

Pre-License Workbook

# Colorado Practical Applications



**Van Education Center**

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## *Colorado Practical Applications - Pre-License Workbook*

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## Unit 2: Residential Competency

Colorado is a national leader in the creation of real estate brokerage laws. For many years, the common law practice of agency guided relationships between the broker and the seller, landlord, buyer or tenant. Effective January 1, 1994, the “Brokerage Relationships in Real Estate Act” significantly changed Colorado license law by establishing two different types of working relationships between a broker and a party: single agency and transaction-brokerage. This legislation codified the duties and obligations of a real estate broker.

### Learning Objectives

In this unit, students will engage with ideas and concepts that are designed to help them formulate a career strategy for becoming a competent residential real estate professional. We will present topics that will allow a student completing this unit to be able to

- Identify brokerage relationships;
- Review specialties and competency requirements;
- List third party providers; and
- Create compliant broker price opinions (BPOs) and comparable market analyses (CMAs).

### Broker Relationships

There are several types of brokerage relationships in which Colorado licensees may participate. The following excerpt from the *Colorado Real Estate Manual* highlights frequently-tested information:

#### One-Person Firm

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

## Multiple-Person Firm

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

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

## Supervising

Commission Rule E-45 states that a designated broker shall be permitted to reveal to a supervising broker, and a supervising broker shall be permitted to receive, confidential information as authorized by the informed consent of the party the designated broker is assisting or working with, without changing or extending the designated brokerage relationship beyond the designated broker.

A supervising broker is an experienced broker selected by the employing broker and authorized by commission Rule E-31 to perform some of the responsibilities of the employing broker. All of the standard commission-approved employment contracts listed above contain a provision granting the party’s consent to the designated broker’s disclosure of confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of the party, or use such information to the detriment of the party.

## Not Dual

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

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

## Transaction-Brokerage

Transaction-brokerage was created as a new, non-agency relationship. Under Colorado law, a broker is presumed to be a transaction-broker unless a single agency relationship is created by a written agreement between the broker and the party. A transaction-broker means a broker who assists one or more parties throughout a contemplated real estate transaction with communication, interposition, advisement, negotiation, clarification of 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. § 12-61-807, C.R.S. defines the duties and obligations of a transaction-broker engaged by a party. All of these duties and obligations are summarized in the “Uniform Duties” section below.

12-61-804, C.R.S. defines the duties and obligations of the single agent engaged by a seller or landlord, and 12-61-805, C.R.S. defines the duties and obligations of a single agent engaged by a buyer or tenant.

## Uniform Duties

The following excerpt from the *Colorado Real Estate Manual* highlights frequently-tested information:

In Colorado, a broker must be either an agent or a transaction-broker. If a broker is an agent, there must be a written agreement between the broker and the party. A broker may be a transaction-broker by either entering into a written agreement with the party or through disclosure only. If a broker is acting either as an agent or as a transaction-broker in Colorado, there are seventeen duties that the broker is responsible to perform. Since all of these duties are the same for agency and transaction-brokerage, they are called “uniform duties.” If the broker and the party determine that the broker should be an agent, then the broker must agree to perform the three “additional duties” shown in “C” or “E” below.

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

1. Broker shall exercise reasonable skill and care for seller or landlord, including, but not limited to the following:
  - a. Performing the terms of any written or oral agreement with seller or landlord;
  - b. Presenting all offers to and from seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or a lease or letter of intent to lease;
  - c. Disclosing to seller or landlord adverse material facts actually known by broker;
  - d. Advising seller or landlord regarding the transaction and to obtain expert advice as to material matters about which broker knows but the specifics of which are beyond the expertise of broker;
  - e. Accounting in a timely manner for all money and property received; and
  - f. Keeping seller or landlord fully informed regarding the transaction.
2. Broker shall not disclose the following information without the informed consent of seller or landlord:
  - a. That seller or landlord is willing to accept less than the asking price for the property or asking lease rate for the premises;
  - b. What the motivating factors are for seller or landlord to sell the property or lease the premises;
  - c. That seller or landlord will agree to financing or lease terms other than those offered;
  - d. Any material information about seller or landlord unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or
  - e. Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the property or premises.
3. Seller or landlord consents to broker's disclosure of seller's or landlord's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of seller or landlord, or use such information to the detriment of seller or landlord.
4. Brokerage firm may have agreements with other sellers to market and sell their property. Broker may show alternative properties not owned by seller or landlord to other prospective buyers or tenants and list competing properties for sale or lease.
5. Broker shall not be obligated to seek additional offers to purchase or lease the property or premises while the property or premises is subject to a contract for sale or a lease or letter of intent to lease.



6. Broker has no duty to conduct an independent inspection of the property or premises for the benefit of a buyer or tenant and has no duty to independently verify the accuracy or completeness of statements made by seller or landlord or independent inspectors. Broker has no duty to conduct an independent investigation of a buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by a buyer or tenant.
7. Seller or landlord shall not be liable for the acts of broker unless such acts are approved, directed or ratified by the seller or landlord.

**C. Seller or Landlord Agency – Additional Duties** If broker is a limited agent of seller or landlord (seller's or landlord's agent), broker has the following additional duties:

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

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

1. Broker shall exercise reasonable skill and care for buyer or tenant, including, but not limited to the following:
  - a. Performing the terms of any written or oral agreement with buyer or tenant;
  - b. Presenting all offers to and from buyer or tenant in a timely manner regardless of whether buyer or tenant is already a party to a contract to purchase the property or a written agreement to lease the premises;
  - c. Disclosing to buyer or tenant adverse material facts actually known by broker;
  - d. Advising buyer or tenant regarding the transaction and to obtain expert advice as to material matters about which broker knows but the specifics of which are beyond the expertise of broker;
  - e. Accounting in a timely manner for all money and property received; and
  - f. Keeping buyer or tenant fully informed regarding the transaction.

2. Broker shall not disclose the following information without the informed consent of buyer or tenant:
  - a. That buyer or tenant is willing to pay more than the purchase price offered for the property or lease rate offered for premises;
  - b. What buyer's or tenant's motivating factors are;
  - c. That buyer or tenant will agree to financing or lease terms other than those offered;
  - d. Any material information about buyer or tenant unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or
  - e. Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the property or premises.
3. Buyer or tenant consents to broker's disclosure of buyer's or tenant's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of buyer or tenant, or use such information to the detriment of buyer or tenant.
4. Broker may show properties in which the buyer or tenant is interested to other prospective buyers or tenants without breaching any duty or obligation to such buyer or tenant. Broker shall not be prohibited from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.
5. Broker shall not be obligated to seek other properties while buyer or tenant is already a party to a contract to purchase property or to a lease or letter of intent to lease.
6. Broker has no duty to conduct an independent inspection of the property for the benefit of buyer or tenant and has no duty to independently verify the accuracy or completeness of statements made by a seller or landlord or independent inspectors. Broker has no duty to conduct an independent investigation of buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by buyer or tenant.
7. Broker shall disclose to any prospective seller or landlord all adverse material facts actually known by broker, including but not limited to adverse material facts concerning buyer's or tenant's financial ability to perform the terms of the transaction and whether buyer intends to occupy the property as a principal residence.
8. Buyer or tenant shall not be liable for the acts of broker unless such acts are approved, directed or ratified by the buyer or tenant.

**E. Buyer or Tenant Agency – Additional Duties** If broker is a limited agent of buyer or tenant (buyer or tenant’s agent), broker has the following additional duties:

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

## Market Analyses

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 § 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.

## Vocabulary Review

- Agency
- Confidentiality
- Lead-Based Paint Disclosure
- Referral Fee
- Transaction-Broker

1. When talking to a potential buyer, the disclosure of whom the broker works for and/or how the broker will work must be made when the broker elicits or accepts \_\_\_\_\_ information

2. A \_\_\_\_\_ must be given to a buyer of any property with a building permit issued before Jan. 1, 1978.
3. The fiduciary duty of \_\_\_\_\_ between the licensee and the customer continues to exist beyond the time that the licensee has completed his or her performance or the agreed-upon term of service expires.
4. When working with investors in the purchase and sale of property, if you represent an investor on more than one transaction, you must work as an agent, not a \_\_\_\_\_.
5. When referring business to a third-party provider, the broker may not be paid a \_\_\_\_\_.

## Practice Questions

1. The brokerage relationship disclosures are \_\_\_\_\_.
  - a. Required by DORA
  - b. Contracts
  - c. Always signed
  - d. Not mandatory
2. If one is required, the \_\_\_\_\_ must sign the lead base paint disclosure.
  - a. listing broker
  - b. selling broker
  - c. transaction broker
  - d. all parties
3. An employing broker may \_\_\_\_\_.
  - a. Allow someone else to run a brokerage using the broker's name and license
  - b. Be held liable for the conduct of the designated broker in a real estate transaction
  - c. Not delegate another broker to supervise
  - d. Not place another broker in charge of a branch office
4. The agency relationship is between \_\_\_\_\_.
  - a. The designated broker and the client
  - b. The managing broker and the client
  - c. The brokerage firm and the client
  - d. The listing broker and the buyer
5. A CMA is used to \_\_\_\_\_.
  - a. Establish a market price for the property
  - b. Substitute for an appraisal
  - c. Give the seller the exact selling price
  - d. Give the buyer the exact purchase price