

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
REAL ESTATE COMMISSION
4 CCR 725-1

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
August 5, 2019

RULE E. SEPARATE ACCOUNTS-RECORDS-ACCOUNTINGS-INVESTIGATIONS

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 Real Estate Commission (the "Commission") to promulgate rules, or to amend, repeal, or repeal and re-enact the present rules of the Commission.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Part 1 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive pursuant to section 24-4-103.3., C.R.S. (SB14-063) and to promulgate necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

SPECIFIC PURPOSE OF RULEMAKING

The specific purpose of this rulemaking is to repeal existing rules with respect to the requirements regarding separate accounts, records, accounting, and investigations for real estate brokers. The Division of Real Estate conducted a review of all of its rules relating to the real estate practice act to assess the continuing need for and the appropriateness and cost-effectiveness of its rules to determine if they should be continued in their current form, modified, or repealed. After consultation with stakeholders, the proposed rules have been re-organized, re-indexed, and correctly categorized. As a result, the current rules are being repealed and re-established in a chapter format.

PROPOSED NEW, AMENDED AND REPEALED RULES

Deleted material shown ~~struck through~~; new material is indicated by underline. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Commission at www.dora.colorado.gov/dre.

~~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-1(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-1 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-1 (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-1(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. — 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. — 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. 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) — Names~~

- ~~1. — Pursuant to C.R.S. §12-61-103(10), no broker shall be licensed to conduct real estate brokerage services under more than one brokerage firm, and no broker or brokerage firm shall conduct or promote a real estate brokerage business except in the name under which that broker or brokerage firm is licensed. However, a brokerage firm may use a trade name in addition to or instead of the brokerage firm's legal name with the permission of the owner of such trade name. The trade name must be filed with the Commission.~~
- ~~2. — No broker shall advertise so as to mislead the public concerning the identity of the broker or the broker's brokerage firm.~~
- ~~3. — All advertising must be done clearly and conspicuously in the name of the broker's brokerage firm. A broker who advertises property owned by the broker which is not listed for sale or lease with the broker's brokerage firm, is exempt from advertising the broker's property in the broker's brokerage firm's name.~~
- ~~4. — A brokerage firm may use a trademark in conjunction with the brokerage firm's legal name or trade name with permission of the owner of such trademark.~~
- ~~5. — A brokerage firm that uses a trade name or trademark owned by a third party is required to use the following legend, which must appear in a clear and conspicuous manner so as to attract the attention of the public:~~

~~“Each (insert general trade name) brokerage business is independently owned and operated.”~~

~~Upon written request, this legend may be modified with consent of the Commission.~~

- ~~6. No brokerage firm shall use more than one trade name, however upon written request and with the consent of the Commission, a brokerage firm may use more than one trademark. Use of the trademark(s) is only acceptable if the brokerage firm has obtained permission of the registrant of such trademark.~~
- ~~7. No broker or brokerage firm will use a professional designation in advertising unless the broker or brokerage firm is in good standing and the designation is easily verifiable by the public and the Commission. A broker or brokerage firm that advertises an award, membership or achievement must be able to provide verification of the validity of such claims.~~

~~(b) Teams~~

- ~~1. Brokers who form a team shall not advertise in a manner that misleads the public as to the identity of the team's brokerage firm. Teams are prohibited from using the following terms in the team's name:
 - ~~(i) Realty,~~
 - ~~(ii) Real estate,~~
 - ~~(iii) Realtors,~~
 - ~~(iv) Company,~~
 - ~~(v) Corporation,~~
 - ~~(vi) CORP.,~~
 - ~~(vii) INC.,~~
 - ~~(viii) LLC,~~
 - ~~(ix) LP or LLP~~
 - ~~(x) Or any other term that would imply a separate entity from the brokerage firm with which the team brokers are licensed.~~~~
- ~~2. All team advertising must include the legal name or trade name of the brokerage firm.~~
- ~~3. If requested by a consumer, the Commission, another brokerage firm or a broker, the brokerage firm will provide the names of the brokers that belong to any team advertising as being licensed with the brokerage firm.~~
- ~~4. Brokers may not allow the use of the team name to other brokers outside the team's brokerage firm.~~

~~(c) Internet~~

- ~~1. The broker is responsible for ensuring that all advertising is accurate and complies with copyright laws.~~
- ~~2. When a broker owns a website or controls its content, every viewable page must include the broker's name, or if applicable the team name, and the broker's brokerage firm name. Any expired listings must be removed from the~~

~~broker's website within three days of the listing expiring.~~

- ~~3. If a broker authorizes a third party to advertise on behalf of the broker, the broker is responsible for ensuring that the information provided to such third party is accurate. The broker must submit a written request to the third party to have an expired listing removed from the website within three days of the listing expiring.~~
- ~~4. A broker, who communicates through email, chat, instant messages, newsgroups, discussion lists, bulletin boards, blogs or other similar means for purposes of advertising the broker's real estate brokerage services must use the broker's name, or if applicable the team name, and the name of the broker's brokerage firm. However, once a broker has disclosed the broker's name and the broker's brokerage firm to a specific client or customer, the broker is not required to continue to make the same disclosure to the specific client or customer.~~
- ~~5. When it is not reasonable for a broker to disclose the broker's name, or if applicable the team name, and brokerage firm name in electronic advertising because space is limited (i.e. Twitter, Facebook, Youtube, banner advertisements, etc.), the broker will disclose clearly and conspicuously on the broker's webpage to which the advertising links, within the first click of the mouse.~~

~~(d) Sales Data~~

- ~~1. General advertising which recaps sales activity over a period of time in a given subdivision or geographical area must:
 - ~~(i) Cite the source of the data;~~
 - ~~(ii) Include a disclaimer that all reported sales were not necessarily listed or sold by the broker; and~~
 - ~~(iii) Are intended only to show trends in the area or shall separately identify the broker's own sales activity.~~~~

~~E-9. Repealed effective 1-1-97~~

~~E-10. 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. When a licensee secures a written agreement to perform activities requiring a license, a definite date for termination shall be included therein.~~

~~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.~~

~~E-13. 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.—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.—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.—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.—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.—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.—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.—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 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.— 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.— 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. 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. 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.—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.—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.—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. — 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.

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 suspended, 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 and pocket card 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. It is the responsibility of the employing broker to ensure that another broker is designated to perform the duties requiring a license in all pending transactions, or to release the affected parties from any listing contract(s) with the real estate brokerage.~~

~~(5) If an independent broker:~~

~~a. 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.~~

~~b. Release the affected parties from any active listing contract(s) with the broker.~~

~~c. Instruct the affected parties to seek guidance from a licensed attorney or an actively licensed real estate broker regarding any pending transactions.~~

~~d. The broker is responsible for accounting for all funds and making all final disbursements. The broker is responsible for maintaining all records for four years.~~

~~(6) If an employing broker:~~

~~a. The broker is personally responsible for the handling of any and all earnest-~~

~~money deposits, escrow or trust funds received or disbursed by the brokerage. The broker must account for all entrusted funds. A broker who will no longer be responsible for the licensed activities of the brokerage is responsible for returning all escrow records to the licensed brokerage and transferring all entrusted funds to the new employing broker.~~

- ~~b. The licensed brokerage must designate a qualified, active broker, who is approved by the Commission, to be responsible for the management and supervision of the licensed actions of the brokerage and all licensees shown in the Commission's records as being in the employ of the brokerage. Pursuant to 12-61-103(7)(c), C.R.S., the brokerage may also seek a temporary license to prevent hardship.~~
- ~~c. If the brokerage is unable to designate a qualified, active broker or is not granted a temporary license, the license of the brokerage will be placed on inactive status and all activities requiring a real estate broker's license must immediately cease.~~
- ~~d. An inactive brokerage will have seven (7) days to notify all owners, buyers and tenants of the impact the license status change will have on the employed licensees and all pending transactions. The broker is responsible for accounting for all funds, returning all escrow records to the licensed brokerage and making all final disbursements within thirty (30) days of the change in license status.~~
- ~~e. 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 making all final disbursements within 30 days of the license status change. The employing broker is responsible for maintaining all records for four years.~~

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

~~E-45. 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-47. Competency~~

~~On every occasion of engaging in the practice of real estate brokerage, a broker must determine whether he or she possesses the necessary experience, training, and knowledge to provide brokerage services and maintain compliance with the applicable federal, state and local laws, rules, regulations and ordinances. If the broker does not have the necessary experience, training, and knowledge, the broker must: decline to provide brokerage services; or obtain the necessary experience, training and knowledge; or obtain the assistance of their supervising broker or legal counsel, or co-list with another licensed broker who does have the necessary experience, training, and knowledge.~~

~~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.~~

(Repealed and re-established in 4 CCR 725-1, Chapters 1-9 effective January 01, 2020)

A hearing on the above subject matter will be held on Monday, August 5, 2019 at the Colorado Division of Real Estate, 1560 Broadway, Suite 110-D, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.