth in applicable regulations prescribed by the Secretary of the Treasury and/or any other regulations prescribed by the federal government therefore I am a qualified appraiser as defined in Section 170(f)11 E(II) of the Internal Revenue Code of 1986, as amended, due to my having completed the required education, and having acquired relevant professional experience, in conservation easement appraisals.

19. Initial_____ If applicable, I have not been prohibited by the Secretary of the Treasury from practicing before the Internal Revenue Service under Section 330(c) of Title 31 of the United States Code at any time during a 3-year period ending on the date that this appraisal was signed.

20. Initial_____ If applicable, this appraisal is a qualified appraisal as defined in Section 170(f)11 E(i) of the Internal Revenue Code of 1986 as amended and has been conducted by me in accordance with generally accepted appraisal practice standards (USPAP) and any regulations prescribed by the Secretary of the Treasury.

21. Initial_____ I am competent and have the necessary experience, to complete the analysis presented in this conservation easement appraisal.

22. Initial_____ If applicable, my client may submit this affidavit to the Division of Real Estate as part of the Application for a Conservation Easement Tax Credit Certificate, in doing so I certify that the conservation easement value (#2e, above) and enhancement value (#5, above) reported in this affidavit are supported by a qualified appraisal as defined in Section 170(f)11 E(i) of the Internal Revenue Code of 1986 as amended and that the appraisal report conforms to the Uniform Standards of Professional Appraisal Practice. I will submit the appraisal and duplicate copy of the affidavit to the Division of Real Estate within 30 days of signing and delivering it to my client.

Under penalties of perjury, I declare that to the best of my knowledge and belief, this affidavit is true, correct and complete.

Authorized Signature	Title	Date
Printed Name of Signatory	Telephone Number	

The Division will refuse receipt of an incomplete or incorrectly completed Affidavit submitted in accordance with C.R.S. §12-16-719 <u>or</u> as part of an application for a tax credit certificate.

Appraisers:

You must submit a <u>hard copy</u> of this Affidavit along with the prescribed fee and a signed copy of the conservation easement appraisal (hard copy or PDF) to the:

Division of Real Estate
Conservation Easement Program
1560 Broadway, Suite 925
Denver, CO 80202

Revised on 10/28/2010 Page 4 of 4

Chapter 12:
Conservation Easements

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

I. Introduction

* First established by state statute in 1976, a conservation easement is a voluntary, legally-binding and perpetual restriction that limits certain uses and prevents future development of a property. It is a recorded deed restriction enforced by a non-profit organization or a governmental entity. Important conservation values such as habitat, open space, scenic views, agriculture, outdoor recreation, or education, are protected forever.

* Landowners who donate all or a portion of a conservation easement to a governmental entity or nonprofit organization ("the conservation easement holder") may qualify for federal and state tax benefits. The state of Colorado provides a transferable income tax credit for donated conservation easements as a powerful incentive for private land conservation. If certain requirements are met, landowners may earn a conservation easement tax credit ("tax credit") at the amount of 50% of the donation value with a maximum tax credit of $375,000. For a landowner to be eligible for a tax credit, the conservation easement holder must be certified by the Division of Real Estate ("Division").

* II. The Aggregate Annual Limit

* In response to the state's 2010 budgetary shortfall, an aggregate limit on the total dollar amount of tax credits available for a given year was established under HB10-1197. This "cap" is $34 million in 2013. Beginning in 2014 and each year thereafter, the cap is $45 million under HB13-1183. The Division administers the cap by issuing tax credit certificates to landowners that submit an application. Approved applications submitted after the cap is reached are placed on a $15 million waitlist for the next year as set forth in HB13-1183. The Department of Revenue will not allow a tax credit claim unless a tax credit certificate is first issued by the Division.

* III. Pre-Approval Process for Donations Made After January 1, 2014

* Beginning in 2014, Senate Bill 13-221 established a pre-approval process prior to the tax credit claim for conservation easement donations made on or after January 1, 2014. SB13-221 authorizes the Director of the Division to determine the credibility of appraisal and the nine-member Conservation Easement Oversight Commission ("Commission") to determine whether the donation is a qualified conservation contribution. The Department of Revenue no longer has jurisdiction to disallow a tax credit for issues relating to the appraisal or conservation purposes.

* As a safeguard against abuse of the tax credit, the application and review process does not guarantee the issuance of a tax credit certificate and depends upon a positive final determination by the Director and the Commission. Donations that meet both requirements are issued certificates in the order in which the applications are received by the Division.

Landowners may also request an optional preliminary advisory opinion for a proposed conservation easement donation in advance of the tax credit certificate application.

* Landowners are given multiple opportunities to show the validity of their conservation easement donation. Division staff will, in their examination, engage the landowner, the conservation easement holder, and any individual associated with the materials in the application in order to address any potential deficiencies. The staff examination will result in recommendations to the Director and the Commission.

* If potential deficiencies cannot be clarified in the course of the examination, the Director and/or the Commission may request more information and a second examination of any additional documents will be conducted. If potential deficiencies are still not addressed, the Division will either (1) issue a formal written denial, or, if the potential deficiencies lie exclusively with the appraisal, (2) the Director and the Commission may request a second appraisal.

* A denial does not necessarily end the process. Within 30 days, the landowner may submit a written appeal by requesting an administrative hearing; otherwise, the denial becomes final. At any time during the application review, the Director and the Commission may conduct settlement discussions with the landowner.

* IV. Conservation Easement Statutes

* *§ 12-61-719, C.R.S. Conservation easement appraisals – fund created – repeal.*

(1) Any appraiser who conducts an appraisal for a conservation easement shall submit a copy of the completed appraisal to the division within thirty days following the completion of the appraisal. For purposes of this section, "completion of the appraisal" shall mean that the certification page, as defined in the uniform standards for professional appraisal practice, promulgated by the appraisal standards board, shall have been signed by the appraiser and the appraisal has been delivered to the client of the appraiser. The appraisal shall be accompanied by an affidavit from the appraiser that includes, but is not limited to, the following:

(a) A statement specifying the value of the unencumbered property and the total value of the conservation easement in gross along with details of what methods the appraiser used to determine these values;

(b) If the appraisal separately allocates the values of sand and gravel, minerals, water, or improvements, a statement of the separate value of the sand and gravel, minerals, water, or improvements before and after the conservation easement in gross is granted;

(c) An acknowledgment specifying whether a subdivision analysis was used to establish the conservation value in the appraisal;

(d) A statement clarifying whether or not the landowner or a family member as defined in section 267 (c) (4) of the federal "Internal Revenue Code of 1986", as amended, owns other property contiguous to the property encumbered by the appraised conservation easement or owns other property, of which the value may be increased by the donation of the property encumbered by the appraised conservation easement, whether contiguous or not, owned by the landowner or related person as defined in section 267 (b) of the federal "Internal Revenue Code of 1986", as amended;

(e) A statement specifying how the appraiser satisfies the qualified appraiser and licensing requirements set forth in section 39-22-522 (3.3), C.R.S.;

(f) A statement verifying the date and method by which the appraiser has met any specified classroom education requirements established by the board for conservation easement appraisals pursuant to subsection (7) of this section; and

(g) A statement specifying the number of previous conservation easement appraisals conducted by the appraiser.

(2) An affidavit submitted in accordance with the provisions of this section shall be in a form approved by the board. The board shall have the authority to promulgate rules concerning the form and content of the affidavit. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S. A copy of the affidavit and the completed appraisal shall be provided to the landowner.

(3) The division shall review the information submitted in accordance with this section to ensure that it is complete and shall record and maintain the information submitted as part of the affidavit in an electronic database. The division shall have the authority to share the information with the department of revenue. Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., the division's custodian of records shall deny the right of inspection of any appraisal, affidavit, or other record related to information submitted in accordance with the provision of this section unless and until such time as the division files a notice of charges related to the information.

(4) The board in its discretion may, or upon receiving a written complaint from any person shall, investigate the activities of any appraiser who submits any information in accordance with the provisions of this section. The investigation shall consider whether the appraiser complied with the uniform standards of professional appraisal practice and any other provision of law. In conducting the investigation, the division shall have the authority to consult with the commission.

(5) If the board determines that a material violation of the uniform standards of professional appraisal practice or a substantial misstatement of value has occurred in any appraisal submitted in accordance with this section, the board shall notify the department of revenue regarding the appraisal and provide the department with a copy of the appraisal and a summary of the division's findings.

(6) If an appraiser fails to file an appraisal, affidavit, or other information as required by this section, the board shall have the authority to take disciplinary action as provided in section 12-61-710.

(7) The board shall have the authority to establish classroom education and experience requirements for an appraiser who prepares an appraisal for a conservation easement pursuant to section 39-22-522, C.R.S. Such requirements shall be established to ensure that appraisers have a sufficient amount of training and expertise to accurately prepare appraisals that comply with the uniform standards of professional appraisal practice and any other provision of law related to the appraisal of conservation easements. A credit for a conservation easement shall not be allowed unless the appraiser who prepared the appraisal of the easement met all requirements established in accordance with this subsection (7) in effect at the time the appraisal was completed.

* (8) Any appraiser who submits a copy of an appraisal to the division in accordance with the requirements of this section shall pay the division a fee as prescribed by the division. The fee shall cover the costs of the division in administering the requirements of this section. The division shall have the authority to accept and expend gifts, grants, and donations for the purposes of this section. The state treasurer shall credit fees, gifts, grants, and donations to the conservation easement appraisal review fund, which fund is hereby created in the state treasury. Moneys in the fund shall be annually appropriated to the division for the purposes of implementing and administering this section and shall not revert to the general fund at the end of any fiscal year. The fund shall be maintained in accordance with section 24-75-402, C.R.S.

On or before January 1, 2009, and on or before each January 1 thereafter, the division shall certify to the general assembly the amount of the fee prescribed by the division pursuant to this subsection (8). Upon the repeal of this section, any moneys remaining in the fund shall be transferred to the conservation easement tax credit certificate review fund created in section 12-61-723 (6).

* (9) This section is repealed, effective January 1, 2014.

§ 12-61-720, C.R.S. Certification of conservation easement holders – fund created – rules – repeal.

(1) The division shall, in consultation with the commission created in section 12-61-721, establish and administer a certification program for qualified organizations under section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S. The purpose of the program shall be to:

(a) Establish minimum qualifications for certifying organizations that hold conservation easements to encourage professionalism and stability; and

(b) Identify fraudulent or unqualified applicants as defined by the rules of the division to prevent them from becoming certified by the program.

(2) The certification program shall be established and commence accepting applications for certification no later than January 1, 2009. The division shall conduct a review of each application and consider the recommendations of the commission before making a final determination to grant or deny certification. In reviewing an application and in granting certification, the division and the commission may consider:

(a) The applicant's process for reviewing, selecting, and approving a potential conservation easement;

(b) The applicant's stewardship practices and capacity, including the ability to maintain, monitor, and defend the purposes of the easement;

(c) An audit of the applicant's financial records;

(d) The applicant's system of governance and ethics regarding conflicts of interest and transactions with related parties as described in section 267 (b) of the federal "Internal Revenue Code of 1986", as amended, donors, board members, and insiders. For purposes of this paragraph (d), "insiders" means board and staff members, substantial contributors, parties related to those above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public.

(e) Any other information deemed relevant by the division or the commission; and

(f) The unique circumstances of the different entities to which this certification applies as set forth in subsection (4) of this section.

(3) At the time of submission of an application, and each year the entity is certified pursuant to this section, the applicant shall pay the division a fee as prescribed by the division. The fee shall cover the costs of the division and the commission in administering the certification program for entities that hold conservation easements for which tax credits are claimed pursuant to section 39-22-522, C.R.S. The division shall have the authority to accept and expend gifts, grants, and donations for the purposes of this section. The state treasurer shall credit fees, gifts, grants, and donations collected pursuant to this subsection (3) to the conservation easement holder certification fund, which fund is hereby created in the state treasury. Moneys in the fund shall be annually appropriated to the division for the purposes of implementing and administering this section and shall not revert to the general fund at the end of any fiscal year. The fund shall be maintained in accordance with section 24-75-402, C.R.S. On or before January 1, 2009, and on or before each January 1 thereafter, the division shall certify to the

general assembly the amount of the fee prescribed by the division pursuant to this subsection (3).

(4) The certification program shall apply to:

(a) Nonprofit entities holding easements on property with conservation values consisting of recreation or education, protection of environmental systems, or preservation of open space;

(b) Nonprofit entities holding easements on property for historic preservation; and

(c) The state and any municipality, county, city and county, special district, or other political subdivision of the state that holds an easement.

(5) The certification program may contain a provision allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry.

(6) The commission shall meet at least quarterly and make recommendations to the division regarding the certification program. The division shall have the authority to determine whether an applicant for certification possesses the necessary qualifications for certification required by the rules adopted by the division. If the division determines that an applicant does not possess the applicable qualifications for certification or that the applicant has violated any provision of this part 7, the rules promulgated by the division, or any division order, the division may deny the applicant a certification or deny the renewal of a certification; and, in such instance, the division shall provide the applicant with a statement in writing setting forth the basis of the division's determination. The applicant may request a hearing on the determination as provided in section 24-4-104 (9), C.R.S. The division shall notify successful applicants in writing. An applicant that is not certified may reapply for certification in accordance with procedures established by the division.

(7) The division shall implement the certification program in a manner that either commences accepting applications for certification:

(a) At the same time for all types of entities that hold conservation easements; or

(b) During the first year of the program for entities described in paragraph (a) of subsection (4) of this section and during the second year of the program for entities described in paragraphs (b) and (c) of subsection (4) of this section, and other entities.

* (8) A conservation easement tax credit certificate application may be submitted pursuant to section 12-61-723 only if the entity has been certified in accordance with the provisions of this section at the time the donation of the easement is made. The division shall make information available to the public concerning the date that it commences accepting applications for entities that hold conservation easements and the requirements of this subsection (8).

(9) (Deleted by amendment, L. 2009, (HB 09-1014), ch. 1, p. 1, § 2, effective August 5, 2009.)

(10) The division shall maintain and update an online list that can be accessed by the public of the organizations that have applied for certification and whether each has been certified, rejected for certification, or had its certification revoked or suspended in accordance with the provisions of this section.

(11) The division shall have the authority to investigate the activities of any entity that is required to be certified pursuant to this section and to impose discipline for noncompliance, including but not limited to the suspension or revocation of a certification or the imposition of fines. The division shall have the authority to promulgate rules for the certification program and discipline authorized by this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

* (11.5) The division shall have the authority to subpoena persons and documents, which may be enforced by a court of competent jurisdiction if not obeyed, for purposes of conducting investigations pursuant to subsection (11) of this section.

(12) Nothing in this section shall be construed to:

(a) Affect any tax credit that was claimed pursuant to section 39-22-522, C.R.S., prior to the time certification was required by this section; or

(b) Require the certification of an entity that holds a conservation easement for which a tax credit is not claimed pursuant to section 39-22-522, C.R.S.

* (13) This section is repealed, effective July 1, 2018. Prior to such repeal, the certification requirement shall be reviewed as provided for in section 24-34-104, C.R.S.

§ 12-61-721, C.R.S. Conservation easement oversight commission – created – repeal.

(1) There is hereby created in the division a conservation easement oversight commission consisting of nine members as follows:

(a) One member representing the great outdoors Colorado program shall be appointed by and serve at the pleasure of the state board of the great outdoors Colorado trust fund established in article XXVII of the state constitution;

(b) One member representing the department of natural resources shall be appointed by and serve at the pleasure of the executive director of the department;

(c) One member representing the department of agriculture shall be appointed by and serve at the pleasure of the executive director of the department;

* (d) Six members appointed by the governor as follows, with at least one member with the following qualifications or representing the following interests:

* (I) A land trust certified in accordance with section 12-61-720;

* (II) A land trust or local government open space or land conservation agency certified in accordance with section 12-61-720;

* (III) A local government open space or land conservation agency certified in accordance with the provisions of section 12-61-720;

* (IV) An individual who is competent and qualified to analyze the conservation purpose of conservation easements;

* (V) A certified general appraiser with experience in conservation easements who meets any classroom education and experience requirements established by the board in accordance with section 12-61-704(1)(l); and

* (VI) A landowner that has donated a conservation easement in Colorado.

* (1.3) The commission shall exercise its powers and perform its duties and functions under the division as if transferred thereto by a **type 2** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) In making appointments to the commission, the governor shall consult with the three members of the commission appointed pursuant to paragraphs (a) to (c) of subsection (1) of this section and with appropriate organizations representing the particular interest or area of expertise that the appointee represents. Not more than three of the governor's appointees serving at the same time shall be from the same political party. In making the initial appointments, the governor shall appoint three members for terms of two years. All other appointments by the governor shall be for a term of three years. No member shall serve more than two consecutive terms. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor shall have the authority to remove any member for misconduct, neglect of duty, or incompetence.

* (3) (a) At the request of the division or the department of revenue, the commission shall advise the division and the department of revenue regarding conservation easements for which a state income tax credit is claimed pursuant to section 39-22-522, C.R.S.

* (b) (Deleted by amendment, L. 2013.)

* (c) The commission shall review conservation easement tax credit certificate applications and requests for optional preliminary advisory opinions in accordance with section 12-61-723.

* (4) The commission shall meet not less than once each quarter. The division shall convene the meetings of the commission and provide staff support as requested by the commission. A majority of the members of the commission constitutes a quorum for the transaction of all business, and actions of the commission require a vote of a majority of such members present in favor of the action taken. The commission may delegate to the director the authority to act on behalf of the commission on such occasions and in such circumstances as the commission deems necessary for the efficient and effective administration and execution of the commission's responsibilities under this part 7.

(5) On or before January 1, 2009, the commission shall establish a conflict of interest policy to ensure that any member of the commission shall be disqualified from performing any act that conflicts with a private pecuniary interest of the member or from participating in the deliberation or decision-making process for certification for an applicant represented by such member.

* (6) The commission shall advise and make recommendations to the director regarding the certification of conservation easement holders in accordance with section 12-61-720. The division shall have the authority to determine whether an applicant for certification possesses the necessary qualifications for certification required by the rules adopted by the division. If the division determines that an applicant does not possess the applicable qualifications for certification or that the applicant has violated any provision of this part 7, the rules promulgated by the division, or any division order, the division may deny the applicant a certification or deny the renewal of a certification; and, in such instance, the division shall provide the applicant with a statement in writing setting forth the basis of the division's determination. The applicant may request a hearing on the determination as provided in section 24-4-104(9), C.R.S. The division shall notify successful applicants in writing. An applicant that is not certified may reapply for certification in accordance with the procedure established by the division.

(6.5) Commission members shall be immune from liability in accordance with the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(7) This section is repealed, effective July 1, 2018. Prior to such repeal, the commission shall be reviewed as provided in section 24-34-104, C.R.S.

§ 12-61-722, C.R.S. Conservation easement tax credit certificates.

* (1) The division shall receive tax credit certificate applications from and issue certificates to landowners for income tax credits for conservation easements donated on or after January 1, 2011, in accordance with section 39-22-522 (2.5), C.R.S., and this part 7. Nothing in this section shall be construed to restrict or limit the authority of the division to enforce this part 7. The division may promulgate rules in accordance with article 4 of title 24, C.R.S., for the issuance of the certificates. In promulgating any such rules, the division may include but shall not be limited to provisions governing the following:

* (a) The review of the tax credit certificate application pursuant to this part 7;

* (b) The administration and financing of the certification process;

* (c) The notification to the public regarding the aggregate amount of tax credit certificates that have been issued and that are on the wait list;

* (d) The notification to the landowner, the entity to which the easement was granted, and the department of revenue regarding the tax credit certificates issued; and

* (e) Any other matters related to administering section 39-22-522 (2.5), C.R.S., or this part 7.

* (2) The division shall apply the amount claimed in a completed tax credit certificate application against the annual tax credit limit in the order that completed applications are received. The division shall apply claimed tax credit amounts that exceed the annual limit in any year against the limit for the next available year and issue tax credit certificates for use in the year in which the amount was applied to the annual limit.

* (3) The division shall not issue tax credit certificates that in aggregate exceed the limit set forth in section 39-22-522 (2.5), C.R.S., during a particular calendar year.

* *§ 12-61-723, C.R.S. Conservation easement tax credit certificate application process – conservation easement tax credit certificate review fund – created – definitions – rules.*

* (1) For purposes of this section:

* (a) "Application" means an application for a tax credit certificate submitted pursuant to section 12-61-722 or this section.

* (b) "Conservation purpose" means conservation purpose as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with such section.

* (c) "Credibility" means the results are worthy of belief and are supported by relevant evidence and logic to the degree necessary for the intended use.

* (d) "Deficiency" means noncompliance with a requirement for obtaining a tax credit certificate that, unless such noncompliance is remedied, is grounds for the denial of a tax credit certificate application submitted pursuant to this section.

* (e) "Director" means the director of the division of real estate or his or her designee.

* (f) "Landowner" means the record owner of the surface of the land and, if applicable, owner of the water or water rights beneficially used thereon who creates a conservation easement in gross pursuant to section 38-30.5-104, C.R.S.

* (g) "Tax credit certificate" means the conservation easement tax credit certificate issued pursuant to section 12-61-722 and this section.

* (2) (a) The division shall establish and administer a process by which a landowner seeking to claim an income tax credit for any conservation easement donation made on or after January 1, 2014, must apply for a tax credit certificate as required by section 39-22-522 (2.5) and (2.7), C.R.S. The purpose of the application process is to determine whether a conservation easement donation for which a tax credit will be claimed:

* (I) Is a contribution of a qualified real property interest to a qualified organization to be used exclusively for a conservation purpose;

* (II) Is substantiated with a qualified appraisal prepared by a qualified appraiser in accordance with the uniform standards of professional appraisal practice; and

* (III) Complies with the requirements set forth in this section.

* (b) The landowner shall have the burden of proof regarding compliance with all applicable laws and regulations.

* (3) For the purpose of reviewing applications and making determinations regarding the issuance of tax credit certificates, including the dollar amount of the tax credit certificate to be issued:

* (a) Division staff shall review each application and advise and make recommendations to the director and the commission regarding the application;

* (b) The director has authority and responsibility to determine the credibility of the appraisal. In determining credibility, the director shall consider, at a minimum, compliance with the following requirements:

* (I) The appraisal for a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522, C.R.S., is a qualified appraisal from a qualified appraiser, as defined in section 170 (f) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with such section.

* (II) The appraisal conforms with the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law.

* (III) The appraiser holds a valid license as a certified general appraiser in accordance with this part 7.

* (IV) The appraiser meets any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-704 (1) (l).

* (c) The director shall have the authority and responsibility to determine compliance with the requirements of section 12-61-720.

* (d) The commission shall have the authority and responsibility to determine whether a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522, C.R.S., is a qualified conservation contribution as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with such section.

* (4) The department of revenue shall not have the authority to disallow a conservation easement tax credit based on any requirements that are under the jurisdiction of the division, the director, or the commission pursuant to this section.

* (5) A complete tax credit certificate application must be made by the landowner to the division and must include the following:

* (a) A copy of the final conservation easement appraisal;

* (b) A copy of the recorded deed granting the conservation easement;

* (c) Documentation supporting the conservation purpose of the easement;

* (d) Any other information or documentation the director or the commission deems necessary to make a final determination regarding the application; and

* (e) The fee required pursuant to subsection (6) of this section.

* (6) A landowner submitting an application for a tax credit certificate pursuant to this section or an application for an optional preliminary advisory opinion pursuant to subsection (14) of this section shall pay the division a fee as prescribed by the division. The application fee for an optional preliminary advisory opinion may be a different dollar amount than the application fee for a tax credit certificate. The fees must cover the costs of the division and the commission in administering the requirements of this section. The state treasurer shall credit the fees collected pursuant to this subsection (6) to the conservation easement tax credit certificate review fund, which fund is hereby created in the state treasury. The general assembly shall annually appropriate moneys in the fund to the division for the purposes of implementing and administering this section. The moneys shall not revert to the general fund at the end of any fiscal year. The fund shall be maintained in accordance with section 24-75-402, C.R.S. On or before January 1, 2014, and on or before each January 1 thereafter, the division shall certify to the general assembly the amount of any fees prescribed by the division pursuant to this subsection (6).

* (7) (a) If, during the review of an application for a tax credit certificate, the director or the commission identifies any potential deficiencies, such potential deficiencies must be documented in a letter sent to the landowner by first class mail. The division shall send letters documenting potential deficiencies to landowners in a timely manner such that the average number of days between the date a completed application is received by the division and the mailing date of the division's letter to the landowner does not exceed one hundred twenty days.

* (b) The landowner shall have sixty days from the mailing date of the division's letter to address the potential deficiencies identified by the director and the commission and provide additional information or documentation that the director or the commission deems necessary to make a final determination regarding the application.

* (c) The director and the commission shall have ninety days from receiving any additional information or documentation provided by the landowner to review such information and documentation and make a final determination regarding the application.

* (d) The deadlines prescribed by this subsection (7) may be extended upon mutual agreement between the director and the commission and the landowner.

* (8) The director or the commission may deny an application if the landowner:

* (a) Has not demonstrated, to the satisfaction of the director or the commission, that the application complies with any requirement of this part 7;

* (b) Does not provide the information and documentation required pursuant to this part 7; or

* (c) Fails to timely respond to any written request or notice from the division, the director, or the commission.

* (9) If the director reasonably believes that any appraisal submitted in accordance with this section is not credible, the director shall have the authority, after consultation with the commission, to require the landowner, at the landowner's expense, to obtain either a revised appraisal or a second appraisal from an appraiser who meets the requirements of this part 7 and is in good standing with the board before making a final determination regarding the application.

* (10) If the director and the commission do not identify any potential deficiencies with an application, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the landowner pursuant to section 12-61-722 in a timely manner such that the average number of days between the date a completed application is received by the division and the date the tax credit certificate is issued does not exceed one hundred twenty days. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39, C.R.S.

* (11) (a) If all potential deficiencies that have been identified are subsequently addressed to the satisfaction of the director and the commission, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the landowner pursuant to section 12-61-722. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39, C.R.S.

* (b) If any potential deficiencies that have been identified are not subsequently addressed to the satisfaction of the director and the commission, the division shall issue a written denial of the application to the landowner documenting those deficiencies that were the specific basis for the denial. The written denial must be dated and sent by first class mail to the landowner at the address provided by the landowner on the application. The director shall have the authority to act on behalf of the commission for purposes of administering the process for issuing approvals and denials of applications and for administering subsection (12) of this section.

* (12) (a) The landowner may appeal to the director either the director's or the commission's denial of an application, in writing, within thirty days of the issuance of the denial. This written appeal constitutes a request for an administrative hearing.

* (b) If the landowner fails to appeal the denial of an application within thirty days of the issuance of the denial, the denial becomes final and no tax credit certificate shall be issued.

* (c) Administrative hearings must be conducted in accordance with section 24-4-105, C.R.S. At the discretion of the director, hearings may be conducted by an authorized representative of the director or the commission or an administrative law judge from the office of administrative courts in the department of personnel. All hearings will be held in the county where the division is located unless the director designates otherwise. The decision of the director or the commission is subject to judicial review by the court of appeals and is subject to the provisions of section 24-4-106, C.R.S.

* (d) In conducting settlement discussions with a landowner, the director and the commission shall have the authority to compromise on any of the deficiencies identified in the application and supporting documentation, including the dollar amount of the tax credit certificate to be issued. A record of any such compromise and the reasons therefore shall be placed on file in the division.

* (e) The director shall have the authority to promulgate rules pursuant to article 4 of title 24, C.R.S., to effectuate the purposes of this subsection (12).

* (13) (a) Commencing with the 2014 calendar year, and for each calendar year thereafter, the division shall create a report, which shall be made available to the public, containing the following aggregate information:

* (I) The total number of tax credit certificate applications received, approved, and denied in accordance with this section, along with average processing times;

* (II) For applications approved in accordance with this section:

* (A) The total acreage under easement summarized by the allowable conservation purposes as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with such section;

* (B) The total appraised value of the easements;

* (C) The total donated value of the easements; and

* (D) The total dollar amount of tax credit certificates issued; and

* (b) The division may include additional easement-specific information in the public report that, notwithstanding the provisions of this part 7 or any other law to the contrary, would otherwise be publicly available.

* (14) (a) In addition to the tax credit certificate application process set forth in this section, a landowner may submit a proposed conservation easement donation to the division to obtain an optional preliminary advisory opinion regarding the transaction. The opinion may address the proposed deed of conservation easement, appraisal, conservation purpose, or other relevant aspect of the transaction.

* (b) The division, the director, and the commission shall review the information and documentation provided in a manner consistent with the scope of their authority and responsibilities for reviewing tax credit certificate applications as outlined in subsection (3) of this section and issue either a favorable opinion or a nonfavorable opinion.

* (c) The director or the commission may request that the landowner submit additional information or documentation that the director or the commission deems necessary to complete the review and issue an opinion.

* (d) A nonfavorable opinion shall set forth any potential deficiencies identified by the director or the commission and that fall within the scope of the director's and the commission's review of the conservation easement transaction. The preliminary opinion is advisory only and is not binding for any purpose upon the division, the director, the commission, or the department of revenue.

* (15) The division shall have the authority to promulgate rules to effectuate the purpose, implementation, and administration of the provisions of this section pursuant to article 4 of title 24, C.R.S. This authority shall include the authority to define further in rule the administrative processes and requirements, including application processing and review time frames, for obtaining and issuing an optional preliminary advisory opinion pursuant to subsection (14) of this section.

* (16) Notwithstanding the provisions of the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S., the division, the director, and the commission shall deny the right of public inspection of any documentation or other record related to information obtained as part of an individual landowner's application for a tax credit certificate or an optional preliminary advisory opinion pursuant to the requirements of this section, including documentation or other records related to administrative hearings and settlement discussions held pursuant to subsection (12) of this section. The division, the director, and the commission shall have the authority to share documentation or other records related to information obtained pursuant to this section with the department of revenue.

* (17) Nothing in this section shall be construed to affect any tax credit that is claimed or used pursuant to section 39-22-522, C.R.S., for conservation easement donations occurring prior to January 1, 2014.

**** § 24-33-112, C.R.S. Conservation easement holders – submission of information. (Repealed)***

**** § 39-21-113, C.R.S. Reports and returns – rule – repeal.***

(17) Notwithstanding any other provision of this section, the executive director may require that such detailed information regarding a claim for a credit for the donation of a conservation easement in gross pursuant to section 39-22-522 and any appraisal submitted in support of the credit claimed be given to the division of real estate in the department of regulatory agencies and the conservation easement oversight commission created pursuant to section 12-61-721 (1), C.R.S., as the executive director determines is necessary in the performance of the department's functions relating to the credit. The executive director may provide copies of any appraisal and may file a complaint regarding any appraisal as authorized pursuant to section 39-22-522 (3.3). Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the executive director shall deny the right to inspect any information or appraisal required in accordance with the provisions of this subsection (17).

(17.5) (a) Notwithstanding the provisions of this section, the executive director may provide such detailed information pertinent to a claim for a credit for the donation of a conservation easement pursuant to section 39-22-522 to taxpayers, including donors and transferees, with cases involving common or related issues of fact or law. The executive director or the executive director's duly authorized agents may also provide such information to the parties to a consolidated administrative hearing pursuant to section 39-22-522.5 (5) (a) as necessary and appropriate for the efficient and fair resolution of disputes.

(b) Persons who receive taxpayer information pursuant to paragraph (a) of this subsection (17.5) shall be subject to the provisions of this section, including the limitations in subsection (4) of this section and the penalties in subsection (6) of this section regarding disclosure of taxpayer information.

§ 39-22-522, C.R.S. Credit against tax – conservation easements.

(1) For purposes of this section, "taxpayer" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article, a partnership, S corporation, or other similar pass-through entity, estate, or trust that donates a conservation easement as an entity, and a partner, member, and subchapter S shareholder of such pass-through entity.

* (2) (a) For income tax years commencing on or after January 1, 2000, but prior to January 1, 2014, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation that is eligible to qualify as a qualified conservation contribution pursuant to section 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

* (b) For income tax years commencing on or after January 1, 2014, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation that meets the requirements of section 170 of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in accordance with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

* (2.5) Notwithstanding any other provision of this section and the requirements of section 12-61-723, C.R.S., for income tax years commencing on or after January 1, 2011, a taxpayer conveying a conservation easement and claiming a credit pursuant to this section shall, in addition to any other requirements of this section and the requirements of section 12-61-723, C.R.S., submit a claim for the credit to the division of real estate in the department of regulatory agencies. The division shall issue a certificate for the claims received in the order submitted. After certificates have been issued for credits that exceed an aggregate of twenty-two million dollars for all taxpayers for the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter, any claims that exceed the amount allowed for a specified calendar year shall be placed on a wait list in the order submitted and a certificate shall be issued for use of the credit in the next year for which the division has not issued credit certificates in excess of the amounts specified in this subsection (2.5); except that no more than fifteen million dollars in claims shall be placed on the wait list in any given calendar year. The division shall not issue credit certificates that exceed twenty-two million dollars in each of the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter. No claim for a credit is allowed for any income tax year commencing on or after January 1, 2011, unless a certificate has been issued by the division. If all other requirements under section 12-61-723, C.R.S., and this section are met, the right to claim the credit is vested in the taxpayer at the time a credit certificate is issued.

* (2.7) Notwithstanding any other provision, for income tax years commencing on or after January 1, 2014, no claim for a credit shall be allowed unless a tax credit certificate is issued by the division of real estate in accordance with sections 12-61-722 and 12-61-723, C.R.S., and the taxpayer files the tax credit certificate with the income tax return filed with the department of revenue.

* (3) For conservation easements donated prior to January 1, 2014, in order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall submit the following in a form approved by the executive director to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:

(a) A statement indicating whether a deduction was claimed on the taxpayer's federal income tax return for a conservation easement in gross;

(b) A statement that reflects the information included in the noncash charitable contributions form used to claim a deduction for a conservation easement in gross on a federal income tax return and whether the donation was made in order to get a permit or other approval from a local or other governing authority;

(c) A statement to be made available to the public by the department of revenue that includes a summary of the conservation purposes as defined in section 170 (h) of the internal revenue code that are protected by the easement; the county, township, and range where the easement is located; the number of acres subject to the easement; the amount of the tax credit claimed; and the name of the organization holding the easement;

(d) A summary of a qualified appraisal that meets the requirements set forth in subsection (3.3) of this section; however, if requested by the department of revenue, the taxpayer shall submit the appraisal itself;

(e) A copy of the appraisal and accompanying affidavit from the appraiser submitted to the division of real estate in the department of regulatory agencies in accordance with the provisions of section 12-61-719, C.R.S.;

(f) If the holder of the conservation easement is an organization to which the certification program in section 12-61-720, C.R.S., applies, a sworn affidavit from the holder of the conservation easement in gross that includes the following:

(I) An acknowledgment that the holder has filed the information with the department of revenue and the division of real estate in accordance with section 24-33-112, C.R.S.;

(II) An acknowledgment of whether the transaction is part of a series of transactions by the same donor; and

(III) An acknowledgment that the holder has reviewed the completed Colorado gross conservation easement credit schedule to be filed by the taxpayer and that the property is accurately described in the schedule.

* (3.3) The appraisal for a conservation easement in gross donated prior to January 1, 2014, and for which a credit is claimed shall be a qualified appraisal from a qualified appraiser, as those terms are defined in section 170 (f) (11) of the internal revenue code. The appraisal shall be in conformance with the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law. The appraiser shall hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S. The appraiser shall also meet any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-719 (7), C.R.S. If there is a final determination, other than by settlement of the taxpayer, that an appraisal submitted in connection with a claim for a credit pursuant to this section is a substantial or gross valuation misstatement as such misstatements are defined in section 1219 of the federal "Pension Protection Act of 2006", Pub. L. 109-280, the department

shall submit a complaint regarding the misstatement to the board of real estate appraisers for disciplinary action in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.

* (3.5) (a) For conservation easements donated prior to January 1, 2014:

* (I) The executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the appraisal value of the easement, the amount of the credit, and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, including the value of the conservation easement for which the credit is granted, the executive director shall have the authority, for good cause shown and in consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-721 (1), C.R.S., to review and accept or reject, in whole or in part, the appraisal value of the easement, the amount of the credit, and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation. If the executive director reasonably believes that the appraisal represents a gross valuation misstatement, receives notice of such a valuation misstatement from the division of real estate, or receives notice from the division of real estate that an enforcement action has been taken by the board of real estate appraisers against the appraiser, the executive director shall have the authority to require the taxpayer to provide a second appraisal at the expense of the taxpayer. The second appraisal shall be conducted by a certified general appraiser in good standing and not affiliated with the first appraiser that meets qualifications established by the division of real estate. In the event the executive director rejects, in whole or in part, the appraisal value of the easement, the amount of the credit, or the validity of the credit, the procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and 39-21-105 shall apply.

* (II) In consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-721 (1), C.R.S., the executive director shall develop and implement a separate process for the review by the department of revenue of gross conservation easements. The review process shall be consistent with the statutory obligations of the division and the commission and shall address gross conservation easements for which the department of revenue has been informed that an audit is being performed by the internal revenue service. The executive director shall share information used in the review of gross conservation easements with the division. Notwithstanding part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the division and the commission shall deny the right to inspect any information provided by the executive director in accordance with this subparagraph (II).

* (b) For conservation easements donated on or after January 1, 2014, and subject to the restrictions of section 12-61-723 (4), C.R.S., the executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the amount of the credit and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, the executive director shall have the authority, for good cause shown, to review and accept or reject, in whole or in part, the amount of the credit and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation, except those requirements for which authority is granted to the division of real estate, the director of the division of real estate, or the conservation easement oversight commission pursuant to section 12-61-723, C.R.S.

* (3.6) For conservation easements donated on or after January 1, 2014, in order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer must submit the following in a form, approved by the executive director, to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:

* (a) (I) A tax credit certificate issued under section 12-61-723, C.R.S.; and

* (II) The information required in subsections (3) (a), (3) (b), (3) (d), and (3) (f) (II) of this section.

* (b) Notwithstanding any other provisions of law, the executive director retains the authority to administer all issues related to the claim or use of a tax credit for the donation of a conservation easement that are not granted to the director of the division of real estate or the conservation easement oversight commission under section 12-61-723, C.R.S.

* (c) The information required in paragraph (f) of subsection (3) of this section will no longer be required from the holder of the conservation easement.

(3.7) If the gain on the sale of a conservation easement in gross for which a credit is claimed pursuant to this section would not have been a long-term capital gain, as defined under the internal revenue code, if, at the time of the donation, the taxpayer had sold the conservation easement at its fair market value, then the value of the conservation easement in gross for the purpose of calculating the amount of the credit shall be reduced to the taxpayer's tax basis in the conservation easement in gross. The tax basis of a taxpayer in a conservation easement shall be determined and allocated pursuant to sections 170 (e) and 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such sections. This subsection (3.7) shall be applied in a manner that is consistent with the tax treatment of qualified conservation contributions under the internal revenue code and the federal regulations promulgated under the internal revenue code.

(4) (a) (I) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated prior to January 1, 2007, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to one hundred percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and forty percent of all amounts of the donation in excess of one hundred thousand dollars; except that in no case shall the credit exceed two hundred sixty thousand dollars per donation.

(II) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated on or after January 1, 2007, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to fifty percent of the fair market value of the donated portion of such conservation easement in gross when created; except that in no case shall the credit exceed three hundred seventy-five thousand dollars per donation.

(III) In no event shall a credit claimed by a taxpayer filing a joint federal return, or the sum of the credits claimed by taxpayers filing married separate federal returns, exceed the dollar limitations of this paragraph (a).

(b) For income tax years commencing on or after January 1, 2000, in the case of a joint tenancy, tenancy in common, partnership, S corporation, or other similar entity or ownership group that donates a conservation easement as an entity or group, the amount of the credit allowed pursuant to subsection (2) of this section shall be allocated to the entity's owners, partners, members, or shareholders in proportion to the owners', partners', members', or shareholders' distributive shares of income or ownership percentage from such entity or group. For income tax years commencing on or after

January 1, 2000, but prior to January 1, 2003, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed one hundred thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such partners, members, and shareholders shall not exceed twenty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2003, but prior to January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed two hundred sixty thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed three hundred seventy-five thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year.

(5) (a) If the tax credit provided in this section exceeds the amount of income tax due on the income of the taxpayer for the taxable year, the amount of the credit not used as an offset against income taxes in said income tax year and not refunded pursuant to paragraph (b) of this subsection (5) may be carried forward and applied against the income tax due in each of the twenty succeeding income tax years but shall be first applied against the income tax due for the earliest of the income tax years possible. Any amount of the credit that is not used after said period shall not be refundable.

(b) (I) Subject to the requirements specified in subparagraphs (II) and (III) of this paragraph (b), for income tax years commencing on or after January 1, 2000, if the amount of the tax credit allowed in or carried forward to any tax year pursuant to this section exceeds the amount of income tax due on the income of the taxpayer for the year, the taxpayer may elect to have the amount of the credit not used as an offset against income taxes in said income tax year refunded to the taxpayer.

(II) A taxpayer may elect to claim a refund pursuant to subparagraph (I) of this paragraph (b) only if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year ending in the income tax year for which the refund is claimed exceeds the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution and the voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year.

(III) If any refund is claimed pursuant to subparagraph (I) of this paragraph (b), then the aggregate amount of the refund and amount of the credit used as an offset against income taxes for that income tax year shall not exceed fifty thousand dollars for that income tax year. In the case of a partnership, S corporation, or other similar pass-through entity that donates a conservation easement as an entity, if any refund is claimed pursuant to subparagraph (I) of this paragraph (b), the aggregate amount of the refund and the credit claimed by the partners, members, or shareholders of the entity shall not exceed the dollar limitation set forth in this subparagraph (III) for that income tax year. Nothing in this subparagraph (III) shall limit a taxpayer's ability to claim a credit against taxes due in excess of fifty thousand dollars in accordance with subsection (4) of this section.

* (6) (a) For conservation easements donated prior to January 1, 2014, a taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits. A taxpayer who has carried forward or elected to receive a refund of part of the tax credit in accordance with subsection (5) of this section shall not claim an additional tax credit under this section for any income tax year in which the taxpayer applies the amount carried forward against income tax due or receives a refund. A taxpayer who has transferred a credit to a transferee pursuant to subsection (7) of this section shall not claim an additional tax credit under this section for any income tax year in which the transferee uses such transferred credit.

* (b) For conservation easements donated on or after January 1, 2014, a taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits.

(7) For income tax years commencing on or after January 1, 2000, a taxpayer may transfer all or a portion of a tax credit granted pursuant to subsection (2) of this section to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:

(a) The taxpayer may only transfer such portion of the tax credit as the taxpayer has neither applied against the income taxes imposed by this article nor used to obtain a refund;

(b) The taxpayer may transfer a pro-rated portion of the tax credit to more than one transferee;

(c) A transferee may not elect to have any transferred credit refunded pursuant to paragraph (b) of subsection (5) of this section;

(d) For any tax year in which a tax credit is transferred pursuant to this subsection (7), both the taxpayer and the transferee shall file written statements with their income tax returns specifying the amount of the tax credit that has been transferred. A transferee may not claim a credit transferred pursuant to this subsection (7) unless the taxpayer's written statement verifies the amount of the tax credit claimed by the transferee.

(e) To the extent that a transferee paid value for the transfer of a conservation easement tax credit to such transferee, the transferee shall be deemed to have used the credit to pay, in whole or in part, the income tax obligation imposed on the transferee under this article, and to such extent the transferee's use of a tax credit from a transferor under this section to pay taxes owed shall not be deemed a reduction in the amount of income taxes imposed by this article on the transferee;

(f) The transferee shall submit to the department a form approved by the department. The transferee shall also file a copy of the form with the entity to whom the taxpayer donated the conservation easement.

(g) A transferee of a tax credit shall purchase the credit prior to the due date imposed by this article, not including any extensions, for filing the transferee's income tax return;

(h) A tax credit held by an individual either directly or as a result of a donation by a pass-through entity, but not a tax credit held by a transferee unless used by the transferee's estate for taxes owed by the estate, shall survive the death of the individual and may be claimed or transferred by the decedent's estate. This paragraph (h) shall apply to any tax credit from a donation of a conservation easement made on or after January 1, 2000.

(i) The donor of an easement for which a tax credit is claimed or the transferor of a tax credit transferred pursuant to this subsection (7) shall be the tax matters representative in all matters with respect to the credit. The tax matters representative shall be responsible for representing and binding the transferees with respect to all issues affecting the credit, including, but not limited to, the charitable contribution deduction, the appraisal,

notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations. The transferee shall be subject to the same statute of limitations with respect to the credit as the transferor of the credit.

(j) Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, shall be binding on transferees.

(8) The executive director of the department of revenue may promulgate rules for the implementation of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(9) Any taxpayer who claims a credit for the donation of a conservation easement contrary to the provisions of this section shall be liable for such deficiencies, interest, and penalties as may be specified in this article or otherwise provided by law.

* (10) On or before July 1, 2008, the department of revenue shall create a report, which shall be made available to the public, on the credits claimed in the previous year in accordance with this section. For each credit claimed for a conservation easement in gross, the report shall summarize by county where the easement is located, the acres under easement, the appraised value of the easement, the donated value of the easement, and the name of any holders of the easement; except that the department shall combine such information for multiple counties where necessary to ensure that the information for no fewer than three easements is summarized for any county or combination of counties in the report. The report shall be updated annually to reflect the same information for any additional credits that have been granted since the previous report. This report shall not be required for conservation easements donated on or after January 1, 2014.

* (11) On or before December 31, 2007, the department of revenue shall create a report, which shall be made available to the public, with as much of the information specified in paragraph (c) of subsection (3) of this section as is available to the department, summarized by county, for each tax credit claimed for a conservation easement in gross for tax years commencing on or after January 1, 2000. This report shall not be required for conservation easements donated on or after January 1, 2014.

* V. Conservation Easement Regulations

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4 CCR 725-4

RULES OF CONSERVATION EASEMENTS

A-1 QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, Qualifications for Certification to Hold Conservation Easements, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

In 2008, Governor Bill Ritter, Jr. signed House Bill 08-1353 into law. This law effectively established the regulatory framework for conservation easement holders that accept a conservation easement donation for which a state tax credit is claimed. Pursuant to section 12-61-720(1), C.R.S., the Colorado Division of Real Estate, in consultation with the conservation easement oversight commission, shall establish and administer a certification program for qualified nonprofit and government entities that hold a conservation easement for which a tax credit is claimed. The purpose of the program is to establish minimum qualifications for certifying organizations to encourage professionalism and stability; and identify fraudulent or unqualified applicants as defined by the rules of the division to prevent them from becoming certified.

In determining whether to grant or deny certification, the Division of Real Estate and the conservation easement oversight commission may consider the following: the applicant's process for accepting conservation easements, stewardship practices and capacity, finances, governance, unique circumstances, and any other information deemed relevant by the Division of Real Estate or the conservation easement oversight commission. Accordingly, the Division of Real Estate created an application for certification based on these considerations.

The purpose of this rule is to establish the required minimum qualifications for certification.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. Definitions

1) "Conservation easements" means conservation easements that have a charitable donation component. This includes full donation and bargain sale conservation easements.

Section 5. A-1 Qualifications for Certification to Hold Conservation Easements

1) The Division may deny, refuse to renew, or revoke the certification of a conservation easement holder who fails to meet any of the following minimum qualifications:
   a) Organization
      i) The conservation easement holder:
         (1) Meets the qualifications under section 170(h) of the federal "Internal Revenue Code of 1986," as amended, and section 38-30.5-104 (2), C.R.S., to hold a conservation easement for which a state tax credit is claimed;
         (2) Has a sufficient number of board members, staff, and/or volunteers to accomplish the work of the organization;
         (3) Has a sufficient number of board meetings per year to accomplish the work of the organization; and
         (4) Is in good standing with the Colorado Secretary of State.

(b) Process: Conservation Easement Selection, Review and Approval

i) The conservation easement holder has and follows reasonable policies and procedures for selecting conservation easements. These include, but are not limited to:

(1) Establishing and following selection criteria to identify conservation easements with a conservation purpose as defined by Section 170(h)(4)(A) of the federal "Internal Revenue Code of 1986," as amended, and Treasury Regulations section 1.170A-14;

(2) Identifying and documenting the conservation values and the public benefits from protecting those values prior to accepting the conservation easement;

(3) Working with the conservation easement donor to identify and design the allowable uses, reserved rights, and prohibited uses for the conservation easement on an individual basis; and

(4) Receiving and reviewing a baseline documentation report for the conservation easement before accepting the donation, and updating the report as needed. The baseline report documents the conservation values and condition of the property.

ii) The conservation easement holder has and follows reasonable policies and procedures for reviewing conservation easements. These include, but are not limited to:

(1) Performing proper due diligence on the title, water and mineral rights on the property before approving the transaction;

(2) Ensuring any liens or encumbrances are correctly subordinated or addressed in a manner so that the conservation rights set forth in the agreement will be ensured in perpetuity.

(3) Having and following a policy that each conservation easement of a phased project has a independent conservation purpose as defined by Section 170(h)(4)(A) of the federal "Internal Revenue Code of 1986," as amended, and Treasury Regulations section 1.170A-14;

(4) Obtaining a legal review of the transaction appropriate to the complexity of the transaction;

(5) Using appropriate scientific expertise to substantiate the conservation values; and

(6) Receiving and adequately reviewing a copy of the appraisal that was used to determine the fair market value of the property for Form 8283.

iii) The conservation easement holder has and follows reasonable policies and procedures for approving conservation easements. These include, but are not limited to:

(1) Declining projects that do not have conservation value or appear to be fraudulent;

(2) Having the board approve all charitable conservation easement donations, or establishing policies delegating the authority to approve transactions to a qualified committee or other designee;

(3) Providing sufficient information to the board, a qualified committee or other designee for review before a charitable conservation easement donation is approved; and

(4) Advising potential conservation easement donors that the organization does not guarantee the qualification of the conservation easement for tax credit purposes, and that they should seek their own legal, financial and tax advice.

c) Stewardship: Practices and Capacity

i) The conservation easement holder has and follows reasonable policies and procedures to ensure the short- and long-term management of its conservation easements. These include, but are not limited to:

(1) Having adequate resources and policies in place to provide annual monitoring of each conservation easement held in Colorado, except for any conservation easement granted to a local government that did not involve a charitable donation.

(2) Monitoring all conservation easements on an annual basis, including visually inspecting the property and performing other types of monitoring actions as appropriate;

(3) Monitoring is performed and documented by a qualified individual, and reviewed by the board, a qualified committee or other designee;

(4) Enforcing every conservation easement agreement, and properly addressing violations in a manner appropriate to the scale of the violation;

(5) Amendments made to a conservation easement agreement do not result in a net loss of conservation value and do not create a private benefit to the donor; and

(6) Preserving original and duplicate copies of necessary and important records, such as agreements, baseline reports, and appraisals, in a safe and secure manner.

ii) The conservation easement holder has the necessary personnel and financial capacity and policies and procedures to ensure the short- and long-term management of its conservation easements. These may include, but are not limited to:

(1) Establishing lasting dedicated stewardship and enforcement funds for the management and enforcement of every conservation easement held;

(2) Only using the dedicated stewardship and enforcement funds for stewardship- and enforcement-related purposes, or other allowable uses established through written policies;

(3) Determining the approximate amount of stewardship and enforcement funds that will be needed for the short- and long-

term management of all conservation easements that have a donation component; and

(4) Collecting the stewardship and enforcement funds needed with all conservation easements that have a donation component, or collecting the required funds through other means, such as fundraising.

d) Finance

i) The conservation easement holder has and follows reasonable fiscal policies and procedures to ensure the transparent and responsible management of its assets. These may include, but are not limited to:

(1) Having the board review and/or regularly discuss the organization's financial status, including the annual budget and any financial changes that have occurred; and

(2) Having a qualified individual conduct a reasonable financial audit or other financial review on an annual basis.

e) Governance

i) The conservation easement holder demonstrates it has and follows reasonable policies and procedures to ensure the responsible management of conflicts of interest and any transactions with insiders.

Section 6. Enforcement

Conservation easement holders who violate this rule shall be subject to disciplinary action pursuant to the Division of Real Estate's authority set forth in section 12-61-720 (11), C.R.S. Disciplinary actions include, but are not limited to:

a) Revocation of certification;

b) Refusal to renew certification;

c) Denial of an application for certification; and

d) Fines.

Section 7. Effective Date

This permanent rule is effective July 1, 2009.

A-2 EXPIRATION DATE FOR CERTIFICATION

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, A-2 Expiration Date for Certification, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of this rule is to define a time when annual certification for a conservation easement holder will expire.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. A-2 Expiration Date for Certification

Certification for a conservation easement holder expires on December 31 following the date of issuance.

A-3 ELIGIBILITY FOR CONSERVATION EASEMENT HOLDERS AFTER REVOCATION

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, A-3 Eligibility for Conservation Easement Holders after Revocation, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of this rule is to define a time when a conservation easement holder may reapply for certification after revocation of their original certification by the Division.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. A-3 Eligibility for Conservation Easement Holders after Revocation

Any conservation easement holder whose certification to hold a conservation easement is revoked is rendered ineligible to apply again for certification until more than two years have elapsed from the date of revocation of the certification. Any re-application after such two-year period shall be required to be submitted on a new application.

A-4 CERTIFICATION RENEWAL

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, A-4 Certification Renewal, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of

this rule is to define a time when and how a conservation easement holder may renew their certification.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. A-4 Certification Renewal

Renewal of a conservation easement holder certification can be executed only with the renewal application provided by the Division, submitted and accompanied by the proper fee by December 31st of each year.

A-5 REINSTATEMENT OF CERTIFICATION

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, A-5 Reinstatement of Certification, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of this rule is to define a time when and how a conservation easement holder may reinstate their certification should their certification expire.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. A-5 Reinstatement of Certification

A certification that has expired may be reinstated within one year after the date of expiration if a proper renewal application and renewal fee is submitted to the Division of Real Estate and if the applicant meets all other requirements of section 12-61-720, C.R.S. and any rules promulgated by the Division. Certification is effective on the date of issuance or reinstatement and cannot be applied retroactively. Any certification that has been expired greater than one year may not be reinstated.

* *A-6 CONDITIONAL CERTIFICATION*

* Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

* **Section 1. Authority**

* The statutory basis for the adoption of these rules regarding conservation easement holders is in Part 11 of Title 12, Article 61, C.R.S. The specific rulemaking provisions contained therein are section 12-61-720(11), C.R.S.

* **Section 2. Scope and Purpose**

* The purpose of this rule is to formally establish a conditional certification for conservation easement holders.

* **Section 3. Applicability**

* The provisions of this section shall be applicable to qualified organizations that meet the requirements of section 170(h) of the federal "Internal Revenue Code of 1986", as amended, and section 38-30.5-104(2), C.R.S.to hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S. ("Conservation Easement Holders").

* **Section 4. A-6 Conditional Certification**

* The Director of the Division of Real Estate in consultation with the Conservation Easement Oversight Commission may issue conditional certification to any Conservation Easement Holder that does not clearly demonstrate, to the satisfaction of the Director, compliance with rule A-1 Qualifications for Certification to Hold Conservation Easements.

* The terms and length of conditional certification will be determined by the Director and may include but are not limited to:

* 1. A requirement that the conditionally certified Conservation Easement Holder co-hold conservation easements for which a state tax credit is claimed with a fully certified Conservation Easement Holder.

* a. For the purpose of Rule A-6 "co-hold" shall mean more than one nonprofit entity or government entity is named as a grantee of the conservation easement.

* 2. Submission of all requested project and governance documentation in a manner prescribed by the Director.

* 3. Approval of project documentation by the Director prior to the conservation easement holder accepting a new conservation easement.

* 4. Any other restriction or term deemed necessary by the Director to ensure ongoing compliance with all applicable rules and statutes.

* Conservation Easement Holders granted conditional certification are subject to all fees, statutes and rules promulgated for certified Conservation Easement Holders, including, but not limited to rule A-1 Qualifications for Certification to Hold Conservation Easements, and all other rules regarding expiration and renewal of state certification.

B-1 DISCIPLINARY ACTION

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Colorado Division Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Colorado Division of Real Estate.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, B-1 Disciplinary Action, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

Pursuant to section 12-61-720(1), C.R.S., the Colorado Division of Real Estate, in consultation with the Conservation Easement Oversight Commission, shall establish and administer a certification program for qualified organizations that hold conservation easements for which a state tax credit is claimed. The purpose of the program shall be to identify fraudulent or unqualified applicants as defined by the rules of the Division of Real Estate.

The purpose of this rule is to establish specific disciplinary action the Division may impose upon conservation easement holders that violate statutory requirements or the rules established by the Division.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity required to hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. B-1 Disciplinary Action

The Director may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; may issue a letter of admonition; may place an easement holder on probation under the Director's close supervision on such terms and for such time as the Director deems appropriate; and may refuse, revoke, or suspend the certification of any easement holder if, after an investigation and after notice and hearing pursuant to the provisions of section 24-4-104, C.R.S. the Director determines that the easement holder or any director, officer, or board member:

(a) Has made false or misleading statements or material omission in their application for certification;

(b) Has misrepresented or concealed any material fact from an easement donor;

(c) Has employed any device, scheme, or artifice with intent to defraud an easement donor or any government agency;

(d) Has failed to comply with any stipulation or agreement made with the Director; or

(e) Has failed to comply with any of the certification requirements, or any lawful rule or regulation promulgated by the Director.

Section 5. Effective Date

This permanent rule is effective September 14, 2011.

B-2 INFORMATION REQUEST

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of the Colorado Division Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Colorado Division of Real Estate.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, B-2 Information Request, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

Pursuant to section 12-61-720(1), C.R.S., the Colorado Division of Real Estate, in consultation with the Conservation Easement Oversight Commission, shall establish and administer a certification program for qualified organizations that hold conservation easements for which a state tax credit is claimed. The purpose of the program shall be to

identify fraudulent or unqualified applicants as defined by the rules of the Division of Real Estate.

The purpose of this rule is to establish administrative regulations for the program so the Division of Real Estate can properly certify easement holders and provide effective oversight.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity required to be certified to hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. B-2 Information Request

A conservation easement holder shall furnish to the Director such information or documentation as the Director in her/his sole discretion deems reasonably necessary for the enforcement of Title 12, Article 61, Part 7, C.R.S. or any rules enacted by the Division. If information or documentation is required, the Director shall give written notice, in detail, of the information so required and shall allow an additional twenty-one (21) days from delivery to present such material, which period may be extended only upon showing of good cause. Written notice may be faxed, hand-delivered or mailed to the party entitled thereto. If faxed or hand delivered, said notice shall be deemed delivered upon confirmation of successful transmission of the fax or upon hand delivery. If mailed, said notice shall be mailed by registered or certified mail, return receipt requested, and said notice shall be deemed delivered the date of mailing.

Section 5. Enforcement

Individuals who violate this rule shall be subject to disciplinary action pursuant to section 12-61-720 (11), C.R.S., section 12-61-720(6) C.R.S. and section 24-4-104 C.R.S. Disciplinary actions include, but are not limited to:

a) Revocation of certification;

b) Refusal to renew certification;

c) Denial of an application for certification; and

d) Fines.

Section 6. Effective Date

This permanent rule is effective September 14, 2011.

* ***C-1 SUBMISSION OF A TAX CREDIT CERTIFICATE CLAIM FOR DONATIONS MADE ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014***

* 1. A valid Deed of Conservation Easement must be recorded before a claim can be submitted and a tax credit certificate issued.

* 2. A claim for a tax credit certificate must include the following:

* a. a signed and completed form entitled: "Application for a Conservation Easement Tax Credit Certificate," approved by the Division of Real Estate;

* b. a signed and completed form entitled: "Affidavit for Conservation Easement Appraisals," approved by the Colorado Board of Real Estate Appraisers; and

* c. a copy of the Recorded Deed of Conservation Easement.

* 3. A taxpayer who submits a claim for a tax credit certificate to the Division of Real Estate shall pay the Division a fee as prescribed by the Division.

* 4. An alternative document may be substituted for the copy of the recorded Deed of Conservation Easement as evidence a conservation easement was conveyed. The

alternative document must originate from the county or counties in which the conservation easement was recorded and disclose the following:

* a. the reception number;

* b. a description of the property;

* c. the date and time which the easement was recorded; and

* d. the name of the grantor and grantee.

* 5. A claim for a tax credit certificate is deemed received by the Division of Real Estate for purposes of Section 39-22-522 (2.5), C.R.S. when the application and all other required documents are signed and initialed, properly filled out, and date-stamped by the Division of Real Estate upon receipt. The Division of Real Estate is not responsible for any claims not received. Only after the claim is deemed to be received will the claim be applied towards the limit for the applicable year.

* 6. The taxpayer must sign, understand, and adhere to all disclosures listed in part three of the form entitled: "Application for a Conservation Easement Tax Credit Certificate," in the form approved by the Division of Real Estate at the time the claim is made.

* 7. After the tax credit certificate has been issued, the Department of Revenue has the authority to determine if the conservation easement tax credit does not comply with statutory and regulatory requirements. The Division of Real Estate is not responsible should the Department of Revenue determine a conservation easement tax credit does not comply with statutory and regulatory requirements.

* 8. A claim for a tax credit certificate is ineligible to receive a tax credit certificate and shall not be applied towards the limit for the applicable year if it is based on a conservation easement donation where:

* a. The appraiser associated with the claim does not hold a valid license as a certified general appraiser or fails to meet all of the education and experience requirements established in accordance with Section 12-61-719 (7), C.R.S.; or

* b. The conservation easement holder is not certified by the Division of Real Estate at the time of the donation or fails to comply with Section 24-33-112, C.R.S.

* 9. A tax credit certificate may not be used to claim an income tax credit with the Department of Revenue prior to the year for which the tax credit certificate is issued by the Division of Real Estate.

* 10. If more than one claim is submitted to the Division of Real Estate on the same day, the tax credit certificates with respect to those claims will be issued in the order that conservation easement donations were first recorded with the appropriate county or counties.

* 11. In the event a portion of a claim does not qualify under the aggregate limit for 2011 or 2012, a second certificate will be issued for the remaining tax credit amount for the subsequent year.

* 12. In the event a tax credit certificate has been issued for a conservation easement donation and the donation value increases pursuant to a revised appraisal, the taxpayer may submit a second claim to the Division of Real Estate for the increased amount. A second claim must be submitted to the Division of Real Estate in accordance with this rule and will be assigned a tax credit certificate in the order received among all other claims submitted to the Division of Real Estate. A second tax credit certificate for a second claim may be issued for a different year.

* 13. The Division of Real Estate may consult with the taxpayer, a taxpayer's Authorized Representative, the conservation easement holder, appraiser, the Conservation Easement Oversight Commission and the Department of Revenue regarding a claim for a tax credit certificate.

* 14. In the event the aggregate limit for a given calendar year is not exceeded and the Division receives and approves a complete application for a tax credit certificate for a conservation easement donated within that year, the Division may issue a tax credit certificate from the remaining limit. Issuance of the tax credit certificate in this circumstance can only occur if the conservation easement donation was recorded during the year in which the aggregate limit was not reached.

* ***C-2 DEFINITIONS***

* 1. Assignment of a Tax Credit Certificate: occurs when the application is deemed complete and the requested dollar amount from the tax credit certificate application is encumbered for the Landowner and the cap is credited the encumbered amount.

* 2. Authorized Representative: means the individual designated in writing by the Landowner on the applications prescribed by the Division. An Authorized Representative is the primary individual for the application that Division will contact.

* 3. Commission: means the Conservation Easement Oversight Commission created by Section 12-61-721, C.R.S.

* 4. Days: means calendar days for the purposes of implementing Section 12-61-723, C.R.S.

* 5. Deemed Complete: means the application is date stamped by the Division and the application package includes, at a minimum, the final appraisal, the recorded conservation easement deed, baseline document report and fee. Once deemed complete, there is an assignment of the tax credit certificate.

* 6. Examination: means the review conducted by the Division and preparation of a report to be presented to the Director and Commission.

* 7. Final Determination: means the final decision by the Director and/or the Commission to approve or deny a tax credit certificate application. A negative Final Determination triggers the 30 day period the Landowner has to request a hearing.

* 8. Issuance of a Tax Credit Certificate: occurs after the Director and the Commission have made the Final Determination to approve the application. The tax credit certificate for the assigned amount is mailed to the Landowner.

* 9. Settlement: means an official agreement intended to compromise on any deficiencies identified in the application and any supporting documentation, including the dollar amount of the tax credit certificate to be issued by the Division.

* ***C-3 APPLICATION SUBMISSION AND REVIEW FOR DONATIONS MADE ON OR AFTER JANUARY 1, 2014***

* 1. An application is deemed complete by the Division of the Real Estate ("Division") in accordance with Section 12-61-723, C.R.S. when the application and all other required documents are signed and initialed, properly filled out, and date-stamped by the Division upon receipt. The Division is not responsible for any application not received. Only after the application is deemed complete will the application be reviewed.

* 2. For an application to be deemed complete and a tax credit certificate to be assigned in accordance with C-4, the application must include the documentation and fee as required in Section 12-61-723 (5), C.R.S., and also provide a signed and completed form entitled: "Application for a Conservation Easement Tax Credit Certificate," approved by the Division. The fee is nonrefundable.

* 3. Upon the application being deemed complete, the Director or Commission may request other information or documentation necessary to make a final determination regarding the application.

* 4. The Landowner or the signatory designated to sign on behalf of the Landowner must sign, understand, and adhere to all disclosures listed in the "Application for a Conservation Easement Tax Credit Certificate," in the form approved by the Division at the time the application is made. The signatory for the application must be authorized as described in this sub paragraph 4.

* a. If the Landowner is a corporation, the individual applying on behalf of the corporation must be an officer or director to apply on behalf of the corporation;

* b. If the Landowner is a partnership, one of the general partners of the partnership must apply on behalf of the partnership;

* c. If the Landowner is a joint owner, such individual may apply on behalf of all joint owners;

* d. If the Landowner is a limited liability company, one of the managers or member-managers must apply on behalf of the company;

* e. If the Landowner is a trust, one of the trustees must apply on behalf of the trust;

* f. If the Landowner is a S corporation, one of the shareholders must apply on behalf of the S corporation; and

* g. If the Landowner is an estate, one of the personal representatives must apply on behalf of the estate.

* 5. A tax credit certificate application is ineligible and will not be applied towards the limit for the applicable year if it is based on a conservation easement donation in which:

* a. The appraiser who conducted the appraisal submitted with the application does not hold a valid license as a certified general appraiser or fails to meet all of the education and experience requirements established in accordance with Section 12-61-719 (7), C.R.S.; or

* b. The conservation easement holder is not certified by the Division at the time of the donation.

* 6. Submission of an application does not guarantee issuance of a tax credit certificate.

* 7. The Director or Commission may consult with the Landowner, a Landowner's Authorized Representative, the conservation easement holder, the appraiser, the Department of Revenue and any other entity or individual deemed necessary to review an application for a tax credit certificate.

* 8. Any extensions of deadlines in accordance with Section 12-61-723 (7)(d), C.R.S., must be agreed to in writing.

* 9. The Director has the authority, in accordance with Section 12-61-723 (9), C.R.S., to request a second appraisal if the Commission and the Director determine the original appraisal is not credible. The second appraisal must be conducted by a

certified general appraiser in good standing and not affiliated with the first appraiser. The request for a second appraisal may include a new appraisal or a USPAP Standard 3 Review with an opinion of value.

* ***C-4 ASSIGNMENT AND ISSUANCE OF A TAX CREDIT CERTIFICATE FOR DONATIONS MADE ON OR AFTER JANUARY 1, 2014***

* 1. Once an application is deemed complete, the dollar amount applied for in the application will be assigned to the Landowner and applied toward the aggregate annual cap in the order the application is deemed complete. The amount applied toward the aggregate annual cap will not be available to any subsequent application.

* 2. If more than one application is deemed complete by the Division on the same day, the amount applied for will be applied toward the aggregate annual cap in the order that the conservation easements were recorded with the respective counties.

* 3. A tax credit certificate will only be issued in whole dollar amounts.

* 4. A tax credit certificate may not be used to claim an income tax credit with the Department of Revenue prior to the year for which the tax credit certificate is issued by the Division.

* 5. In the event a portion of an approved tax credit certificate application cannot be issued under the available tax credit cap for any given year, a second certificate will be issued for the remaining tax credit amount for the subsequent year subject to the fifteen million dollar waitlist limit set forth in Section 39-22-522 (2.5), C.R.S.

* 6. In the event that all or a portion of an approved tax credit certificate application cannot be issued under the available fifteen million dollar waitlist limit for the following calendar year, the remaining amount will be issued a tax credit certificate in the next available calendar year.

* 7. In the event the aggregate limit for a given calendar year is not exceeded and the Division receives and approves a complete application for a tax credit certificate for a conservation easement donated within that year, the Division may issue a tax credit certificate from the remaining limit. Issuance of the tax credit certificate in this circumstance can only occur if the conservation easement donation was recorded during the year in which the aggregate limit was not reached.

* ***C-5 APPLICATION DENIAL AND APPEAL FOR DONATIONS MADE ON OR AFTER JANUARY 1, 2014***

* 1. If an application is denied, the assigned dollar amount applied toward the aggregate annual cap for that application will not be available for use by any subsequent application.

* 2. The Landowner may submit a new application if the denial of the original application is final pursuant to Section 12-61-723 (12), C.R.S. The new application must be submitted pursuant to Rule C-3 and will be applied toward the aggregate annual cap in the order the new application is deemed complete.

* 3. Appeal of the Director's or the Commission's denial of an application must be made in writing by either the Landowner, the individual who applied on behalf of the Landowner, or the Landowner's Authorized Representative. The written appeal of the denial must be sent by first class mail and postmarked within 30 days of the issuance of the denial.

* 4. The Director and the Commission may conduct settlement discussions with the Landowner at any time during the application review process.

* ***C-6 PRELIMINARY ADVISORY OPINION FOR DONATIONS MADE ON OR AFTER JANUARY 1, 2014***

* 1. Prior to an application for a tax credit certificate, a Landowner may request a preliminary advisory opinion regarding the issuance of a tax credit certificate. Such opinions may consider:

* a. The credibility of the appraisal pursuant to Section 12-61-723 (3)(b)(i)-(iv), C.R.S.; and/or

* b. Whether a conservation easement donation for which a tax credit is to be claimed is a qualified conservation contribution pursuant to Section 12-61-723 (3)(d), C.R.S.

* 2. A Landowner requesting such an opinion must do so in a form entitled: "Application for a Conservation Easement Tax Credit Certificate Preliminary Advisory Opinion," approved by the Division. An application for a preliminary advisory opinion is deemed complete by the Division when the application and all other required documents are signed and initialed, properly filled out, and date-stamped by the Division upon receipt. The Division is not responsible for any applications not received. Only after the application is deemed complete will the application be reviewed.

* 3. The Landowner or the signatory designated to sign on behalf of the Landowner must sign, understand, and adhere to all disclosures listed in the "Application for a Conservation Easement Tax Credit Certificate Preliminary Advisory Opinion," in the form approved by the Division at the time the application is made. The signatory for the application must be authorized as described in this sub paragraph 3.

* a. If the Landowner is a corporation, the individual applying on behalf of the corporation must be an officer or director to apply on behalf of the corporation;

* b. If the Landowner is a partnership, one of the general partners of the partnership must apply on behalf of the partnership;

* c. If the Landowner is a joint owner, such individual may apply on behalf of all joint owners;

* d. If the Landowner is a limited liability company, one of the managers or member-managers must apply on behalf of the company;

* e. If the Landowner is a trust, one of the trustees must apply on behalf of the trust;

* f. If the Landowner is a S corporation, one of the shareholders must apply on behalf of the S corporation; and

* g. If the Landowner is an estate, one of the personal representatives must apply on behalf of the estate.

* 4. A Landowner requesting a preliminary advisory opinion is not an applicant for a tax credit certificate. No tax credit certificate will be issued for a favorable preliminary advisory opinion. The issuance of either a favorable or nonfavorable preliminary advisory opinion by the Division will not act to prohibit a Landowner from submitting an application for a tax credit certificate.

* 5. A request for a preliminary advisory opinion regarding the credibility of the appraisal must include:

* a. The draft or final appraisal to be considered; and

* b. Any other relevant information or documentation the Director deems necessary to make a preliminary opinion regarding the appraisal; and

* c. The required fee as prescribed by the Division. The fee is nonrefundable.

* 6. A request for a preliminary advisory opinion regarding the qualification of the conservation contribution must include:

* a. The draft or recorded deed of conservation easement to be considered;

* b. Documentation supporting the conservation purpose of the easement;

* c. Any other relevant information or documentation the Commission deems necessary to make a preliminary opinion regarding the qualification of the conservation contribution; and

* d. The required fee as prescribed by the Division. The fee is nonrefundable.

* 7. The Director and the Commission will review applications for preliminary advisory opinions and issue either a favorable opinion or a nonfavorable opinion within an average of 120 days.

* 8. A nonfavorable opinion will include a description of any potential deficiencies identified by the Director or the Commission in writing.

* 9. The issuance of a preliminary advisory opinion will not limit the authority of the Director or the Commission to make a final determination to approve or deny an application for a tax credit certificate contrary to the preliminary advisory opinion; limit the Director's authority to investigate a conservation easement holder; or limit the Board of Real Estate Appraisers' authority to investigate an appraiser.

* 10. The Director or Commission may consult with the Landowner, a Landowner's Authorized Representative, the conservation easement holder, the appraiser, the Department of Revenue and any other entity or individual deemed necessary in reviewing an application for a preliminary advisory opinion.

* 11. Preliminary advisory opinions are not appealable.

D-1 CEASE AND DESIST

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

Section 1. Authority

The Division adopts the following permanent rule entitled, D-1 Cease and Desist, according to the authority found in section 12-61-722, C.R.S.

Section 2. Scope and Purpose

The purpose of these rules is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the Colorado Revised Statutes concerning the state income tax credit that may be claimed for the donation of a conservation easement.

The specific purpose of this rule is to allow the Director of the Division of Real Estate the ability to impose discipline on an organization if it is not in compliance with section 38-30.5-104 (2), C.R.S. and section 12-61-720, C.R.S.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. D-1 Cease and Desist

If the Division of Real Estate has reasonable cause to believe any public or private organization is not in compliance with section 38-30.5-104 (2), C.R.S. and section 12-61-720, C.R.S., the Director of the Division of Real Estate may enter an order requiring such organization to cease and desist from attempting to hold a conservation easement for which a state tax credit may be claimed.

Section 5. Effective Date

This permanent rule is effective September 14, 2011.

D-2 TRANSFERRING CONSERVATION EASEMENTS TO NON-CERTIFIED ENTITIES

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, D-2 Transferring Conservation Easements to Non-Certified Entities, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program. The specific purpose of this rule is to prevent a non-certified organization from holding a transferred conservation easement for which a tax credit is claimed.

Section 3. Applicability

This rule applies to any nonprofit entity and any government entity that holds a conservation easement for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. Definitions

1. "Conservation easement" means conservation easements that have a charitable donation component. This includes full donation and bargain sale conservation easements.

Section 5. D-2 Transferring Conservation Easements to Non-Certified Entities

A conservation easement holder may not assign or otherwise transfer all or a partial interest in a conservation easement for which a state tax credit is claimed to an organization that is not certified. An organization may not accept an assigned or otherwise transferred interest in a conservation easement for which a state tax credit is claimed if they are not certified at the time of acceptance. Governmental entities transferring a partial interest in a conservation easement to another governmental entity in accordance with an established written agreement shall be exempt from this prohibition on transferring a partial interest in a conservation easement. The certified grantee and all certified organizations retaining a partial interest in the conservation easement shall remain responsible for stewardship and defense of the conservation easement at all times.

E-1 COURTESY FILING

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Division of Real Estate (the "Division") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Division regarding the conservation easement certification program.

Section 1. Authority

The Division of Real Estate adopts the following permanent rule entitled, E-1 Courtesy Filing, according to the authority found in section 12-61-720 (11) C.R.S.

Section 2. Scope and Purpose

Pursuant to section 12-61-720 (11), C.R.S., the Division shall have the authority to promulgate rules for the conservation easement certification program.

Section 3. Applicability

This rule applies to any certified nonprofit entity and any certified government entity defined in section 12-61-720 (4), C.R.S. that holds a conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S.

Section 4. E-1 Courtesy Filing

A certified conservation easement holder shall provide the following information and/or documentation to the Division within 30 days of a substantive change in:

1. physical or mailing address of the organization;
2. authorized contact person; or
3. policy necessary for compliance with rule A-1.

Section 5. Effective Date

This permanent rule is effective September 14, 2011.

Chapter 13:
Mortgage Loan Originators

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

I. Introduction

In 2003, the Department of Regulatory Agencies received a request to initiate a review of the mortgage loan origination industry to determine whether regulation was appropriate. Accordingly, pursuant to § 24-34-104.1(2), C.R.S., a sunrise review was conducted and completed October 14, 2005. In summary, the review addressed Colorado's current regulatory environment with respect to mortgage transactions and the possibility for public harm.

Colorado was one of two states (the other being Alaska) that had no regulatory oversight of mortgage loan originators. The sunrise review also concluded that there was significant risk to consumers, as mortgage financing often represented their largest financial transaction. The review highlighted an inherent conflict of interest between the consumer, who seeks the lowest possible interest rate, and the mortgage loan originator, who receives compensation from higher interest rates. Ultimately, the sunrise review identified a need for regulatory oversight to ensure consumer protection. As a result, the Mortgage Broker Registration Act, House Bill 06-1161, was passed by the Colorado General Assembly in 2006.

The Mortgage Broker Registration Act provided a minimal registration program for mortgage loan originators. Registration required a completed criminal background check, a $25,000 surety bond, a completed application, and payment of the $200 application fee. Due to the wave of foreclosures and the mortgage fraud epidemic, the Colorado General Assembly passed four new mortgage broker bills in the 2007 session. These included House Bill 07-1322, Senate Bill 07-085, Senate Bill 07-216, and Senate Bill 07-203. Governor Bill Ritter, Jr. signed all four bills into law on June 1, 2007. This legislation created a significant change in Colorado's regulatory environment. House Bill 07-1322 contained measures to prevent mortgage fraud and established comprehensive definitions of prohibited conduct for mortgage loan originators. Senate Bill 07-085 prohibited mortgage loan originators from coercing or intimidating appraisers for the purpose of influencing an appraiser's independent judgment. Senate Bill 07-216 established that mortgage loan originators have a duty of good faith and fair dealing in all communications and transactions with a borrower. Finally, Senate Bill 07-203 required the development of a licensure program and the establishment of grounds for disciplinary actions.

In July of 2008, Congress passed the Housing and Economic Recovery Act of 2008. A small portion of this Act is Title V – The S.A.F.E. Mortgage Licensing Act, which may also be cited as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. In summary, this bill sets minimum national licensing standards for mortgage loan originators and requires that all mortgage loan originators be registered on the Nationwide Mortgage Licensing System and Registry. Additionally, this law requires licensure for a few new groups of individuals and loan originators , including: loan originators working for non-profit organizations; loan originators working in chattel financing related to mobile and manufactured housing; loan originators working for affiliates of depositories; and

independent contractor loan processors and underwriters. The S.A.F.E. Act was essentially a mandate for states to ensure that their laws are consistent with this federal mandate. Furthermore, the S.A.F.E. Act mandates the development of the Nationwide Mortgage Licensing System and Registry. This registry will benefit Colorado, because it will be possible to track individuals across state lines. In order to adopt provisions defined in the S.A.F.E. Act, the Colorado General Assembly passed House Bill 09-1085 in May of 2009 ; it became effective August 5, 2009.

In 2009, the Federal Housing and Finance Agency established a policy decision requiring Fannie Mae and Freddie Mac to only purchase mortgage loans if they contained a unique identifier for the individual mortgage loan originator and the mortgage company. Because Colorado, at that time, was one of two states (the other being Hawaii) that did not have any oversight regarding mortgage companies, the Colorado General Assembly acted and passed House Bill 10-1141. This law became effective on August 11, 2010 and requires mortgage companies to be registered on the Nationwide Mortgage Licensing System and Registry. Furthermore, this law established some standards of conduct for mortgage companies, including: document retention; advertising standards; and a prohibition on mortgage companies hiring unlicensed mortgage loan originators. Additionally, this law transforms the Mortgage Loan Originator Program from a director-model program to a board-model program. The defined board consists of five members, three of which are to be licensed mortgage loan originators and two that are representatives of the public at large. The transition to the new Board of Mortgage Loan Originators is an important change for Colorado's Mortgage Loan Originator regulatory program.

Since the inception of the mortgage regulatory program, there have been seven laws that have been passed. Additionally, there have been close to 40 rules that have been promulgated, many of which were adopted on an emergency basis. This regulatory program has seen a consistent change in licensing requirements, standards of conduct, and prohibitions. The mission of the Department of Regulatory Agencies is consumer protection. The Colorado Division of Real Estate now has the tools to protect Colorado consumers and ensure fair competition through aggressive enforcement and responsible implementation.

II. Mortgage Loan Originator Licensing and Mortgage Company Registration Act

Colorado Revised Statutes Title 12, Article 61, Part 9

§ 12-61-901, C.R.S. Short title.

This part 9 shall be known and may be cited as the "Mortgage Loan Originator Licensing and Mortgage Company Registration Act".

§ 12-61-902, C.R.S. 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.

(1.2) "Affordable housing dwelling unit" means an affordable housing dwelling unit as defined in section 29-26-102, C.R.S.

(1.3) "Board" means the board of mortgage loan originators created in section 12-61-902.5.

(1.5) "Borrower" means any person who consults with or retains a mortgage loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(1.7) "Community development organization" means any community housing development organization or community land trust as defined by the federal "Cranston-Gonzalez National Affordable Housing Act of 1990" or a community-based development organization as defined by the federal "Housing and Community Development Act of 1974", that is also either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and that receives funding from the United States department of housing and urban development, Colorado division of housing, Colorado housing and finance authority, or United States department of agriculture rural development, or through a grantee of the United States department of housing and urban development, purely for the purpose of community housing development activities.

(2) "Depository institution" has the same meaning as set forth in the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1813 (c), and includes a credit union.

(3) "Director" means the director of the division of real estate.

(4) "Division" means the division of real estate.

(4.3) "Dwelling" shall have the same meaning as set forth in the federal "Truth in Lending Act", 15 U.S.C. sec. 1602 (v).

(4.5) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

(4.6) "HUD-approved housing counseling agency" means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and approved by the United States department of housing and urban development, in accordance with the housing counseling program handbook section 7610.1 and 24 CFR 214.

(4.7) "Individual" means a natural person.

(4.9) (a) "Loan processor or underwriter" means an individual who performs clerical or support duties at the direction of, and subject to supervision by, a state-licensed loan originator or a registered loan originator.

(b) As used in this subsection (4.9), "clerical or support duties" includes duties performed after receipt of an application for a residential mortgage loan, including:

(I) The receipt, collection, distribution, and analysis of information commonly used for the processing or underwriting of a residential mortgage loan; and

(II) Communicating with a borrower to obtain the information necessary to process or underwrite a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(5) "Mortgage company" means a person other than an individual who, through employees or other individuals, takes residential loan applications or offers or negotiates terms of a residential mortgage loan.

(5.5) "Mortgage lender" means a lender who is in the business of making residential 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 that regularly loans money to lenders for the purpose of funding mortgage loans.

(6) (a) "Mortgage loan originator" means an individual who:

(I) Takes a residential mortgage loan application; or

(II) Offers or negotiates terms of a residential mortgage loan.

(b) "Mortgage loan originator" does not include:

(I) An individual engaged solely as a loan processor or underwriter;

(II) A person that only performs real estate brokerage or sales activities and is licensed or registered pursuant to part 1 of this article, unless the person is compensated by a mortgage lender or a mortgage loan originator;

(III) A person solely involved in extensions of credit relating to time share plans, as defined in 11 U.S.C. sec. 101 (53D);

(IV) An individual who is servicing a mortgage loan; or

(V) A person that only performs the services and activities of a dealer, as defined in section 24-32-3302, C.R.S.

(6.3) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed pursuant to the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 *et seq.*, to track the licensing and registration of mortgage loan originators and that is established and maintained by:

(a) The conference of state bank supervisors and the American association of residential mortgage regulators, or their successor entities; or

(b) The secretary of the United States department of housing and urban development.

(6.5) "Nontraditional mortgage product" means a mortgage product other than a thirty-year, fixed-rate mortgage.

(7) "Originate a mortgage" means to act, directly or indirectly, as a mortgage loan originator.

(7.5) "Person" means a natural person, corporation, company, limited liability company, partnership, firm, association, or other legal entity.

(7.6) "Quasi-government agency" means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and was created to operate in accordance with article 4 of title 29, C.R.S., as a public housing authority.

(7.7) "Real estate brokerage activity" means an activity that involves offering or providing real estate brokerage services to the public, including, without limitation:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than matters related to financing for the transaction;

(d) Engaging in an activity for which a person engaged in the activity is required under applicable law to be registered or licensed as a real estate agent or real estate broker; or

(e) Offering to engage in any activity, or act in any capacity related to such activity, described in this subsection (7.7).

(8) "Residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.

(9) "Residential real estate" means any real property upon which a dwelling is or will be constructed.

(9.5) "Self-help housing organization" means a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and that purely originates residential mortgage loans with interest rates no greater than zero percent for borrowers who have provided part of the labor to construct the dwelling securing the loan or that receives funding from the United States department of agriculture rural development section 502 mutual self-help housing program for borrowers that have provided part of the labor to construct the dwelling securing the loan.

(10) "Servicing a mortgage loan" means collecting, receiving, or obtaining the right to collect or receive payments on behalf of a mortgage lender, including payments of principal, interest, escrow amounts, and other amounts due on obligations due and owing to the mortgage lender.

(11) "State-licensed loan originator" means an individual who is:

(a) A mortgage loan originator or engages in the activities of a mortgage loan originator;

(b) Not an employee of a depository institution or a subsidiary that is:

(I) Owned and controlled by a depository institution; and

(II) Regulated by a federal banking agency;

(c) Licensed or required to be licensed pursuant to this part 9; and

(d) Registered as a state-licensed loan originator with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(12) "Unique identifier" means a number or other identifier assigned to a mortgage loan originator pursuant to protocols established by the nationwide mortgage licensing system and registry.

§ 12-61-902.5, C.R.S. Board of mortgage loan originators – creation – compensation – enforcement of part after board creation – immunity.

(1) There is hereby created in the division a board of mortgage loan originators, consisting of five members appointed by the governor with the consent of the senate. Of the members, three shall be licensed mortgage loan originators and two shall be members of the public at large not engaged in mortgage loan origination or mortgage lending. Of the members of the board appointed for terms beginning on and after August 11, 2010, two of the members appointed as mortgage loan originators and one of the members appointed as a member of the public at large shall be appointed for terms of two years, and one of the members appointed as a mortgage loan originator and one of the members appointed as a member of the public at large shall serve for terms of four years. Thereafter, members of the board shall hold office for a term of four years. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor shall have the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) (a) The board shall exercise its powers and perform its duties and functions under the department of regulatory agencies as if transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) Notwithstanding any other provision of this part 9, on and after the creation of the board by this section, the board shall exercise all of the rule-making, enforcement, and

administrative authority of the director set forth in this part 9. The board has the authority to delegate to the director any enforcement and administrative authority under this part 9 that the board deems necessary and appropriate. If the board delegates any enforcement or administrative authority under this part 9 to the director, the director shall only be entitled to exercise such authority as specifically delegated in writing to the director by the board.

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all per diem compensation and expenses shall be made out of annual appropriations from the mortgage loan originator licensing cash fund created in section 12-61-908.

(4) Members of the board, consultants, and expert witnesses shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 9.

(5) A majority of the board shall constitute a quorum for the transaction of all business, and actions of the board shall require a vote of a majority of the members present in favor of the action taken.

(6) (a) All rules promulgated by the director prior to August 11, 2010, shall remain in full force and effect until repealed or modified by the board. The board shall have the authority to enforce any previously promulgated rules of the director under this part 9 and any rules promulgated by the board.

(b) Nothing in this section shall affect any action taken by the director prior to August 11, 2010. No person who, on or before August 11, 2010, holds a license issued under this part 9 shall be required to secure an additional license under this part 9, but shall otherwise be subject to all the provisions of this part 9. A license previously issued shall, for all purposes, be considered a license issued by the board under this part 9.

§ 12-61-903, C.R.S. License required – rules.

* (1) (a) Unless licensed by the board and registered with the nationwide mortgage licensing system and registry as a state-licensed loan originator, an individual shall not originate or offer to originate a mortgage or act or offer to act as a mortgage loan originator.

(b) On and after January 1, 2010, a licensed mortgage loan originator shall apply for license renewal in accordance with subsection (4) of this section every calendar year as determined by the board by rule.

(c) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1615, § 1, effective August 5, 2009.)

(1.5) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless the independent contractor is a state-licensed loan originator.

(2) An applicant for initial licensing as a mortgage loan originator shall submit to the board the following:

(a) A criminal history record check in compliance with subsection (5) 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 board in accordance with section 12-61-908.

(3) (a) In addition to the requirements imposed by subsection (2) of this section, on or after August 5, 2009, each individual applicant for initial licensing as a mortgage loan originator shall have satisfactorily completed a mortgage lending fundamentals course approved by the board and consisting of at least nine hours of instruction in subjects

related to mortgage lending. In addition, the applicant shall have satisfactorily completed a written examination approved by the board.

(b) The board may contract with one or more independent testing services to develop, administer, and grade the examinations required by paragraph (a) of this subsection (3) and to maintain and administer licensee records. The contract may allow the testing service to recover from applicants its costs incurred in connection with these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(c) The board may publish reports summarizing statistical information prepared by the nationwide mortgage licensing system and registry relating to mortgage loan originator examinations.

(4) An applicant for license renewal shall submit to the board the following:

(a) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1) (c); and

(b) The renewal fee established by the board in accordance with section 12-61-908.

(5) (a) Prior to submitting an application for a license, 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 board. The board may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(b) If the board determines that the criminal background check provided by the nationwide mortgage licensing system and registry is a sufficient method of screening license applicants to protect Colorado consumers, the board may, by rule, authorize the use of that criminal background check instead of the criminal history record check otherwise required by this subsection (5).

(5.5) (a) On and after January 1, 2010, in connection with an application for a license as a mortgage loan originator, the applicant shall furnish information concerning the applicant's identity to the nationwide mortgage licensing system and registry. The applicant shall furnish, at a minimum, the following:

(I) Fingerprints for submission to the federal bureau of investigation and any government agency or entity authorized to receive fingerprints for a state, national, or international criminal history record check; and

(II) Personal history and experience, in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry to obtain:

(A) An independent credit report from the consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p); and

(B) Information related to any administrative, civil, or criminal findings by a government jurisdiction.

(b) An applicant is responsible for paying all costs arising from a criminal history record check and shall pay such costs upon submission of fingerprints.

(c) The board may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

* (5.7) Repealed.

(6) Before granting a license to an applicant, the board shall require the applicant to post a bond as required by section 12-61-907.

(7) The board shall issue or deny a license within sixty days after:

(a) The applicant has submitted the requisite information to the board and the nationwide mortgage licensing system and registry, including, but not limited to, the completed application, the application fee, and proof that the applicant has posted a surety bond and obtained errors and omissions insurance; and

(b) The board receives the completed criminal history record check and all other relevant information or documents necessary to reasonably ascertain facts underlying the applicant's criminal history.

(8) (a) The board may require, as a condition of license renewal on or after January 1, 2009, continuing education of licensees for the purpose of enhancing the professional competence and professional responsibility of all licensees.

(b) Continuing professional education requirements shall be determined by the board by rule; except that licensees shall be required to complete at least eight credit hours of continuing education each year. The board may contract with one or more independent service providers to develop, review, or approve continuing education courses. The contract may allow the independent service provider to recover from licensees its costs incurred in connection with these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(9) (a) The board may require contractors and prospective contractors for services under subsections (3) and (8) of this section to submit, for the board's review and approval, information regarding the contents and materials of proposed courses and other documentation reasonably necessary to further the purposes of this section.

(b) The board may set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars, and the fee for continued review shall not exceed two hundred fifty dollars per year per course offered.

(10) The board may adopt reasonable rules to implement this section. The board may adopt rules necessary to implement provisions required in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 *et seq.*, and for participation in the nationwide mortgage licensing system and registry.

(11) In order to fulfill the purposes of this part 9, the board may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part 9.

(12) The board may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from or distributing information to the department of justice, a government agency, or any other source.

§ 12-61-903.1, C.R.S. Registration required – rules.

(1) On or after January 1, 2011, each mortgage company shall register with the nationwide mortgage licensing system and registry, unless exempted by rule by the board, and shall renew such registration each calendar year based on the following criteria:

(a) (I) The mortgage company is legally operating in the state of Colorado in accordance with standards determined and administered by the Colorado secretary of state; and

(II) The mortgage company is not legally barred from operating in Colorado.

(b) Sole proprietors, general partnerships, and other mortgage companies not otherwise required to register with the secretary of state shall register using a trade name.

§ 12-61-903.3, C.R.S. License or registration inactivation.

(1) The board may inactivate a state license or a registration with the nationwide mortgage licensing system and registry when a licensee has failed to:

(a) Comply with the surety bond requirements of sections 12-61-903 (6) and 12-61-907;

(b) Comply with the errors and omissions insurance requirement in section 12-61-903.5 or any rule of the board that directly or indirectly addresses errors and omissions insurance requirements;

(c) Maintain current contact information, surety bond information, or errors and omissions insurance information as required by this part 9 or by any rule of the board that directly or indirectly addresses such requirements;

(d) Respond to an investigation or examination;

(e) Comply with any of the education or testing requirements set forth in this part 9 or in any rule of the board that directly or indirectly addresses education or testing requirements; or

(f) Register with and provide all required information to the nationwide mortgage licensing system and registry.

§ 12-61-903.5, C.R.S. Errors and omissions insurance – duties of the board – certificate of coverage – when required – group plan made available – effect – rules.

(1) Every licensee under this part 9, except an inactive mortgage loan originator or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions insurance for their activities as a licensee under this part 9, shall maintain errors and omissions insurance to cover all activities contemplated under this part 9. The division 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. A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division 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 division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part 9, the board shall adopt such rules as it deems necessary or proper to carry out this section.

§ 12-61-903.7, C.R.S. License renewal.

(1) In order for a licensed mortgage loan originator to renew a license issued pursuant to this part 9, the mortgage loan originator shall:

(a) Continue to meet the minimum standards for issuance of a license pursuant to this part 9;

(b) Satisfy the annual continuing education requirements set forth in section 12-61-903 (8) and in rules adopted by the board; and

(c) Pay applicable license renewal fees.

(2) If a licensed mortgage loan originator fails to satisfy the requirements of subsection (1) of this section for license renewal, the mortgage loan originator's license shall expire. The board shall adopt rules to establish procedures for the reinstatement of an expired license consistent with the standards established by the nationwide mortgage licensing system and registry.

§ 12-61-904, C.R.S. Exemptions – rules.

(1) Except as otherwise provided in section 12-61-911, this part 9 does not apply to the following, unless otherwise determined by the federal bureau of consumer financial protection or the United States department of housing and urban development:

(a) (Deleted by amendment, L. 2010, (HB 10-1141), ch. 280, p. 1289, § 10, effective August 11, 2010.)

(b) With respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of no more than three properties in any twelve-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan;

(c) A bank and a savings association as these terms are defined in the "Federal Deposit Insurance Act", a subsidiary that is owned and controlled by a bank or savings association, employees of a bank or savings association, employees of a subsidiary that is owned and controlled by a bank or savings association, credit unions, and employees of credit unions;

(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) (Deleted by amendment, L. 2007, p. 1716, § 2, effective June 1, 2007, and p. 1734, § 6, effective January 1, 2008.)

(f) A person who:

(I) Funds a residential mortgage loan that has been originated and processed by a licensed 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 licensed or exempt person;

(g) A loan processor or underwriter who is not an independent contractor and who does not represent to the public that the individual can or will perform any activities of a mortgage loan originator. As used in this paragraph (g), "represent to the public" means communicating, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual is able to provide a particular service or activity for a consumer.

(h) To the extent that it is providing programs benefitting affordable housing dwelling units, an agency of the federal government, the Colorado government, or any of Colorado's political subdivisions or employees of an agency of the federal government, of the Colorado government, or of any of Colorado's political subdivisions;

(i) Quasi-government agencies, HUD-approved housing counseling agencies, or employees of quasi-government agencies or HUD-approved housing counseling agencies;

(j) Community development organizations or employees of community development organizations;

(k) Self-help housing organizations or employees of self-help housing organizations or volunteers acting as an agent of self-help housing organizations.

* (*l*) A person licensed under part 1 of this article who represents a person, estate, or trust providing mortgage financing under paragraph (b) of this subsection (1).

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

(3) The board may adopt reasonable rules modifying the exemptions in this section in accordance with rules adopted by the federal bureau of consumer financial protection or the United States department of housing and urban development.

§ 12-61-904.5, C.R.S. Originator's relationship to borrower – rules.

(1) A mortgage loan originator shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. Such duty includes, but is not limited to:

(a) The duty to not recommend or induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances;

(b) The duty to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other relevant information and, after making such inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower, but the mortgage loan originator shall not be deemed to violate this section if the borrower conceals or misrepresents relevant information; and

(c) The duty not to commit any acts, practices, or omissions in violation of section 38-40-105, C.R.S.

(2) For purposes of implementing subsection (1) of this section, the board may adopt rules defining what constitutes a reasonable, tangible net benefit to the borrower.

(3) A violation of this section constitutes a deceptive trade practice under the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

§ 12-61-905, C.R.S. Powers and duties of the board.

(1) The board may deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:

(a) Filed an application with the board 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, except as otherwise set forth in this part 9;

(c) Except as otherwise set forth in this part 9, within the last five years, 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 or a mortgage loan originator;

(II) A real estate broker, as defined by section 12-61-101 (2);

(III) A real estate salesperson;

(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.;

(d) Been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to the brokering of or originating a mortgage loan;

(e) Been found to have violated the provisions of section 12-61-910.2;

(f) Been found to have violated the provisions of section 12-61-911;

* (g) to (i) Repealed.

(j) Not demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently, consistent with the purposes of this part 9;

(k) Not completed the prelicense education requirements set forth in section 12-61-903 and any applicable rules of the board; or

(l) Not passed a written examination that meets the requirements set forth in section 12-61-903 and any applicable rules of the board.

* (1.5) The board shall deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:

* (a) (I) Had a mortgage loan originator license or similar license revoked in any jurisdiction.

* (II) If a revocation is subsequently formally nullified, the license is not revoked for purposes of this paragraph (a).

* (b) (I) At any time preceding the date of application for a license, been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

* (II) If the individual obtains a pardon of the conviction, the board shall not deem the individual convicted for purposes of this paragraph (b).

* (c) Been convicted of, or pled guilty or nolo contendere to, a felony within the seven years immediately preceding the date of application for a license.

(2) The board may investigate the activities of a licensee 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 board has reasonable grounds to believe that a mortgage loan originator is no longer qualified under subsection (1) of this section, the board may summarily suspend the mortgage loan originator's license pending a hearing to revoke the license. A summary suspension shall conform to article 4 of title 24, C.R.S.

(b) The board shall suspend the license of a mortgage loan originator who fails to maintain the bond required by section 12-61-907 until the licensee complies with such section.

(4) The board 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 loan originators and mortgage companies. 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), an individual whose license has been revoked shall not be eligible for licensure for two years after the effective date of the revocation.

(b) If the board 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 board shall allow the applicant to correct the application. Upon receipt of the corrected and completed application, the board or administrative law judge shall not bar the applicant from being licensed on the basis of the unintentional misstatement or omission.

(6) (a) The board 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 board or an administrative law judge. The board may request any information relevant to the investigation, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p).

(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 board or administrative law judge; produce the relevant papers, books, records, documentary evidence, testimony, or materials in question; or both. Failure to obey the order of the court may be punished as a contempt of court. The board or an administrative law judge may apply for such order.

(c) The licensee or individual who, after an investigation under this part 9, is found to be in violation of a provision of this part 9 shall be responsible for paying all reasonable and necessary costs of the division arising from subpoenas or requests issued pursuant to this subsection (6), including court costs for an action brought pursuant to paragraph (b) of this subsection (6).

(7) (a) If the board has reasonable cause to believe that an individual is violating this part 9, including but not limited to section 12-61-910 (1), the board may enter an order requiring the individual to cease and desist such violations.

(b) The board, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any individual who assumes to act in such capacity within the state. In addition to any other penalty that may be imposed pursuant to this part 9, any individual violating any provision of this part 9 or any rules promulgated pursuant to this article may be fined upon a finding of misconduct by the board as follows:

(I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;

(II) In a second or subsequent administrative proceeding, a fine not less than one thousand dollars nor in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this subsection (7) shall be transferred to the state treasurer, who shall credit such moneys to the mortgage company and loan originator licensing cash fund created in section 12-61-908.

(8) The board shall keep records of the individuals licensed as mortgage loan originators and of disciplinary proceedings. The records kept by the board shall be open to public inspection in a reasonable time and manner determined by the board.

(9) (a) The board 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 loan originator.

(b) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1621, § 1, effective August 5, 2009.)

(10) The board shall promulgate rules to allow licensed mortgage loan originators to hire unlicensed mortgage loan originators under temporary licenses. If an unlicensed mortgage loan originator has initiated the application process for a license, he or she shall be assigned a temporary license for a reasonable period until a license is approved or denied. The licensed mortgage loan originator who employs an unlicensed mortgage loan originator shall be held responsible under all applicable provisions of law, including without limitation this part 9 and section 38-40-105, C.R.S., for the actions of the unlicensed mortgage loan originator to whom a temporary license has been assigned under this subsection (10).

§ 12-61-905.1, C.R.S. Powers and duties of the board over mortgage companies – fines – rules.

(1) With respect to mortgage companies, the board may deny an application for registration; refuse to renew, suspend, or revoke the registration; enter cease-and-desist orders; and impose fines as set forth in this section as follows:

(a) If the board has reasonable cause to believe a person is acting without a license or registration;

(b) If the mortgage company fails to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce such documents or records upon reasonable request by the board or by an authorized representative of the board;

* (c) If the mortgage company employs or contracts with individuals who are required to be licensed pursuant to this part 9 and who are not either:

* (I) Licensed; or

* (II) In the process of becoming licensed; or

(d) If the mortgage company directs, makes, or causes to be made, in any manner, a false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, engages in bait and switch advertising as that term is used in section 6-1-105 (1) (n), C.R.S., or violates any rule of the board that directly or indirectly addresses advertising requirements.

(2) (a) The board upon its own motion or upon the complaint in writing of any person may investigate the activities of any registered mortgage company or any mortgage company that is acting in a capacity that requires registration pursuant to this part 9.

(b) The board may fine a mortgage company that has violated this section or any rules promulgated pursuant to this section as follows:

(I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;

(II) In a second or subsequent administrative proceeding, a fine not in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit such moneys to the mortgage company and loan originator licensing cash fund created in section 12-61-908.

(3) The board may adopt reasonable rules for implementing this section.

(4) Nothing in this section automatically imputes a violation to the mortgage company if a licensed agent or employee, or an individual agent or employee who is required to be licensed, violates any other provision of this part 9.

§ 12-61-905.5, C.R.S. Disciplinary actions – grounds – procedures – rules.

(1) The board, upon its own motion or upon the complaint in writing of any person, may investigate the activities of any mortgage loan originator. The board has the power to impose an administrative fine in accordance with section 12-61-905, deny a license, censure a licensee, place the licensee on probation and set the terms of probation, order restitution, order the payment of actual damages, or suspend or revoke a license when the board finds that the licensee or applicant has performed, is performing, or is attempting to perform any of the following acts:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;

(c) Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;

(d) Violating any provision of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., and, if the licensee has been assessed a civil or criminal penalty or been subject to an injunction under said act, the board shall revoke the licensee's license;

(e) Acting for more than one party in a transaction without disclosing any actual or potential conflict of interest or without disclosing to all parties any fiduciary obligation or other legal obligation of the mortgage loan originator to any party;

(f) Representing or attempting to represent a mortgage loan originator other than the licensee's principal or employer without the express knowledge and consent of that principal or employer;

(g) In the case of a licensee in the employ of another mortgage loan originator, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed mortgage loan originator-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 mortgage loan originator-employer;

(h) Failing to account for or to remit, within a reasonable time, any moneys coming into his or her possession that belong to others, whether acting as a mortgage loan originator, real estate broker, salesperson, or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules of the board relative thereto and shall be subject to audit by the board;

(i) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the licensee's own funds, or failing to keep such funds of others in an escrow or a trustee account with a 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 keep records relative to the deposit that contain such information as may be prescribed by the rules of the board relative thereto, which records shall be subject to audit by the board;

(j) Failing to provide the parties to a residential mortgage loan transaction with such information as may be prescribed by the rules of the board;

(k) Unless an employee of a duly registered mortgage company, failing to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce such documents or records upon reasonable request by the board or by an authorized representative of the board;

(*l*) Paying a commission or valuable consideration for performing any of the functions of a mortgage loan originator, as described in this part 9, to any person who is not licensed under this part 9 or is not registered in compliance with the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 *et seq.*;

(m) Disregarding or violating any provision of this part 9 or any rule adopted by the board pursuant to this part 9; violating any lawful orders of the board; or aiding and abetting a violation of any rule, order of the board, or provision of this part 9;

(n) 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 to 4 of article 4 of title 18, C.R.S., in 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 9.

(o) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;

(p) Failing to immediately notify the board in writing of a conviction, plea, or violation pursuant to paragraph (n) or (o) of this subsection (1);

(q) Having demonstrated unworthiness or incompetency to act as a mortgage loan originator by conducting business in such a manner as to endanger the interest of the public;

(r) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5, 2009.)

(s) Procuring, or attempting to procure, a mortgage loan originator's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a mortgage loan originator's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for such license;

(t) 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 9;

(u) Exercising 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;

(v) Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to this part 9 or that results in the entry of a civil judgment for damages;

(w) Any other conduct, whether of the same or a different character than specified in this subsection (1), that evinces a lack of good faith and fair dealing;

(x) Having had a mortgage loan originator's license suspended or revoked in any jurisdiction or having had any disciplinary action taken against the mortgage loan originator in any other jurisdiction. A certified copy of the order of disciplinary action shall be prima facie evidence of such disciplinary action.

(2) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5, 2009.)

(3) Upon request of the board, when any mortgage loan originator is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving a residential mortgage loan and the mortgage loan originator participated in the transaction in his or her capacity as a licensed mortgage loan originator, the mortgage loan originator shall supply to the board a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and advise the board of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.

(4) This part 9 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 board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and subject to sections 24-72-203 and 24-72-204, C.R.S.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, the board may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy of the letter of admonition 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 mortgage company and loan originator licensing cash fund created in section 12-61-908.

(8) (a) The board shall not consider an application for licensure from an individual whose license has been revoked until two years after the date of revocation.

(b) If an individual's license was suspended or revoked due to conduct that resulted in financial loss to another person, no new license shall be granted, nor shall a suspended license be reinstated, until full restitution has been made to the person suffering such financial loss. The amount of restitution shall include interest, reasonable attorney fees, and costs of any suit or other proceeding undertaken in an effort to recover the loss.

(9) When the board or the division 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 board or division shall, in addition to the exercise of its authority under this part 9, 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.

§ 12-61-905.6, C.R.S. Hearing – administrative law judge – review – rules.

(1) Except as otherwise provided in this section, all proceedings before the board with respect to disciplinary actions and denial of licensure under this part 9, at the discretion of the board, may

be conducted by an authorized representative of the board or an administrative law judge pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) Proceedings shall be held in the county where the board has its office or in such other place as the board may designate. If the licensee is employed by another licensed mortgage loan originator or by a real estate broker, the board shall also notify the licensee's employer by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3), C.R.S., to the employer's last-known business address.

(3) The board, an authorized representative of the board, or an administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the board, subject to appropriations made to the department of personnel. Each 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 in accordance with sections 24-4-104 and 24-4-105, C.R.S. No license shall be denied, suspended, or revoked until the board has made its decision.

(4) The decision of the board in any disciplinary action or denial of licensure under this section is subject to judicial review by the court of appeals. In order to effectuate the purposes of this part 9, the board has the power to promulgate rules pursuant to article 4 of title 24, C.R.S.

(5) In a judicial review proceeding, the court may stay the execution or effect of any final order of the board; 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 board's order. If the court determines that the order should be stayed, it shall also determine at the 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 a mortgage loan originator 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.

(6) In any hearing conducted by the board or an authorized representative of the board 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 board or its authorized representative shall be governed by section 24-5-101, C.R.S.

§ 12-61-905.7, C.R.S. Subpoena – misdemeanor.

(1) The board or the administrative law judge appointed for hearings may issue subpoenas, as described in section 12-61-905 (6), which 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 or the production of documents at hearings.

(2) 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 or her in any matter conducted under this part 9, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred 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 constitutes a separate offense.

§ 12-61-906, C.R.S. Immunity.

A person participating in good faith in the filing of a complaint or report or participating in an investigation or hearing before the board 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, C.R.S. Bond required.

(1) Before receiving a license, an applicant shall post with the board a surety bond in the amount of twenty-five thousand dollars or such other amount as may be prescribed by the board by rule. A licensed mortgage loan originator shall maintain the required 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 board within thirty days if payment is made from the surety bond or if the bond is cancelled.

§ 12-61-908, C.R.S. Fees – cash fund – created.

(1) The board may set the fees for issuance and renewal of licenses and registrations under this part 9. The fees shall be set in amounts that offset the direct and indirect costs of implementing this part 9 and section 38-40-105, C.R.S. The moneys collected pursuant to this section shall be transferred to the state treasurer, who shall credit them to the mortgage company and loan originator licensing cash fund.

(2) There is hereby created in the state treasury the mortgage company and loan originator licensing cash fund. Moneys in the fund shall be spent only to implement this part 9 and section 38-40-105, C.R.S., 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.

(3) For the 2009-10 fiscal year, the division is authorized to expend up to one hundred twelve thousand dollars or such other amount as may be appropriated by the general assembly from the mortgage company and loan originator licensing cash fund for purposes of paying the development costs assessed by the conference of state bank supervisors, or its successor organization, for participating in the nationwide mortgage licensing system and registry. However, the board shall use its discretion in determining whether expenditure of these moneys is necessary for compliance with the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or participation in the nationwide mortgage licensing system and registry.

§ 12-61-909, C.R.S. 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, C.R.S. Violations – injunctions.

(1) (a) Any individual violating this part 9 by acting as a mortgage loan originator in this state without having obtained a license or by acting as a mortgage loan originator after that individual's license has been revoked or during any period for which said license may have been suspended is guilty of a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except that, if the violator is not a natural person, the violator shall be punished by a fine of not more than five thousand dollars.

(b) Each residential mortgage loan negotiated or offered to be negotiated by an unlicensed person shall be a separate violation of this subsection (1).

(2) (Deleted by amendment, L. 2007, p. 1742, § 11, effective January 1, 2008.)

(3) The board 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.

§ 12-61-910.2, C.R.S. Prohibited conduct – influencing a real estate appraisal.

(1) A mortgage loan originator shall not, directly or indirectly, compensate, coerce, or intimidate an appraiser, or attempt, directly or indirectly, to compensate, coerce, or intimidate an appraiser, for the purpose of influencing the independent judgment of the appraiser with respect to the value of a dwelling offered as security for repayment of a residential mortgage loan. This prohibition shall not be construed as prohibiting a mortgage loan originator from requesting an appraiser to:

(a) Consider additional, appropriate property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report.

§ 12-61-910.3, C.R.S. Rule-making authority.

The board has the authority to promulgate rules as necessary to enable the board to carry out the board's duties under this part 9.

§ 12-61-910.4, C.R.S. Nontraditional mortgage products – consumer protections – rules – incorporation of federal interagency guidance.

The board shall adopt rules governing the marketing of nontraditional mortgage products by mortgage loan originators. In adopting such rules, the board shall incorporate appropriate provisions of the final "Interagency Guidance on Nontraditional Mortgage Product Risks" released on September 29, 2006, by the office of the comptroller of the currency and the office of thrift supervision in the federal department of the treasury, the board of governors of the federal reserve system, the federal deposit insurance corporation, and the national credit union administration, as such publication may be amended.

§ 12-61-911, C.R.S. Prohibited conduct – fraud – misrepresentation – conflict of interest – rules.

(1) A mortgage loan originator, including a mortgage loan originator otherwise exempted from this part 9 by section 12-61-904 (1) (b), shall not:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(b) Engage in any unfair or deceptive practice toward any person;

(c) Obtain property by fraud or misrepresentation;

(d) Solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through the mortgage loan originator's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(e) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a lender with whom the mortgage loan originator maintains a written correspondent or loan agreement under section 12-61-913;

(f) Fail to make a disclosure to a loan applicant or a noninstitutional investor as required by section 12-61-914 and any other applicable state or federal law;

(g) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in "bait and switch" advertising;

(h) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage loan originator or in connection with any investigation conducted by the division;

(i) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;

(j) Fail to comply with any requirement of the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226; the "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 and Regulation X, 24 CFR 3500; the "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 and Regulation B, 12 CFR 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial services modernization act of 1999 (known as the "Gramm-Leach-Bliley Act"), 12 U.S.C. secs. 6801 to 6809; the federal trade commission's privacy rules, 16 CFR 313-314, mandated by the "Gramm-Leach-Bliley Act"; the "Home Mortgage Disclosure Act of 1975", 12 U.S.C. sec. 2801 *et seq.* and Regulation C, home mortgage disclosure, 12 CFR 203; the "Federal Trade Commission Act", 15 U.S.C. sec. 45(a); the "Telemarketing and Consumer Fraud and Abuse Prevention Act", 15 U.S.C. secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 CFR 310, as amended, in any advertising of residential mortgage loans or any other applicable mortgage loan originator activities covered by the acts. The board may adopt rules requiring mortgage loan originators to comply with other applicable federal statutes and regulations.

* (k) Fail to pay a third-party provider, no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service; or

* (*l*) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by section 12-61-914 or 12-61-915.

* (m) Repealed.

§ 12-61-911.5, C.R.S. Acts of employee – mortgage loan originator's liability.

An unlawful act or violation of this part 9 upon the part of an agent or employee of a licensed mortgage loan originator shall not be cause for disciplinary action against a mortgage loan originator unless it appears that the mortgage loan originator knew or should have known of the unlawful act or violation or had been negligent in the supervision of the agent or employee.

§ 12-61-912, C.R.S. Dual status as real estate broker – requirements.

(1) Unless a mortgage loan originator complies with both subsections (2) and (3) of this section, he or she shall not act as a mortgage loan originator in any transaction in which:

(a) The mortgage loan originator acts or has acted as a real estate broker or salesperson; or

(b) Another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson.

(2) Before providing mortgage-related services to the borrower, a mortgage loan originator shall make a full and fair disclosure to the borrower, in addition to any other disclosures required by this part 9 or other laws, of all material features of the loan product and all facts material to the transaction.

(3) (a) A real estate broker or salesperson licensed under part 1 of this article who also acts as a mortgage loan originator shall carry on such mortgage loan originator business activities and shall maintain such person's mortgage loan originator business records separate and apart from the real estate broker or sales activities conducted pursuant to part 1 of this article. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address if:

(I) Each business is clearly identified by a sign visible to the public;

(II) Each business is physically separated within the office facility; and

(III) No deception of the public as to the separate identities of the broker business firms results.

(b) This subsection (3) shall not require a real estate broker or salesperson licensed under part 1 of this article who also acts as a mortgage loan originator to maintain a physical separation within the office facility for the conduct of its real estate broker or sales and mortgage loan originator activities if the board determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage loan originator and is unnecessary for the protection of the public.

§ 12-61-913, C.R.S. Written contract required – effect.

(1) Every contract between a mortgage loan originator and a borrower shall be in writing and shall contain the entire agreement of the parties.

(2) A mortgage loan originator shall have a written correspondent or loan agreement with a lender before any solicitation of, or contracting with, any member of the public.

§ 12-61-914, C.R.S. Written disclosure of fees and costs – contents – limits on fees – lock-in agreement terms – rules.

(1) Within three business days after receipt of a loan application or any moneys from a borrower, a mortgage loan originator shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, specifying the fee or fees that inure to the benefit of the mortgage loan originator. A good-faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. Except as required by paragraph (c) of subsection (2) of this section, this subsection (1) shall not be construed to require disclosure of the distribution or breakdown of loan fees, discounts, or points between the mortgage loan originator and any mortgage lender or investor.

(2) The written disclosure shall contain the following information:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest, and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan. If the interest rate is variable, the written disclosure shall clearly describe the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan;

(c) If applicable, the amount of any commission or other compensation to be paid to the mortgage loan originator, including the manner in which the commission or other compensation is calculated and the relationship of the commission or other compensation to the cost of the loan received by the borrower;

(d) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, whether the lock-in agreement is guaranteed by the mortgage loan originator or lender, and, if a lock-in agreement has not been entered, disclosure in a form acceptable to the board that the disclosed interest rate and terms are subject to change;

(e) A statement that, if the borrower is unable to obtain a loan for any reason, the mortgage loan originator must, within five days after a written request by the borrower, give copies of each appraisal, title report, and credit report paid for by the borrower to the borrower and transmit the appraisal, title report, or credit report to any other mortgage loan originator or lender to whom the borrower directs the documents to be sent;

(f) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(g) A statement providing that moneys paid by the borrower to the mortgage loan originator for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(3) If, after the written disclosure is provided under this section, a mortgage loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, the mortgage loan originator shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement within three days, including Saturdays, after the agreement is entered or the representation is made. The written confirmation shall include a copy of the disclosure made under paragraph (d) of subsection (2) of this section.

(4) (a) Except as otherwise provided in paragraph (b) of this subsection (4), a mortgage loan originator shall not charge any fee that inures to the benefit of the mortgage loan originator and that exceeds the fee disclosed on the written disclosure pursuant to this section unless:

(I) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(II) The mortgage loan originator has provided to the borrower, at least three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(b) If the borrower's closing costs on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by the board by rule, do not exceed the total closing costs in the most recent good-faith estimate, excluding prepaid escrowed costs of ownership, no other disclosures shall be required by this subsection (4).

§ 12-61-915, C.R.S. Fee, commission, or compensation – when permitted – amount.

(1) Except as otherwise permitted by subsection (2) or (3) of this section, a mortgage loan originator shall not receive a fee, commission, or compensation of any kind in connection with the preparation or negotiation of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed to by the borrower and mortgage loan originator.

(2) If the mortgage loan originator has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage loan originator, and the borrower fails to close on the loan through no fault of the mortgage loan originator, the mortgage loan originator may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the

federal "Truth in Lending Act", 15 U.S.C. sec. 1601, and Regulation Z, 12 CFR 226, as amended.

(3) A mortgage loan originator may solicit or receive fees for third-party provider goods or services in advance. Fees for any goods or services not provided shall be refunded to the borrower, and the mortgage loan originator may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

§ 12-61-916, C.R.S. Confidentiality.

(1) Except as otherwise provided in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5111, the requirements under any federal law or law of this state regarding privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to such information or material, shall apply to the information or material after it has been disclosed to the nationwide mortgage licensing system and registry. The information or material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or confidentiality protections provided by federal or state law.

(2) The board may enter into agreements with other government agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing government agencies as established by rule.

(3) Information or material that is subject to privilege or confidentiality pursuant to subsection (1) of this section shall not be subject to the following:

(a) Disclosure under a federal or state law governing the disclosure to the public of information held by an officer or agency of the federal government or the respective state; or

(b) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to a privilege held by the nationwide mortgage licensing system and registry regarding the information or material, the person to whom the information or material pertains waives the privilege, in whole or in part.

§ 12-61-917, C.R.S. Mortgage call reports – reports of violations.

(1) The board may require each licensee or registrant to submit to the nationwide mortgage licensing system and registry mortgage call reports, which shall be in the form and contain the information required by the nationwide mortgage licensing system and registry.

(2) The board may report violations of this part 9, enforcement actions, and other relevant information to the nationwide mortgage licensing system and registry.

§ 12-61-918, C.R.S. Unique identifier – clearly displayed.

Each person required to be licensed or registered shall show his or her or the entity's unique identifier clearly on all residential mortgage loan application forms and any other documents as specified by the board by rule or order.

§ 12-61-919, C.R.S. Repeal of part.

* (1) This part 9 is repealed, effective September 1, 2018.

(2) Prior to its repeal, the department of regulatory agencies shall review the licensing of mortgage loan originators and the registration of mortgage companies in accordance with section 24-34-104, C.R.S. The department shall include in its review of mortgage loan originators and mortgage companies an analysis of the number and types of complaints made about mortgage loan originators and mortgage companies and whether the licensing of mortgage loan

originators and the registration of mortgage companies correlates with public protection from fraudulent activities in the residential mortgage loan industry.

III. Standards for Mortgage Lending and Servicing

§ 38-40-101, C.R.S. Mortgage broker fees – escrow accounts – unlawful act – penalty.

(1) Any funds, other than advanced for actual costs and expenses to be incurred by the mortgage broker on behalf of the applicant for a loan, paid to a mortgage broker as a fee conditioned upon the consummation of a loan secured or to be secured by a mortgage or other transfer of or encumbrance on real estate shall be held in an escrow or a trustee account with a bank or recognized depository in this state. Such account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government.

(2) It is unlawful for a mortgage broker to misappropriate funds held in escrow or a trustee account pursuant to subsection (1) of this section.

(3) The withdrawal, transfer, or other use or conversion of any funds held in escrow or a trustee account pursuant to subsection (1) of this section prior to the time a loan secured or to be secured by mortgage or other transfer of or encumbrance on real estate is consummated shall be prima facie evidence of intent to violate subsection (2) of this section.

(4) Any mortgage broker violating any of the provisions of subsection (2) of this section commits theft as defined in section 18-4-401, C.R.S.

(5) Any mortgage broker violating any of the provisions of subsection (1) or (2) of this section shall be liable to the person from whom any funds were received for the sum of one thousand dollars plus actual damages caused thereby, together with costs and reasonable attorney fees. No lender shall be liable for any act or omission of a mortgage broker under this section.

(6) As used in this section, unless the context otherwise requires, "mortgage broker" means a person, firm, partnership, association, or corporation, other than a bank, trust company, savings and loan association, credit union, supervised lender as defined in section 5-1-301 (46), C.R.S., insurance company, federal housing administration approved mortgagee, land mortgagee, or farm loan association or duly appointed loan correspondents, acting through officers, partners, or regular salaried employees for any such entity, that engages in negotiating or offering or attempting to negotiate for a borrower, and for commission, money, or other thing of value, a loan to be consummated and funded by someone other than the one acting for the borrower.

§ 38-40-102, C.R.S. Disclosure of costs – statement of terms of indebtedness.

(1) Any person regularly engaged in the making of loans secured by a mortgage or deed of trust on a one-to-four-family dwelling shall provide to any applicant for a loan to be secured by such a mortgage or deed of trust a good faith estimate, as a dollar amount or range, of each charge for a settlement service to be charged by the lender and paid by the applicant or a third party at the time of the making of the loan for which the application is made. Such disclosure shall be delivered to the applicant, and to any third party who will be liable on the loan and to the seller if the name and address of the third party and seller is known to the lender at the time of the application, in the same manner and at the same time as the good faith estimate required by the federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 *et seq.* If the lender conditionally guarantees any of the terms of the loan for which the application is made, there shall be delivered to the applicant a written statement of the conditions of such guaranty, including the period of time within which the consummation of the loan must occur in order for the guaranty to be honored.

(2) A person shall not state terms of an indebtedness to an applicant which are in conflict with the good faith estimate and which he knows to be false or unavailable at the time of the statement or at the time of closing of the agreement creating the indebtedness.

(3) As used in this section, unless the context otherwise requires, the terms "good faith estimate", "person", and "settlement service" shall have the same meanings as given to such terms in the federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 *et seq.*, and in regulation X, 24 CFR part 3500, issued by the United States secretary of housing and urban development pursuant to such act.

(4) The provisions of this section shall not apply to a loan to be made by a bank, trust company, savings and loan association, credit union, federal housing administration approved mortgagee, or supervised lender as defined in section 5-1-301 (46), C.R.S., that will be secured by a mortgage or deed of trust other than a first mortgage or deed of trust having priority as a lien on the real property over any other mortgage or deed of trust.

§ 38-40-103, C.R.S. Servicing of mortgages and deeds of trust – liability for interest or late fees for property taxes.

(1) (a) (I) Any person who regularly engages in the collection of payments on mortgages and deeds of trust for owners of evidences of debt secured by mortgages or deeds of trust shall promptly credit all payments which are received and which are required to be accepted by such person or his agent and shall promptly perform all duties imposed by law and all duties imposed upon the servicer by such evidences of debt, mortgages, or deeds of trust creating or securing the indebtedness.

(II) No more than twenty days after the date of transfer of the servicing or collection rights and duties to another person, the transferor of such rights and duties shall mail a notice addressed to the debtor from whom it has been collecting payments at the address shown on its records, notifying such debtor of the transfer of the servicing of his or her debt and the name, address, and telephone number of the transferee of the servicing.

(b) The debtor may continue to make payments to the transferor of the servicing of his or her loan until a notice of the transfer is received from the transferee containing the name, address, and telephone number of the new servicer of the loan to whom future payments should be made. Such notice may be combined with the notice required in subparagraph (II) of paragraph (a) of this subsection (1). It shall be the responsibility of the transferor to forward to the transferee any payments received and due after the date of transfer of the loan.

(2) The servicer of a loan shall respond in writing within twenty days from the receipt of a written request from the debtor or from an agent of the debtor acting pursuant to written authority from the debtor for information concerning the debtor's loan, which is readily available to the servicer from its books and records and which would not constitute the rendering of legal advice. Any such response must include the telephone number of the servicer. The servicer shall not be liable for any damage or harm that might arise from the release of any information pursuant to this section.

(3) The servicer of a loan shall annually provide to the debtor a summary of activity related to the loan. Such a summary shall contain, but need not be limited to, the total amount of principal and interest paid on the loan in that calendar year.

(4) The servicer of a loan shall be liable for any interest or late fees charged by any taxing entity if funds for the full payment of taxes on the real estate have been held in an escrow account by such servicer and not remitted to the taxing entity when due.

* ***§ 38-40-103.5, C.R.S. Notice upon transfer of servicing rights – prior servicer's offer to borrower survives transfer – definitions.***

* (1) As used in this section:

* (a) "Borrower" means a person liable under an evidence of debt constituting a residential mortgage loan.

* (b) "Evidence of debt" has the meaning set forth in section 38-38-100.3 (8).

* (c) "Holder" means the holder of an evidence of debt constituting a residential mortgage loan.

* (d) "Residential mortgage loan" has the meaning set forth in section 12-61-902, C.R.S.

* (e) (I) "Servicer" means a person who collects, receives, or has the right to collect or receive payments on behalf of a holder, including payments of principal, interest, escrow amounts, and other amounts due on obligations due and owing to the holder.

* (II) "Servicer" includes:

* (A) The person or entity to whom payments are to be sent, as listed on the most recent billing statement or payment coupon provided to the borrower; or

* (B) A subsidiary, affiliate, or assignee of a servicer, however designated, including a person designated as a subservicer.

* (2) A servicer to whom servicing rights for a residential mortgage loan have been sold or transferred by the holder or by a predecessor servicer is subject to, and shall honor, the borrower's acceptance, prior to the sale or transfer of servicing rights, of any offer previously made by the holder or predecessor servicer in connection with a modification of a residential mortgage loan.

* (3) At the time of the transfer or sale of servicing rights for a residential mortgage loan, the transferor or seller shall inform the buyer or transferee of the servicing rights whether a loan modification is pending.

* (4) A contract for the transfer or sale of servicing rights for a residential mortgage loan must obligate the successor servicer to:

* (a) Accept and continue processing any pending loan modification requests; and

* (b) Honor any trial and permanent loan modification agreements entered into by the prior servicer.

§ 38-40-104, C.R.S. Cause of action — attorney fees.

* (1) If any applicant or debtor is aggrieved by a violation of section 38-40-102, 38-40-103, or 38-40-103.5 and the violation is not remedied in a reasonable, timely, and good faith manner by the party obligated to do so, and after a good faith effort to resolve the dispute is made by the debtor or borrower, the debtor or borrower may bring an action in a court of competent jurisdiction for any such violation. If the court finds that actual damages have occurred, the court shall award to the debtor or borrower, in addition to actual damages, the amount of one thousand dollars, together with costs and reasonable attorney fees.

* (2) A transferee from a lender is not liable for any act or omission of the lender under section 38-40-102. A transferee of servicing or collection rights is not liable for any act or omission of the transferor of those rights under section 38-40-103 or 38-40-103.5.

§ 38-40-105, C.R.S. Prohibited acts by participants in certain mortgage loan transactions – unconscionable acts and practices – definitions.

(1) The following acts by any mortgage broker, mortgage originator, mortgage lender, mortgage loan applicant, real estate appraiser, or closing agent, other than a person who provides closing or settlement services subject to regulation by the division of insurance, with respect to any loan that is secured by a first or subordinate mortgage or deed or trust lien against a dwelling are prohibited:

(a) To knowingly advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcast, or televised, in any manner, any false, misleading, or deceptive statement with regard to rates, terms, or conditions for a mortgage loan;

(b) To make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or a creditor to enter into a mortgage agreement when, under the terms and circumstances of the transaction, he or she knew or reasonably should have known of such falsity, misrepresentation, or concealment;

(c) To knowingly and with intent to defraud present, cause to be presented, or prepare with knowledge or belief that it will be presented to or by a lender or an agent thereof any written statement or information in support of an application for a mortgage loan that he or she knows to contain false information concerning any fact material thereto or if he or she knowingly and with intent to defraud or mislead conceals information concerning any fact material thereto;

(d) To facilitate the consummation of a mortgage loan agreement that is unconscionable given the terms and circumstances of the transaction;

(e) To knowingly facilitate the consummation of a mortgage loan transaction that violates, or that is connected with a violation of, section 12-61-911, C.R.S.

(f) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1638, § 4, effective August 5, 2009.)

(1.5) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1638, § 4, effective August 5, 2009.)

(1.7) (a) A mortgage broker or mortgage originator shall not commit, or assist or facilitate the commission of, the following acts or practices, which are hereby deemed unconscionable:

(I) Engaging in a pattern or practice of providing residential mortgage loans to consumers based predominantly on acquisition of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay a loan in accordance with its terms; except that any reasonable method may be used to determine a borrower's ability to repay. This subparagraph (I) shall not apply to a reverse mortgage that complies with article 38 of title 11, C.R.S.

(II) Knowingly or intentionally flipping a residential mortgage loan. As used in this subparagraph (II), "flipping" means making a residential mortgage loan that refinances an existing residential mortgage loan when the new loan does not have reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer's circumstances. This subparagraph (II) applies regardless of whether the interest rate, points, fees, and charges paid or payable by the consumer in connection with the refinancing exceed any thresholds specified by law.

(III) Entering into a residential mortgage loan transaction knowing there was no reasonable probability of payment of the obligation by the consumer.

(b) Except as this subsection (1.7) may be enforced by the attorney general or a district attorney, only the original parties to a transaction shall have a right of action under this subsection (1.7), and no action or claim under this subsection (1.7) may be brought against a purchaser from, or assignee of, a party to the transaction.

(2) (a) Except as provided in subsection (5) of this section, if a court, as a matter of law, finds a mortgage contract or any clause of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) (I) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the mortgage broker or mortgage originator such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice on the part of one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the mortgage broker, mortgage originator, or lender.

(II) This paragraph (c) shall not apply to an unconscionable act or practice under subsection (1.7) of this section.

(3) A violation of this section shall be deemed a deceptive trade practice as provided in section 6-1-105 (1) (uu), C.R.S.

(4) The provisions of this section are in addition to and are not intended to supersede the deceptive trade practices actionable at common law or under other statutes of this state.

(5) No right or claim arising under this section may be raised or asserted in any proceeding against a bona fide purchaser of such mortgage contract or in any proceeding to obtain an order authorizing sale of property by a public trustee as required by section 38-38-105.

(6) The following acts by any real estate agent or real estate broker, as defined in section 12-61-101, C.R.S., in connection with any residential mortgage loan transaction, are prohibited:

(a) If directly engaged in negotiating, originating, or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the real estate agent or real estate broker shall not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the real estate agent or real estate broker actually knew or, under the terms and circumstances of the transaction, reasonably should have known of such falsity, misrepresentation, or concealment.

(b) If not directly engaged in negotiating, originating, or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the real estate agent or real estate broker shall not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the real estate agent or real estate broker had actual knowledge of such falsity, misrepresentation, or concealment.

(7) As used in this section, unless the context otherwise requires:

(a) "Consumer" has the meaning set forth in section 5-1-301, C.R.S.

(b) "Dwelling" has the meaning set forth in section 5-1-301, C.R.S.

(c) "Mortgage broker" has the same meaning as "mortgage loan originator" as set forth in section 12-61-902, C.R.S.

(d) "Mortgage lender" has the meaning set forth in section 12-61-902, C.R.S.

(e) "Mortgage originator" has the same meaning as "mortgage loan originator" as set forth in section 12-61-902, C.R.S.

(f) "Originate" has the same meaning as "originate a mortgage" as set forth in section 12-61-902, C.R.S.

(g) "Residential mortgage loan" has the meaning set forth in section 12-61-902, C.R.S.

IV. Loan Fraud

Legislative declaration

(1) The general assembly hereby determines that mortgage lending has a significant effect upon Colorado's economy; an estimated two trillion five hundred billion dollars in mortgage loans were made in the United States in 2005; an estimated eighty percent of reported mortgage fraud involves collusion by industry insiders; and Colorado's per capita incidents of mortgage fraud is one of the ten highest in the nation.

(2) The general assembly hereby declares that the high rates of mortgage fraud in Colorado are unacceptable and that residential mortgage fraud shall not be tolerated. The general assembly further declares that the goals of Colorado law are to deter residential mortgage fraud and to make the victim whole.

§ 18-4-401, C.R.S. Theft.

(9) (a) If a person is convicted of or pleads guilty or nolo contendere to theft by deception and the underlying factual basis of the case involves the mortgage lending process, a minimum fine of the amount of pecuniary harm resulting from the theft shall be mandatory, in addition to any other penalty the court may impose.

(b) A court shall not accept a plea of guilty or nolo contendere to another offense from a person charged with a violation of this section that involves the mortgage lending process unless the plea agreement contains an order of restitution in accordance with part 6 of article 1.3 of this title that compensates the victim for any costs to the victim caused by the offense.

(c) The district attorneys and the attorney general have concurrent jurisdiction to investigate and prosecute a violation of this section that involves making false statements or filing or facilitating the use of a document known to contain a false statement or material omission relied upon by another person in the mortgage lending process.

(d) Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs; and any required disclosures.

(e) For the purposes of this subsection (9):

(I) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan, including, without limitation, solicitation, application, or origination; negotiation of terms; third-party provider services; underwriting; signing and closing; funding of the loan; and perfecting and releasing the mortgage.

(II) "Residential mortgage loan" means a loan or agreement to extend credit, made to a person and secured by a mortgage or lien on residential real property, including, but not limited to, the refinancing or renewal of a loan secured by residential real property.

(III) "Residential real property" means real property used as a residence and containing no more than four families housed separately.

§ 13-21-125, C.R.S. Civil actions for theft in the mortgage lending process.

A person who suffers damages as a result of a violation of section 18-4-401, C.R.S., in the mortgage lending process, as defined by section 18-4-401 (9) (e) (I), C.R.S., shall have a private civil right of action against the perpetrator, regardless of whether the perpetrator was convicted of the crime. A claim arising under this section shall not be asserted against a bona fide purchaser of a mortgage contract.

§ 18-5-208, C.R.S. Dual contracts to induce loan.

It is a class 3 misdemeanor for any person to knowingly make, issue, deliver, or receive dual contracts for the purchase or sale of real property. The term "dual contracts", either written or oral, means two separate contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price, and is used, or intended to be used, to induce persons to make a loan or a loan commitment on such real property in reliance upon the stated inflated value.

. . . .

Loan fraud has become one of the largest areas of white-collar crime and is a recurring subject of Commission disciplinary actions. Loan fraud includes falsified loan applications; fictitious income, employment, or deposit verifications; false occupancy claims; undisclosed buyer rebates or credits; and a host of other items, which can be considered dual contracting.

Loan fraud may also result in disbarment by HUD from all federal programs, large fines, and federal prosecution. Since virtually all loan programs are affiliated with the federal government in either the primary or secondary mortgage market, disbarment can mean the end of a career in real estate, appraisal, and lending or related fields.

V. Mortgage Loan Originator Rules

DEPARTMENT OF REGULATORY AGENCIES
Division of Real Estate

RULES REGARDING MORTGAGE LOAN ORIGINATORS
4 CCR 725-3

* ***CHAPTER 1: DEFINITIONS***

* 1.1 Address: The street address, city, state and postal code.

* 1.2 Adjustable Rate Mortgage: A mortgage in which the teaser rate, payment rate, or interest rate changes periodically and, in some cases, may adjust according to corresponding fluctuations in an index.

* 1.3 Adjustment Date: The date the teaser rate, payment rate, or interest rate changes on an adjustable rate mortgage.

* 1.4 Advertisement: Any commercial message that promotes consumer credit. Advertisements may appear:

* A. In newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, or other printed material;

* B. On radio, television, or a public address system;

* C. On an inside or outside sign or display, or a window display;

* D. In point-of-sale literature, price tags, signs, and billboards; or

* E. Online, such as on the internet.

* 1.5 Bona Fide Nonprofit Organization: An organization that complies with the following criteria:

* A. Has the status of tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, incorporated by reference in compliance with Section 24-4-103(12.5), C.R.S., and does not include later amendments or editions of the Code. A certified copy of the Code is readily available for public inspection at the offices of the Board of Mortgage Loan Originators at 1560 Broadway Suite 925, Denver, Colorado. The Internal Revenue Code of 1986 may be examined at the internet website of the Internal Revenue Service at www.irs.gov. The Internal Revenue Service may also be contacted at 1999 Broadway, Denver, Colorado 80202 or by telephone at (303) 446-1675;

* B. Promotes affordable housing or provides homeownership education, or similar services;

* C. Conducts its activities in a manner that serves public and charitable purposes, rather than commercial purposes;

* D. Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

* E. Compensates its employees to act other than in the best interests of its clients; and

* F. Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under the government housing assistance programs.

* 1.6 Business Day: All calendar days except Sundays and federal holidays.

* 1.7 Business Name: The company for which individuals who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator are officers, partners, members, managers, owners, exclusive agents, contractors, independent contractors or employees.

* 1.8 Consumer Credit: may be either closed-end or open-end credit. It is credit that is extended primarily for personal, family, or household purposes. It excludes business and agricultural loans, and loans exceeding $ 25,000 that are not secured by real property or a dwelling. It also must be extended by a “creditor”.

* 1.9 Creditor: Is a person or organization (a) that regularly extends consumer credit for which a finance charge is required or that is repayable in more than four installments even without a finance charge, and (b) to whom the obligation is initially payable—for example, the finance company, bank, automobile dealer or other lender identified on the face of the credit agreement. A person or organization is considered to extend credit “regularly,” if it has extended credit more than 25 times during the preceding year or more than 5 times for transactions secured by dwellings.

* 1.10 Employee: An individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

* 1.11 Finance Charge: The dollar amount charged for credit. It includes interest and other costs, such as service charges, transaction charges, buyer’s points, loan fees, and mortgage insurance. It

also includes the premiums for credit life, accident, and health insurance, if required, and for property insurance, unless the buyer may select the insurer.

* 1.12 Fixed Term: The length of time a teaser rate, payment rate, or interest rate, is fixed and will not adjust.

* 1.13 Good Faith Estimate Disclosure: Is the Disclosure form established in the Real Estate Settlement Procedures Act, Part 3500, Appendix C.

* 1.14 Housing Finance Agency: An authority that is chartered by the State of Colorado to help meet the affordable housing needs of the residents of Colorado; is supervised directly or indirectly by the state government; is subject to audit and review by the State of Colorado; and whose activities make it eligible to be a member of the National Council of State Housing Agencies.

* 1.15 HUD Approved Housing Counseling Agency: is an agency which is either a private or public nonprofit organization that is exempt from taxation under Section 501(a) pursuant to Section 501(c), of the Internal Revenue Code of 1996, 26, U.S.C. 501(a) and 501(c), and approved by the U.S. Department of Housing and Urban Development, in accordance with Housing Counseling Program Handbook 7610.1 and Code of Federal Regulations Title 24, Part 214.

* 1.16 Independent Contractor: An individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of an individual who is licensed by the Board or is not required to be licensed based on one of the following:

* A. The individual is lawfully registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an employee of:

* 1. A depository institution;

* 2. A subsidiary that is:

* a. Owned and controlled by a depository institution; and

* b. Regulated by a Federal banking agency; or

* 3. An institution regulated by the Farm Credit Administration; or

* B. An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of a federal, state, or local government agency or housing finance agency; or

* C. An employee of a bona fie nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

* 1.17 Index: The index for an adjustable rate mortgage.

* 1.18 Initial Adjustment Cap: The limit on how much the interest or payment rate can change at the first adjustment period.

* 1.19 Interest Rate: The rate used to calculate a borrower's monthly interest payment.

* 1.20 Life Cap: The limit on how much the interest or payment rate can change over the life of the loan.

* 1.21 Loan Modification: A temporary or permanent change in one or more of the terms of a mortgagor's existing loan, allows the loan to be reinstated, and often results in a more affordable mortgage payment. The borrower retains ownership of the real property and the mortgage note and the deed of trust remains intact.

* 1.22 Loan Modifier: An individual who in the course of the person's business, vocation, or occupation offers to assist, provide, or negotiate on behalf of a borrower to facilitate the receipt of a loan modification from the borrower's current mortgage lender, generally for a fee or other thing of value.

* 1.23 Offering or Negotiating Terms of a Residential Mortgage Loan: To present for consideration to a borrower or prospective borrower particular residential mortgage loan terms, or to communicate directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms. An individual's generic referral to or recommendation of a particular lender in and of itself, is not offering or negotiating the terms of a residential mortgage loan.

* 1.24 Payment Rate: The rate used to determine a borrower's monthly payment.

* 1.25 Payment Type: Is the principal and interest, interest only or negative amortization.

* 1.26 Physical Address: The physical location of the property.

* 1.27 Prepayment Penalty: A fee assessed pursuant to the terms of the loan on a borrower who repays all or part of the principal of a loan before it is due. Prepayment penalties do not include interest payments of thirty (30) days or less that may be assessed pursuant to the terms of some FHA or VA loans. Prepayment penalties for the purpose of this rule do not include termination fees of $ 500.00 or less that are associated with home equity lines of credit.

* 1.28 Rate: The teaser rate, payment rate or interest rate used to determine a borrower's monthly payment or deferred interest specific to reverse mortgage transactions.

* 1.29 Residential Mortgage Loan Application: A request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary and necessary in a decision on whether to make such an offer.

* 1.30 Safe and Secure Manner: Reasonable measures are taken to minimize the risk of loss, damage, or theft.

* 1.31 Short Sale: The sale of a real property for less than the mortgage loan balance. In the settlement of the short sale transaction the existing mortgage is extinguished. Any deficiency created from the settlement of the transaction may be transformed into a promissory note, charged off, forgiven, or pursued as a judgment against the previous owner.

* 1.32 Taking a Residential Mortgage Loan Application: The receipt of a residential mortgage loan application by an individual for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower, whether the application is received directly or indirectly from the borrower or prospective borrower. An individual's generic referral to or recommendation of a particular lender, in and of itself, is not taking a residential loan application.

* 1.33 Teaser Rate: A temporary and often low introductory rate on an adjustable rate mortgage.

* 1.34 Truth-in-Lending Disclosure: Is the disclosure form established by the Truth in Lending Act, specific to Regulation Z, Appendices H-2, H-3, H-4(a), (b), (c) and (d).

* 1.35 Uniform Residential Loan Application: Is the Freddie Mac form 65 or the Fannie Mae form 1003 used in residential loan transactions on properties of four or fewer units.

* ***CHAPTER 2: REQUIREMENTS FOR LICENSURE (Effective 1/14/2014)***

* 2.1 An applicant for licensure as a Colorado mortgage loan originator shall successfully complete the requirements set forth below:

* A. Submit a set of fingerprints for a criminal history check to the Colorado Bureau of Investigations (CBI) within 1 year immediately preceding the date of application;

* B. Register with the Nationwide Mortgage Licensing System and Registry in accordance with policies and procedures established by the Nationwide Mortgage Licensing System and Registry. This includes, but is not limited to completion of the correct registration application, authorization for the registry to pull a credit report and payment of any fees associated with registration;

* C. Submit fingerprints to the Nationwide Mortgage Licensing System and Registry in accordance with policies and procedures established by the Nationwide Mortgage Licensing System and Registry;

* D. Complete the 20 hours of pre-licensing education reviewed and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry for the review and approval of pre-licensing courses;

* E. Successful completion of the S.A.F.E. Mortgage Loan Originator examination, developed by the Nationwide Mortgage Licensing System and Registry which will consist of two parts. These two parts include a national component and a Colorado state specific component. An individual shall pass the test in accordance with policies and procedures developed and administered by the Nationwide Mortgage Licensing System and Registry and in compliance with the S.A.F.E. Mortgage Licensing Act;

* F. Acquisition of a surety bond as required by § 12-61-907, C.R.S. and in accordance with any rule of the Board that directly or indirectly addresses surety bond requirements;

* G. Acquisition of the errors and omissions insurance required by § 12-61-903.5, C.R.S. and in accordance with any rule of the Board that directly or indirectly addresses errors and omissions insurance requirements;

* H. Completion of the Colorado Division of Real Estate specific Mortgage Loan Originator Application; and

* I. Payment of the application fee established by the Board and is non-refundable.

* 2.2 Authority to audit education provider

* The Board or the Board's designee may audit any mortgage loan originator courses offered and may request from each education provider or schools offering such courses, all related instructional materials, student attendance records and other information that may be necessary for an audit. Failure to comply with this rule may result in the withdrawal of course approval.

* 2.3 Retesting

* A. An individual may retake a test three (3) consecutive times with each consecutive taking occurring at least thirty (30) days after the preceding test.

* B. After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.

* C. Individuals who fail to maintain a valid license for a period of five (5) years or longer shall retake the test prior to re-application, not taking into account any time during which such individual was licensed.

* 2.4 Temporary license

* Mortgage loan originators demonstrating to the Board a good-faith effort to comply with the requirements pursuant to § 12-61-901, et seq., C.R.S. may be issued a temporary license upon completion of the requirements set forth below:

* A. The individual has completed all requirements set forth by the Nationwide Mortgage Licensing System and Registry, including payment of requisite fees, and has been approved by the Board of Mortgage Loan Originators on the Nationwide Mortgage Licensing System and Registry;

* B. Prior to submitting an application, a set of fingerprints for a criminal history record check must be submitted to the Colorado Bureau of Investigation (CBI);

* C. Acquisition of a surety bond as required by § 12-61-907, C.R.S. and in accordance with any rule of the Board that directly or indirectly addresses surety bond requirements;

* D. Acquisition of the errors and omissions insurance required by § 12-61-903.5, C.R.S. and in accordance with any rule of the Board that directly or indirectly addresses errors and omissions insurance requirements;

* E. Completion of the Colorado Division of Real Estate specific Mortgage Loan Originator Application; and

* F. Payment of the application fee established by the Board and is non-refundable.

* 2.5 Only individuals who are licensed as state-licensed loan originators may hire and sponsor unlicensed mortgage loan originators under the temporary license provision.

* A. Licensed mortgage loan originators who employ and sponsor such a temporarily licensed mortgage loan originator shall be held responsible under all applicable provisions of law, including without limitation this Part 9 and § 38-40-105, C.R.S., for the actions of the temporarily licensed mortgage loan originator to whom a temporary license has been assigned, and are personally subject to all applicable penalties under the law.

* B. Licensed mortgage loan originators shall notify the Division of Real Estate, in a manner acceptable to the Board, of exact dates of hire and termination of employment for temporarily licensed mortgage loan originators. Sponsoring mortgage loan originators shall complete the mortgage loan originator temporary license update form, and forward to the Division of Real Estate, in a manner acceptable to the Board, all other information required for the possible receipt of a temporary license.

* C. Licensed mortgage loan originators shall be held responsible for the activity of temporarily licensed mortgage loan originators through and including the date of termination and required notification of such termination to the Division of Real Estate.

* 2.6 Temporary licenses shall expire 120 days after completion of the Mortgage Loan Originator License Application or when the temporary license is terminated by a licensed mortgage loan originator with whom the temporary licensee is operating under.

* 2.7 Individuals seeking temporary licenses shall be granted one temporary license. Additional or extended temporary licenses shall be prohibited.

* 2.8 Temporary licensees shall request on the application that the Board inactivate their temporary license upon determination by the Board that the requirements of the law have not been met.

* 2.9 Any temporary license issued by the Board shall have the same force and effect of the license required by § 12-61-901, et seq., C.R.S. for the period of time it is in effect.

* 2.10 Once the applicant fully complies with the terms of the law as determined by the Board, the Board shall license the applicant in accordance with § 12-61-903, C.R.S.

* 2.11 Preliminary advisory opinion

* Potential applicants for a state license or a registration through the Nationwide Mortgage Licensing System and Registry may submit information in order for the Board or an authorized representative of the Board to reasonably ascertain the likelihood of license or registration approval through a defined preliminary advisory opinion process.

* 2.12 Potential applicants may request a preliminary advisory opinion for any of the following reasons:

* A. If the individual has been convicted, plead guilty or nolo contendere to any crime in a domestic, foreign or military court.

* B. If the individual has been enjoined in the immediately preceding five (5) years under domestic or foreign laws from engaging in deceptive conduct relating to the origination of a mortgage loan;

* C. If the individual has had other professional licenses, certifications or registrations issued by Colorado, the District of Columbia, any other states or foreign countries, revoked or suspended for fraud, theft, deceit, material misrepresentations or the breach of a fiduciary

duty and such suspension or revocation denied authorization to practices as: a mortgage loan originator or similar license; real estate broker; real estate appraiser; an insurance producer; an attorney; a securities broker-dealer; a securities sales representative; an investment advisor; or an investment advisor representative; or

* D. If the individual has been assessed a civil or criminal penalty for violating any provision of the Colorado Consumer Protection Act.

* 2.13 Individuals requesting a preliminary advisory opinion shall complete the Preliminary Advisory Application located on the Division of Real Estate's website.

* 2.14 Individuals requesting a preliminary advisory opinion shall submit all corresponding, or relevant documents related to any conduct or actions as set forth in Rule 2.12. Incomplete requests will not be processed.

* The Board or an authorized representative of the Board may, at any time, request additional information regarding the preliminary advisory opinion request. Such corresponding, relevant or related documents may include, but are not limited to:

* A. Police officer reports;

* B. Dispositions documents;

* C. Court documents;

* D. Original charges documents;

* E. Stipulated agreements; or

* F. Final Agency Orders.

* 2.15 individuals requesting a preliminary advisory opinion shall submit a written and signed personal explanation and detailed account of the facts and circumstances.

* 2.16 Any preliminary advisory opinion shall not be binding on the Board or limit the Board's authority to investigate a future formal application for licensure.

* 2.17 An individual seeking a preliminary advisory opinion is not an applicant for licensure and the issuance of an unfavorable opinion shall not prevent such individual from making application for licensure pursuant to the Mortgage Loan Originator Licensing Act.

* 2.18 The Board or an authorized representative of the Board will provide a favorable or an unfavorable opinion.

* 2.19 Surety bond

* Mortgage loan originators are deemed compliant with the surety bond requirement if their surety bond meets the requirements defined in one of the following options:

* A. Mortgage loan originators, at a minimum, may acquire and maintain an individual surety bond if:

* 1. The surety bond is in the amount of $25,000.00;

* 2. The surety bond is in conformance with all relevant Colorado statutory requirements;

* 3. The surety bond is exclusive to covering acts contemplated under current Colorado mortgage loan originator licensing laws;

* 4. The surety bond is not applicable to any conduct or transactions outside the jurisdiction of the Board; and

* 5. The surety bond is identical to the individual surety bond form developed and approved by the Board.

* B. Mortgage loan originators who are W-2 employees or exclusive agents for companies with less than 20 individuals who are required to be licensed pursuant to current Colorado mortgage loan originator licensing laws and who do not work for more than one company, may, at a minimum, operate under their company's surety bond if the surety bond meets the following criteria:

* 1. The surety bond is in the amount of $100,000.00;

* 2. The surety bond is in conformance with all relevant Colorado statutory requirements;

* 3. The surety bond is exclusive to covering acts of all of the company's W-2 employees or exclusive agents contemplated under current Colorado mortgage loan originator licensing laws; and

* 4. The surety bond is identical to the individual surety bond form developed and approved by the Board.

* C. Mortgage loan originators who are W-2 employees or exclusive agents for companies with 20 or more individuals who are required to be licensed pursuant to current Colorado mortgage loan originator licensing laws and who do not work for more than one company, may, at a minimum, operate under a company's surety bond if the surety bond meets the following criteria:

* 1. The surety bond is in the amount of $200,000.00;

* 2. The surety bond is in conformance with all relevant Colorado statutory requirements;

* 3. The surety bond is exclusive to covering acts of all of the company's W-2 employees or exclusive agents contemplated under current Colorado mortgage loan originator licensing laws; and

* 4. The surety bond is identical to the company surety bond form developed and approved by the Board.

* 2.20 Regarding company surety bonds, the company shall provide the Board or an authorized representative of the Board with any and all requested surety bonds relevant to Rule 2.19 or current mortgage loan originator license laws and shall verify and provide adequate proof regarding the timeline of employment for each individual operating under such company policy. Failure on the part of the company to provide such information shall result in non-compliance regarding the surety bond requirement for individual licensees operating under such company bond.

* 2.21 Mortgage loan originators shall be required to provide proof of continuous surety bond coverage and that all required information is current. The mortgage loan originator may update all required information electronically on the Division of Real Estate's website.

* 2.22 Any licensee who so fails to obtain and maintain a surety bond in accordance with Board Rules or fails to provide proof of continuous coverage shall be subject to disciplinary action.

* 2.23 Errors and omissions insurance

* Mortgage loan originators may obtain errors and omissions coverage from the qualified insurance carrier contracted with the Board of Mortgage Loan Originators to offer licensees and license applicants a group policy of insurance or licensees and applicants may obtain errors and omissions coverage independent of the group plan. Mortgage loan originators are deemed compliant with the errors and omissions insurance requirements if their errors and omissions insurance meets the requirements defined in one of the following options:

* A. Mortgage loan originators, at a minimum, may acquire and maintain individual errors and omissions insurance in their own name with the following terms of coverage:

* 1. The contract and policy are in conformance with all relevant Colorado statutory requirements;

* 2. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;

* 3. Coverage shall encompass all types of transactions conducted by the mortgage loan originator and shall be in the individual mortgage loan originator's name;

* 4. Coverage is for not less than $100,000.00 for each licensed individual per covered claim, with an annual aggregate limit of not less than $300,000.00 per licensed individual; and

* 5. Coverage contains a deductible no greater than $1,000.00, or a deductible no greater than $20,000.00 for policies that primarily insure reverse mortgage transactions.

* B. Mortgage loan originators who are employees or exclusive agents for companies with less than 20 individuals who are required to be licensed pursuant to the current Colorado mortgage loan originator licensing laws and who do not work for more than one company, may, at a minimum, operate under the company's errors and omissions insurance policy if the policy meets the following terms of coverage:

* 1. The contract and policy are in conformance with all relevant Colorado statutory requirements;

* 2. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;

* 3. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;

* 4. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company or by all mortgage loan originators who are exclusive agents of the company;

* 5. Coverage is for not less than $1,000,000.00 per covered claim, with an annual aggregate limit of not less than $2,000,000.00 that is exclusive to Colorado consumers; and

* 6. Coverage contains a deductible no greater than $50,000.00.

* C. Mortgage loan originators who are W-2 employees or exclusive agents for companies with 20 or more employees and who do not work for more than one company, may, at a minimum, operate under the company's errors and omissions insurance policy if the policy meets the following terms of coverage:

* 1. The contract and policy are in conformance with all relevant Colorado statutory requirements;

* 2. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;

* 3. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;

* 4. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company or by all mortgage loan originators who are exclusive agents of the company;

* 5. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company;

* 6. Coverage is for not less than $1,000,000.00 per covered claim, with an annual aggregate limit of not less than $4,000,000.00 that is exclusive to Colorado consumers; and

* 7. Coverage contains a deductible no greater than $100,000.00.

* 2.24 Regarding company errors and omissions insurance policies, the company shall provide the Board, or an authorized representative of the Board, with any and all requested errors and omissions insurance policies relevant to Rule 2.23 or current Colorado mortgage loan originator licensing laws and shall verify and provide adequate proof regarding the timeline of

employment for each individual operating under such company policy. Failure on the part of the company to provide such information shall result in non-compliance regarding the errors and omissions insurance requirement for individual licensees operating under the company's errors and omissions insurance policy.

* 2.25 Mortgage loan originators shall be required to provide proof of continuous errors and omissions insurance coverage and that all required information is current. The mortgage loan originator may update all required information electronically on the Division of Real Estate's website.

* 2.26 Any licensee who so fails to obtain and maintain an errors and omissions insurance coverage in accordance with Board rules or fails to provide proof of continuous coverage shall be subject to disciplinary action.

* ***CHAPTER 3: CONTINUING EDUCATION REQUIREMENTS (Effective 1/14/2014)***

* 3.1 The continuing education requirements for licensed individuals shall begin after issuance of the initial license. Individuals shall complete at least eight (8) hours of continuing education courses reviewed and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted to review and approve continuing education courses and a two (2) Hour Annual Colorado specific state update course reviewed and approved by the Division of Real Estate each calendar year and prior to license and registration renewals or reinstatements.

* 3.2 Completion of the 20 hours of pre-licensing education approved by the Nationwide Mortgage Licensing System and Registry in the same year in which the license was approved, shall satisfy the continuing education requirements in that calendar year.

* 3.3 All individuals required to be licensed as state-licensed mortgage loan originators and required to complete the Colorado two (2) Hour Annual Update Course shall maintain records of completion for a period of four (4) years.

* 3.4 Colorado two (2) Hour Annual Update Course provider requirements:

* A. In order to provide and teach the Colorado two (2) Hour Annual Update Course, educators and trainers not exempt from the Colorado Division of Private Occupational Schools oversight, pursuant to 12-59-101, et seq., C.R.S., must be approved by the Colorado Division of Private Occupational Schools and approved by an authorized representative of the Board of Mortgage Loan Originators.

* B. In order to provide and teach the Colorado two (2) Hour Annual Update Course, educators and trainers exempt from the Colorado Division of Private Occupational Schools oversight, pursuant to section 12-59-104, C.R.S., must be approved by an authorized representative of the Board of Mortgage Loan Originators.

* C. If not approved by the Colorado Division of Private Occupational Schools, the educators and trainers shall attend one train-the-trainer class, as developed and administered by the Colorado Division of Real Estate, prior to teaching the Colorado two (2) Hour Annual Update Course.

* D. All education providers and trainers interested in teaching the Colorado two (2) Hour Annual Update Course shall apply each calendar year with the Colorado Division of Real Estate for approval in a manner prescribed by the Board of Mortgage Loan Originators; prior to teaching the course material. Educators and trainers that are exempt from the Division of Private Occupational Schools' oversight shall provide proof of such exemption.

* E. All education providers and trainers interested in teaching the Colorado two (2) Hour Annual Update Course shall keep records of all individuals that have completed the Colorado two (2) Hour Annual Update course and shall provide the Colorado Division of Real Estate with a list of such individuals in a manner prescribed by the Board of

Mortgage Loan Originators. Educators and trainers are required to keep records of course attendance for a period of four (4) years.

* F. All education providers shall provide the course material, in a manner prescribed by the Board of Mortgage Loan Originators, and applicable handouts to all students that have enrolled and completed the Colorado two (2) Hour Annual Update Course.

* G. All education providers and trainers shall provide a certificate of completion to all individuals that have completed the Colorado two (2) Hour Annual Update Course.

* 3.5 Authority to audit education provider

* The Board or the Board's designee may audit any Colorado specific state Update Course reviewed and approved by the Division of Real Estate and may request from each education provider or schools offering such courses, all related instructional materials, student attendance records and other information that may be necessary for an audit. Failure to comply with this rule may result in the withdrawal of course approval.

* ***CHAPTER 4: RENEWAL, REINSTATEMENT, INACTIVATION, SUSPENSION, SURRENDER OR REVOCATION OF A LICENSE OR REGISTRATION (Effective 1/14/2014)***

* 4.1 Renewal process for active licensees.

* A. There are two existing databases that licensees shall independently renew their license through annually. The two independent databases include:

* 1. The license database managed by the Division of Real Estate. This database may be located by visiting the Division of Real Estate's website.

* 2. The registration database managed by the Nationwide Mortgage Licensing System and Registry.

* B. Mortgage loan originators renewing, reinstating or re-applying for registration through the Nationwide Mortgage Licensing System and Registry shall do so in accordance with established timelines, policies and procedures set forth by the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry may collect fees for the purpose of registration applications, renewal applications, reinstatement applications, credit reports, criminal background checks and for other processes associated with registration through the Nationwide database.

* C. The Board shall issue or deny a license renewal or reinstatement application within thirty days after the applicant has submitted all of the information necessary for license renewal or reinstatement and after the Board has received all information necessary to make a determination regarding the applicants' compliance.

* D. Regarding the license database managed by the Division of Real Estate, mortgage loan originators may renew or reinstate their license online or may do so by submitting a paper renewal or reinstatement application.

* E. For both databases, the license renewal period begins November 1st of each calendar year and ends December 31st of each calendar year. Individuals who renew their license shall only do so if they are compliant with all provisions of the mortgage loan originator licensing act and all Board Rules.

* F. All licenses expire at 12 midnight on December 31st of each calendar year if the licensee has not properly renewed their license.

* G. If a license has expired, individuals may choose to reinstate their mortgage loan originator license. The reinstatement period for both databases begins January 1st of each calendar year and ends on the last day of February of each calendar year. Individuals who reinstate their license shall only do so if they are compliant with all provisions of the mortgage loan originator licensing act and all Board Rules.

* H. Individuals who fail to renew or reinstate their license shall re-apply in the manner set forth in Rule 4.3.

* I. All renewal, reinstatement or application fees shall be prescribed by the Board. All fees collected for the purpose of applying for license renewal, reinstatement or re-application are non-refundable.

* 4.2 Renewal process for inactive licensees.

* A. Individuals with inactive licenses shall renew their license annually in the manner set forth in Rule 4.1. Individuals with inactive licenses are not required to maintain compliant errors and omissions insurance or a compliant surety bond, but they are required to stay current on all continuing education requirements in order to renew their license.

* B. The fee for reinstatement is one and one half times the amount of the current renewal fee.

* 4.3 Re-application.

* A. Individuals who fail to maintain a valid license for a period of up to five (5) years after the date of license expiration and who are compliant with the annual continuing education requirements will need to complete the following:

* 1. Register with the Nationwide Mortgage Licensing System and Registry in accordance with policies and procedures established by the Nationwide Mortgage Licensing System and Registry. This includes, but is not limited to completion of the correct registration application, authorization for the registry to pull a credit report and payment of any fees associated with registration;

* 2. Submit fingerprints to the Nationwide Mortgage Licensing System and Registry in accordance with policies and procedures established by the Nationwide Mortgage Licensing System and Registry;

* 3. Obtain a compliant surety bond. Surety bond requirements are defined in section 12-61-907, C.R.S. and by Board Rule;

* 4. Obtain compliant errors and omissions insurance. Errors and omission insurance requirements are defined in Section 12-61-903.5, C.R.S. and by Board Rule; and

* 5. Complete the Colorado Division of Real Estate specific license application and pay the application fee.

* B. Individuals who fail to maintain a valid license for a period of up to five (5) years after the date of license expiration and who are not compliant with the annual continuing education requirements will need to complete the following:

* 1. Comply with all requirements set forth in section (a), subsection (1) to (5) of this Rule, and

* 2. Complete the 20 hours of pre-licensing education reviewed and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry for the review and approval of pre-licensing courses;

* C. Individuals who fail to maintain a valid license for a period of more than five (5) years after the date of license expiration will need to complete the following:

* 1. Comply with all requirements set forth in section (b), subsection (1) and (2) of this Rule; and

* 2. Retake the S.A.F.E. Mortgage Loan Originator examination, developed by the Nationwide Mortgage Licensing System and Registry which will consist of two parts. These two parts include a national component and a Colorado state specific component. An individual shall pass the test in accordance with policies and

procedures developed and administered by the Nationwide Mortgage Licensing System and Registry and in compliance with the S.A.F.E. Mortgage Licensing Act;

* 4.4 Individuals who do not have an active license are prohibited from practicing as a mortgage loan originator. Additionally, individuals who do not have an active license are prohibited from engaging in any mortgage related activities which require licensure pursuant to the Colorado mortgage loan originator licensing and Mortgage Company Registration Act, Board rule or as prescribed by Board position statement.

* 4.5 Renewal process for mortgage companies.

* A. Mortgage companies shall renew the registration on the Nationwide Mortgage Licensing System and Registry.

* B. Mortgage companies renewing, reinstating or re-applying for registration through the Nationwide Mortgage Licensing System and registry shall do so in accordance with established timelines, policies and procedures set forth by the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry may collect fees for the purpose of registration applications, renewal applications, reinstatement applications, credit reports, criminal background checks and for other processes associated with registration through the Nationwide database.

* C. The Board shall issue or deny a registration renewal application within thirty days after the applicant has submitted all of the information necessary for license renewal or reinstatement and after the board has received all information necessary to make a determination regarding the applicants' compliance.

* D. The registration renewal period begins November 1st of each calendar year and ends December 31st of each calendar year. Mortgage companies that renew or reinstate their license shall only do so if they are compliant with all provisions of the mortgage loan originator licensing and mortgage company registration act and all Board rules.

* E. All registrations expire at 12 midnight on December 31st of each calendar year if the licensee has not properly renewed their license.

* F. If a license has expired, mortgage companies may choose to reinstate their registration. The reinstatement period for reinstatement begins January 1st of each calendar year and ends on the last day of February of each calendar year. Mortgage companies that reinstate their registration shall only do so if they are compliant with all provisions of the mortgage loan originator licensing and mortgage company registration act and all Board Rules.

* G. Mortgage companies that fail to renew or reinstate their registration shall re-apply on the Nationwide Mortgage Licensing System and Registry in order for the Division of Real Estate to review their applications and determine whether the mortgage company is compliant with the registration requirements.

* H. All renewal, reinstatement or application fees shall be prescribed by the Board and are non-refundable.

* 4.6 Mortgage companies that do not have an approved registration are prohibited from acting through employees or other individuals who takes residential loan applications or offers or negotiates terms of a residential mortgage loan. Additionally, mortgage companies that do not have an approved registration are prohibited from engaging in any mortgage related conduct that requires a registration pursuant to the mortgage loan originator licensing and mortgage company registration act, Board Rule or as prescribed by the Board by Position Statement.

* 4.7 Mortgage loan originator license inactivation and reactivation

* If a mortgage loan originator license or registration is inactivated by the Board of mortgage loan originators or an authorized representative of the Board for one or any combination of the

following reasons, the mortgage loan originator shall pay an administrative fee determined by the board in order to reactivate their license:

* A. The mortgage loan originator has failed or is failing to comply with the surety bond requirements of section 12-61-903(6), C.R.S. Section 12-61-907, C.R.S. or any rule of the Board that directly or indirectly addresses surety bond requirements;

* B. The mortgage loan originator has failed or is failing to comply with the errors and omissions insurance requirement in Section 12-61-903.5, C.R.S. or any Rule of the Board that directly or indirectly addresses errors and omissions insurance requirements;

* C. The mortgage loan originator has failed or is failing to maintain current contact information, surety bond information, or errors and omissions insurance information as required by this Part 9 or by any Rule of the Board that directly or indirectly addresses such requirements;

* D. The mortgage loan originator has failed or is failing to respond to an investigation or examination;

* E. The mortgage loan originator has failed or is failing to comply with any of the education or testing requirements set forth in this Part 9 or in any rule of the Board that directly or indirectly addresses education or testing requirements; or

* F. The mortgage loan originator has failed or is failing to register with and provide all required information to the Nationwide Mortgage Licensing System and Registry.

* 4.8 Individuals who have an inactive license or registration are prohibited from practicing as a mortgage loan originator. Additionally, individuals who have an inactive license or registration are prohibited from engaging in any mortgage related activities which requires licensure pursuant to the Colorado mortgage loan originator licensing and mortgage company registration act, Board rule or as prescribed by Board position statement.

* 4.9 In order for an inactive mortgage loan originator license or registration to be reactivated, the individual seeking reactivation shall provide the Division of Real Estate with proof of full compliance with current mortgage loan originator license law.

* 4.10 The Board has created the mortgage loan originator license reactivation form and this form may be found on the Division of Real Estate's website.

* *CHAPTER 5: PROFESSIONAL STANDARDS*

* 5.1 Advertising

* Any advertisement of a residential mortgage loan product or rate offered by a mortgage loan originator as that term is defined in § 12-61-902(6), C.R.S., or mortgage company as that term is defined in § 12-61-902(5), C.R.S., shall conform to the following requirements:

* A. An advertisement shall be made only for such products and terms as are actually available at the time they are offered and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations;

* B. The advertisement shall contain the following, each of which must be clearly and conspicuously included in the advertisement;

* 1. At least one (1) responsible party. The responsible party must be an individual person or a mortgage company. The responsible party must include their registration number that is approved on the Nationwide Mortgage Licensing System and Registry (NMLS);

* 2. The mortgage company name;

* 3. The business phone number of the responsible party; and

* 4. The statement "Regulated by the Division of Real Estate."

* C. The advertisement shall not appear to be offered by a government agency, a quasi-government agency or the perspective borrower's current lender and/or loan servicer;

* D. An advertisement shall not make or omit any statement the result of which would be to present a misleading or deceptive impression to consumers;

* E. An advertisement shall otherwise comply with all applicable state and federal disclosure requirements;

* F. *(effective 1/14/2014)* Advertisements shall incorporate applicable provisions of the final *Interagency Guidance on Nontraditional Mortgage Product Risks* ("Interagency Guidance") released on September 29, 2006, incorporated by reference in compliance with Section 24-4-103(12.5), C.R.S., and does not include any later amendments or editions of the final guidance. A certified copy of the Interagency Guidance is readily available for public inspection at the offices of the Board of Mortgage Loan Originators at 1560 Broadway, Suite 925, Denver, Colorado. The Interagency Guidance released by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift supervision, and the National Credit Union Administration can be examined at the internet website of the federal register (volume 71, number 192, page 58609-58618) at *www.federalregister.gov*. Reference copies of the federal register publications may also be found at the Colorado Supreme Court, located at 101 w. Colfax, Denver, Colorado 80202 or by telephone at (303) 837-3720; and

* G. The responsible party must retain copies of all advertisements for a period of four (4) years, and provide said copies for inspection by an authorized representative of the Board upon request.

* 5.2 The requirements set forth in Rule 5.1(b), Subsections one (1) through four (4) shall not apply to:

* A. Any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage company, the name and title of the mortgage loan originator, the contact information for the mortgage company or the mortgage loan originator, a mortgage company logo, or any license or registration numbers, such as the inscription on a coffee mug, pen, pencil, youth league jersey, sign, business card, or other promotional item; or

* B. Any rate sheet, pricing sheet, or similar proprietary information provided to real estate brokers, builders, and other commercial entities that is not intended for distribution to consumers.

* 5.3 Loan Modifier Licensure

* A. Individuals, not otherwise exempt from Part 9, who directly or indirectly take residential loan modification applications or who negotiate, offer, or attempt to negotiate or offer loan modifications are required to be licensed as a Colorado Mortgage Loan Originator.

* B. All individuals required to be licensed shall comply with all other provisions of the Colorado Mortgage Loan Originator Licensing Act and all Board Rules.

* 5.4 Required Use of a Loan Modification Contract

* A. Individuals taking loan modification applications or offering or negotiating loan modifications are required to use a loan modification contract which complies with the Mortgage Loan Originator Licensing Act and the Foreclosure Protection Act.

* B. The Board has created the Colorado Loan Modification Services Contract to ensure compliance with the aforementioned laws. This contract may be found on the Division of Real Estate's website. Loan modifiers shall use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Board.

* C. The Colorado Loan Modification Services contract prescribed by this rule shall be completed at time of application.

* 5.5 The Requirements Set Forth in Rules 5.3 and 5.4 Shall Not Apply to:

* A. Employees of HUD approved housing counseling agencies who are providing advice or general information on loan modifications in an ancillary manner relating to their general housing counseling services or duties.

* B. Employees of mortgage loan servicing companies operating on behalf of the borrowers' mortgage lenders.

* C. Licensed Real Estate Brokers engaged in licensed activities when performing services within the defined short sale transactions do not need to maintain a license as a mortgage loan originator. If a real estate broker engages in the activities of providing loan modification services (those not included in the activities of short sales) as defined, loan modification services are defined as outside the scope of licensed real estate broker activities and therefore, separate licensure as a mortgage loan originator is required.

* D. An attorney, as set forth in Section 12-61-904(1)(d), C.R.S., 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 or loan modifications is not required to be licensed as a mortgage loan originator, but is required to comply with all non-licensing provisions of current mortgage loan originator law set forth in Sections 12-61-901 through 12-61-915, C.R.S.

* 5.6 Reasonable Inquiry

* A. A mortgage loan originator shall only recommend appropriate products after reasonable inquiry has been made in order to understand borrower's current and prospective financial status.

* B. Reasonable inquiry requires the mortgage loan originator to interview and discuss current and prospective income, including the income's source and likely continuance, with borrowers, and may not require the mortgage loan originator to verify such income.

* C. A mortgage loan originator has a duty to recommend mortgage products based on the information provided by the borrower.

* D. A mortgage loan originator shall be deemed in compliance with this rule and Colorado law, § 12-61-904.5(1)(b), C.R.S., concerning reasonable inquiry, upon interviewing and discussing, with all applicable borrowers, all sections contained in the uniform residential loan application and upon completion of a tangible net benefit disclosure. The tangible net benefit disclosure is posted on the Division of Real Estate's website.

* 5.7 Tangible Net Benefit

* The reasonable, Tangible Net Benefit Standard in § 12-61-904.5(1)(a), R.R.S., is inherently dependent upon the totality of facts and circumstances relating to a specific transaction. While the refinancing of certain home loans may clearly provide a reasonable, tangible net benefit, others may require closer scrutiny or consideration to determine whether a particular loan provides the requisite benefit to the borrower.

* A. When determining reasonable, tangible net benefit, there are many considerations a mortgage loan originator shall take into account and discuss with prospective borrowers. If applicable, the required considerations for a mortgage loan originator determining the requisite benefit shall include, but are not limited to:

* 1. Lower payments;

* 2. Condensed amortization schedule;

* 3. Debt consolidation;

* 4. Cash out;

* 5. Avoiding foreclosure;

* 6. Negative amortization;

* 7. Balloon payments;

* 8. Variable rates;

* 9. Interest only options;

* 10. Prepayment penalties; and

* 11. Hybrid mortgage products.

* B. The purpose or reason for a purchase or refinance transaction shall be identified by the borrower. A mortgage loan originator shall require that all borrowers describe, in writing, the reasons they are seeking a mortgage loan, a loan modification or to refinance an existing mortgage loan.

* 1. It is the responsibility of the mortgage loan originator to ensure this information is acquired and accurately documented.

* 2. Pursuant to § 12-61-904.5(1), C.R.S., a mortgage loan originator may not have demonstrated a duty of good faith and fair dealing in all communications and transactions with a borrower if it is determined that a mortgage loan originator completed the required purpose or reason for a purchase, loan modification or refinance transaction without consulting the borrower.

* 5.8 Tangible Net Benefit Disclosure Form

* The Board developed a disclosure form regarding reasonable, tangible net benefit. Alternate disclosures are acceptable if they include all information required on the suggested form, as determined by the Board.

* A. At the time of completing a loan application the mortgage loan originator shall complete a Tangible Net Benefit Disclosure with the borrower(s).

* B. The Tangible Net Benefit Disclosure shall also be completed with the borrower(s) prior to the borrower(s) signing loan closing documents if the reasonable, tangible net benefit has changed.

* C. Tangible Net Benefit Disclosures shall be signed by both the mortgage loan originator and the borrowers.

* D. A mortgage loan originator shall provide copies of completed disclosure forms to all borrowers within three (3) business days after receipt of a loan application or any moneys from a borrower. Furthermore, the mortgage loan originator must be able to provide proof to the Board or an authorized representative of the Board that the disclosure forms defined in this rule were in fact provided to the borrower within three (3) business days after receipt of a loan application, any moneys from a borrower or any subsequent changes to any loan terms requiring re-disclosure.

* 5.9 Mortgage Loan Originator and Mortgage Company Duty to Respond and Provide Requested Documents for Investigations

* A. Persons required to be licensed or mortgage companies required to be registered pursuant to §§ 12-61-903 and 12-61-903.1, C.R.S., shall provide the Board or the Board's representative with all information required by this rule.

* 1. Failure to provide all information requested by the Board or an authorized representative of the Board within a timeline established by the Board, or authorized representative of the Board, shall be grounds for disciplinary action and grounds for the imposition of fines unless the Board, or authorized representative of the Board, has granted an extension of time for the response.

* a. The mortgage loan originator and mortgage company may ask for an extension of time to comply if:

* i. The request is done so in writing; and

* ii. The request is received by the Board or authorized representative of the Board prior to the expiration date defined in the notification letter sent by the Board or authorized representative of the Board.

* b. Any and all extensions granted are done so at the discretion of the Board or an authorized representative of the Board.

* 2. Failure to provide all requested information shall be grounds for disciplinary action and grounds for the imposition of fines regardless of whether the underlying complaint results in further investigation or subsequent action by the Board.

* B. The response from the person shall contain the following:

* 1. If requested in the notification letter, the mortgage loan originator shall provide a complete and specific answer to the factual recitations, allegations or averments made in the complaint filed against the licensee, whether made by a member of the public or on the Board's own motion or by an authorized representative of the Board;

* 2. The mortgage loan originator shall provide a complete and specific response to all questions, allegations or averments presented in the notification letter; and

* 3. Any and all documents or records requested in the notification letter.

* C. Mortgage companies shall maintain any and all documents collected, gathered and provided for the purpose of negotiating and originating residential mortgage loans for a period of four years. Additionally, mortgage companies shall maintain any and all documents used for the purpose of soliciting or marketing borrowers that were directed, made or caused to be made by the mortgage company. These documents include but are not limited to:

* 1. All uniform residential loan applications (form 1003);

* 2. All required state and federal disclosures;

* 3. Asset statements;

* 4. Income documentation;

* 5. Verification of employment;

* 6. Verification of deposit;

* 7. Lender submission forms;

* 8. Advertisements;

* 9. Flyers;

* 10. HUD-1 settlement statements;

* 11. Uniform underwriting and transmittal summary(form 1008); and

* 12. Credit report.

* D. The mortgage loan originator shall maintain any and all documents used for the purpose of soliciting or marketing borrowers that were directed, made or caused to be made by the mortgage loan originator.

* E. All documents required in this rule shall be kept in a safe and secure manner. Electronic storage is acceptable as long as the information is accessible and kept in a safe and secure manner.

* 5.10 Mortgage Loan Originators Maintaining Current Contact Information and All Information Required for Licensing

* A. Individuals required to be licensed as a state licensed loan originator shall maintain all current contact information and all information required for licensing, in a manner acceptable to the Board, including on the Division of Real Estate database and on the Nationwide Mortgage Licensing System and Registry. Failure to maintain the information identified in this rule shall be grounds for disciplinary action.

* B. Contact information shall include, but is not limited to:

* 1. E-mail address;

* 2. Legal first, middle and last names;

* 3. Physical home address;

* 4. Home phone number;

* 5. Business address;

* 6. Business phone number; and

* 7. Business name.

* C. Information required for licensing includes, but is not limited to:

* 1. Surety bond company;

* 2. Surety bond number;

* 3. Surety bond effective date;

* 4. Errors and omissions insurance provider;

* 5. Errors and omissions policy number;

* 6. Errors and omissions effective and expiration date; and

* 7. Convictions, pleas of guilt or nolo contendere for all crimes.

* D. Individuals required to be licensed as a state licensed loan originator shall update the Board within thirty (30) days of any changes to the information defined in this rule on both the Division of Real Estate database and on the Nationwide Mortgage Licensing System and Registry.

* 5.11 Mortgage Loan Originator Contracts

* All contracts between a mortgage loan originator and a borrower shall be in writing and shall contain the entire agreement of the parties. Section 12-61-913(1), C.R.S. does not require a contract between a mortgage loan originator and a borrower. Rather, that if a contract does exist; such contract shall be in writing.

* 5.12 Mortgage Loan Originator Agreements

* A mortgage loan originator shall have a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public. A mortgage loan originator is compliant with this rule and § 12-61-913(2), C.R.S., if they adhere to one of the following requirements:

* A. They individually have a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public;

* B. They are an officer, partner, member, exclusive agent, or employee of a company that has a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public;

* C. They are acting as an independent contractor and maintain a contractual agreement with a company that has a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public; or

* D. They are an employee of a lender before any solicitation of, or contracting with, any member of the public.

* 5.13 Mortgage Loan Originator Disclosures

* Pursuant to Section 12-61-914(1), C.R.S., requires that specific disclosures, set forth in § 12-61-914(2), C.R.S., be disclosed within three (3) business days after receipt of a loan application or any moneys from a borrower.

* 5.14 Disclosure requirements (information commonly found in the Truth in Lending Disclosure form) as defined in Section 12-61-914(2)(a), C.R.S., shall be disclosed:

* A. Within three (3) business days after receipt of a loan application or any moneys from a borrower;

* B. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter and prior to the borrower signing loan closing documents; and

* C. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.

* The Truth in Lending Disclosure form is an acceptable manner in which to disclose the requirements set forth in this rule.

* 5.15 Disclosure requirements (information commonly found in the pre-2010 HUD Good Faith Estimate Disclosure form) as defined in Section 12-61-914(2)(b), C.R.S., shall be disclosed in the manner set forth in Rule 5.14, Sections (a) through (c); and

* The mortgage loan originator must create and implement a form that itemizes the disclosure of all third-party fees and costs. The disclosure shall include mortgage loan originator and borrower signatures and dates in which the disclosure was completed and signed.

* 5.16 A mortgage loan originator shall not charge any fee that inures to the benefit of the mortgage loan originator and the mortgage company for which they are an officer, partner, member, exclusive agent, contractor, independent contractor or employee if such fee exceeds the fee disclosed on the previous written disclosure unless:

* A. The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

* B. The mortgage loan originator has provided to the borrower, no less than (3) three business days and prior to the signing of the loan closing documents, a clear and written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

* 5.17 Compensation disclosure requirements as defined in Section 12-61-914(2)(c), C.R.S., shall be disclosed pursuant to provisions and timelines defined in applicable Federal laws or according to any regulation adopted by the consumer financial protection bureau.

* 5.18 Lock-in Disclosure requirements as defined in section 12-61-914(2)(d), C.R.S., shall be disclosed:

* A. Within three (3) business days after receipt of a loan application or any moneys from a borrower;

* B. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter and prior to the borrower signing loan closing documents, the mortgage loan originator shall deliver or send by first-class mail to the borrower, the written Lock-in Disclosure.

* C. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one

(1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents; and

* D. If, after the mortgage loan originator enters into a lock-in agreement, there is a change to any of the information provided on the Lock-in Disclosure form, including but not limited to a lock-in extension.

* 5.19 The Board has created the Colorado Lock-in Disclosure form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website. A mortgage loan originator may use an alternate form if the alternate form clearly includes all information required on the Colorado Lock-in Disclosure form, as determined by the Board.

* 5.20 The Colorado Lock-in Disclosure form or alternate form shall be used when disclosing the secured rate of interest for the perspective borrower or disclosing that the interest rate is not secured and is subject to change.

* A. The mortgage loan originator shall disclose the amount of the teaser rate, payment rate or interest rate and also disclose the type of rate. Examples of the type of rate include, but are not limited to:

* 1. Teaser rate;

* 2. Payment rate; or

* 3. Interest rate.

* B. When disclosing the payment type, mortgage loan originators shall define if the payment type is a negative amortization payment; interest only payment or principal and interest payment.

* 5.21 Individuals who originate a mortgage or act as a mortgage loan originator are required to keep records of the disclosures, set forth in 12-61-914(2), C.R.S., for a period of four years, for the purposes of inspection by the Board or authorized representative of the Board.

* A. All documents shall be kept in a safe and secure manner. Electronic storage is acceptable as long as the information is accessible and kept in a safe and secure manner.

* B. The company for whom the mortgage loan originator is an officer, partner, contractor, independent contractor, member, exclusive agent or an employee may provide the requested documents to the Board. However, the mortgage loan originator is responsible for compliance with the Board's request and is subject to disciplinary action if the company fails or refuses to provide the requested documentation.

* C. The mortgage loan originator must be able to provide proof to the Board or an authorized representative of the Board that the disclosure forms defined in this rule were in fact provided to the borrower within three (3) business days after receipt of a loan application, any moneys from the borrower or any subsequent changes to any loan terms requiring re-disclosure.

* 5.22 Dual Status Disclosure

* The Board prohibits individuals from acting as a mortgage loan originator and a Real Estate Broker, on the same transaction, unless they comply with the requirements set forth in this rule.

* A. Dual status is a material fact to real estate transactions and shall be disclosed to the borrower(s).

* B. The Board has created the Colorado Dual Status Disclosure form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website. A mortgage loan originator shall use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Board.

* C. The Colorado Dual Status Disclosure form shall be completed, disclosed, and provided to the borrower within three (3) business days after receipt of a loan application or any moneys from a borrower.

* D. Persons who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator shall maintain the disclosure form defined by this rule for a period of four years.

* E. The mortgage loan originator must be able to provide proof to the Board or an authorized representative of the Board that the disclosure forms defined in this rule were in fact provided to the borrower within three (3) business days after receipt of a loan application, any moneys from the borrower or any subsequent changes to any loan terms requiring re-disclosure.

CHAPTER 6: EXCEPTIONS AND BOARD REVIEW OF INITIAL DECISIONS

6.1 Written form, service, and filing requirements

A. All designations of record, requests, exceptions and responsive pleadings ("pleadings") must be in written form, mailed with a certificate of mailing to the Board.

B. All pleadings must be received by the Board by 5:00 p.m. On the date the filing is due. A pleading is considered filed upon receipt by the Board. These rules do not provide for any additional time for service by mail.

C. Any pleadings must be served on the opposing party by mail or by hand delivery on the date which the pleading is filed with the Board.

D. All pleadings must be filed with the Board and not with the Office of Administrative Courts. Any designations of record, requests, exceptions or responsive pleadings filed in error with the Office of Administrative Courts will not be considered. The Board's address is:

Colorado Board of Mortgage Loan Originators

1560 Broadway, Suite 925

Denver, Colorado 80202

6.2 Authority to review

A. The Board hereby preserves the Board's option to initiate a review of an initial decision on its own motion pursuant to § 24-4-105(14)(a)(ii) and (b)(iii), C.R.S. outside of the thirty day period after service of the initial decision upon the parties without requiring a vote for each case.

B. This option to review shall apply regardless of whether a party files exceptions to the initial decision.

6.3 Designation of record and transcripts

A. Any party seeking to reverse or modify the initial decision of the administrative law judge shall file with the Board a designation of the relevant parts of the record for review ("designation of record"). Designations of record must be filed with the Board within twenty days of the date on which the Board mails the initial decision to the parties' address of record with the Board.

B. Within ten days after a party's designation of record is due, any other party may file a supplemental designation of record requesting inclusion of additional parts of the record.

C. Even if no party files a designation of record, the record shall include the following:

1. All pleadings;
2. All applications presented or considered during the hearing;
3. All documentary or other exhibits admitted into evidence;

4. All documentary or other exhibits presented or considered during the hearing;
5. All matters officially noticed;
6. Any findings of fact and conclusions of law proposed by any party; and
7. Any written brief filed.

D. Transcripts: transcripts will not be deemed part of a designation of record unless specifically identified and ordered. Should a party wish to designate a transcript or portion thereof, the following procedures will apply:

1. The designation of record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, or may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript.
2. Any party who includes a transcript or a portion thereof as part of the designation of record must <u>order</u> the transcript or relevant portions by the date on which the designation of record must be filed (within twenty days of the date on which the Board mails the initial decision to the parties).
3. When ordering the transcript, the party shall request a court reporter or transcribing service to prepare the transcript within thirty days. The party shall timely pay the necessary fees to obtain and file with the Board an original transcription and one copy within thirty days.
4. The party ordering the transcript shall direct the court report or transcribing service to complete and file with the Board the transcript and one copy of the transcript within thirty days.
5. If a party designates a portion of the transcript, the opposing party may also file a supplemental designation of record, in which the opposing party may designate additional portions of the transcript.
6. An opposing party filing a supplemental designation of record designating additional portions of the transcript must order and pay for such transcripts or portions thereof within the deadlines set forth above. An opposing party must also cause the court reporter to complete and file with the Board the transcript and one copy of the transcript within thirty days.
7. Transcripts that are ordered and not filed with the Board in a timely manner by the reporter or the transcription service due to non-payment, insufficient payment or failure to direct as set forth above will not be considered by the Board.

6.4 Filing of exceptions and responsive pleadings

A. Any party wishing to file exceptions shall adhere to the following timelines:

1. <u>If no transcripts are ordered,</u> exceptions are due within thirty days from the date on which the Board mails the initial decision to the parties. Both parties' exceptions are due on the same date.
2. <u>If transcripts are ordered by either party,</u> the following procedure shall apply. Upon receipt of all transcripts identified in all designations of record and supplemental designations of record, the Board shall mail notification to the parties stating that the transcripts have been received by the Board. Exceptions are due within thirty days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.

B. Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings shall be filed within ten days of the date on which the exceptions were filed with the Board. No other pleadings will be considered except for good cause shown.

C. The Board may in its sole discretion grant an extension of time to file exceptions or responsive pleadings, or may delegate the discretion to grant such an extension of time to the Board's designee.

6.5 Request for oral argument

A. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings.

B. It is within the sole discretion of the Board to grant or deny a request for oral argument. If oral argument is granted, both parties shall have the opportunity to participate.

C. If a request for oral argument is granted, each side shall be permitted ten minutes of oral argument unless such time is extended by the Board or its designee.

CHAPTER 7: DECLARATORY ORDERS PURSUANT TO SECTION 24-4-105(11), C.R.S.

7.1 Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the Petitioner of any statutory provisions or of any rule or order of the Board.

7.2 The Board will determine, in its discretion and without prior notice to Petitioner, whether to entertain any such petition. If the Board decides that it will not entertain such a petition, the Board shall promptly notify the Petitioner in writing of its decision and the reasons for that decision. A copy of the order shall be provided to the Petitioner.

7.3 In determining whether to entertain a petition filed pursuant to this rule, the Board may consider the following matters, among others:

A. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to Petitioner of any statutory provision or rule or order of the Board.

B. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the Petitioners.

C. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court but not involving any Petitioner.

D. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

E. Whether the Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, C.R.C.P., which will terminate the controversy or remove any uncertainty as to the applicability to the Petitioner of the statute, rule or order in question.

7.4 Any petition filed pursuant to this rule shall set forth the following:

A. The name and address of the Petitioner and whether the Petitioner holds a license or registration issued pursuant to Section 12-61-901 et. Seq. C.R.S. (as amended).

B. The statute, rule or order to which the petition relates.

C. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner.

D. A concise statement of the legal authorities if any, and such other reasons upon which the Petitioner relies.

E. A concise statement of the declaratory order sought by the Petitioner.

7.5 If the Board determines that it will rule on the petition, the following procedures shall apply:

A. The Board may rule upon the petition without a hearing. In such case:

1. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.
2. The Board may request the Petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
3. Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
4. The Board may order the Petitioner to file a written brief, memorandum or statement of position based on the facts set forth in the petition and any amendment to the petition.
5. The Board may take administrative notice of facts pursuant to The Administrative Procedures Act, Section 24-4-105(8), C.R.S. (as amended), and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
6. If the Board rules upon the petition without hearing, it shall promptly notify the Petitioner in writing of its decision.

B. The Board may, in its discretion, set the petition for hearing, upon due notice to Petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the Petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire and whether the hearing will be evidentiary or non-evidentiary in nature. For the purpose of such a hearing, to the extent necessary, the Petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner and any other facts the Petitioner desires the Board to consider.

7.6 The parties to any proceeding pursuant to this rule shall be the Board and the Petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene shall be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by section 7.4 of this rule. Any reference to a "Petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

7.7 Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to Section 24-4-106, C.R.S. (as amended).

* ***CHAPTER 8: NATIONAL MORTGAGE LICENSING SYSTEM AND REGISTRY ("NMLS")***

* 8.1 A mortgage loan originator may challenge information entered into the NMLS by the Division. Such challenge must be in writing and must set forth the specific information being challenge and include supporting evidence. The grounds for a challenge shall be limited to the factual accuracy of the information pertaining to the mortgage loan originator's own license record.

* 8.2 A challenge submitted to appeal the underlying grounds for a disciplinary action will not be considered by the Director.

* 8.3 The Director, or an authorized representative of the Director, will review all information submitted by the mortgage loan originator and will determine the merits of the challenge. If the Director, or the Director's authorized representative, determines that the information submitted to the NMLS by the Division is factually incorrect, the Division will promptly submit the correct information to the NMLS.

* 8.4 A mortgage loan originator may appeal the Director's, or the Director's authorized representative's, decision regarding the challenge to the Board of Mortgage Loan Originators within 30 days of the decision being rendered. The decision of the Board regarding a NMLS

challenge is subject to judicial review by the court of appeals by appropriate proceedings under Section 24-4-106(11), C.R.S.

* 8.5 Call Reports

* All mortgage companies must submit the NMLS Mortgage Call Report on a calendar quarterly basis, as set forth below, and shall contain such information as the NMLS may require.

* A. A mortgage company must identify the applicable NMLS Mortgage Call Report. This includes, but is not limited to, the standard section and the expanded section of the NMLS Mortgage Call Report. The mortgage company must identify and complete the report on behalf of all employed mortgage loan originators or other mortgage loan originators that operate through their company.

* B. The quarterly report is due within 45 days of the end of the quarter and the financial condition report of the standard section is due annually 90 days from the company's fiscal year end.

* C. Mortgage companies must comply with any rules, policies and procedures relating to the submission of a Mortgage Call Report that are prescribed by the NMLS.

* 8.6 Failure to properly submit a NMLS Mortgage Call report in a timely manner prescribed by the NMLS shall prevent the mortgage company from renewing their NMLS registration.

* ***1-1-2 [REPEALED effective 1/14/2014]***

* ***1-1-4 [REPEALED effective 1/14/2014]***

* ***1-1-5 [REPEALED effective 1/14/2014]***

* ***1-2-2 [REPEALED effective 1/14/2014]***

* ***1-3-1 [REPEALED effective 1/14/2014]***

* ***1-4-1 [REPEALED effective 1/14/2014]***

* ***1-5-1 [REPEALED effective 1/14/2014]***

* ***3-1-4 [REPEALED effective 1/10/2014]***

VI. Position Statements

Position Statement – MB 1.1 [Repealed]

Position Statement – MB 1.2 [Repealed]

* **Position Statement – MLO 1.3 – Board Position on Individuals Not Required to be Licensed – Supervisors and Support Staff (revised 09/18/2013) – effective 11/14/2013**

The Board of Mortgage Loan Originators ("Board") issues this position statement to provide clarification to the mortgage industry regarding when supervisors and support staff of mortgage loan originators are not required to be licensed.

Supervision of Licensed Individuals:

Persons who directly or indirectly supervise mortgage loan originators, defined as those individuals who either take residential loan applications or offer or negotiate terms of a residential mortgage loan, are not required to hold a license if their duties are purely administrative in nature. Administrative tasks include, but are not limited to: setting goals and objectives, overseeing production, delegating duties, and evaluating performance, as long as performance of these tasks does not amount to the taking of a residential mortgage loan application or offering or negotiating the terms of a residential mortgage loan.

Support Staff:

Individuals who perform purely clerical and support tasks under the direction and supervision of a state licensed individual do not fall within the definitions of "originate a mortgage" or "mortgage loan originator." Clerical or support tasks include, but are not limited to:

a. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; and
b. The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan.

However, at any time, if the unlicensed persons activities fall outside of administrative, clerical or support in nature and within the definitions of "originate a mortgage" as defined in section 12-61-902(7), C.R.S., or "mortgage loan originator" as defined in section 12-61-902(6)(a), C.R.S., they are required to be licensed as a Colorado mortgage loan originator.

* Position Statement – MLO 1.4 – Mortgage Loan Originator and Mortgage Company Exemptions (revised 09/18/2013)

The Board of Mortgage Loan Originators has reissued this position statement to provide guidance for all individuals and entities identified under the exemption portion of the Mortgage Loan Originator Licensing and Mortgage Company Registration Act (the "Act"); specifically section 12-61-904, C.R.S., and federal regulations regarding seller financing.

State specific exemption for real estate brokers:

The Colorado General Assembly passed two bills in 2013 concerning the regulation of mortgage loan originators with new language affecting the exemption portion of the Act. Section 12-61-904, C.R.S., defines all individuals and entities that are exempt or otherwise excused from complying with licensure and registration standards outlined by the Act.

The first bill, SB 13-118, added exemption language for real estate brokers representing persons providing seller financing for the sale of no more than three residential properties in any twelve month period. Section 12-61-904 (1)(l), C.R.S., now includes as exempt:

> "A person licensed under part 1 of this article who represents a person, estate, or trust providing mortgage financing under paragraph (b) of the subsection (1)."

The Board finds it necessary to clarify in what capacity one is acting when representing a person, estate, or trust that is offering seller financing. The Board has taken the position that "represents" denotes in the capacity of a real estate broker as set forth in section 12-61-101(2)(a), C.R.S. As such, persons licensed under part 1 are limited to the real estate brokerage activities as defined in section 12-61-902(7.7), C.R.S. "Acting in the capacity of a real estate broker" does not include the offering or negotiation of terms and conditions of any proposed financing arrangements with the seller. That activity would fall under the purview of mortgage origination.

Additionally, the sunset bill for the mortgage loan originators program, SB 13-156, deleted subsection (m) of 12-61-911(1), C.R.S., thereby removing any uncertainties as to the plain and straightforward intent to exempt all individuals and entities identified in sections 12-61-904(1)(c) through (k) and (l), C.R.S., from all sections, provisions, and requirements of the Act.

Compliance with federal requirements:

There have been some questions with regard to SB13-118, and how the new exemption created for licensed real estate brokers reconciles with federal licensure requirements. The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act") sets minimum national licensing standards for mortgage loan originators and requires that all mortgage loan originators be registered on the National Mortgage Licensing System and Registry ("NMLS"). The SAFE Act defines "loan originator" as an individual who (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain. This regulation also describes activities in the residential mortgage process that are excluded from the definition of "loan originator." Activities that are excluded include: those that pertain to administrative or clerical tasks; real estate brokerage activities by individuals licensed or registered by a state to undertake real estate brokerage activities, unless that person is compensated by a loan originator, loan processing or underwriting under the direction and supervision of a state-licensed loan originator or registered loan originator; and those individuals solely involved in extensions of credit relating to timeshare plans. Care should be taken by anyone licensed under part 1 as not to perform any acts that may require licensure under federal licensing requirements.

* Position Statement – MLO 1.5 – Loan Modifications

Short sale – A short sale is the sale of a real property for less than the mortgage loan balance. In the settlement of the short sale transaction the existing mortgage is extinguished. Any deficiency created from the settlement of the transaction may be transformed into a promissory note, charged off, forgiven, or pursued as a judgment against the previous owner.

Loan modification – A Loan Modification is a permanent change in one or more of the terms of a mortgagor's existing loan, allows the loan to be reinstated, and often results in a more affordable mortgage payment. The borrower retains ownership of the real property and the mortgage note and deed of trust remain intact.

1. Section 12-61-902(7), C.R.S. defines originate a mortgage as to act directly or indirectly as a mortgage loan originator. It is the Board's position that individuals offering or negotiating loan modifications are, at a minimum, indirectly acting as mortgage loan originators. Pursuant to section 12-61-903(1)(a), Colorado Revised Statutes, all persons who meet the definition of originate a mortgage are required to be licensed. As a result, persons who directly or indirectly negotiate, originate or offer or attempt to negotiate or originate loan modifications are currently required to be licensed as mortgage loan originators and are required to be licensed as state-licensed loan originators by July 31, 2010.
2. In addition to the licensing requirements, all individuals who directly or indirectly negotiate loan modifications for borrowers are required to comply with all other provisions of Colorado mortgage loan originator licensing law and Board rules. This includes, but is not limited to:
   a. A duty of good faith and fair dealing in all communications and transactions with borrowers;
   b. A prohibition against making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;
   c. A prohibition against soliciting or entering into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through the

mortgage loan originator's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower; and

d. If the mortgage loan originator has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage loan originator, and the borrower fails to close on the loan through no fault of the mortgage loan originator, the mortgage loan originator may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act", 15 U.S.C. section 1601, and Regulation Z, 12 CFR 226, as amended.

3. The Board's position on this matter shall not be construed to include employees of non-profit HUD-approved housing counseling agencies as long as such individuals receive neither compensation nor anything of value for participation in loan modifications.
4. The Board's position on this matter shall not be construed to include employees of mortgage loan servicing companies operating on behalf of mortgage lenders.
5. Licensed Real Estate Brokers engaged in licensed activities when performing services within the defined short sale transactions do not need to maintain a license as a mortgage loan originator. However, loan modification services as defined in this position statement are considered outside the scope of real estate brokerage activities and as such, separate licensure as a mortgage loan originator is required.
6. As set forth in section 12-61-904(1)(d), C.R.S., 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 or loan modifications is not required to be licensed as a mortgage loan originator.
7. Noncompliance may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
   a. Imposition of fines;
   b. Restitution for any financial loss;
   c. Refusal to renew a license;
   d. Refusal to grant a license; and
   e. Revocation.

Position Statement – MLO 1.7 – Financial Responsibility Requirement

The Board's position on this matter is there is a presumption of compliance with the financial responsibility requirement in section 12-61-905(1)(j), C.R.S. for individuals required to be licensed as state-licensed loan originators who have complied with the errors and omissions insurance requirements defined in section 12-61-903.5, C.R.S. and any Director rule that directly or indirectly addresses errors and omissions insurance requirements and who have complied with the surety bond requirements defined in sections 12-61-903(6) and 12-61-907, C.R.S. and any Board rule that directly or indirectly addresses surety bond requirements.

Position Statement – MLO 1.8 – Real Estate Brokerage Activity

The Board is aware that pursuant to the real estate brokers licensing act, specifically § 12-61-801, C.R.S. *et seq*., licensed Colorado real estate brokers are required to fulfill specific duties and obligations. Many of the duties prescribed by the act address financial matters involved in the contract for a real property transaction. Whether acting as a single agent or a transaction broker, a real estate broker must exercise reasonable skill and care, including but not limited to: 1) accounting for all money and property received in a timely manner; 2) keeping the parties fully informed of the

transaction; 3) assisting the parties in complying with the terms and conditions of any contract including closing the transaction; and 4) making disclosures regarding adverse material facts pertaining to a principal's financial ability to perform the terms of the transaction and the buyer's intent to occupy the property as a principal residence. Without the informed consent of all parties, a transaction broker is prohibited from disclosing that a seller or buyer will agree to financing terms other than those offered. A single agent is prohibited from disclosing whether his or her client(s) will agree to financing terms other than those offered, unless the client consents. The Board is also cognizant that real estate brokers advise on fees relating to homeowner's associations, special assessments, appraisals, surveys, inspections, property insurance, and taxes.

Pursuant to § 12-61-902(7.7)(c), C.R.S., the aforementioned activities could be construed as requiring a mortgage loan originator's license since they involve "matters related to financing for the transaction" at the time of contract negotiation. However, the Board has determined these activities are exempt from the mortgage loan originator's licensing act. Specifically, § 12-61-902(6)(a), C.R.S. defines a mortgage loan originator as an individual who "takes a residential loan application" or "offers or negotiates terms of a residential mortgage loan." Real estate brokers engaging in these activities are required to be licensed as a mortgage loan originator.

Position Statement – MLO 1.9 – Mortgage Company Definition Applicability

The Board of mortgage loan originators views the definition of a mortgage company, pursuant to their interpretation of Colorado law, to exclude the following entities:

1. Persons, other than an individual, who meet all of the following requirements:
    a. Funds a residential mortgage loan when the residential mortgage loan application was taken by a licensed or exempt person;
    b. Does not take residential mortgage loan applications or does not offer or negotiate terms of a residential mortgage loan;
    c. Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and
    d. Does not participate in the offering or 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 licensed person;
2. Private mortgage insurance companies that provide contract underwriting services to the lending community; or
3. Lead generating companies that do not, through employees or other individuals, take residential mortgage loan applications or offer or negotiate terms of a residential mortgage loan to prospective borrowers.

The types of entities described in this position statement are determined to be excluded from the definition of a mortgage company and, therefore, are not required to register as Mortgage Companies with the Colorado Board of Mortgage Loan Originators.