

# 1998 SUNSET REVIEW

## ***Colorado Division of Real Estate and the Colorado Real Estate Commission***

Colorado Department of Regulatory Agencies



Office of Policy and Research

October 15, 1998

Members of the Colorado General Assembly  
c/o The Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Division of Real Estate and the Colorado Real Estate Commission. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 1999 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes, which states in part:

*"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...*

*The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination . . ."*

The report discusses the question of whether there is a need for the regulation provided under Parts 1, 3 and 4 of Article 61 of Title 12, C.R.S. The report also discusses the effectiveness of the division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia  
Executive Director

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## **Executive Summary**

The Department of Regulatory Agencies has concluded its Sunset Review of the Colorado Real Estate Commission and the Division of Real Estate. The purpose of this review is to determine whether the Division and Commission should be continued for the protection of the public and to evaluate the performance of the Division and Commission. During this review, the Division and Commission must demonstrate that there is still a need for the regulation and that it is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the Legislative Committee of Reference of the Colorado General Assembly.

The Sunset Review process includes an analysis of the statute, interviews with state authorities, staff, industry representatives and interested parties. DORA makes every effort to elicit information and comments from all interested parties.

The fundamental purpose of the Division is to establish and maintain a safe, stable environment in that the general public may buy, sell and lease real property in Colorado. The Division accomplishes this through qualifying and licensing real estate and appraiser professionals, by careful scrutiny of time share and undeveloped, raw land subdivision offerings, and through an enforcement program that is responsive to the needs of the citizens. Additional protection is offered to the public through the Real Estate Recovery Fund and an affordable program of errors and omissions professional liability insurance for all real estate licensees. The Division interacts with numerous state, federal and local governmental and private agencies in accomplishing these tasks. Additionally, the Division serves as a statewide resource for the general public, the General Assembly and other governmental bodies regarding real property transactions.

The Division is responsible for the following program areas:

- Brokers and Salespersons: §12-61-101, CRS
- Subdivision Developers: §12-61-401, CRS
- Appraisers: §12-61-701, CRS
- Recovery Fund Act: §12-61-301, CRS
- Errors and Omissions Insurance: §12-61-103.6, CRS

This sunset review recommends continuing the Division of Real Estate and the Real Estate Commission until 2009. Also, this report contains a recommendation to create a new licensing scheme for persons who sell time share properties exclusively. Presently, Colorado law requires such salespersons to hold a full real estate broker license. Adoption of the sunset recommendation would serve to lessen the present level of regulation.

Colorado recently imposed a requirement that licensees obtain errors and omissions insurance. This requirement was implemented January 1, 1998. Therefore a comprehensive review was not possible. As a result, this review recommends the General Assembly establish a new sunset date of 2001 for the errors and omissions requirement. Initial data covers only a six-month period and is inadequate to measure the effectiveness of the program. The benefit of this requirement should be assessed again when more data is available.

Further, this report recommends that the Real Estate Commission be given the authority to compile and publish passing rates for real estate schools. Approximately 50% of applicants for a Colorado real estate license fail the examination. Interviews, conducted as part of this review, revealed a perception that some schools' students pass the examination at a higher rate than others do. If this information were available to consumers (prospective students) it would help them choose a school which could impact the state passing rate.

Finally, the report makes several recommendations to improve the regulatory structure and enhance consumer protection: increase the maximum amount a consumer can claim from the recovery fund, reduce the restriction on brokers licensed in other states who wish to practice in Colorado, and require a period of time to lapse before a licensee whose license has been revoked is allowed to re-apply for a Colorado license.

This sunset review finds the Colorado Division of Real Estate and the Real Estate Commission to be noteworthy in effectiveness and protection of the public. In particular, the Commission and Division sought the single license regulatory scheme now in place in this state, developed a methodology for prioritization of complaints so that more serious complaints are investigated quickly, successfully developed and utilized an alternative dispute resolution methodology and successfully implemented the errors and omissions insurance requirement which went into effect January 1, 1998.

The Department of Regulatory Agencies makes the following recommendations:

- Recommendation 1:** *The General Assembly should continue the Colorado Real Estate Commission and the Division of Real Estate with a sunset review date of 2009.*..... 31
- Recommendation 2:** *The Division of Real Estate should pursue transfer of the authority to regulate real estate schools from the Division of Higher Education to the Division of Real Estate.*..... 31
- Recommendation 3:** *The General Assembly should increase the Real Estate Recovery Fund claim ceiling.*..... 32
- Recommendation 4:** *The General Assembly should amend §12-61-103, C.R.S., to require a certain period of time before a revoked licensee may apply.*..... 32
- Recommendation 5:** *The Division of Real Estate should be given the authority to collect and publish school passing rates.*..... 33
- Recommendation 6:** *The General Assembly should create a new licensing category for time share salespersons.*..... 33
- Recommendation 7:** *The General Assembly should amend §12-61-103(6)(b), C.R.S., to lessen the restrictions on licensed brokers from other states being granted a Colorado license.*..... 35
- Recommendation 8:** *The General Assembly should set a sunset date of 2001 for Colorado's errors and omissions insurance requirement.*..... 35

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## ***Background and History of Regulation***

### ***The Sunset Process***

The Colorado Division of Real Estate (Division) and the Real Estate Commission (Commission) shall be terminated on July 1, 1999, unless continued by the General Assembly (§24-34-104(28)(a)(2)), C.R.S. During the year prior to this date, it is the duty of the Department of Regulatory Agencies to conduct an analysis and evaluation of the Division and Commission's performance pursuant to §24-34-104(9)(b), C.R.S. During this review, the Division and Commission must demonstrate that there is a need for its continued existence, and that its regulation is the least restrictive regulation consistent with the public interest. The Department's findings and recommendations are submitted to a Legislative Committee of Reference of the General Assembly. The statutory criteria used to guide sunset reviews can be found in Appendix A on page 37.

The sunset review process includes an analysis of the statute and rules, interviews with Commission members, licensees, registrants, staff of the Division, assistant attorneys general, professional association and other industry representatives, and local government representatives. Research of related statutes and procedures in other states is also included.

The Office of Policy and Research (Office) wishes to acknowledge the staff of the Division of Real Estate and the members of the Colorado Real Estate Commission who provided information used in this review. Also, the Association of Real Estate License Law Officials provided data that contributed significantly to the production of this report. Finally, the Office wishes to acknowledge the members of real estate professional associations, licensees and others who provided input for this review.

### ***History***

The real estate industry has been regulated since 1925. The Legislature created the Real Estate Brokers Board in the Office of the Secretary of State. The Board consisted of three members who were appointed by the Governor. In 1963, the agency became known as the Colorado Real Estate Commission. It remained a three member board until 1979 when the Legislature created a five member Commission.

Under the Administrative Organization Act of 1968, the Commission was transferred as a Type I agency to the Department of Regulatory Agencies and placed in the Division of Registrations. In 1979, a Division of Real Estate was created within the Department, and the Commission remains in this Division at the present time.

The Commission had its first audit authority granted in 1963. A recovery fund was established in 1971. Formal education requirements for licensure were established in 1975 and in 1979 the agency became cash funded.

## *Background and History of Regulation*

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In 1963, a subdivision law was passed giving the Commission the authority to regulate subdivision developers who sold, leased or transferred raw land. In 1983, time shares, condominiums and cooperative housing were formally included in the definition of a subdivision, and those engaging in this activity became subdivision developers under the Act.

In 1973, rental location agents became regulated. This law was repealed entirely in 1980, and those in the occupation were required to comply with the broker/salesman licensure law if they solicited a fee or valuable consideration from a prospective tenant for furnishing information on the availability of real property for lease or rent.

Since 1980, the Division has contracted with a private company for test administration. Legislation in 1996 eliminated salesperson licensing, and a new requirement that licensees obtain errors and omissions insurance went into effect January 1, 1998.

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## **Statutory Summary**

### **Real Estate Broker**

#### *Definition*

The statute defines a real estate broker as 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:

1. Selling, exchanging, buying, renting, or leasing real estate, or interest therein, or improvements in real property;
2. Offering to sell, exchange, buy, rent, or lease real estate, or interest therein, or improvements in real property;
3. Selling or offering to sell or exchange an existing lease of real estate, or interest therein, or improvements in real property;
4. Negotiating the purchase, sale, or exchange of real estate, or interest therein, or improvements in real property;
5. Listing, offering, attempting, or agreeing to list real estate, or interest therein, or improvements made on real property for sale, exchange, rent, or lease;
6. Auctioning or offering, attempting, or agreeing to auction real estate, or interest in real estate, or improvements made on real property;
7. Buying, selling, offering to buy or sell, or otherwise dealing in options on real estate, or interest in real estate, or improvements made on real property or acting as an "option dealer". An 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 in real estate with the intent or for the purpose of buying, selling, exchanging, renting, or leasing the real property or interest in real estate to another or others whether or not the option is in that person's or its name and whether or not title to the property passes through the name of the 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;
8. Performing any of the foregoing acts as an employee of, or in behalf of, the owner of real estate, or interest in real estate, or improvements made on real property at a salary or for a fee, commission, or other consideration;



9. 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 in such business when the 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;
10. 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.

### *Licensing*

The Commission licenses individuals, firms, partnerships, limited liability companies, associations, and corporations engaged in the business or capacity of a real estate broker or sales person. Beginning in 1997, Colorado became the first state to move to a single licensing system. Single licensing eliminated the two-tiered system of salespersons and brokers licenses and instituted a broker only licensing system. To be licensed a person must meet educational and experience requirements, must pass an examination, must be truthful, honest and of good moral character, and must demonstrate competency to transact the business of a real estate broker. In judging a person's character, the Commission is governed by the provision of §24-5-202, C.R.S. (§12-61-102, C.R.S.)

To qualify for a license, a broker must be 18 years of age and have either received a degree from an accredited degree-granting college or university with a major course of study in real estate or have completed courses of study approved by the Commission, the State Board of Community Colleges and Occupational Education, or the licensing agency of another state. Approved courses must include:

- 48 hours of classroom instruction or equivalent correspondent hours in real estate law and practice,
- 48 hours of classroom instruction or equivalent correspondent hours in understanding and preparation of Colorado real estate contracts, and
- A total of 72 hours of instruction or equivalent correspondent hours from the following areas of study:
  - A. Trust accounts and record-keeping;
  - B. Real estate closings;
  - C. Current legal issues; and
  - D. Practical applications.

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The examination for licensure is designed to assess the competency of the applicant. The Commission sets the minimum passing score and the times and places where an exam may be taken. The examination includes ethics, reading, spelling, basic mathematics, principles of land economics, appraisal, financing, a knowledge of Colorado statutes and law relating to deeds, trust deeds, mortgages, listing contracts, contracts of sale, bills of sale, leases, agency, brokerage, trust accounts, closings, securities, Commission rules, and the preparation of a real estate closing examination. (§12-61-103(6)(a), C.R.S.)

A broker may not engage in an independent brokerage practice without first having been an actively practicing broker or salesperson for two years. A real estate broker may not employ another broker or sales person until they have completed the 24 hours of instruction or the equivalent in correspondence hours in brokerage administration. The Commission must approve the course. The Commission, as required by statute, has adopted rules that require an employing broker to ensure that a high level of supervision is exercised over these brokers during their two-year time commitment.

The Commission also licenses partnerships, limited liability companies, and corporations if a designated member or director takes and passes the examination. The designee must conduct business only through the partnership, limited liability company, or corporation. Another designee may be picked if the original one is refused a license or leaves the partnership, limited liability company, or corporation. A temporary license to prevent hardship, effective for 90 days, may be issued by the Director until the designee can take the examination. The temporary license may be extended for another 90-day period upon a showing of good cause. The Commission must approve any further temporary licenses.

The designee is personally responsible for handling all earnest money deposits, escrow, or trust funds received or dispersed. In the event of a breach of duty, the aggrieved person has a claim of relief against the designee and also against the partnership, limited liability company, or corporation.

The statute requires every real estate broker to maintain an office in Colorado unless the broker is from out of state and maintains a definite place of business in another state. Nonresidents may be judged under Colorado law and are liable for any action arising out of any court in Colorado. (§12-16-107, C.R.S.)

An attorney may become a broker after passing the real estate examination and completing twelve hours of classroom instruction or equivalent correspondent hours in trust accounts, record keeping and real estate closings.

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### ***Licensing Fees***

Fees are required to be paid to the Commission for:

- A. Each broker's original application and license;
- B. Each 3-year renewal of a broker's license;
- C. Any change of name, address or employing broker requiring a change in Commission records; and
- D. A new application when a broker wishes to become the broker acting for a partnership, limited liability company, or corporation.

### ***Continuing Education***

Since 1994, a licensee applying for renewal must pass the Colorado portion of the real estate examination or complete a minimum of 24 hours credit, 8 hours that must be credits developed by the Commission. These credits must include an update of the current statutes and rules and regulations. Courses must be taken from an accredited Colorado college, university, community college, or private occupational school certified by the state board for community colleges and occupational education. To successfully complete these courses, the licensee must pass a written examination. The Commission sets the passing rate.

The remaining 16 credits must be acquired from educational programs contributing directly to the professional competence of a licensee and may include such topics as real estate law, real estate appraisal, condominiums and cooperatives, water and waste management, and brokerage administration and management. The Commission must approve all topics.

### ***Discipline***

The Commission may admonish, censure, fine, suspend or revoke a licensee and the right of a firm, partnership, limited liability company, association or a corporation to conduct business. If the Commission requests, a broker or salesperson who is party to any law suit must furnish the Commission a copy of the complaint, pleadings and other related filed documents, and any judgment, verdict, finding or sentence made or entered. The Commission, in its discretion, may close cases to public inspection until notice of hearing and charges are served on a licensee or are dismissed.

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The Commission may discipline a licensee on any of the following grounds in §12-61-113, C.R.S.:

1. Knowingly making any misrepresentation or any false or misleading advertising.
2. Making promises that the licensee did not intend to keep which influenced, persuaded, or induced others.
3. Knowingly misrepresenting or making false promises through agents, salespersons, advertising or otherwise.
4. Violating the Colorado Consumer Protection Act.
5. Acting for more than one party in a transaction without the knowledge of all parties.
6. Representing or attempting to represent a real estate broker other than the licensee's employer without the express knowledge and consent of the employer.
7. Failure of a salesperson or broker employee to place any deposit or other money or fund in the custody of the licensed broker employer as soon as practicably possible.
8. Failing to account for, or remit moneys belonging to others within a reasonable time frame and failure to keep records in accordance with Commission rules related to those funds.
9. Converting, diverting, or commingling funds of others with licensees own funds or not maintaining such funds in an escrow or trust account.
10. Failing to provide the purchaser or seller with a closing statement or failing to provide a signed duplicate copy of the listing.
11. Failing to produce or maintain records and documents for seven years subject to inspection by the Commission.
12. Paying a commission or valuable consideration to an unlicensed person performing functions for which a license is required.
13. Disregarding or violating any rule, regulation, or order by the Commission, or provision of part 1 or 8 of the real estate statute.
14. 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 part 4 of article 4 of title 18, C.R.S., or in part 1, 2, 3, or 5 of article 5 of title 18, C.R.S., or any other like crime under Colorado law, federal law, or the laws of other states.
15. Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws.

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16. Failing to immediately notify the Commission in writing of a conviction, plea, or violation.
  17. Demonstrating unworthiness or incompetence to act as a real estate broker or salesperson by conducting business in such a manner as to endanger the interest of the public.
  18. Failure on part of broker to exercise reasonable supervision over the activities of licensed employees.
  19. Fraud, misrepresentation, or deceit in obtaining or attempting to obtain a license.
  20. Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failure to reveal full amount of compensation, commission or profit without revealing such action to his or her principle or employer.
  21. Participating in any agreement with an option to purchase when the licensee is employed to sell, buy, or exchange such real estate without written notification to the principal or the employer and the written consent of the principal or the employer.
  22. Fraud, misrepresentation, deceit, or conversions of trust funds that result in the payment of any claim from the real estate recovery fund.
  23. Any other conduct, whether of the same or a different character than specified in this subsection (1), which constitutes dishonest dealing.
  24. Having had a real estate broker's or salesperson's license or a subdivision developer's license suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the broker, salesperson, or subdivision developer in any other jurisdiction if the broker's, salesperson's, or subdivision developer's action would constitute a violation of the broker statute.
  25. Failing to keep records documenting proof of completion of the continuing education requirements for a period of seven years.
  26. Failing to provide a prospective tenant with a contract or receipt informing the tenant of the regulatory authority of the Commission over rental location agents.

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### **Brokerage Relationships**

In 1993, the General Assembly codified the legal principles relating to broker's duties and obligations to the public (§12-61-801 et. seq. C.R.S.). Prior to this legislation, case law and judicial interpretation guided the legal principles. Codification provided a clearer understanding of the responsibility brokers had to their clients by establishing a uniform set of legal standards. The 1993 legislation created three agency relationships (single agent engaged by seller or landlord, single agent engaged by buyer or tenant, or dual agency) and a non-agency concept (transactional broker).

Prior to the Brokerage Relations Act, there was a presumption in the law that all brokers worked for the seller. Consequently, when an individual began to look for a home to purchase, any broker/agent they approached to show them homes was presumed to work for the seller. This created confusing lines of liability. Since the broker represented the seller, any criticism of the home by the broker to a potential buyer could create potential liability issues.

The new law created a specific buyer agency as well as relieving buyers, sellers, landlords or tenants of liability for acts of a transaction broker. The new law also allowed choices for buyers, sellers, landlords, and tenants as to their legal and working relationship, and required that an agency relationship be entered into voluntarily and knowingly. Finally, the new law required disclosure of the broker's obligations and duties to buyers, sellers, landlords and tenants whether the broker acted as an agent or not.

Under the current statute a broker is considered a transaction broker with no agency liability unless the agency relationship is established in writing. In many cases the broker still works for the seller. This is usually the case when individuals drive by the property and find it advertised for sale and contact the broker.

### **Real Estate Recovery Fund**

The Real Estate Recovery Fund is administered by the Commission to provide monetary assistance to consumers who are victims of certain illegal behavior by licensees, specifically, fraud, willful misrepresentation, or conversion of trust funds. In addition, claims may be made for licensee negligence against licensees who did not carry mandatory errors and omissions insurance.

Licensees who cause payment to be made from the fund automatically have their license revoked upon issuance of a final court order. A person may not be licensed again until the recovery fund is indemnified.

Payment from the fund is limited to a maximum of \$20,000 per transaction and a maximum of \$60,000 per licensee. As a result, depending upon the number of cases filed against a licensee, a consumer's recovery could vary. For example, six claimants could receive a maximum of \$6,000 each. Applications against the same licensee may also be distributed in the ratio that their respective claims bear to the aggregate with the above limitations.

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Application for fund monies must occur in writing within 90 days after commencement of the civil action. Applications after this time are not accepted. This application serves notice to the Commission that there may be a claim for fund monies. Payment of fund monies occurs after there is a court ordered judgment and payment is limited to actual and direct out-of-pocket losses, court costs and reasonable attorneys fees that remain unpaid on the judgment. Attorney's fees may not exceed 25% of the actual and direct out-of-pocket expenses. Additionally, the fund may be used only against judgments of natural persons. No fund payments may be made for pre-judgment interest or losses attributable to pain and suffering or mental anguish.

Upon receiving a final judgment from the court, the applicant must file a verified application with the Commission for an administrative order for payment from the Fund. Commission provides the application.

### **Subdivisions**

Part 4 of the Colorado real estate statute defines the regulation of subdivisions. Under 12-61-101, C.R.S., "developer" is defined as person, individual, corporation, governmental subdivision or agency, business trust, estate, trust, limited liability corporation, partnership, association, or other legal entity which promotes, sells or leases subdivisions.

"Subdivision" is defined as any real property converted or divided into 20 or more interests intended solely for residential use and offered for sale, lease, or transfer. Subdivisions also include groups of 20 or more time shares or proprietary leases in cooperative housing corporations intended for residential use.

Developers must register with the Commission prior to conducting any sales, leases, or transfers of subdivisions. Applicants are required to provide information about themselves and their subdivision. Required registration information includes:

- name and location of developers principle place of business and all branch offices;
- names and residences of all natural persons who have a 24% or greater financial or ultimate interest in the business of the developer;
- the length of time and locations where the applicant was engaged in real estate sales or development;
- any felony convictions within the past 10 years;
- other states where the applicant is licensed or registered and any disciplinary actions; and
- a copy of certificate of authority in Colorado, where applicable.

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Information regarding each subdivision must include:

- the location of each subdivision where sales will be made;
- the name of each subdivision and the trade name used by the developer;
- evidence or certification that subdivision has met state or local registration requirements;
- all proper legal documents identifying title or other interest in the property;
- a statement that the developer will use standard Commission-approved forms for subdivision transactions;
- a statement by the developer that purchaser through conveyances by means of an installment contract will be advised to record the contract with the proper authorities. Developer will not prohibit installment contracts;
- a statement by the developer of the provisions for legal access, sewage, and public utilities;
- a statement as to whether or not there has been a survey and whether or not survey markers are in place;
- a statement as to whether or not there is or will be a common interest community within the subdivision and the type of that common interest community; and
- a statement as to the existence of any common interest community association, and whether the developer controls those funds;

The Commission may seek injunctive relief upon a showing that a person engages or intends to engage in any practice violating part 4 (Subdivisions) of the act. The Commission may issue subpoenas and compel the attendance of witnesses during investigations. A violation of the subdivision law is a class 6 felony.



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The Commission may fine a developer up to \$2,500 for each offense. The Commission may also issue letters of admonishment, suspend or place a developer's registration on probation, or may refuse or revoke a developer on any of the following grounds:

- false or misleading advertising;
- making a false or misleading statement or concealment in application;
- misrepresenting or concealing any material fact from a purchaser of a subdivision;
- employing any device or scheme with the intent of defrauding a purchaser;
- conviction or pleading guilty or nolo contendere to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing;
- disposing of, concealing, diverting, converting or otherwise failing to account for purchaser's interest;
- failing to comply with any Commission stipulation or agreement;
- failing to comply with any provision of the real estate law or any rule or order under this article;
- failure to honor rescission of buyers contract within five calendar days;
- violated any provision of the Colorado Consumer Protection Act;
- employing any sales agent or employee who violates any provision of the subdivision law;
- failure to use Commission approved forms; or
- failure to disclose encumbrances to prospective purchasers or transfer clear title at the time of sale when agreed to by parties;

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## ***Program Description and Administration***

### ***Commission***

Section 12-61-105, C.R.S., creates a five-member Real Estate Commission. The Commission is made up of three real estate brokers with at least five years experience in Colorado real estate, one member who has expertise in subdivision development and one public member. The Commission is charged with carrying out the provisions of parts 1, 3 and 4 of titles 12, Article 61.

Appendix B on page 38 shows a comparison of the board composition across the United States and Canada. Colorado's five-member board is consistent with 14 other states and represents the highest frequency of board composition. One state, West Virginia has a three-member board, while New York has a 15-member board. Ten states have seven member boards and nine states have 13 member boards.

### ***Administrative Function of the Division of Real Estate***

The Division of Real Estate is responsible for brokers and salespeople, subdivision developers, appraisers, the administration of the Real Estate Recovery Fund, and Errors and Omissions Insurance. Division FTE consists of:

- the Directors Office, (3.0 FTE);
- the Licensing and Education Section, (13.5 FTE);
- the Auditing Section (9.0 FTE); and
- the Enforcement Section, (11.0 FTE).

Together these sections work to establish and maintain a safe and workable environment that allows the public to buy, sell and lease real property in Colorado. Following is a description of each section.

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**Director's Office**

The Executive Director of the Department of Regulatory Agencies appoints the Director of the Division of Real Estate. A Deputy Director and an administrative staff assistant assist the Director. Under §12-61-106, C.R.S., the Director must aid in the administration and enforcement of the real estate statutes, prosecute all persons charged with violating the statutes, conduct audits of business accounts of licensees, perform those duties as the Commission prescribes, and act on behalf of the Commission when directed by the Commission. There are several specific areas where the Director acts on behalf of the Commission. These include routine issuance of real estate licenses and subdivision registration certificates, investigation of complaints, and issuance of summary suspensions of broker and salesperson licenses in cases indicating extreme and immediate danger to the public.

**Licensing and Education Section**

The Education and Licensing Section (Section) is responsible for directing and conducting the real estate licensing and registration programs within the Division of Real Estate. Personnel within the section include secretarial support, real estate specialists and a section supervisor.

Duties of the Section include pre-licensing and pre-registration investigations; review of difficult or unusual licensing applications regarding required education and/or experience requirements; development and approval of pre-licensing and continuing education courses; and verification that all applicants have successfully completed the written real estate examination.

Licenses issued by the Section include:

- Real Estate Broker
- Corporate Real Estate Broker
- Partnership Real Estate Broker
- Limited Liability Company Real Estate Broker
- Temporary Real Estate Broker

Registrations approved by the Section include:

- Subdivision Developers
- Time Share Developers

Table 1  
Licensing Activity

MONTH	SALES TRANSFERS	BROKER TRANSFERS	SALES APPLICATIONS	BROKER APPLICATIONS	BRANCH APPLICATIONS	CORPORATE APPLICATIONS	SUBDIVISION APPLICATIONS	SUBDIVISION SUPPLEMENTAL APPLICATIONS	SUBDIVISION RENEWALS	SALES RENEWAL	BROKER RENEWAL
JULY 1995	340	292	198	96	14	44	5	1	0	37	20
AUGUST 1995	341	284	217	88	6	47	9	3	0	35	14
SEPTEMBER 1995	298	276	164	67	5	37	4	2	0	27	13
OCTOBER 1995	357	329	286	68	6	30	5	3	0	18	20
NOVEMBER 1995	310	327	129	119	6	23	5	2	64	1263	1321
DECEMBER 1995	321	396	184	226	6	54	4	4	104	3269	2604
JANUARY 1996	410	411	248	137	11	36	2	3	17	2395	1626
FEBRUARY 1996	373	309	231	111	6	42	5	1	5	159	97
MARCH 1996	385	318	288	88	13	42	2	2	1	49	44
APRIL 1996	356	268	270	84	15	40	9	3	2	53	22
MAY 1996	345	279	270	101	11	38	5	4	0	24	22
JUNE 1996	338	291	217	107	16	39	4	1	0	28	17
<b>TOTAL 95-96</b>	<b>4174</b>	<b>3780</b>	<b>2702</b>	<b>1292</b>	<b>115</b>	<b>472</b>	<b>59</b>	<b>29</b>	<b>193</b>	<b>7357</b>	<b>5820</b>
JULY 1996	325	276	205	101	12	33	1	1	0	17	16
AUGUST 1996	280	298	204	86	10	37	0	4	0	18	15
SEPTEMBER 1996	300	271	208	104	13	32	0	3	0	24	17
OCTOBER 1996	284	279	259	98	10	37	1	6	0	22	21
NOVEMBER 1996	360	291	293	241	5	45	1	2	0	927	1435
DECEMBER 1996	307	452	1629	683	0	72	2	5	130	3983	3419
JANUARY 1997	658	539	372	152	0	81	2	5	19	1778	1186
FEBRUARY 1997	437	420	310	118	0	39	3	4	4	179	115
MARCH 1997	470	466	78	52	0	42	4	4	0	70	34
APRIL 1997	370	466	12	67	0	53	1	1	2	57	33
MAY 1997	307	405	7	86	0	37	2	4	0	30	14
JUNE 1997	323	435	4	71	0	34	2	0	0	27	18
<b>TOTAL 96-97</b>	<b>4421</b>	<b>4598</b>	<b>3581</b>	<b>1859</b>	<b>50</b>	<b>542</b>	<b>19</b>	<b>39</b>	<b>155</b>	<b>7132</b>	<b>6323</b>
JULY 1997	318	491	4	116		31	1	2	0	21	9
AUGUST 1997	239	407	5	73		43	3	2	0	23	16
SEPTEMBER 1997	238	378	4	104		32	3	5	0	25	15
OCTOBER 1997	342	494	1	89		38	3	2	0	32	21
NOVEMBER 1997	229	400	1	51		36	6	0	49	376	949
DECEMBER 1997	265	607	7	112		64	4	4	70	2724	5093
JANUARY 1998	253	503	4	151		51	4	1	18	1076	1233
FEBRUARY 1998	257	511	2	128		30	3	3	2	108	123
MARCH 1998	225	582	0	136		44	6	2	3	76	103
APRIL 1998	200	537	0	183		43	1	2	0	30	39
MAY 1998	223	503	1	171		29	4	3	3	24	21
JUNE 1998	234	627	0	188		40	6	2	0	45	24
<b>TOTAL 97-98</b>	<b>3023</b>	<b>6040</b>	<b>29</b>	<b>1502</b>		<b>481</b>	<b>44</b>	<b>28</b>	<b>145</b>	<b>4560</b>	<b>7646</b>

Source: Colorado Division of Real Estate

Prior to actual licensing, the Section reviews all applications for compliance with educational requirements, experience requirements and examination qualifications. Pre-licensing investigations may be conducted along with processing applicant fingerprint cards in regard to an applicant's reputation for truthfulness and honesty as required by §12-61-103 (3), C.R.S., and Commission Rule A-12. All applications with documented concerns which are civil/criminal in nature and/or which pertain to real estate licensing and other licensing matters in Colorado or any other state are reviewed and investigated thoroughly. Applications with serious problems are presented to the Commission for their review and official consideration.

Applications for a Subdivision Developer registration are reviewed thoroughly. The review takes a considerable amount of time and includes very technical, complicated legal documentation such as evidence of the developer's ownership interest; encumbrances; release provisions and non-disturbance agreements for blanket encumbrances; escrow agreements and sample contracts the developer will use, and condominium declarations and by-laws. An investigation or on-site inspection may be conducted, especially in regard to a time share subdivision, prior to approval of a registration.

The Section coordinates the Commission's efforts with the national testing service, Assessment Systems Inc. (ASI) of Philadelphia, Pennsylvania, for administration of the real estate examination in Colorado. Questions on the uniform (National) portion of the examination are reviewed by the staff for correctness and applicability in Colorado. Questions for the Colorado portion of the examination are developed, evaluated, and approved by the staff in conjunction with ASI. Examinations are monitored by the staff and reports submitted to the Section supervisor. The reports are filed with ASI along with any noted recommendations for improvements. Examination statistics are developed and maintained by the Section and are used in many ways. The staff spends considerable time counseling educational providers, examinees and applicants in regard to the examinations, educational and experiences requirements, and reciprocity with other states.

One of the important functions of a regulatory program is examining individuals. Through this process, unqualified applicants are prevented from practicing. Tables 2 and 3 show examination activity in Colorado. In particular, Table 3 illustrates a snapshot of examination activity for the months of May and June 1997, showing passing and failing percentages for those months.

Table 2  
**Total Examinations Administered Per Month**

	92/93	93/94	94/95	95/96	96/97
July	508	629	501	469	550
August	499	563	558	525	712
September	404	442	443	436	591
October	563	610	586	494	992
November	432	595	512	531	1,343
December	664	798	562	585	3,956
January	521	559	417	448	625
February	516	651	524	563	883
March	698	885	793	839	217
April	707	640	621	568	240
May	631	810	634	787	262
June	739	691	680	712	386
<b>TOTAL</b>	<b>6,882</b>	<b>7,873</b>	<b>6,841</b>	<b>6,957</b>	<b>10,757</b>

Source: Colorado Division of Real Estate

Table 3  
Real Estate Examination Pass/Fail Percentages

	May 1997		June 1997		
Passed	115	44%	Passed	171	44.3%
Failed	147	56%	Failed	215	55.7%
<i>Total</i>	<i>262</i>		<i>Total</i>	<i>386</i>	

Source: Colorado Division of Real Estate

Pass/fail rates can also be examined in Appendix C on page 39. This chart shows a passing rate of 50.24 on the broker exam for the period July 1, 1996 through June 30, 1997. This chart also shows passing rates for salespersons, although Colorado has a single broker license. As Appendix C shows, only Arkansas has a lower passing rate than Colorado.

It could be argued that this type of "weeding out" of unqualified applicants better protects the public. However, and the Division staff agrees, a state licensing examination should measure knowledge necessary to practice safely and assure the public a minimal level of competency by practitioners. An examination that measures more specialized information than required to assure a minimal level of competency can be used as a barrier to entry into the market.

The Division points out that Colorado's new single licensing model may contribute to the low passing rate. That would appear to be reasonable and staff has implemented a program of instructor seminars and workshops to address this problem. It is also reasonable that real estate schools are not responding as quickly as anticipated in preparing students for Colorado's single examination. This report makes a recommendation to address this issue.

Original broker applicants are required by §12-61-103(4)(a), C.R.S., to complete specific real-estate classes with the course content (outline) approved by the Commission. The staff develops these required course outlines and their revision from time to time, often with the assistance of special committees composed of industry and educational experts.

The Division of Private Occupational Schools (DPOS) and the Colorado Department of Higher Education approve proprietary real estate schools and community colleges. Both agencies work in conjunction with the Section for the approval of all real estate courses offered at these levels. From time to time, section staff members visit the approved real estate schools to verify compliance with the real estate license law and other educational standards.

The Education and Licensing section controls the Division's continuing real estate education process by approving and monitoring real estate education providers not subject to DPOS and by auditing licensee's education records and recommending disciplinary action where appropriate.

The Section controls the Division's annual license renewal process for licensed brokers and salespersons and the certification renewal process for subdivision developers.

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The Section is also involved in the research, writing and printing of Commission publications. The major publication is the Real Estate Manual, which is used by examinees and the industry and public in general. The Manual is revised approximately once a year. A second major publication is the Real Estate Newsletter, which is published quarterly. The Newsletter allows the Commission to apprise the industry of license law changes, Commission rule changes, law changes which have an effect on the way real estate business is conducted, and any other information which may be of value to the real estate industry.

This section is also responsible for maintenance of the Division's Internet web site, which includes all statutes and rules plus a public information section and a licensee database that offers 24-hour access to all licensing and registration records.

### ***Auditing Section***

The Auditing Section conducts on-site audits of broker, subdivision and homeowner association trust accounts throughout the state and assists the Enforcement Section and Attorney General's Office in the investigation of public complaints. Such audits vary in scope and complexity depending on the company examined. Auditors often carry out independent investigations of brokerage practices when evidence of wrongdoing is discovered during a routine audit. In addition to the actual conduct of audits, the staff also spends a great deal of time educating licensees concerning trust account requirements.

A typical audit involves examination of several types of trust accounts and related real estate practices. Many brokers have sales, property management, security deposit and other trust accounts with balances ranging from hundreds to hundreds of thousands of dollars. Many audits are of an investigative or fraud nature, in contrast to the "attest" function of a certified financial audit by a CPA. These audit tests, therefore, are more limited in scope and are usually done only on the trust accounts themselves and not on a broker's entire business accounting system. When a troubled property management company, subdivision developer or homeowner association is discovered, the auditor will analyze the management, organization, asset administration, client account administration, areas of fund abuse, and overall financial condition of such companies and institutions in order to reach conclusions concerning recommendations for continued operation, appointment of a receiver or immediate revocation and closure. Such audits often require the staff to deal with professionals representing the broker or the public. For reporting purposes, Commission audits that originate by internal broker selection are classified as "routine" audits, while those requested as the result of a public complaint are designated as "investigative" audits. A routine audit may take three to four hours, but an investigative audit may take many weeks to reconstruct real estate transactions and the associated escrow balances, especially if the business has ceased operations. There are currently over 10,500 licensed brokerage companies in Colorado, making it impossible to audit more than a small percentage each year. Auditors frequently assist licensees in establishing proper account procedures using a variety of electronic computer and software systems.

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The staff prioritizes audits in the following manner: investigative, new brokers, routine audits, and repeat audits after a three year period has elapsed. Audits are also prioritized in terms of activity and the services provided: high dollar volume operations, property management, commercial sales, and residential sales. Routine post-registration audits are now conducted on all Colorado time share projects as a follow-up to the subdivision registration process. Both announced and unannounced audits are conducted throughout the state. Questionnaires are used to identify active brokers.

There are five general causes of disciplinary actions taken by the Commission with respect to the operation of the broker trust accounts:

1. Lack of client reserves and allowing ledger accounts to become overdrawn often results in conversion or commingling of funds among the various beneficiaries of the trust account. Real estate companies having a large cash flow sometimes are able to temporarily commingle sales or property management trust accounts by taking advantage of the cash "float" and may appear healthy to the outside world until an unforeseen event or audit occurs.
2. Improperly maintained escrow accounting records also lead to conversion or commingling of funds. Brokers are not accountants by training or function, and accounting services or procedures provided by professional services are not necessarily suited to the statutory obligations applicable to the licensed broker.
3. Poor or non-existent supervision of the activities of both licensed and non-licensed employees often leads to commingling or conversion of trust funds, as well as the failure to properly maintain and account for such funds.
4. Improper training, experience or continuing education in the technical field undertaken can also lead to the conversion or commingling of trust funds and harm to the public through use of outdated real estate practices.
5. Undercapitalization of the business creates a temptation to misappropriate trust funds for seasonal operating expenses on a "temporary" basis until cash flows increase. When joint work projects arise, such as public complaints alleging trust account irregularities and other wrongdoing, the Audit Section often functions in cooperation with the Enforcement Section. The auditor is usually responsible for the financial examination of the licensee's trust accounts while an investigator assumes non-audit responsibilities such as interviewing witnesses and obtaining ancillary documents. In situations involving only trust account violations, the auditor will usually complete the entire investigation.

An auditor may be the initial source of an investigation in regular field work. Therefore, one must have sound working knowledge of both real estate law and industry practices, as well as the financial accounting expertise to audit and prepare findings for use by the Commission and its legal staff as well as other law enforcement agencies.



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## **Enforcement Section**

The Real Estate Commission is charged by statute with licensing real estate brokers. Once licensed, the Commission has a continuing obligation to protect the public from dishonest or incompetent licensees. To that end, the Enforcement Section investigates complaints filed by the public against licensees.

The Commission has the power to admonish, censure, suspend or permanently revoke a license upon a finding of improper conduct. The Commission may levy fines against licensees in addition to any other action taken. Educational courses may also be imposed as part of any disciplinary action. Except in the case of a stipulated agreement with the licensee, a hearing before an Administrative Law Judge must be held before disciplinary action can be imposed.

The Commission, by statute, is limited to disciplinary action. Therefore, it cannot award money damages, arbitrate disputes or prosecute alleged crimes. Matters such as these are handled through appropriate civil or criminal proceedings.

The Commission receives approximately 900 written complaints a year alleging a wide range of misconduct. Some of the more common allegations are:

1. Misrepresentation. Untrue statements made by a licensee or statements made without regard to their truth; can also be the withholding of information. Over 2/3 of the complaints received contain allegations of misrepresentation.
2. Misuse of money. Licensees have a strict fiduciary duty to properly account for money of others and to hold such money in a trust account.
3. Failure to adequately protect the principal. All licensees must act in the best interest of those with whom they have an agency (contractual) relationship.
4. Earnest money disputes. Many complaints are received from purchasers or sellers claiming earnest money deposits where the contract has failed. The Commission cannot direct a broker to give the money to either party where there is a legitimate dispute between buyer and seller as to whom the money belongs. The Division advises the broker to hold the money in a trust account until the parties have reached an agreement or a court makes a decision regarding the money. Therefore, the Commission will take no disciplinary action against a broker who fails to turn over a disputed deposit to one of the parties so long as the dispute is legitimate and the money remains in the broker's trust account.

An investigation begins when a complaint is received from the public or when information is received from other sources indicating wrongdoing by a licensee; the latter is handled as a complaint on the Commission's "own motion." An investigator is assigned and proceeds to obtain complete documentary evidence and to interview all parties and witnesses to the transaction. The investigator then prepares an investigative report including pertinent exhibits and notes. If the investigation fails to reveal sufficient evidence of a license law violation, or if there has been an acceptable settlement of the complaint, the file is closed. If the investigation reveals that a probable violation has occurred, the results of the investigation are referred to the Commission. Following review, the Commission may dismiss the complaint, request further information, issue a letter of admonition or refer the matter to the Department of Law for drafting of formal charges and hearing.

In addition to conducting investigations, members of the Enforcement Staff respond to thousands of direct inquires annually, providing guidance to the public and industry on investigative, enforcement and various other real estate questions. Table 4 illustrates complaint and disciplinary actions taken by the Commission.

Table 4  
**Complaints and Disciplinary Actions**

	FY 92-93	FY 93-94	FY 94-95	FY 95-96	FY 96-97
Total Broker/Salesperson Licensees	40,141	40,333	40,037	39,800	40,500
Subdivision Licensees	182	216	202	220	169
Complaints Received*	796	920	647	755	872
Revocations/Suspensions	66	61	33	41	41
Other Disciplinary Actions	77	98	68	63	127
Cases Referred to Hearing	79	108	98	82	160
Completed Hearing Cases	101	110	102	75	136
Completed Expedited Hearing Cases	42■	80	75	59	118
Broker Trust Accounts	5,500	5,950	7,600	8,700	8,045
Brokers Audited	622	694	570	562	680

\* Does not include Appraisers                      ■ Partial Year

Source: Colorado Division of Real Estate

Prioritization of Complaints

The Division has taken several steps to increase its efficiency in dealing with complaints. First, a method of prioritizing complaints has been adopted and, second, the Division has implemented an alternative dispute methodology. Both of these measures increase public protection as well as increase the Division's efficiency.

The Division has instituted a rigorous, though informal, screening and prioritization program. Complaints are first screened to ensure that the Division has jurisdiction over the complaint and to ensure that if the activity complained of actually occurred, it would constitute a violation. If a complaint passes this process, the Division's investigative staff then investigates it.

If the investigation so warrants, the complaint is referred to the Real Estate Commission to determine whether the case warrants disciplinary action.

If the Commission determines that disciplinary action is warranted, the case is referred to the Division's Early Settlement Process ("ESP"), which is discussed in greater detail below. If ESP fails, then the case is referred to the Department of Law for a hearing before an administrative law judge.

Throughout this process, cases are prioritized based upon the seriousness of the alleged conduct. For example, complaints alleging theft or fraud receive higher priority than complaints alleging unreasonable commissions.

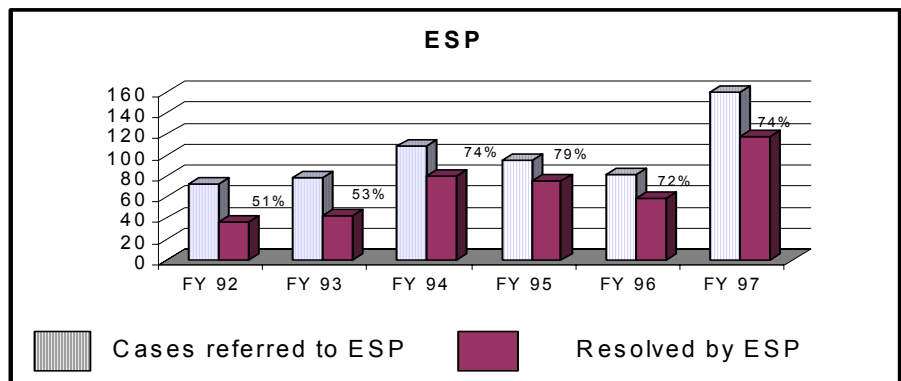
Alternative Dispute Resolution Aids in Consumer Protection

Recognizing the escalating number of complaints, the Division took proactive measures and instituted, in conjunction with the Department of Law (DOL), the Early Settlement Process (the "ESP") in FY94.

When the Commission determines that disciplinary action is warranted in a particular case, the Commission will articulate its terms for settlement. Division staff members then incorporate these terms into a standard form. The stipulation is then presented to the respondent. Using standardized stipulation forms allows the Division to conserve legal services resources.

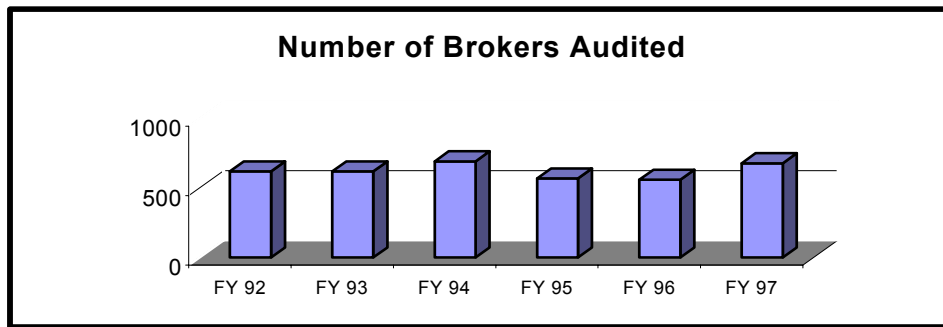
The respondent may accept the stipulation, effectively bringing an end to the process; reject the stipulation and demand a hearing; or counter the stipulation with alternative terms. If alternative terms are proposed, the Division staff presents these terms to the Commission. The Division staff is not authorized to negotiate stipulations, but rather acts as a liaison between the respondent and the Commission.

In FY96, the ESP settled almost 80% of the Division's cases. Information in this section, taken from the *Department of Regulatory Agencies' Use of Legal Services* report to the Colorado Joint Budget Committee, contains data from the Real Estate Appraisers Board that is also administered by the Division of Real Estate.



Also illuminated in this graph is the success of the Division's screening mechanisms. In FY92, for example, the Division received 632 complaints. Of the 632 complaints received, 559 were screened out, meaning that the Commission determined that disciplinary action was warranted in only 73 cases. This illustrates that most of the cases referred by the Commission for disciplinary actions are processed through the ESP before they are referred to the DOL for hearing.

In addition to the Early Settlement Process, one of the most prominent of the Division's preventative efforts is the process of auditing broker trust accounts. Actual numbers of audits appear in Table 4 on page 23 of this report.



The Division audit staff routinely conduct between 560 and 680 audits per year. While the audits are routine, the Division focuses on high-risk brokers. This process allows the Division to maintain a presence in the regulated community and allows the Division to identify minor problems before they become major problems.

Recovery Fund

Part 3 of Title 12, Article 61, C.R.S., creates a recovery fund in the Office of the State Treasurer.

To receive a recovery from the fund, a consumer must possess a court order of judgment resulting from a civil action. The judgment must contain specific findings of fact and conclusion of law that a licensed real estate broker or salesperson committed negligence, fraud, willful misrepresentation, or conversion of trust funds. If a payment is issued from the fund, the broker or salesperson's license is automatically revoked.

Tables 5 and 6 illustrate recovery fund activity from FY 73/74 through FY 97/98 and fund balance from FY92/93 through FY 96/97. Illustrated is the high activity in terms of both numbers of payments and payment amounts from FY 83/84 through FY 92/93. However, claims have dropped significantly, as have amounts paid, beginning FY 93/94 and continuing through the present. As a result, the balance of the fund is growing at this time, approaching \$3 million as shown in Table 6. The Division reports that the recovery fund is a valuable compliment to Colorado's Errors and Omissions Insurance requirement. In particular, the recovery fund allows recovery by a consumer for illegal acts while errors and omissions insurance covers acts of negligence on the part of a licensee.

Table 5

RECOVERY FUND PAYMENTS ANNUAL SUMMARY					
Fiscal Year	Number	Amount of Payout	Average Payout	Accrued Number	Accrued Amount
73/74	1	\$2,700	\$2,700	1	\$2,700
74/75	0	0	\$2,700	1	2,700
75/76	2	29,454	\$14,727	3	32,154
76/77	3	73,179	\$24,393	6	105,333
77/78	4	12,683	\$3,171	10	118,016
78/79	2	75,860	\$37,930	12	193,876
79/80	5	123,124	\$24,625	17	317,000
80/81	5	174,368	\$34,874	22	491,368
81/82	5	57,866	\$11,573	27	549,234
82/83	13	90,437	\$6,957	40	639,671
83/84	16	322,187	\$20,137	56	961,858
84/85	17	375,699	\$22,100	73	1,337,557
85/86	33	649,770	\$19,690	106	1,987,327
86/87	16	258,745	\$16,172	122	2,246,072
87/88	31	591,984	\$19,096	153	2,838,056
88/89	37	327,995	\$8,865	190	3,166,051
89/90	37	523,827	\$14,157	227	3,689,878
90/91	24	306,211	\$12,759	251	3,996,089
91/92	15	212,078	\$14,139	266	4,208,167
92/93	24	379,256	\$15,802	290	4,587,423
93/94	8	88,329	\$11,041	298	4,675,752
94/95	3	33,307	\$11,102	301	4,709,059
95/96	8	79,694	\$9,962	309	4,788,753
96/97	8	100,740	\$12,593	317	4,889,493
97/98	5	74,156	\$14,831	322	4,963,649

NOTE: Board of Appraiser expenditures not figured in percentage for AG expenditures.

Source: Colorado Division of Real Estate

Table 6

**Recovery Fund Balance**

<b>FY</b>	<b>Cases</b>	<b>Balance (In Millions)</b>
92-93	24	\$1,115
93-94	8	\$1,705
94-95	3	\$2,369
95-96	8	\$2,604
96-97	8	\$2,604

Source: Colorado Division of Real Estate

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***Appraisal Section***

The Colorado Board of Real Estate Appraisers, a separate and independent regulatory body, is also found within the Division of Real Estate. The Division offers a full range of support to the Board, including a full-time Program Administrator and staff assistance in the areas of licensing, education and enforcement. As a closely related regulatory body, the Commission is kept informed of the Board's plans and activities. The Board of Real Estate Appraisers underwent a separate sunset review in 1995. By statutory direction it is not part of this current sunset review. However, this information is provided to offer a thorough picture of the function of the Division of Real Estate, which, as mentioned previously, provides support to the Real Estate Appraiser Board.

***Errors and Omissions Insurance***

The General Assembly amended the statutes regulating real estate in 1996 by requiring licensees to maintain errors and omissions insurance. The statutes require the Commission to contract with an insurer for a group policy and for availability of coverage to all licensees.

St. Paul Fire and Marine Insurance Co. through Williams Underwriting Group now offer a group plan. Section 12-61-103.6 (3), C.R.S., directs the Commission to determine the terms and conditions of coverage. The Commission has promulgated a number of rules to comply with the statutory requirements.

**Commission Requirements for Errors and Omissions**

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:

- The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state.
- The insurance carrier maintains an A.M. Best rating of "B" or better.
- 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.
- The insurance carrier has been selected through a competitive bidding process.
- The contract and policy are in conformance with this rule and all relevant Colorado statutory requirements.

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The group policy must provide, at a minimum, the following terms of coverage:

- 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.
- An annual premium not to exceed \$100.
- That the insurance carrier, except for non-payment of the premium, cannot cancel the coverage, or in the event a licensee becomes inactive, or is revoked or an applicant is denied a license.
- Pro-ration of premiums for coverage which is purchased during the course of a calendar year but with no refunds of unused premiums.
- 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.
- An annual aggregate limit of not less than \$300,000 per licensed individual.
- A deductible amount for each occurrence of not more than \$1,000 for claims and no deductible for legal expenses and defense.
- The obligation of the insurance carrier to defend all 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.
- Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
- 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.
- That coverage is individual and license specific and will cover the licensee regardless of changes in employing broker.
- An extended reporting period of not less than 365 days.
- 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.

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### Independent Errors and Omissions Insurance

The statute provides for a licensee obtaining errors and omissions insurance independently of the group policy as long as the coverage complies with the minimum requirements established by the Commission. The Commission has promulgated rules establishing conditions for such independent insurance.

- 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.
  - The insurance provider maintains an A.M. Best rating of "B" or better.
  - 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:
    - The contract and policy are in conformance with all relevant Colorado statutory requirements.
    - Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts that are normally excluded from such coverage.
    - The insurance provider cannot cancel coverage, except pursuant to and in conformance with §10-4-109.7, C.R.S.
    - 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 of not less than \$300,000 per licensed individual and entity.
    - 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.
    - An extended reporting period of not less than 365 days.
    - That the provider of the independent policy has executed an affidavit in a form 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. The Commission will make no independent determination of whether individual policies meet the requirements of this rule.
    - Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
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Costs and Claims Experience of Colorado's Errors and Omissions Requirement

Information regarding errors and omissions claim experience is available for the period January 1, 1998 through June 30, 1998 as follows:

Errors and Omissions Claims Experience

Total Claims - 127  
Total Claims Open - 63  
Total Claims Closed - 64  
  
Total Paid Loss - \$33,217.00  
Total Paid Expense - \$33,863.00  
  
Total Claims Reserve - \$677,400  
Total Expense Reserve - \$398,908

Source: Williams Underwriting Group

Paid claims describe a variety of allegations including misrepresentation involving conveyance of a different lot than the lot shown, breach of duty, two accepted offers, and misrepresentation of public water and sewage.

Appendix D on page 40 shows that Colorado has joined nine other states in requiring errors and omissions insurance. Real estate sales are a billion dollar industry annually in Colorado. To that extent, the aggregate paid loss of \$33,217 on a handful of claims to date is insufficient to adequately evaluate the effectiveness of the program. The amount of reserves indicates that paid claims will increase significantly as the program matures.

Proponents of errors and omissions insurance requirements argue that it is too soon to evaluate the benefit of this new regulatory requirement. In fact, the requirement was implemented only ten months prior to the publication of this sunset review. Still, assuming that well over 30,000 licensees purchase errors and omissions insurance at the contract price of \$68.00, just over \$2,000,000 is spent with a return, at this point, of just over \$33,000. Given that early data, this report contains a recommendation that the errors and omissions insurance requirement be reviewed in two years.

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## **Conclusions and Recommendations**

***Recommendation 1: The General Assembly should continue the Colorado Real Estate Commission and the Division of Real Estate with a sunset review date of 2009.***

Regulation of an occupation or business should only occur if the unregulated practice poses a threat to the public health, safety or welfare, including the public's economic welfare. One reason for regulation by the state is that the regulated occupation or the services provided are too complex for the public to make reasonable choices in the unregulated marketplace.

It is reasonable to conclude that the complexity of real estate transactions conducted in an unregulated market could result in significant financial harm to Colorado citizens.

One need only look to a snapshot of the state's enforcement activities to judge the benefit of state regulation in this industry. Consumer complaints for FY 95-96 and 96-97 were 755 and 872 respectively. For each of these years, over 40 licenses were revoked. Revocation is the most serious sanction the state can take against a licensee. In essence, revocation means that the individual can no longer practice his or her occupation or profession. During these two years, in addition to revocation, the Commission took disciplinary action in 190 other cases. Over 240 other cases were referred to hearing and 211 hearings were completed.

Finally, all 50 states regulate the real estate industry in a manner similar to Colorado. Absent regulation, Colorado could become at the very least, a "dumping ground" for persons who have lost their license in other states. In such a scenario, the threat to the public is greatly increased.

***Recommendation 2: The Division of Real Estate should pursue transfer of the authority to regulate real estate schools from the Division of Higher Education to the Division of Real Estate.***

Colorado's regulation of real estate education is somewhat unusual in that the Division of Higher Education administers regulation of the schools, while the Real Estate Commission is required to approve curriculum. The Commission's role is quite significant and very important to students investing in a real estate education as they will ultimately require passage of the state examination in order to practice.

It is the conclusion of this review that more efficient state regulation should result from the consolidation of school regulation in the Division of Real Estate and the Real Estate Commission.

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The Director of the Division of Real Estate has expressed support for this recommendation but does not believe that the transfer can be accomplished as part of the sunset legislation. In particular, the Director stated that more time is needed to develop the proposal and build consensus from all parties affected by such a transfer.

Therefore, this sunset review recommends that such a transfer should be pursued vigorously by the Division. The Division should seek to develop and introduce legislation to implement the transfer. In the event that a transfer cannot occur, the Division should prepare a report for the Legislative Committee of Reference setting forth the proposal and the reasons preventing the transfer.

***Recommendation 3: The General Assembly should increase the Real Estate Recovery Fund claim ceiling.***

Part 3 of Article 61 of Title 12, C.R.S., establishes the Real Estate Recovery Fund. The purpose of the fund is to provide a remedy to consumers when a licensed broker or salesperson has committed negligence, fraud, willful misrepresentation or conversion of trust funds. Presently, recovery from the fund is limited to \$20,000 per transaction or \$60,000 for any one licensee. The present limit on claims may offer little relief in significant cases such as structural damage. A limit of \$50,000 would be more beneficial to consumers given the average cost of a home. Evidence suggests that the fund would not be jeopardized by this increase. Claims against the fund have dropped significantly since a peak period in the 1980's and the fund balance is now approaching \$3 million. No fees have been assessed to maintain the fund for several years. Rather, interest, disciplinary fees and license reinstatement penalties maintain the fund balance.

***Recommendation 4: The General Assembly should amend §12-61-103, C.R.S., to require a certain period of time before a revoked licensee may apply.***

Presently, a licensee whose license has been revoked may reapply for a new license immediately. The revocation of a license occurs in situations involving a serious violation of Colorado law. The General Assembly has historically placed in statute a prohibition against application for a period of time to reduce the costs associated with the application process and the appeal of a denial. In the instant case, a minimum of two years appears to be an appropriate waiting period before re-application.

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***Recommendation 5: The Division of Real Estate should be given the authority to collect and publish school passing rates.***

Compared to other states and compared to other regulatory programs, the percentage passing rate for licensure as a real estate broker in Colorado is low - approximately 50% of applicants pass the examination. This may be indicative of an examination that blocks entry into the market, thus reducing the supply of real estate brokers. In a competitive market, such a situation is good for brokers but not good for consumers. The Division rightfully points out that other factors, primarily Colorado's movement to single licensing, may account for some decrease in the passing rate. Therefore, it is perhaps premature to criticize the examination at this point. However, there are other reasonable measures that can be taken which may improve Colorado's passing rate or at least provide important information to potential students.

During this review, comments were received that some real estate school's graduates routinely fail the state exam at higher rates than do graduates of other schools. Research conducted for this review revealed no way for a prospective student to gather reliable data for comparative purposes. One way to address this problem is to require the assimilation of school passing rates and the distribution of such information by the Division and Commission. Such a law would represent a significant increase in regulation of the marketplace. A more reasonable response might entail the Division and Commission working with the real estate schools and the testing service to acquire passing rates and to make that information available to the public. Such a voluntary effort could result in more informed choices by persons wishing to enter the real estate profession, an increase in the passing rate, an increase in the licensing exam passing rate, and a subsequent increase in the supply of licensed brokers which benefits consumers.

***Recommendation 6: The General Assembly should create a new licensing category for time share salespersons.***

Under current law, persons selling time share properties are required to be licensed as full real estate brokers. Under this regulatory scheme, the educational requirements for entry into the market are excessive. The Colorado Real Estate Commission, recognizing this problem, created the Personal Assistants and Time share Salesperson Subcommittee Specialty Licensing Task Force. The Task Force responded with a proposal and requested that the proposal be included as a recommendation of this sunset review.

The foundation of the Task Force recommendation includes: a special license separate from a regular real estate broker or salesperson license. The license would authorize the individual to engage in the sale and resale of time share interests only, and would not allow the person to engage in any other licensed real estate activity.

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Further, the proposal would establish in statute, certain pre-licensing requirements including:

- An examination focusing on time share regulations and sales practices, to be developed and administered by either the Commission or ASI.
- 24 classroom hours of pre-licensing education. Class(es) to be administered by the employing Colorado broker or any university, college or private occupational school following a special outline to be developed by the Commission.
- Errors and omissions insurance required for active time share salespeople. Recovery Fund would also cover theft, conversion, fraud, etc.
- An exemption of fully licensed brokers and salespeople.

#### Supervisory Requirements for Time Share Sales Licensees

- To remain on active status, time share salespeople must be affiliated with a Colorado employing broker.
- Employing brokers must maintain an office policy and provide appropriate supervision in accordance with all Commission rules and regulations.
- Time share salespeople are fully responsible for complying with brokerage relationship disclosure requirements.
- Time share salespeople must use only sales contracts which have been approved by the Commission as part of the time share subdivision application process for each specific time share development. (Such contracts are currently being approved by staff as part of the registration process for all time share projects.)
- Employing brokers who employ time share salespeople would be responsible for appointing, in writing, an experienced, licensed broker to supervise any branch office from which a time share salesperson operates.

#### Renewal of Time Share Licenses

- Time share salespeople must renew their license every three years.
- Renewals would be on the third anniversary date of original licensure and every three years thereafter.
- As a requirement for renewal, time share salespeople must retake and pass the original licensing examination.

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### Disciplinary Standards

- All current grounds for license denial or disciplinary action would be applicable toward time share salesperson applicants or licensees. Action taken against a time share salesperson licensee or applicant would also be grounds for disciplinary or license denial actions against such person's real estate license or application.

It is reasonable to question the need for a time share sales licensing scheme in general, given the lack of complaints in this area. However, the lack of consumer harm may in fact be due to the present requirement that time share salespersons hold a real estate broker license. Also, the Division reports that the proposed regulatory scheme is consistent with other states' regulatory responses in the area of time share sales. Through that analysis, the creation of a separate time share license is a less restrictive scheme than the one currently in place.

***Recommendation 7: The General Assembly should amend §12-61-103(6)(b), C.R.S., to lessen the restrictions on licensed brokers from other states being granted a Colorado license.***

Colorado law permits licensed brokers from other states who have been licensed for any portion of the two years prior to application in Colorado be granted a Colorado license after passing the Colorado part of the real estate brokers examination.

Mobility of professionals from state to state is an important component of a healthy market. Consumers benefit from an increased supply that results in increased competition.

The present language should be amended to allow the Commission to issue a license by endorsement to applicants who are licensed to practice in another state or a territory of the United States or a foreign country and whose license is in good standing. In addition, applicants must provide satisfactory proof that they possess credentials and qualifications which are substantially equivalent to requirements in Colorado for licensure by examination. The statute should allow the Commission to specify by rule and regulation what shall constitute substantially equivalent credentials and qualifications.

The General Assembly has historically amended occupational licensing statutes to include endorsement provisions as recommended in this report. As an example, similar language exists in statutes regulating accounting and nursing.

***Recommendation 8: The General Assembly should set a sunset date of 2001 for Colorado's errors and omissions insurance requirement.***

This report discusses the implementation of errors and omissions insurance requirements that went into effect January 1, 1998. While it is too early to evaluate the benefit of this requirement, it has been successfully implemented by the Division with an annual premium to licensees of \$68.00 for \$100,000 of coverage. This report recommends that it would be prudent to evaluate the effectiveness of this requirement after a period of time of operation.

## *Appendices*

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**Appendix A - Sunset Statutory Evaluation Criteria**

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.



## Appendix B - Commission/Board Structure by State

Jurisdiction	Number of Commission/Board Members					
	Total	Appointed	Not Appointed	Minimum from Public	Minimum from Industry	Regulatory / Advisory
Alabama	9	8	1	1		Regulatory
Alaska	No Input					
Alberta	11	11	N/A	2	9	Regulatory
Arizona	7	7		3	4	Advisory
Arkansas	5	5		2	3	Regulatory
British Columbia	19	2	17	N/A	N/A	Regulatory
California	10	8	2	4	6	Advisory
Colorado	5	5		1	4	Regulatory
Connecticut	No Input					
Delaware	9	9		4	5	Regulatory
Dist. of Columbia	7	1		1	4	Regulatory
Florida	7	7		2	5	Regulatory
Georgia	6	6		1	5	Regulatory
Hawaii	9	9		2	4	Regulatory
Idaho	4	4			4	Regulatory
Illinois	10	10		3	6	Advisory
Indiana	12	12		2	10	Regulatory
Iowa	5	5		2	3	Regulatory
Kansas	5	5		1	3	Regulatory
Kentucky	5	5	N/A	1	4	Regulatory
Louisiana	9	9			9	Advisory
Maine	6	6		2	4	Regulatory
Manitoba	7	7				Regulatory
Maryland	9	9		4	5	Regulatory
Massachusetts	5	5		2	3	Regulatory
Michigan	9	9	N/A	3	6	Advisory
Minnesota	No Input					
Mississippi	5	5			5	Regulatory
Missouri	7	7		1	6	Regulatory
Montana	5	5		2	3	Regulatory
Nebraska	7	6	1	1	5	Regulatory
Nevada	5	5	N/A		5	Advisory
New Hampshire	5	5				Regulatory
New Jersey	8	8		2	5	Regulatory
New Mexico	5	5		1	4	Regulatory
New York	15	15		7	6	Regulatory
North Carolina	7	7		2	3	Regulatory
North Dakota	5	5		1	3	Regulatory
Nova Scotia	9	6	3	3	3	Regulatory
Ohio	10	10		2	8	Regulatory
Oklahoma	7	7		1	5	Regulatory
Oregon	9	9		2	7	Advisory
Pennsylvania	11			3	6	Regulatory
Quebec	11	2	9	2	9	Regulatory
Rhode Island	No Input					
Saskatchewan	9	4	5	4	5	Regulatory
South Carolina	9	8	1	2	7	Regulatory
South Dakota	5	5		2	3	Regulatory
Tennessee	9	2		7		Regulatory
Texas	9	9		3	6	Regulatory
Utah	5	5		1	4	Advisory
Vermont	7	7		2	4	Regulatory
Virginia	9	9		2	7	Regulatory
Washington	6	6	N/A		6	Both
West Virginia	3	3		1	2	Regulatory
Wisconsin	7	7		3	4	Both
Wyoming	5	5		1	3	Regulatory

Source: Association of Real Estate License Law Officials

### Appendix C - License Examination Statistics by State

Jurisdiction	Period		# of Applicants Scheduled		# of Applicants Examined		% of Applicants Passing the Exam		% Passing General Section		% Passing Jurisdiction Section	
	To	From	Broker	Sales	Broker	Sales	Broker	Sales	Broker	Sales	Broker	Sales
Alabama	7-1-96	6-30-97	530	3,212	506	2,984	56	52	N/A	N/A	N/A	N/A
Alaska	No Input											
Alberta	1-1-96	12-31-96	172	1,034	172	1,034	70	70	N/A	N/A	N/A	N/A
Arizona	7-1-96	7-1-97	889	6,288	867	6,122	81	78	83	81	86	83
Arkansas	7-1-96	6-30-97			536	1,992	41	50				
British Columbia	7-96	6-97	189	1,461	174	1,137	78	72	N/A	N/A	N/A	N/A
California	7-1-96	6-30-97	5,975	28,064	4,530	22,640	59	60	N/A	N/A	N/A	N/A
Colorado	7-1-96	6-30-97			4,548	6,201	50.24	52.51	N/A	N/A	N/A	N/A
Connecticut	No Input											
Delaware	8-1-96	7-31-97	64	551	64	551						
Dist. of Columbia	7-1-96	6-30-97	207	791	184	656	72.1	80.4	82.2	82.3	79.1	93.5
Florida	7-1-96	6-30-97	3,223	24,184	2,723	20,436	64	60	N/A	N/A	N/A	N/A
Georgia	7-1-96	6-30-97	586	7,577	549	6,792	82.3	76.6	N/A	N/A	N/A	N/A
Hawaii	7-1-96	6-30-97	N/A	N/A	178	952	35	70	N/A	N/A	N/A	N/A
Idaho	7-1-96	6-30-97	173	833	172	825	56	66	68	68	46	92
Illinois	7-1	6-30	732	6,683	619	6,094	81	68	N/A	N/A	N/A	N/A
Indiana												
Iowa	7-1-96	6-30-97	133	1,316	131	1,303	67.94	56.25	N/A	N/A	N/A	N/A
Kansas	7-1-96	6-30-97			119	1,210	67	63				
Kentucky	7-1-96	6-30-97	188	2,129	179	2,060	59	64	61	67	84	85
Louisiana	8-1-96	7-31-97			374	3,921			50	64	83	77
Maine	7-1-96	6-30-97	794		719		66					
Manitoba	1-1-96	12-31-96	20	113	18	102	83	80	N/A	N/A	N/A	N/A
Maryland	7-1-96	7-1-97	unknown	Unknown	389	4,333			70	61	75	64
Massachusetts	7-1-96	6-30-97	6,764		6,199		56	66	N/A	N/A	N/A	N/A
Michigan	4-1-96	3-31-97	958	10,322	864	8,760	50.4	50.1				
Minnesota	No Input											
Mississippi	7-1-96	6-30-97	196	1,001	190	976	59	66				
Missouri	7-1-96	6-30-97	N/A	N/A	1,385	6,780	51.9	45.9	42.8	39.9	75.7	73.6
Montana	8-96	7-97	121	565	121	565	76	68	N/A	N/A	N/A	N/A
Nebraska	7-1-96	6-30-97	138	950	135	912	70	52	74	58	86	69
Nevada	7-1-96	6-30-97	1,317	6,443					64.97	56.15	68.16	53.38
New Hampshire	6-30-96	7-1-97	259	1,244	245	1,150	68	66	49.95	49.97	49.97	49.96
New Jersey	7-1-96	6-30-97	499	7,740	499	7,740	42	64	N/A		N/A	
New Mexico	7-1-96	6-30-97	302	953	258	903	80	81	78	84	84	88
New York	4-1-96	12-31-96	N/A	N/A	2,356	18,649	69	66	N/A	N/A	N/A	N/A
North Carolina	7-1-96	6-30-97	1,950	8,033	1,812	7,416	59	60	N/A	N/A	N/A	N/A
North Dakota	7-1-96	6-30-97	20	235	18	220	66	47	N/A	N/A	N/A	N/A
Nova Scotia	10-96	9-97	27	297	23	291	82	77				
Ohio	7-1-96	6-30-97	296	6,756	266	6,435	58	58	N/A	N/A	N/A	N/A
Oklahoma	1-1-96	12-31-96	N/A	N/A	204	2,393	80	80	N/A	N/A	N/A	N/A
Oregon	7-1-96	6-30-97	555	2,875	518	2,727	69	63	71	65	82	76
Pennsylvania	7-1-96	6-30-97	536	7,048	508	6,689	51	54	50	59	73	68
Quebec	1-1-96	12-31-96	50	826	50	826	64	86	N/A	N/A	N/A	N/A
Rhode Island	No Input											
Saskatchewan	7-1-96	6-30-97	25	226	25	226	72	62	N/A	N/A	N/A	N/A
South Carolina	7-1-96	6-30-97	516	4,360	498	4,124	60.2	68.0	64.7	78.0	80.9	81.0
South Dakota	7-1-96	6-30-97	125	316	113	288	61	34	71	43	81	60
Tennessee												
Texas	9-1-96	7-31-97			808	7,085	82.1	83.1				
Utah	7-1-96	6-30-97	291	2,414	283	2,315	70	72	67	73	70	80
Vermont												
Virginia	7-1-96	6-30-97	284	6,033	275	5,638	75	43	87	51	81	64
Washington	7-96	6-97	457	3,650	445	3,625	70	82	N/A	N/A	N/A	N/A
West Virginia	7-1-96	6-30-97	67	1,060	50	841	48	71				
Wisconsin	7-1-96	7-1-97	669	3,437	652	3,320	80.36	55.57	N/A	71.77	N/A	62.21
Wyoming	7-1-96	6-30-97	79	362	78	342	64	63				

Source: Association of Real Estate License Law Officials

### Appendix D - Errors and Omissions Insurance by State

Jurisdiction	Mandate Errors and Omissions Insurance	Date of Inception	Who Must Obtain Coverage				Coverage Amount Required				Equivalent Coverage Option Offered
			Broker	Sales	Firm	Other	Minimum Per Claim	Minimum Annual Aggregate	Maximum Deductible		
									Jurisdiction Contracted	Equivalent Coverage	
Alabama	Yes	1992	X	X	X		100,000 / 300,000		1,000		Yes
Alaska	No Input										
Alberta	Yes	1991	X	X		Designated representatives	100,000	N/A	2,500 (1 <sup>st</sup> ) 5,000 (2 <sup>nd</sup> /2 yrs.)		No
Arizona	No										
Arkansas	No										
British Columbia	Yes	1988	X	X	X		100,000	No Limit	2,000/license		No
California	No										
Colorado	Yes	1998	X	X	X		100,000	300,000	1,000	1,000	Yes
Connecticut	No Input										
Delaware	No										
Dist. of Columbia	No										
Florida	No										
Georgia	No										
Hawaii	No										
Idaho	Yes	1994	X	X	X		100,000	300,000	3,500	3,500	Yes
Illinois	No										
Indiana	No Input										
Iowa	Yes	1991	X	X	X		100,000	100,000		Unknown	Yes
Kansas	No										
Kentucky	Yes	1987	X	X			100,000	1,000,000	3,500	3,500	Yes
Louisiana	Yes	1990	X	X	X	Corp's., Partnerships, LLC's	100,000	300,000	2,500	1,000	Yes
Maine	No										
Manitoba	No										
Maryland	No										
Massachusetts	No										
Michigan	No										
Minnesota	No Input										
Mississippi	Yes	1994	X	X			100,000	Not Stated	1,000	2,500	Yes
Missouri	No										
Montana	No										
Nebraska	Yes	1993	X	X	N/A		100,000	300,000	Not more than 1% of coverage per claim		Yes
Nevada	No										
New Hampshire	No										
New Jersey	No										
New Mexico	No										
New York	No										
North Carolina	No										
North Dakota	No										
Nova Scotia	No										
Ohio	No										
Oklahoma	No										
Oregon	No										
Pennsylvania	No										
Quebec	Yes		X				100,000	500,000	5,000		Yes
Rhode Island	No Input										
Saskatchewan	No										
South Carolina	No										
South Dakota	Yes	1994	X	X		Property managers, auctioneers	100,000	500,000	Not greater than 1% of total single-limit liability amount		Yes
Tennessee	Yes		X	X	optional		100,000		1,000		Yes
Texas	No										
Utah	No										
Vermont	No										
Virginia	No										
Washington	No										
West Virginia	No										
Wisconsin	No										
Wyoming	No										

Jurisdiction	Jurisdiction Contracted Plan					Loss Report Information Since Inception							
	Plan Offered	Policy Period	Annual Premium	Insurance Carrier	Who Collects Premium	Date of Report Used	Total Number of Claims	Closed (No Loss Payments)	Closed (With Loss Payments)	Open	Total Dollar Loss Paid	Total Dollar Paid Loss by: (Does not include paid expense)	
												Insured	Insurer
Alabama	Yes	1 yr.	97.00	St. Paul Fire and Marine	Program Admin.	3-31-96	248			102	540,701		
Alaska	No Input												
Alberta	No	1 yr.	100.00	Self-Insured	Regulatory Body	6-30-97	580	368	52	160	427,047	130,000	427,047
Arizona													
Arkansas													
British Columbia	Yes	1 yr.	200.00	RE E&O Ins. Corp.	With License Fees	8-11-97							
California													
Colorado	Yes	1 yr.	68.00	Williams Underwriting	By Carrier	N/A							
Connecticut	No Input												
Delaware													
Dist. of Columbia													
Florida													
Georgia													
Hawaii													
Idaho	Yes	2 yrs.	204.00	Bankers Mult. Line	RE Commission								
Illinois													
Indiana													
Iowa	Yes	1 yr.		Frontier	By Frontier	6-29-96	340	N/A	N/A		349,792		864,580
Kansas													
Kentucky	Yes	1 yr.	69.00		With License Fees								
Louisiana	Yes	1 yr.	84.00	St. Paul Fire & Marine	With License Fees	1-27-97	196	31	19	146	132,556	N/A	388,295
Maine													
Manitoba													
Maryland													
Massachusetts													
Michigan													
Minnesota	No Input												
Mississippi	Yes	1 yr.	61.00	Frontier	By carrier	6-13-97	118				518,364	17,013	501,351
Missouri													
Montana													
Nebraska	Yes	1 yr.	71.00	St. Paul Fire & Marine	Williams Underwriting	3-31-97	116	67	15	34	135,749		135,749
Nevada													
New Hampshire													
New Jersey													
New Mexico													
New York													
North Carolina													
North Dakota													
Nova Scotia													
Ohio													
Oklahoma													
Oregon													
Pennsylvania													
Quebec	No												
Rhode Island	No Input												
Saskatchewan													
South Carolina													
South Dakota	Yes	1 yr.	80.00	Frontier	Commission	6-30-97	51	12	7	19	N/A	N/A	44,850
Tennessee	Yes	1 yr.	118 / 2 yrs.	Frontier	With License and Renewal								
Texas													
Utah													
Vermont													
Virginia													
Washington													
West Virginia													
Wisconsin													
Wyoming													

Source: Association of Real Estate License Law Officials

## Appendix E - Statute

### ARTICLE 61

#### PART 1 - BROKERS AND SALESPERSONS

12-61-101.	Definitions.
12-61-102.	License required.
12-61-103.	Application for license.
12-61-103.5.	Transitional provisions - holders of existing salesperson's licenses.
12-61-103.6.	Errors and omissions insurance - duties of the commission - certificate of coverage, when required - group plan made available - effect.
12-61-104.	Licenses - issuance - contents - display.
12-61-105.	Commission - compensation - immunity - subject to termination.
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## PART 1

## BROKERS AND SALESPERSONS

12-61-101. 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.

(1.3) "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) "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:

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

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

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

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

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

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

(g) 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";

(h) 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;

(i) 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;

(j) 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.

(3) "Real estate salesperson" or "salesperson" means any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity of a real estate broker, as defined in subsection (1.5) or (2) of this section, for compensation or otherwise.

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- (4) "Real estate salesperson" or "real estate broker" does not apply to any of the following:
- (a) 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;
  - (b) Any public official in the conduct of his official duties;
  - (c) Any receiver, trustee, administrator, conservator, executor, or guardian acting under proper authorization;
  - (d) 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;
  - (e) An attorney-at-law in connection with his representation of clients in the practice of law;
  - (f) Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof engaged in the act of acquiring, purchasing, assigning, exchanging, selling, or dealing in oil and gas or other mineral leases or interests therein or other severed mineral or royalty interests in real property;
  - (g) 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;
  - (h) 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 paragraph (h), 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.
  - (i) 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;
  - (j) 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;
  - (k) 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. For the purposes of this paragraph (k), "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.
  - (l) 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 employer.
  - (m) A regularly salaried employee of an owner of condominium units who acts as an on-site manager of such units. For purposes of this paragraph (m) 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 employer.
  - (n) 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;
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(o) Repealed.

(p) 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.

**12-61-102. 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 or real estate salesperson 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 or real estate salesperson 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 the provisions of section 24-5-101, C.R.S.

**12-61-103. Application for license.** (1) 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 prescribed by it.

(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 and 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:
  - (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 commission. 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 been licensed as a broker in another jurisdiction during a portion of the immediate past two years prior to making such application, which jurisdiction administers a real estate broker's examination, shall be required to successfully complete only the Colorado part of the real estate broker's 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 or salesperson 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.

(II) No such broker shall employ another broker or salesperson 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 unincorporated association consisting of more than one individual shall designate one of its members to submit an application for a partnership broker's license, a limited liability company shall designate one of its managers to submit an application for a limited liability company broker's license, and every corporation, in its application for a license, shall designate and appoint one of its directors, who shall also be an officer of the corporation, to submit an application for a corporate broker's license, and such member, manager, or director shall have more than a nominal ownership interest in the partnership, limited liability company, or corporation. The application of the partnership, limited liability company, or corporation and the application of the member, manager, or director 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 member, manager, or director 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 member's, manager's, or officer'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 member, manager, or director, the commission shall issue a broker's license to the partnership, limited liability company, or corporation, which shall bear the name of such member, manager, or director, and thereupon the member, manager, or director 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 member, manager, director, 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 member, manager, director, or employee shall first obtain a license as a real estate broker as provided in this section and shall pay the regular fee therefor.

(8) The member, manager, or director 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 member, manager, or director acting as broker, and may pursue said claim against the partnership, limited liability company, or corporation and the designated member, manager, or director personally. The said member, manager, or director 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 member, manager, or director 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 and no real estate salesperson's license shall be issued to a partnership, a limited liability company, or a corporation or under a fictitious name or trade name; except that a woman may elect to use her birth name.

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

(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.

**12-61-103.5. Transitional provisions - holders of existing salesperson's licenses.** (1) Effective January 1, 1997, the real estate commission shall no longer issue a real estate salesperson's license.

(2) A holder of a salesperson's license who wishes to renew on active status for the year 2000 or any subsequent year must renew, if at all, as brokers and shall be issued a real estate broker's license in lieu of a renewed salesperson's license upon meeting either of the following two alternative requirements:

(a) Passage of the Colorado portion of the real estate broker's license examination during the three-year period immediately preceding the application for renewal; or

(b) Successful completion of a course of study approved by the commission and consisting of twenty-four clock hours of instruction, including instruction in closings and contract preparation, within the three-year period immediately preceding the application for renewal. Such course shall be in lieu of the continuing education requirements of sections 12-61-110 and 12-61-110.5 for the applicable renewal period. A person issued a broker's license pursuant to this paragraph (b) shall practice, if at all, only in the employ of a licensed broker until passing the Colorado portion of the real estate broker's license examination.

(3) A holder of a real estate salesperson's license who wishes to renew on inactive status for the year 2000 or any subsequent year may do so, subject to any otherwise applicable requirements for such renewal. An application to activate such an inactive license shall be accompanied by proof or certification of compliance with either paragraph (a) or paragraph (b) of subsection (2) of this section.

**12-61-103.6. Errors and omissions insurance - duties of the commission - certificate of coverage, when required - group plan made available - effect.** (1) Commencing January 1, 1998, every licensee under this part 1, except an inactive broker or salesperson or an attorney licensee who maintains a policy of professional malpractice insurance which 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 this article. The commission 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. Any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Any licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

(2) If the commission 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 not to exceed one hundred dollars, the errors and omissions insurance requirement of this section shall not apply during any year for which coverage cannot be obtained.

(3) The commission shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty days prior to 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 commission.

(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.

**12-61-104. Licenses - issuance - contents - display.** (1) The commission shall issue 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) The commission shall issue and deliver to each broker and to each salesperson pocket cards which shall contain the name of the licensee and the imprint of the seal or facsimile as provided in subsection (1) of this section and shall certify that the person whose name appears thereon is a licensed real estate broker or real estate salesperson, as the case may be. Such cards shall be in such form as prescribed by the commission.

(3) Each person, partnership, limited liability company, or corporation licensed as a real estate broker shall display such broker's license in a conspicuous place on the premises of the broker's place of business, and the licenses of the salespersons and brokers employed by the broker shall be similarly displayed.

**12-61-105. 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, 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, one person with expertise in subdivision development, and one person representative 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 shall have the authority to 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 registrations 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 and no real estate salesperson'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. 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 for the commission and such attorneys, deputies, investigators, clerks, and assistants as are necessary to discharge the duties imposed by the provisions of parts 1, 3, and 4 of this article.

(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. 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) Every applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper courts of any county of this state in which a cause of action may arise and in which the plaintiffs may reside by the service of any process or pleading authorized by the laws of this state on the secretary of state, said consent stipulating and agreeing that such service or such process or pleading on said secretary shall be held in all courts to be as valid and binding as if due service had been made upon said applicant in the state of Colorado. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of an officer or member thereof, if otherwise.

(3) All such applications, except from individuals, shall be accompanied by a certificate signed by the proper officers or managing board certifying that the broker is authorized to act for the corporation. In case any process or pleading mentioned in this part 1 is served upon the secretary of state, it shall be by duplicate copies, one of which shall be filed in the office of said secretary and the other immediately forwarded by certified mail to the main office of the applicant against which said process or pleading is directed.

**12-61-108. List of licensees - publications.** The commission shall maintain a list 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 lists 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.

**12-61-109. Change of license status - inactive - cancellation.** (1) Immediate notice shall be given in writing 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 cancel the license theretofore issued.

(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, and such employed broker shall have no salespersons licensed under the employed broker during the term of such employment, nor shall the employed broker 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 in writing. Either party may deliver or mail such notice 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 and after the date that employment has been terminated. When any real estate salesperson or 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 salesperson or broker for the same period of time.

**12-61-110. License fees - partnership, limited liability company, and corporation licenses.** (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, a condition of which renewal shall be fulfillment of the continuing education requirements set forth in section 12-61-110.5. 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 which 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 his license before January 1 of the year succeeding the year of the expiration of his license may reinstate his license as follows:

(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 real estate recovery fund, as established by section 12-61-301.

(5) The suspension, expiration, or revocation of a real estate broker's license shall automatically cancel every real estate broker's or real estate salesperson'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, p. 1628, § 8, effective July 1, 1991.)

**12-61-110.5. Renewal of license - continuing education requirement.** (1) Commencing January 1, 1992, except as otherwise provided in subsection (4) of this section, a salesperson or 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) For licensees applying for renewal for 1992, passage within the previous year of the Colorado portion of the real estate exam or completion of eight hours of credit developed by the real estate commission pursuant to subsection (2) of this section.

(b) For licensees applying for renewal for 1993, passage within the previous two years of the Colorado portion of the real estate exam or completion of a minimum of sixteen hours of credit, eight of which shall be the credits developed by the real estate commission pursuant to subsection (2) of this section.

(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, eight 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 eight 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 and regulations 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; or a Colorado private occupational school holding a certificate of approval from the state board for community colleges and occupational education. 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.

(3) All credits, other than the credits specified in subsection (2) of this section, shall be acquired from educational programs contributing 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.

**12-61-111. Disposition of fees.** All moneys collected by the commission under parts 1 and 4 of this article 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. Fee adjustments.** (1) This section shall apply to all activities of the division under parts 1, 3, 4, and 7 of this article.

(2) (a) The division shall propose, as part of its annual budget request, an adjustment in the amount of each fee which 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.

(b) Based upon the appropriation made and subject to the approval of the executive director of the department of regulatory agencies, the division 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 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. 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. Investigation - revocation - actions against licensee.** (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, salespersons, 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;



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- (f) In the case of a salesperson or 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 his possession which belong to others, whether acting as real estate brokers, salespersons, or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules and regulations 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;
- (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 seven 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 or real estate salesperson, as described in this part 1, to any person not licensed under the provisions of 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., in part 4 of article 4 of title 18, C.R.S., or in part 1, 2, 3, or 5 of article 5 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 1.
- (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 or salesperson 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;
- (p) Procuring, or attempting to procure, a real estate broker's license or a real estate salesperson's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a real estate broker's license or a real estate salesperson'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;
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(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) Fraud, misrepresentation, deceit, or conversion of trust funds which results in the payment of any claim from the real estate recovery fund, pursuant to part 3 of this article;

(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 salesperson's license or a subdivision developer's license suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the broker, salesperson, or subdivision developer in any other jurisdiction if the broker's, salesperson'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 seven years from the date of compliance with said section.

(1.5) Every person licensed pursuant to section 12-61-101 (2) (j) 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 member, manager, or officer 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 member, manager, or director, whether or not the designated member, manager, or director had personal knowledge thereof and whether or not the commission suspends or revokes the individual license of said member, manager, or director.

(3) Upon request of the commission, when any real estate broker or salesperson 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 or salesperson is involved in such transaction in such capacity as a licensed broker or salesperson, it shall be the duty of said broker or salesperson 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 which 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 the results of staff investigations may, in the discretion of the commission, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(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 real estate recovery fund established in section 12-61-301.

**12-61-113.5. Mobile home transactions - requirements. (Repealed)**

**12-61-114. 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 a salesperson or 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. In the event that 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 or salesperson 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. Rules and regulations.** 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. Subpoena compelling attendance of witnesses, records, and documents. (Repealed)**

**12-61-116. Failure to obey subpoena - penalty. (Repealed)**

**12-61-117. Salesperson or broker remuneration.** It is unlawful for any real estate salesperson or for any 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 or the salesperson's employer, who must be a licensed real estate broker.

**12-61-118. Acts of salespersons - broker's liability.** Any unlawful act or violation of any of the provisions of this part 1 upon the part of any real estate salesperson or employee or any 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 salespersons or employees.

**12-61-119. Violations.** Any natural person, firm, partnership, limited liability company, or association or any corporation violating the provisions of this part 1 by acting as real estate broker or real estate salesperson in this state without having obtained a license or by acting as real estate broker or real estate salesperson after that person'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 a corporation, 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. 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. 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. 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. Repeal of part.** This part 1 is repealed, effective July 1, 1999. 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.

## PART 2

### BROKERS' COMMISSIONS

**12-61-201. 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. 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. 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.

**12-61-204. Repeal of part.** This part 2 is repealed, effective July 1, 1999. Prior to such repeal, the provisions in this part 2 shall be reviewed as provided for in section 24-34-104, C.R.S.

## PART 3

### RECOVERY FUND

**12-61-301. Real estate recovery fund - fees.** (1) There is created in the office of the state treasurer a real estate recovery fund, referred to in this part 3 as the "fund", which shall be used under the direction of the real estate commission in the manner prescribed in this part 3.

(2) When renewing a license under this article, each licensee shall pay, in addition to the license renewal fee, a fee that shall be determined by the commission, not to exceed forty dollars, in accordance with subsection (4) of this section and shall be deposited in the fund.

(3) (a) Any interest earned on investment of moneys in the fund shall be credited at least annually to said fund. No moneys shall be appropriated from the general fund for payment of any expenses incurred under this part 3, and no such expenses shall be charged against the state.

(b) All moneys remaining in the fund as of June 30, 1995, shall first be applied to pay future claims as they become due. No additional payments to the fund from licensees pursuant to subsection (2) of this section shall be required until the balance remaining in the fund is less than three hundred fifty thousand dollars.

(4) (a) If, on January 1 of any year, the balance remaining in the fund is less than three hundred fifty thousand dollars, the commission shall set a fee to be collected from licensees under subsection (2) of this section. The amount of the fee shall be sufficient to reestablish and maintain the balance of the fund at a minimum of three hundred fifty thousand dollars. The fee shall be imposed beginning July 1 of that year and shall remain in effect through June 30 of the third year thereafter.

(b) If, on January 1 of any year, the balance remaining in the fund is five hundred thousand dollars or more as a result of deposits made in accordance with subsection (2) of this section, the amount over five hundred thousand dollars shall be transferred to the real estate cash fund and disposed of as provided in sections 12-61-111 and 12-61-111.5.

**12-61-302. Limitation on payments out of the fund.** (1) No payment shall be made from the fund unless 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.

(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.

(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, 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;

(d) Sixty 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.

**12-61-303. Simplified procedure - application for administrative order for payment from the fund.** (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 from the real estate recovery fund has been filed with the real estate commission.**

**If the real estate commission issues an administrative order for payment from the fund, 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 fund is reimbursed for the amount paid, plus interest at the statutory rate.**

**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) Any real estate broker or real estate salesperson who is licensed or who renews a license under part 1 of this article on or after January 1, 1972, and upon whom personal service cannot be made with reasonable diligence shall be deemed to have appointed the secretary of state as agent for service of process for purposes of actions and applications filed against said broker or salesperson pursuant to this part 3. Service of process upon such persons shall be made as nearly as practicable in the manner prescribed by section 7-105-104, C.R.S. The burden shall be upon the applicant to show that personal service cannot be made with reasonable diligence.

(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. 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 which shall state as follows:

**"NOTICE: Based on a judgment entered against you in the above-captioned matter, a petition for an order directing payment from the recovery fund of the real estate commission has been filed with the court.**

**If the real estate commission makes a payment from the fund 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 fund is reimbursed for the amount paid, plus interest at the statutory rate.**

**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. 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. 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. Automatic revocation of license - reinstatement.** 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. 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.

**12-61-308. 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. 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.

#### PART 4

#### SUBDIVISIONS

**12-61-401. 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.

(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. 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. 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. 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. 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 real estate recovery fund established in section 12-61-301.

**12-61-406. 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. 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 18-1-105, 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.

**12-61-408. Repeal of part.** This part 4 is repealed, effective July 1, 1999. Prior to such repeal, the provisions in this part 4 shall be reviewed as provided for in section 24-34-104, C.R.S.

## PART 5

### RENTAL LOCATION AGENTS

**12-61-501 to 12-61-507. (Repealed)**

## PART 6

### PREOWNED HOUSING HOME WARRANTY SERVICE CONTRACTS

**12-61-601. Short title. (Repealed)**

**12-61-602. Definitions.** As used in this part 6, unless the context otherwise requires:

(1) and (2) Repealed.

(3) (a) "Preowned home warranty service contract" means any contract or agreement whereby a person undertakes for a predetermined fee, with respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified preowned home:

(I) Structural components, such as the roof, foundation, basement, walls, ceilings, or floors;

(II) Utility systems, such as electrical, air conditioning, plumbing, and heating systems, including furnaces; and

(III) Appliances, such as stoves, washers, dryers, and dishwashers.

(b) "Preowned home warranty service contract" does not include any contract or agreement whereby a public utility undertakes for a predetermined fee, with respect to a specified period of time, to repair or replace any or all of the elements of a specified preowned home as specified in subparagraph (II) or (III) of paragraph (a) of this subsection (3).

(4) "Preowned home warranty service company", referred to in this part 6 as the "company", means any person who undertakes a contractual obligation on a preowned home through a preowned home warranty service contract.

(5) "Person" includes an individual, company, corporation, association, agent, and every other legal entity.

(6) "Preowned" means a single-family residence, residential unit in a multiple-dwelling structure, or mobile home on a foundation which is occupied as a residence and not owned by the builder-developer or first occupant.

**12-61-603. Registration required - exemption. (Repealed)**

**12-61-604. Deposit - bond - letter of credit or initial capitalization. (Repealed)**

**12-61-605. Registration - denial - expiration and renewal. (Repealed)**

**12-61-606. Grounds for suspension or revocation of registration. (Repealed)**

**12-61-607. Judgments - distribution. (Repealed)**

**12-61-608. Order of suspension or revocation of registration. (Repealed)**

**12-61-609. Annual statement - review. (Repealed)**

**12-61-610. Reporting of service of process. (Repealed)**

**12-61-611. Purchase of service contract not to be compulsory.** No company selling, offering to sell, or effecting the issuance of a preowned home warranty service contract under this part 6 shall in any manner require a home buyer or seller, or prospective home buyer or seller, or person refinancing a home to purchase a preowned home warranty service contract.

**12-61-611.5. Contract requirements.** (1) Every preowned home warranty service contract shall contain the following information:

(a) A specific listing of all items or elements excluded from coverage;

(b) A specific listing of all other limitations in coverage, including the exclusion of preexisting conditions if applicable;

(c) The procedure that is required to be followed in order to obtain repairs or replacements;

(d) A statement as to the time period, following notification to the company, within which the requested repairs will be made or replacements will be provided;

(e) The specific duration of the preowned home warranty service contract, including an exact termination date that is not contingent upon an unspecified future closing date or other indefinite event;

(f) A statement as to whether the preowned home warranty service contract is transferable;

(g) A statement that actions under a preowned home warranty service contract may be covered by the provisions of the "Colorado Consumer Protection Act" or the "Unfair Practices Act", articles 1 and 2 of title 6, C.R.S., and that a party to such a contract may have a right of civil action under such laws, including obtaining the recourse or penalties specified in such laws.

**12-61-612. Penalty for violation.** Any person who knowingly violates any provision of this part 6 commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Each instance of violation shall be considered a separate offense.

**12-61-613. Rules and regulations. (Repealed)**

**12-61-614. Prohibitions.** It shall be unlawful for any lending institution to require the purchase of preowned home warranty insurance as a condition for granting financing for the purchase of said home.

**12-61-615. Repeal of part.** This part 6 is repealed, effective July 1, 1999. Prior to such repeal, the provisions in this part 6 shall be reviewed as provided for in section 24-34-104, C.R.S.

## PART 7

## REAL ESTATE APPRAISERS

**12-61-701. Legislative declaration.** The general assembly finds, determines, and declares that this part 7 is enacted pursuant to the requirements of the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989". The general assembly further finds, determines, and declares that this part 7 is intended to implement the minimum requirements of federal law in the least burdensome manner to real estate appraisers.

**12-61-702. Definitions.** As used in this part 7, unless the context otherwise requires:

(1) "Appraisal", "appraisal report", or "real estate appraisal" means a written analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. Such 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 such terms include any valuation completed by any appraiser employee of a county assessor as defined in section 39-1-102 (2), C.R.S. Such 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 said financial institution or affiliate, concerning an interest in real estate that is owned or held as collateral by the said financial institution or affiliate which is not 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. Any such appraisal prepared by an officer, director, or regular salaried employee of said financial institution who is not registered, licensed, or certified under this part 7 shall contain a written notice that the preparer is not registered, licensed, or certified as an appraiser under this part 7.

(2) "Board" means the board of real estate appraisers created in section 12-61-703.

(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.

(4.5) "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 any person who provides for a fee or a salary an opinion 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 or salesperson 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) "Financial institution" means any "bank" or "savings association" as such terms are defined in 12 U.S.C. 1813, any state or industrial bank incorporated under title 11, C.R.S., any state or federally chartered credit union, or any company which has direct or indirect control over any of such entities.

**12-61-703. 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 such 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, and two shall be members of the public at large not engaged in any of the businesses represented by the other members of the board. Of the members of the board appointed for terms beginning July 1, 1990, the commercial bank member, the county assessor member, and two of the appraiser members shall be appointed for terms of three years, and the public member and the remaining appraiser members shall be appointed for terms of one year. Members of the board appointed after July 1, 1990, shall hold office for a term of three years. The additional public member of the board of real estate appraisers authorized by this subsection (1) shall not be appointed before the earliest date on which one of the four appraiser members' terms expires after July 1, 1996. 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) 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 registrations 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, 2002. 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. 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 and regulations 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.

(b) To charge application, examination, and registration, license, and certificate renewal fees established pursuant to section 12-61-111.5 from all applicants for registration, licensure, certification, examination, and renewal under this part 7. No fees received from applicants seeking registration, licensure, certification, examination, or renewal shall be refunded.



(c) (I) To keep all records of proceedings and activities of the board conducted under authority of this part 7, which records shall be open to public inspection at such time and in such manner as may be prescribed by rules and regulations formulated by the board.

(II) The board shall not be required to maintain or preserve licensing history records of any person licensed or certified under the provisions of this part 7 for any period of time longer than seven years.

(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 registration, 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 or purchase 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 which 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.

**12-61-705. Fees, penalties, and fines collected under part 7.** All fees, penalties, and fines collected pursuant to this part 7 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. Qualifications for registration, licensing, and certification of appraisers - continuing education.** (1) The board shall, by rule, prescribe requirements for the initial registration, licensing, or certification of persons under this part 7 to meet the requirements of the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989" and shall develop or purchase examinations to be passed by applicants. The board shall not establish any requirements for initial registration, licensing, or certification that are more stringent than the requirements of any applicable federal law; except that all applicants shall pass an examination developed or purchased 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.

(2) The board shall, by rule, prescribe continuing education requirements for persons registered, licensed, or certified under this part 7 as needed to meet the requirements of the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989". The board shall not establish any continuing education requirements that are more stringent than the requirements of any applicable law; except that all persons registered, licensed, or certified under this part 7 shall be 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.

(3) Any provision of this section to the contrary notwithstanding, the criteria established by the board for the registration, 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 registered, licensed, or certified as provided in subsections (1) and (2) of this section. Obtaining and maintaining a registration, 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 registered, 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 registration, 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.)

**12-61-707. Expiration of licenses - renewal - penalties.** (1) (a) Any registration, license, or certificate issued by the board shall expire on December 31 of the second year following issuance if not timely renewed; except that the initial registration, license, or certificate issued to a person shall expire on December 31 of the year of issuance and shall be renewed as provided in this section. Upon compliance with this section and any applicable rules and regulations 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 registration, license, or certificate shall be reinstated. No real estate appraiser's registration, license, or certificate that has not been renewed for a period of time greater than two years shall be reinstated, and such person shall be required to make new application for registration, licensure, or certification.

(b) A person who fails to renew his or her registration, license, or certificate prior to January 1 of the year succeeding the year of the expiration of such registration, license, or certificate 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 three-year renewal fee; or

(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-third the regular three-year 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 three-year renewal fee and payment of a reinstatement fee equal to two-thirds the regular three-year renewal fee.

(2) In the event the federal registry fee to be 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 shall forward such amount to the said council on an annual basis.

**12-61-708. 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, registration, 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 registration, license, or certificate by endorsement, the applicant possesses credentials and qualifications which 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. Denial of registration, license, or certificate - renewal.** (1) The board is empowered to determine whether an applicant for registration, licensure, or certification possesses the necessary qualifications for registration, 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 involving moral turpitude.

(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 and regulations promulgated by the board or any board order, the board may deny the applicant a registration, license, or certificate or deny the renewal or reinstatement of a registration, 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. Prohibited activities - grounds for disciplinary actions - procedures.** (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, registration, or other authorization to practice as an appraiser. A disciplinary action relating to a registration, license, or certificate 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 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.

(2) If an applicant, a registrant, a licensee, or a certified person has violated any of the provisions of this section, the board may deny or refuse to renew any registration, license, or certificate, or, as specified in subsections (2.5) and (5) of this section, revoke or suspend any registration, license, or certificate, issue a letter of admonition to a licensee or certified person, or place a registrant, licensee, or certified person on probation.

(2.5) When a complaint or an investigation discloses an instance of misconduct by a registered, 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 registrant, licensee, or certified person may be commenced when the board has reasonable grounds to believe that a registrant, 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 registration, license, or certificate.** (I) Revocation of a registration, license, or certificate by the board shall mean that the registered, licensed, or certified person shall surrender his or her registration, license, or certificate immediately to the board.

(II) Any person whose registration, license, or certificate to practice is revoked is rendered ineligible to apply for any registration, license, or certificate issued under this part 7 until more than two years have elapsed from the date of surrender of the registration, 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.)

(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) Complaints of record in the office of the board and the results of staff investigations may, in the discretion of the board, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(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) 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.

(10) Any registrant, 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 registration, 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.

**12-61-711. 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. Unlawful acts.** (1) It is unlawful for any person to:

(a) Violate any provision of this part 7 or, on and after July 1, 1997, to 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 registration, 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 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Any person who subsequently violates any provision of subsection (1) of this section within three years after the date of a conviction for a violation of subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, 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.

**12-61-713. 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 any person from committing any act prohibited by the provisions of 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. 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 registered, 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 registration, license, or certificate or hold himself or herself out to the public as a registered, licensed, or certified real estate appraiser unless registered, 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 registered, 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. Duties of board under federal law.** (1) The board shall:

(a) Transmit to the appraisal subcommittee of the federal financial institutions examinations council, no less than annually, a roster listing individuals who have received a certificate or license as provided in this part 7;

(b) Collect from individuals who have received a certificate or license as provided in this part 7 an annual registry fee of not more than twenty-five dollars, unless the appraisal subcommittee of the federal financial institutions examinations council adjusts the fee up to a maximum of fifty dollars, and transmit such 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.

**12-61-716. 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 individuals registered, certified, or licensed in accordance with this part 7. An individual who is not a registered, certified, or licensed appraiser may assist in the preparation of an appraisal if:

- (a) The assistant is under the direct supervision of a registered, certified, or licensed appraiser; and
- (b) The final appraisal document is approved and signed by an individual who is a registered, certified, or licensed appraiser.

**12-61-717. Provisions found not to comply with federal law null and void - severability.** 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", such provision shall be null and void, but the remaining provisions of this part 7 shall be valid unless such remaining provisions alone are incomplete and are incapable of being executed in accordance with the legislative intent of this part 7.

**12-61-718. Scope of article - regulated financial institutions - de minimis exemption.** (1) (a) The provisions of 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 or salesperson 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 registered, licensed, or certified as an appraiser under this part 7. Nothing in this subsection (1) shall be construed to exempt a person registered, 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.

## PART 8

### BROKERAGE RELATIONSHIPS

**12-61-801. 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, subagent, dual agent, or transaction-broker. Further, the public should be advised of the general duties, obligations, and responsibilities of a real estate broker in any particular real estate transaction.

(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. Definitions.** As used in this part 8, unless the context otherwise requires:

- (1) "Broker" shall have the same meaning as set forth in subsection (2) or (3) of section 12-61-101, except as otherwise specified in this part 8. For purposes of this part 8, "broker" may include a "salesperson" as defined in section 12-61-101 (3).
- (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, 12-61-805, or 12-61-806, 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) (a) or a written disclosure pursuant to section 12-61-808 (2) (d), a transaction-broker may become a single agent, subagent, or dual agent.

**12-61-803. Relationships between brokers and the public.** (1) When engaged in any of the activities enumerated in section 12-61-101 (2) or (3), a broker may act in any transaction as a single agent, subagent, dual 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) A single agency or dual agency relationship is established through a written agreement between the broker and the party or parties to be represented by such broker; or

(b) A broker works with a buyer or tenant as a subagent of the seller or landlord by expressly agreeing with the seller or landlord to serve as a subagent or by impliedly agreeing to serve as a subagent by acting upon and thereby accepting an offer of subagency.

(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, buyer's agent, or subagent, if the broker complies with this part 8 in establishing the relationships for each transaction.

(4) A broker or salesperson licensed pursuant to part 1 of this article, whether acting as a single agent, subagent, dual 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 or salesperson is performing the activities enumerated or referred to in subsection (2) or (3) of section 12-61-101 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.

**12-61-804. 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:

(l) 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 may be vicariously liable for the acts of such seller's or landlord's agent or any subagent when the broker is acting within the scope of the agency relationship.

(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) A seller or landlord may agree in writing with a seller's or landlord's agent that other brokers may be retained and compensated as subagents.

(b) Any broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1), (2), (3), and (4) of this section.

**12-61-805. 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 may be vicariously liable for the acts of such buyer's or tenant's agent when such agent is acting within the scope of the agency relationship;

(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.

**12-61-806. Dual agent.** (1) A broker may act as a dual agent only with the informed consent of all parties to the transaction. Such informed consent shall be evidenced by a written agreement pursuant to section 12-61-808 (2) (e). The seller and buyer or the landlord and tenant shall be informed that they may both be vicariously liable for the acts of the dual agent when such agent is acting within the scope of the dual agency relationship.

(2) A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections 12-61-804 and 12-61-805 unless otherwise provided for in this section.

(3) Except as provided for in subsections (4) and (5) of this section, a dual agent may disclose any information to one party that such agent gains from the other party if such information is relevant to the transaction or party.

(4) The following information shall not be disclosed by a dual agent without the informed written consent of the parties to the proposed transaction:

- (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; and
- (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.

(5) (a) A dual agent shall not disclose to one party information made confidential by statute, regulation, or instructions from the other party except for information required to be disclosed pursuant to sections 12-61-804 (3) and 12-61-805 (3).

(b) No cause of action by any person shall arise against a dual agent for making any required disclosure.

(c) A dual agent does not terminate the dual agency relationship by making any required disclosure.

(6) In a dual agency relationship there shall be no imputation of knowledge or information between any party and the dual agent or among persons within an entity engaged as a dual agent.

**12-61-807. 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, subagent, or dual agent 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 any subagents.

**12-61-808. Broker disclosures.** (1) (a) Any person, firm, partnership, limited liability company, association, or corporation acting as a broker shall adopt a written office policy which identifies and describes the relationships in which such broker may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

(b) A broker shall not be required to offer or engage in any one or in all of the brokerage relationships enumerated in sections 12-61-804 to 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 which include buyer agency, seller agency, subagency, or 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 which 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 subsection (2) or (3) of section 12-61-101, 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 subsection (2) or (3) of section 12-61-101, 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, including a disclosure that the party to be represented may be vicariously liable for the acts of the broker and of any subagents while such broker or subagent is acting within the scope of the agency relationship. Notice of the single agency relationship shall be furnished to any prospective party to the proposed transaction in a timely manner.

(c) Prior to engaging in any of the activities enumerated in subsection (2) or (3) of section 12-61-101, a seller's or landlord's agent shall execute a written agreement with the seller or landlord specifying whether an offer of subagency may be made to any other broker. Such agreement shall indicate that a seller or landlord may be held vicariously liable for the acts of any subagent.

(d) (I) Prior to engaging in any of the activities enumerated in subsection (2) or (3) of section 12-61-101, a broker intending to work with a buyer or tenant as an agent or subagent of the seller shall provide a written disclosure to such buyer or tenant which 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 unless the broker enters into a written agreement to act as a buyer's or tenant's agent;

(B) A list of the tasks that the agent acting as a subagent intends to perform 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 when acting as a subagent.

(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) A broker intending to act as a dual agent shall obtain the written agreement of the seller and buyer or landlord and tenant permitting the broker to serve as a dual agent in the proposed transaction. Such agreement shall disclose and include a recitation of the responsibilities and obligations required pursuant to section 12-61-806. Such agreement shall also state that the seller and buyer or landlord and tenant can both be held vicariously liable for the acts of a dual agent when such agent is acting within the scope of the dual agency relationship.

(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.

**12-61-809. 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, buyer's agent, subagent, or dual 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

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(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. 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, single agent, or subagent 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, transaction-broker, or subagent 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. Violations.** The violation of any provision of this part 8 by a broker or salesperson shall constitute 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 or salesperson pursuant to sections 12-61-113 and 12-61-114 if it has reason to believe that this part 8 has been violated.