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CEBCTC(0906) (V090106)
CONTINUING EDUCATION
COLORADO BROKER TRANSITION COURSE

COURSE OBJECTIVE: To protect the public by providing a course of study for the transition from a Colorado salesperson's license to a broker associate license pursuant to 12-61-103.5 C.R.S.

I. THE DISCUSSION OF THE LEVELS OF AUTHORITY AND RESPONSIBILITY FOR BROKER(S)

The Colorado Legislature has passed a bill changing the current law regarding real estate licenses in Colorado. Colorado will no longer issue a real estate salesperson license. Instead, as of January 1, 1997, only real estate brokers licenses will be issued.

Anyone wishing to become a salesperson or broker prior to January 1, 1997 will need to finish all the current courses, pass the examination and apply for the respective license on or before December 31, 1996.

Anyone applying for a real estate brokers license on January 1, 1997 and thereafter will have to complete the new education and experience requirements.

Colorado license law acknowledges three levels of broker authority:

Associate Broker: This is the entry-level license real estate brokerage. No previous licensure or experience is required. An associate broker may hold an inactive license or be employed by an employing broker.

Independent Broker: Requires two years of active licensure. An independent broker may be inactive, self-employed (without employing other licensees) or choose to be employed by an employing broker.

Employing Broker: In addition to two years' experience, a licensee must complete a 24-hour "Brokerage Administration" in order to qualify as an employing broker. A broker qualified at this level may hold inactive licensure, practice independently, choose to be employed and supervised by another employing broker or employ (and is required to supervise) other licensees. Persons licensed as a real estate broker prior to January 1, 1997 are qualified at the employing level.

Use the following chart to determine your requirements for each of the three levels of broker authority as of January 1, 1997.

To use the grid, find your CURRENT STATUS in the left column, then look to the right to find the education, examination and years of active experience for the desired broker level of authority. You must submit proof of completion of all course work.

A. Levels of Authority and Responsibility

1. Educational and experience requirements for each of the three new levels of broker practice:
<table>
<thead>
<tr>
<th>Your Current Status</th>
<th>Associate Broker</th>
<th>Independent Broker</th>
<th>Employing Broker</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Find your Current Status</strong></td>
<td>An associate broker must be employed and supervised by an employing broker or on inactive status. You must meet the requirements listed below as they pertain to your Current Status.</td>
<td>This level of authority allows you to be: (1) independent (self-employed without employed licensees), (2) in the employ of another broker or (3) inactive. You must meet the requirements listed below as they pertain to your Current Status.</td>
<td>This level of authority allows you to: (1) employ and supervise other licensees, (2) be independent (self-employed with employed licensees), (3) in the employ of another broker, or (4) inactive. You must meet the requirements listed below as they pertain to your Current Status.</td>
</tr>
<tr>
<td><strong>New Colorado broker applicant. No past or present real estate licensure in any jurisdiction</strong></td>
<td>48 hours in Real Estate Law and Practice 48 hours in Colorado Contracts and Regulations 8 hours in Trust Accounts and Record Keeping 8 Hours in Current Legal Issues 24 Hours in Real Estate Closings 32 Hours in Practical Applications *Pass entire broker exam.</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td><strong>Licensed as a broker in another jurisdiction on, or prior to 12-31-96 or Previous Colorado broker who was issued a license prior to January 1, 1997 and whose license expired more than three years ago.</strong></td>
<td>Apply at employing broker level of authority.</td>
<td>Apply at employing broker level of authority.</td>
<td>48 hours in Colorado Contracts and Regulations 24 Hours in Real Estate Closings * Pass entire exam if previous license expired more than two years ago. or * Pass only the state portion of the exam if licensed as a broker in the past two years.</td>
</tr>
<tr>
<td>Your Current Status</td>
<td>Associate Broker</td>
<td>Independent Broker</td>
<td>Employing Broker</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Colorado Broker, Licensed in CO after January 1, 1997 and whose license has expired more than 3 years ago.</td>
<td>* Pass the entire license exam.</td>
<td>* Pass the entire license exam.</td>
<td>Pass the entire license exam.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* 2 years active licensure.</td>
<td>* 2 years active licensure.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* 24 Hours in Brokerage Administration</td>
<td></td>
</tr>
<tr>
<td>Current broker license issued after 12-31-96 in another jurisdiction</td>
<td>48 hours in Colorado Contracts and Regulations</td>
<td>48 hours in Colorado Contracts and Regulations</td>
<td>48 hours in Colorado Contracts and Regulations</td>
</tr>
<tr>
<td></td>
<td>24 Hours in Real Estate Closings</td>
<td>24 Hours in Real Estate Closings</td>
<td>24 Hours in Real Estate Closings</td>
</tr>
<tr>
<td></td>
<td>* Pass the state portion of the broker's exam</td>
<td>* Pass the state portion of the broker's exam</td>
<td>* Pass the state portion of the broker's exam</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* 2 years active licensure.</td>
<td>* 2 years active licensure.</td>
</tr>
<tr>
<td>Past or current real estate salesperson license in another jurisdiction or</td>
<td>48 hours in Colorado Contracts and Regulations</td>
<td>48 hours in Colorado Contracts and Regulations</td>
<td>48 hours in Colorado Contracts and Regulations</td>
</tr>
<tr>
<td>Previous Colorado salesperson whose license expired more than 3 years ago</td>
<td>8 hours in Trust Accounts and Record Keeping</td>
<td>8 hours in Trust Accounts and Record Keeping</td>
<td>8 hours in Trust Accounts and Record Keeping</td>
</tr>
<tr>
<td></td>
<td>8 Hours in Current Legal Issues</td>
<td>8 Hours in Current Legal Issues</td>
<td>8 Hours in Current Legal Issues</td>
</tr>
<tr>
<td></td>
<td>24 Hours in Real Estate Closings</td>
<td>24 Hours in Real Estate Closings</td>
<td>24 Hours in Real Estate Closings</td>
</tr>
<tr>
<td></td>
<td>32 Hours in Practical Applications</td>
<td>32 Hours in Practical Applications</td>
<td>24 Hours in Brokerage Administration</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* 2 years active licensure.</td>
<td>* 2 years active licensure.</td>
</tr>
</tbody>
</table>
### CONTINUING EDUCATION
### COLORADO BROKER TRANSITION COURSE

<table>
<thead>
<tr>
<th>Your Current Status</th>
<th>Associate Broker</th>
<th>Independent Broker</th>
<th>Employing Broker</th>
</tr>
</thead>
<tbody>
<tr>
<td>College graduate with a major course of study in <strong>Real Estate</strong></td>
<td>Transcript indicating major course of study in real estate.</td>
<td>Transcript indicating major course of study in real estate.</td>
<td>Transcript indicating major course of study in real estate.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12 Hours in Trust Accounts, Closings and Record Keeping.</td>
<td>* 2 years active real estate licensure.</td>
</tr>
<tr>
<td>Licensed Attorney</td>
<td>12 Hours in Trust Accounts, Closings and Record Keeping.</td>
<td>12 Hours in Trust Accounts, Closings and Record Keeping.</td>
<td>12 Hours in Trust Accounts, Closings and Record Keeping.</td>
</tr>
<tr>
<td></td>
<td>* Pass the entire broker exam</td>
<td>* Pass the entire broker exam</td>
<td>24 Hrs in Brokerage Administration</td>
</tr>
<tr>
<td></td>
<td>* Proof of an active law license.</td>
<td>* Proof of an active law license.</td>
<td>* Pass the entire broker exam</td>
</tr>
<tr>
<td><strong>Current salesperson licensee in another jurisdiction with a current full license recognition agreement with Colorado.</strong></td>
<td>Current good standing as a real estate salesperson.</td>
<td>Current good standing as a real estate salesperson.</td>
<td>Current good standing as a real estate salesperson.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* Pass the state portion of the broker exam</td>
<td>24 Hours in Brokerage Administration</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* 2 years active licensure.</td>
<td>* Pass the state portion of the broker’s exam</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>* 2 years active licensure.</td>
</tr>
<tr>
<td>*Current broker licensee in another jurisdiction with a current full license recognition agreement with Colorado.</td>
<td>Current good standing as a real estate broker with equivalent level of authority in cooperating jurisdiction.</td>
<td>Current good standing as a real estate broker with equivalent level of authority in cooperating jurisdiction.</td>
<td>Current good standing as a real estate broker with equivalent level of authority in cooperating jurisdiction.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* 2 years of previous licensure</td>
<td>* 2 years of previous licensure</td>
</tr>
</tbody>
</table>

**CEBTC(0906) (V090106)**

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(303) 421-9078
National 1-866-311-7382
## Rule regarding supervision under the new legislation

### E-5. Closing responsibility; closing statement distribution

Pursuant to 12-61-113 (l)(h), at time of closing, the individual licensee who has established a brokerage relationship with the buyer or seller or who works with the buyer or seller as a customer, either personally or on behalf of an employing broker, shall be responsible for the proper closing of the transaction and shall provide, sign and be responsible for an accurate, complete and detailed closing statement as it applies to the party with whom the brokerage relationship has been established. If signed by an employed licensee, closing statements shall be delivered to the employing broker immediately following closing. Nothing in this rule shall relieve an employing broker of the responsibility for fulfilling supervisory responsibilities pursuant to 12-61-103(6)(c), 12-61-113(1)(o), 12-61-118 C.R.S, and Rules E-31 and E-32.

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

(b) The closing statement or statements of all real estate or business opportunity transactions in which a real estate broker participates shall show the date of closing, the total purchase price of the property, itemization of all adjustments, money, or things of value received or paid showing to whom each item is credited and/or to whom each item is debited, the dates of the adjustments shall be shown if not the same as the date of the closing, also shown shall be the balances due from the respective parties to the transaction, and the names of the payees, makers and assignees of all notes paid or made or assumed;
the statements furnished to each party to the transaction shall contain an itemization of such credits
and such debits as pertain to each respective party. The credits and debits concerning the sale of a
preowned home warranty service contract shall be disclosed on the closing statements.

(c) Closing statements shall be delivered to the respective parties at the time of the delivery and
acceptance of the title whether such delivery and acceptance be effected by bill of sale, deed or by an
installment contract to give a deed at a future date.

(d) If closing documents and statements are prepared by, and the closing is conducted by, an employing
broker's company such broker is primarily responsible for the accuracy and completeness of the
settlement statements and documents.

(e) If a licensee with whom a brokerage relationship has been established is unable to attend a closing or
review closing documents, another licensee may agree or be designated by an employing broker to
review and sign a closing statement and will assume joint responsibility with the absent licensee for its
accuracy, completeness and delivery.

(f) A broker may transfer funds pertinent to a real estate transaction from a trust or escrow account to a
lawyer or a closing entity acting on behalf of the broker at or before closing or final settlement. The
broker will not be relieved of responsibilities in regard thereto. The broker delivering an earnest
money deposit to a lawyer or a closing entity providing settlement services shall obtain a dated and
signed receipt from the person or entity providing settlement services and retain a copy of the receipt
in the office transaction file. The settlement statements prepared by the lawyer or closing entity shall
bear the names of the licensee who signs the statement and the employing broker if applicable.

(g) If the real estate transaction involves a new loan made by the purchaser from a lending institution
which deducts costs before disbursing the loan proceeds prior to final settlement, the loan proceeds
must be reconciled with money due to or paid by the buyer and money due the seller after final
settlement. A copy of this reconciliation must be kept in the broker's files and available for audit by a
representative of the Commission.

E-30. Employing broker responsibilities
To ensure compliance with Commission statutes and rules regarding supervision, employing brokers shall have
the following responsibilities:

(a) Maintain all trust accounts and trust account records;
(b) Maintain all transaction records;
(c) Develop an office policy manual and periodically review office policies with all employees; (Ed. Note: See CP-21 in Chapter 3)
(d) Provide for a high level of supervision of newly licensed persons pursuant to Rule E-32;
(e) Provide for a reasonable level of supervision for experienced licensees pursuant to Rule E-31;
(f) Take reasonable steps to ensure that violations of statutes, rules and office policies do not occur or
reoccur;
(g) Provide for adequate supervision of all offices operated by the broker, whether managed by licensed or
unlicensed persons.

E-31. Reasonable supervision
Pursuant to section 12-61-113(l)(o), C.R.S., and in addition to the requirements of Commission Rule E-30,
"reasonable supervision" of licensees with two or more years of experience shall include, but not be limited to,
compliance with the following:
(a) Maintaining a written office policy describing the duties and responsibilities of licensees employed by the broker. A copy of the written policy shall:
   (1) be given to, read and signed by each licensee;
   (2) be available for inspection, upon request, by any authorized representative of the Commission.
(b) Reviewing all executed contracts in order to maintain assurance of competent preparation.
(c) Reviewing transaction files to ensure that required documents exist.
(d) Nothing in this rule shall prohibit an employing broker from delegating supervisory authority to other experienced licensees.
   (1) Employed licensees who accept supervisory authority from an employing broker shall bear responsibility with the employing broker for ensuring compliance with the Commission statutes and rules by all supervised licensees.
   (2) Any such delegation of authority shall be in writing and signed by the employed licensee to whom such authority is delegated. A copy of such delegation shall be maintained by the employing broker for inspection, upon request, by any authorized Commission representative.
   (3) An employing broker shall not contract with any employed licensee so as to circumvent the requirement that the broker supervise employed licensees.

E-32. High-level of supervision
In addition to the requirements of Rule E-31 and pursuant to section 12-61-103(6)(c)(I) C.R.S., an employing broker shall provide a "high level of supervision" for licensed persons with less than two years experience as follows:
   (a) Provide specific training in office policies and procedures;
   (b) Be reasonably available for consultation;
   (c) Provide assistance in preparing contracts;
   (d) Monitor transactions from contracting to closing;
   (e) Review documents in preparation for closing;
   (f) Ensure that the employing broker or an experienced licensee attends closings or is available for assistance.
   (g) Nothing in this rule shall prohibit an employing broker from delegating supervisory authority to other experienced licensees.
      (1) Employed licensees who accept supervisory authority from an employing broker shall bear responsibility with the employing broker for ensuring compliance with the Commission statutes and rules by all supervised licensees.
      (2) Any such delegation of authority shall be in writing and signed by the employed licensee to whom such authority is delegated. A copy of such delegation shall be maintained by the employing broker for inspection upon request by an authorized Commission representative.

E-33. Ministerial tasks
Following proper disclosure pursuant to 12-61-808 C.R.S., a broker engaged as a single agent for one party to a transaction may assist the other party by performing such ministerial tasks as showing a property, preparing and conveying written offers and counteroffers, making known the availability of financing alternatives and providing information related to professional, governmental and community services which will contribute to completion of the transaction and successful fulfillment of the agency. Performing such ministerial tasks shall not of themselves violate the terms of an agency relationship between a broker and a buyer, seller, tenant or landlord and shall not create an agency or transaction-broker relationship with the person being assisted.
Employed licensees who accept supervisory authority from an employing broker shall bear responsibility with the employing broker for ensuring compliance with the Commission statutes and ruled by all supervised licensees.

Any such delegation of authority shall be in writing and signed by the employed licensee to whom such authority is delegated. A copy of such delegation shall be maintained by the employing broker for inspection upon request by an authorized commission representative.
B. Personal Assistants

1. The Commission’s Position Statement regarding Personal Assistants is as follows:


The use of personal assistants has grown considerably in recent years. Personal assistants are generally thought of as unlicensed persons performing various functions as employees (including clerical support) or independent contractors of a real estate broker within the framework of a real estate transaction. The Commission recognizes the growth in the utilization of such assistants. Inquiries generally fit into two categories: (1) whether the activity performed is one which requires a license, and (2) what are the supervisory responsibilities of an employing broker.

The license law prohibits unlicensed persons from negotiating, listing or selling real property. Therefore, foremost to the use of personal assistants is careful restriction of their activities so as to avoid illegal brokerage practice. Personal assistants may complete forms prepared and as directed by licensees but should never independently draft legal documents such as listing and sales contracts, nor should they offer opinions, advice or interpretations, in addition, they should not distribute information on listed properties other than that prepared by a broker.

On the other hand, they may:

1. perform clerical duties for a broker which may include the gathering of information for a listing;
2. provide access to a property and hand out preprinted, objective information, so long as no negotiating, offering, selling or contracting is involved;
3. distribute preprinted, objective information at an open house, so long as no negotiating, offering, selling or contracting is involved;
4. distribute information on listed properties when such information is prepared by a broker;
5. deliver paperwork to other brokers;
6. deliver paperwork to sellers or purchasers, if such paperwork has already been reviewed by a broker;
7. deliver paperwork requiring signatures in regard to financing documents that are prepared by lending institutions; and
8. prepare market analyses for sellers or buyers on behalf of a broker, but disclosure of the name of the preparer must be given, and it must be submitted by the broker.

Employing brokers need to be especially aware of their supervisory duties under the license law. Supervisory duties apply whether the assistant is an employee or independent contractor.

An employing broker should have a written office policy explaining the duties, responsibilities and limitations on the use of personal assistants. This policy should be reviewed by and explained to all employees.

Licensees should not share commissions with unlicensed assistants. Although this may not technically be a violation of the licensing act if the activity is not one which requires a license, the temptation to "cross over" into the area of negotiating and other prohibited practices is greatly increased where compensation is based on the success of the transaction.
CONTINUING EDUCATION
COLORADO BROKER TRANSITION COURSE

If brokers develop adequate policies for the use of assistants and routine procedures for monitoring their activities, the assistant can serve as a valuable tool in the success of the transaction. As with any other activity involving the delegation of an act to another, the freedom and convenience afforded the broker in allowing the use of assistants carries with it certain responsibilities for that person's actions.

2. Office Policy - all brokers shall adopt a written office policy that identifies and include but are not limited to secretaries, bookkeepers and personal assistants.

II. INTEGRATING THE LISTING WITH THE CONTRACT AND THE CLOSING

A. Seller Relationship

1. The Parties - There are two primary types of brokerage relationships: Agency and Transaction Brokerage. A Broker should disclose his or her agency relationship to the transaction principals upon first substantive contact. In this section, buyer also means tenant and seller means landlord.

   a. AGENCY - is a legal relationship resulting from an agreement that one person, called the agent (broker), shall act for and be subject to the control of another person, called the principal (buyer or seller). The fact that a real estate broker performs some acts for a purchaser or seller in a transaction does not itself create the agency relationship. In Colorado, the agency relationship can only be established through a written contract which constitutes the employment agreement between the principal and agent.

   Both buyers and sellers can hire agents to represent their interests in a real estate transaction. Agency relationships include Buyer Agency and Seller Agency. The agency contract commonly binds you to a working relationship with that broker for a specified period of time. A broker engaged by a buyer or seller in an agency capacity has specific duties and obligations.

   Buyers often use the services of the seller's broker to prepare and submit an offer on property. In this instance, the broker is still responsible for making a disclosure to the buyer concerning their working relationship. If the broker assisting the buyer is representing the interests of the seller only, the broker must give the buyer a written disclosure to this effect.

   b. TRANSACTION BROKERAGE (Non-Agency) - If you do not choose to hire a broker to represent you in an agency capacity, a broker may assist you as a transaction broker. A transaction broker is one who assists a buyer, seller, or both throughout a real estate transaction without being an agent or advocate for the interests of either the buyer or seller.

   Unlike Agency, Transaction Brokerage does not have to be established through a written contract. Transaction brokerage can be established through written disclosure. The disclosure defines the broker's duties and responsibilities and is not a contract. The transaction broker disclosure does not limit you to the services of any one broker. If done through a written contract, the contract is an employment agreement which binds you to the broker for a specified period of time.
BROKERAGE RELATIONSHIPS LAW

Effective January 1, 1994, SB 223, entitled Brokerage Relationships, codified much of the law of agency, as it relates to real estate, and established the laws concerning the working and legal relationships between the public and real estate brokers. This law enumerates and defines the working relationships with brokers, including agency and transaction brokerage, and sets forth the general duties, obligations, and responsibilities of a real estate broker in any particular real estate transaction.

In June 2002, the Colorado Legislature passed SB-196 which amended the current statute for Brokerage Relationships to implement Designated Brokerage. This law went into effect on January 1, 2003, and is mandatory for brokerage firms consisting of more than one licensee. A designated broker is defined as a broker "who is designated by an employing broker to serve as single agent or transaction broker for a seller, landlord, buyer, or tenant in a real estate transaction." The Employing broker shall make this designation in writing. The brokerage relationship between the designated broker and the public shall not extend to the employing broker, other licensees, or the brokerage firm.

Designated brokerage abolishes sub-agency and dual agency and reduces the vicarious liability of the public for the acts and omissions of their designated broker. Designated brokerage does not reduce the vicarious liability of the brokerage firm for the acts of its licensees the duty of the employing broker to supervise and manage licensees, or the public's right to choose the type of brokerage relationship, agency or transaction brokerage.

(1) Office Policy - All brokers must adopt a written office policy which identifies and describes the relationships which the broker will enter into with the public. This applies to a single person office as well as large companies. It is the right of any broker to decide on a policy that best suits the broker’s practice. Commission rule E-39 provides:

E-39. Office brokerage relationship policy must be written
Pursuant to 12-61-803 and 808 C.R.S., a broker shall adopt a written office policy which identifies and describes the relationships in which such broker and any employed licensee may engage with any seller, landlord, buyer or tenant as part of any real estate brokerage activities. A broker may adopt any policy suitable to the broker's business, subject to the following:

(a) An office policy shall apply to all licensees in the office;
(b) An office policy shall be given and explained to each licensee and shall be read, agreed to, and signed by each licensee;
(c) An office policy shall, in a manner compliant with Commission Rule E-38, identify the procedures for the designation of brokers who are to work with a seller, landlord, buyer or tenant pursuant to 12-61-803(6) C.R.S., except office policies of real estate brokerage firms that consist of only one licensed natural person.
(d) An office policy shall identify and provide adequate means and procedures for the maintenance and protection of confidential information that:
(1) The seller or landlord is willing to accept less;
(2) The buyer or tenant is willing to pay more;
(3) Information regarding motivating factors for the parties;
(4) Information that a party will agree to other financing terms;
(5) Material information about a party not required by law to be disclosed;
(6) Facts or suspicions which may psychologically impact or stigmatize a property;
(7) All information required to be kept confidential pursuant to sections 12-61-804(2), 12-61 805(2) and 12-61-807(3), C.R.S.
(e) An office policy may permit an employing broker to supervise a transaction and to participate in the same transaction as a designated broker.

SAMPLE OFFICE POLICY CHART

Key:  BA = Buyer Agency  SA = Seller Agency  T-B = Transaction Broker

<table>
<thead>
<tr>
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<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>My Company</td>
<td>BA</td>
<td>T-B</td>
<td>SA</td>
<td>SA</td>
<td>SA</td>
<td>SA</td>
<td>SA</td>
<td>SA</td>
<td>SA</td>
<td>T-B</td>
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<tr>
<td>Seller Listings</td>
<td>None</td>
<td>T-B</td>
<td>SA</td>
<td>SA</td>
<td>SA</td>
<td>SA</td>
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<td>SA</td>
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<td>T-B</td>
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<td>In-House</td>
<td>None</td>
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<td>T-B</td>
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<tr>
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<td>Co-op With</td>
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<td>Will Do</td>
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<td>T-B</td>
<td>T-B</td>
<td>T-B</td>
<td>SA</td>
</tr>
</tbody>
</table>

(2) Disclosure of Brokerage Relationships - written agency agreements are required to be used and brokers must disclose their duties and obligations to a party prior to engaging in acts which require a license. Transaction-broker relationships as well as relationships in which a broker is working with a buyer but representing the seller as the seller’s agent require a written disclosure acting as buyer’s agent or seller’s agent without disclosure of the relationship to the other party would make any contract voidable by the uninformed party. These disclosures must also be made prior to engaging in acts which requires a license. Rule E-35 states:
E-35. Brokerage relationship disclosure in writing
Written disclosures pursuant to C.R.S. 12-61-808 shall be made to a buyer or tenant prior to engaging in activities enumerated in C.R.S. 12-61-101 (2) and (3).

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

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

Written disclosures must contain a signature block for acknowledgment. If the party to whom the disclosure is given chooses not to sign the acknowledgment, the broker must note that fact on a copy of the disclosures and retain the copy for one year or a reasonable period of time. Written disclosures and agreements must also contain a statement that “DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY OR TRANSACTION-BROKER”. If a party asks questions concerning a relationship which the broker does not offer, the broker must provide the party with a written definition of that relationship on a commission approved form.

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

One of the major purposes of the rule is to help to insure broker compliance with the Colorado Supreme Court Conway-Bogue decision. (See case summary in Chapter 5) A second purpose is to help promote uniformity in contracting to the end that the public is better protected. The privileges granted should not be abused by the real estate broker . Rule F -Use of Commission Approved FORMS

COMMISSION APPROVED FORMS - the following is a list of forms used by real estate licensees:

LIST OF THE COMMISSION CURRENT APPROVED FORMS AS OF 01/19/05
ALL FORMS CAN BE FOUND AT www.dora.state.co.us/real-estate

<table>
<thead>
<tr>
<th>LISTING CONTRACTS</th>
<th>Form No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exclusive Right-to-Sell Listing (All Types)</td>
<td>LC10-05-04</td>
</tr>
<tr>
<td>Exclusive Right-to-Buy (All Types)</td>
<td>BC60-04-05</td>
</tr>
<tr>
<td>Exclusive Brokerage Listing Contract (All Types)</td>
<td>LC53-04-05</td>
</tr>
<tr>
<td>Open Listing Contract (All Types)</td>
<td>LC54-04-05</td>
</tr>
<tr>
<td>Exclusive Right-to-Lease Listing Contract (All Types)</td>
<td>LC57-04-05</td>
</tr>
<tr>
<td>Exclusive Tenant Contract (All Types)</td>
<td>ETC59-10-05</td>
</tr>
</tbody>
</table>
SALES CONTRACTS
Contract to Buy & Sell Real Estate (Residential) CBS1-07-04
Contract to Buy & Sell Real Estate (Commercial) CBS2-07-04
Contract to Buy & Sell Real Estate (Vacant Land/Farm & Ranch) CBS3-07-04

ADDENDUMS TO CONTRACT
Common Interest Community Addendum to Contract to Buy and Sell Real Estate (Commercial or Vacant Land-Farm-Ranch) CIC32-05-04
Licensee Buy-Out Addendum to Contract to Buy and Sell Real Estate EX32-05-04
Exchange Addendum to Contract to Buy and Sell Real Estate LP45-05-04
Lead-Based Paint Disclosures (Sales) LP46-05-04
Lead-Based Paint Disclosures (Rentals) LP47-05-04
Lead-Based Paint Obligations of Seller LP48-05-04
Lead-Based Paint Obligations of Landlord Inspection Notice NTC43-05-04
Brokerage Duties Addendum to Property Management Agreement BDA55-04-05

DISCLOSURE DOCUMENTS

COUNTERPROPOSAL
Counterproposal CP40-05-04

AGREEMENTS TO AMEND/EXTEND CONTRACT
Agreement to Amend/Extend Contract Agreement to Amend/Extend Contract with Broker AE41-05-04 AE42-05-04

CLOSINGS
Closing Instructions and Earnest Money Receipt Statement of Settlement (See footnote #1) Worksheet for Real Estate Settlement Real Property Transfer Declaration CL8-05-04 SS60-05-04 SS61-05-04 TD-1000
EXCHANGE CONTRACT AND ADDENDUMS
Contract to Exchange Real Estate (Simultaneous Exchange) EX30-05-04

DEEDS OF TRUST
Deed of Trust (Due on Transfer-Strict) TD72-05-04
Deed of Trust (Due on Transfer-Creditworthy Restriction) TD73-05-04
Deed of Trust (Assumable-Not Due-on Sale) TD74-05-04

PROMISSORY NOTES
Earnest Money Promissory Note EMP80-05-04
Promissory Note for Deed of Trust (UCCC-No Default Rate) NTD82-05-04
Promissory Note for Deed of Trust NTD81-05-04

OTHER FORMS
Earnest Money Release EMR83-05-04
Common Interest Community Checklist for Brokerage Firm CICC-05-04
Colorado Statutory Power of Attorney for Property 34S

STUDENT NOTES: Five types of numbers appear in the sample contracts, as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Item</th>
<th>Description/Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Left margin</td>
<td>1, 2, 3, 4, etc.</td>
<td>Line number of contract draft*</td>
</tr>
<tr>
<td>Inside Contract</td>
<td>1, 2, 3, 4, etc.</td>
<td>Actual contract paragraph numbers</td>
</tr>
<tr>
<td>Subheadings</td>
<td>a., b., c., d., etc.</td>
<td>Actual contract subheadings</td>
</tr>
<tr>
<td>Inside Contract (BOLD)</td>
<td>(1), (2), (3), (4), etc.</td>
<td>RETC reference numbers</td>
</tr>
<tr>
<td>Inside Contract Boxes &amp; Text</td>
<td>§5a, §5b, §5c, §5d, etc.</td>
<td>Actual contract references to paragraph and subheading combination, i.e., §5a - (paragraph 5, subsection a, etc.)</td>
</tr>
</tbody>
</table>

* The marginal line references used in the following contract are from the original contract draft. The marginal line reference numbers vary from the contract form published in the “July 1, 2003 State of Colorado Real Estate Manual”, but all information remains the same.
The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. LC 50-04-05

When reading this contract to your client(s), it is important to point out that this contract has been "approved" by the Colorado Real Estate Commission.

The law specifically provides that licensees, no matter what type of relationship they choose, may complete standard forms, including those promulgated by the Real Estate Commission. They may also advise the parties as to the effects of the forms.

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Compensation charged by real estate brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

In the statement above, you are informing the client(s) for the first time that they should obtain legal, tax or other counsel before signing. Remember, if the Seller(s) do not obtain legal counsel, it is your responsibility to make sure they understand this contract. That means you have to understand it first, and then be able to explain it. Reading it word-for-word to the Seller(s) and answering any questions they may have regarding it, is the best way to fulfill your responsibility. Not doing to could make you liable.

Licensees should always recommend that the client or customer has the right to:

1. Have their attorney and/or tax counsel review the contract before they sign it.
2. Have their attorney review the title commitment.
3. Have their attorney do the closing or,
4. Have their attorney present at closing.

This is placed in the contract to make the public aware that individual brokerage offices set their own commission rates. Be very sure that you understand the anti-trust laws.

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY OR TRANSACTION-BROKERAGE.
CONTINUING EDUCATION
COLORADO BROKER TRANSITION COURSE

Here you are informing the client(s) that other types of brokerage relationships exist and what they are. You may have to explain this more fully and what you are allowed to do according to your written office policy.

If a party asks questions concerning a relationship which the broker does not offer, the broker must provide the party with a written definition of that relationship on a commission approved form.

EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT
(ALL TYPES OF PROPERTIES)

(1) □ SELLER AGENCY   □ TRANSACTION-BROKERAGE

You are establishing the type of working relationship with the seller(s). The broker makes this decision, not the seller(s), unless you establish an agency relationship you are presumed to be a transaction-broker.

The date is the day the listing is being taken. This is not necessarily the day the listing begins.

1. AGREEMENT. Seller and Brokerage Firm enter into this exclusive, irrevocable contract as of the date set forth above.

This statement identifies that this contract is between the Seller (client(s)) and your brokerage firm (not you personally) and that it gives your firm the "exclusive" right to sell the property being listed according to the terms in this agreement. It also says it is "irrevocable", meaning that once signed, they can’t just walk away from it.

The broker is given the sole and exclusive right to sell the property during the listing period. Even if the owner should sell the property to a buyer procured by the owner, the broker is entitled to a commission.

This type of listing is the one most commonly used by brokers in Colorado. Brokers can apply their best efforts, secure in the knowledge that the right to a commission cannot be defeated by anyone during the listing period.
2. BROKER AND BROKERAGE FIRM. (3)

- **a. Multiple-Person Firm.** If this box is checked, the individual designated by Brokerage Firm to serve as the broker of Seller and to perform the services for Seller required by this contract is called Broker. If more than one individual is so designated, then references in this contract to Broker shall include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

- **b. One-Person Firm.** If this box is checked, Broker is a real estate brokerage firm with only one licensed natural person. References in this contract to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm who shall serve as the broker of Seller and perform the services for Seller required by this contract.

Check **ONE** of the boxes. In 2-a, it says the "individual designated by the Brokerage Firm" is a **limited** agent of the Seller and is required to perform the services specified in the contract, and will hereafter be identified as "Broker" (usually, this will be you). Others in your company could also be included as "Broker" but this is normally only done if you become incapacitated, fired, or fail to perform as required. It also states that your employing broker, the company, and any other brokers in your company that are not designated in this contract are not parties to this contract.

"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.

Statute 12-61-804 C.R.S. Single agent engaged by seller or landlord (1) A broker engaged by a seller or landlord to act as a seller’s agent or a landlord’s agent is a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the seller or landlord;

(b) To exercise reasonable skill and care for the seller or landlord.

(c) To promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity, including, but not limited to (etc.):

2-b is self explanatory.

3. DEFINED TERMS.

- **a. Seller:** (4)
List the names of all owners, preferably the way they hold title (you can get this from their title policy). Confirm parties in title! Prior to taking a listing (or shortly thereafter, order an owner and encumbrance (O&E) report from the title company you will be using. You should see some form of identification from the Seller so you can confirm that the individuals signing the listing are who they claim to be and are the owners of the property.

b. Brokerage Firm: (5)

This is the name of your brokerage firm or your name if you are an individual broker working under your own name.

c. Broker: (6)

This is where your name goes, unless you are taking this listing for someone else who has been "designated" to be the listing "broker".

d. Property. The Property is the following legally described real estate: (7)

in the County of (8) ________________, Colorado,
commonly known as No. (9) ________________________________

Street Address City State Zip
together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

The "legal description" should be inserted in the blank space (Lot 1, Block 6, Heavenly Acres, etc.). The listing will be valid without the legal description as long as the property is described with the address. However, since you did obtain an O&E from the title company before going to the listing appointment you will have the "legal description" to insert in the blank space or you may obtain the legal description from the Seller’s Title Policy.

Below the blank space is the space for the "common" address (include the zip code).

Be sure to ask Seller(s) if they have given or received any easements.
CONTINUING EDUCATION
COLORADO BROKER TRANSITION COURSE

57
58 e. Sale. A Sale is the voluntary transfer or exchange of any interest in the Property or the voluntary creation of the obligation to convey any interest in the Property, including a contract or lease. It also includes an agreement to transfer any ownership interest in an entity which owns the Property.

This identifies what the term "sale" means legally. Note, if the property is taken by foreclosure, eminent domain, condemnation, adverse possession, etc., the broker will not have a claim for a commission.

61
62 f. Listing Period. The Listing Period of this contract shall begin on (10) ___________, and shall continue through the earlier of (1) completion of the Sale of the Property or (2) (11) ___________. Broker shall continue to assist in the completion of any transaction for which compensation is payable to Brokerage Firm under § 16 of this contract.

This establishes the beginning and end of the listing contract. The contract must have a termination date.

66
67 g. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" means not applicable. The abbreviation "MEC" (mutual execution of this contract) means the latest date upon which the parties have signed this contract.

4. BROKERAGE SERVICES AND DUTIES. Brokerage Firm, acting through Broker, shall provide brokerage services to Seller. The Broker, acting as either a Transaction-Broker or a Seller's Agent, shall perform the following Uniform Duties when working with Seller:

a. Broker shall exercise reasonable skill and care for Seller, including, but not limited to the following:

   (1) Performing the terms of any written or oral agreement with Seller;
   (2) Presenting all offers to and from Seller in a timely manner regardless of whether the Property is subject to a contract for Sale;
   (3) Disclosing to Seller adverse material facts actually known by Broker;
   (4) Advising Seller regarding the transaction and to obtain expert advice as to material matters about which Broker knows but the specifics of which are beyond the expertise of Broker;
   (5) Accounting in a timely manner for all money and property received; and
   (6) Keeping Seller fully informed regarding the transaction.

b. Broker shall not disclose the following information without the informed consent of Seller:

   (1) That Seller is willing to accept less than the asking price for the Property;
   (2) What the motivating factors are for Seller to sell the Property;
   (3) That Seller will agree to financing terms other than those offered;
   (4) Any material information about Seller unless disclosure is required by law or
As the Broker in this contract you are held responsible and maybe liable for performing the duties and services in 4-a, and not disclosing the items in 4-b. The term "informed consent" means the Seller has to understand the risks and benefits of whatever is contemplated to be disclosed, and if the Seller consents, you should get it in writing and signed by the Seller before making the disclosure. Different types of working relationship entail different responsibilities.

Seller’s agents can give advice or their opinion regarding benefits and risks; Transaction-Brokers can only give advice regarding the transaction, and never give their opinion or advice on how to get out of a contract.

Relationship with the buyer (disclosure) - the Commission approved forms give you a choice of disclosures which coincide with your office policy. "Following is the disclosure of Seller Agency (Form BD24-5-04 BROKERAGE DISCLOSURE TO BUYER)
DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE SELLER AGENCY, BUYER AGENCY OR TRANSACTION-BROKERAGE.

BROKERAGE DISCLOSURE TO BUYER

DEFINITIONS OF WORKING RELATIONSHIPS

For purposes of this disclosure, seller also means "landlord" (which includes sublandlord) and buyer also means "tenant" (which includes subtenant).

Seller's Agent: A seller's agent (or listing agent) works solely on behalf of the seller to promote the interests of the seller with the utmost good faith, loyalty and fidelity. The agent negotiates on behalf of and acts as an advocate for the seller. The seller's agent must disclose to potential buyers all adverse material facts actually known by the seller's agent about the property. A separate written listing agreement is required which sets forth the duties and obligations of the broker and the seller.

Buyer's Agent: A buyer's agent works solely on behalf of the buyer to promote the interests of the buyer with the utmost good faith, loyalty and fidelity. The agent negotiates on behalf of and acts as an advocate for the buyer. The buyer's agent must disclose to potential sellers all adverse material facts actually known by the buyer's agent including the buyer's financial ability to perform the terms of the transaction and if a residential property, whether the buyer intends to occupy the property. A separate written buyer agency agreement is required which sets forth the duties and obligations of the broker and the buyer.

Transaction-Broker: A transaction-broker assists the buyer or seller or both throughout a real estate transaction by performing terms of any written or oral agreement, fully informing the parties, presenting all offers and assisting the parties with any contracts, including the closing of the transaction, without being an agent or advocate for any of the parties. A transaction-broker must use reasonable skill and care in the performance of any oral or written agreement, and must make the same disclosures as agents about all adverse material facts actually known by the transaction-broker concerning a property or a buyer's financial ability to perform the terms of a transaction and if a residential property, whether the buyer intends to occupy the property. No written agreement is required.

Customer: A customer is a party to a real estate transaction with whom the broker has no brokerage relationship because such party has not engaged or employed the broker, either as the party's agent or as the party's transaction-broker.

RELATIONSHIP BETWEEN BROKER AND BUYER

The Broker and Buyer referenced below have NOT entered into a buyer agency agreement. The working relationship specified below is for a specific property described as: ______________________ or real estate which substantially meets the following requirements:
CHECK ONE BOX ONLY:

☐ Customer: The Broker is the seller's agent and the Buyer is a customer.

☐ Customer for Broker's Listings - Transaction-Brokerage for Other Properties: When the Broker is the seller's agent, the Buyer is a customer. When the Broker is not the seller's agent, the Broker is a transaction-broker assisting in the transaction.

☐ Transaction-Brokerage Only: The Broker is a transaction-broker assisting in the transaction.

If the Broker is acting as a transaction-broker, Buyer consents to Broker's disclosure of Buyer's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of Buyer, or use such information to the detriment of Buyer.

THIS IS NOT A CONTRACT.

BUYER ACKNOWLEDGMENT:

The Buyer acknowledges that the Buyer has received this Brokerage Disclosure to Buyer on ________.

__________________________________________ ______________________________________
Buyer Buyer

BROKER ACKNOWLEDGMENT:

On ____________________ , the Broker provided ____________________________ (Buyer) with this Brokerage Disclosure to Buyer at ____________________________ (location) and retained a copy for the Broker's records.

Brokerage Firm's Name: _________________________________________________________

___________________________________________
Broker
Listing agreement and related forms

(1) In-company sales policy

(a) There are two choices available to the Colorado Broker who is faced with the possibility of an in-company transaction when in possession of an agency listing. It is of utmost importance that your company policy state which alternative will be used by everyone in the company. (If you already have a transaction-broker relationship with both buyer and seller there is no change of agency relationship required.)

i) Keep the seller agency and work with the buyer as a "customer" (no agency representation.)

   a) A broker acting as an agent for the seller must also act as that person's advocate to bring about a sale on terms acceptable to the principal. In return for such advocacy, the principal is legally responsible for the acts of the agent performed within the scope of the agency.

ii) Convert the seller to a transaction-broker relationship through a pre-arranged agreement and work with both buyer and seller as a transaction-broker.

   a) A transaction-broker may not act as an advocate for one party's interests over those of the other party, but the parties are not legally responsible for the acts of the broker as they would be in an agency relationship.

(2) Additional Provisions - Paragraph 26

102
d. Broker may show alternative properties not owned by Seller to other prospective buyers and list competing properties for sale.

This informs the seller that you will continue to work with other sellers and buyers.

105
e. Broker shall not be obligated to seek additional offers to purchase the Property while the Property is subject to a contract for Sale.

Once the seller(s) have accepted a contract, you have no further obligation to continue seeking further offers.

108
f. Broker has no duty to conduct an independent inspection of the Property for the benefit of a buyer and has no duty to independently verify the accuracy or completeness of statements made by Seller or independent inspectors. Broker has no duty to conduct an independent investigation of a
buyer's financial condition or to verify the accuracy or completeness of any statement made by a buyer.

The contract states you have no duty, but it would be prudent for you to check it out.

g. Seller shall not be liable for the acts of Broker unless such acts are approved, directed or ratified by the Seller.

Seller is NOT liable for what you say or do unless what you said or did was approved, directed or refused by the seller.

5. ADDITIONAL DUTIES OF SELLER'S AGENT.

If the Seller Agency box at the top of Page 1 is checked, Broker is a limited agent of Seller (Seller's Agent), with the following additional duties:

a. Promoting the interests of Seller with the utmost good faith, loyalty and fidelity.

b. Seeking a price and terms that are acceptable to Seller.

c. Counseling Seller as to any material benefits or risks of a transaction that are actually known by Broker.

In addition to exercising reasonable skill and care to your seller, as a limited agent, you name those uniform duties.

6. BROKERAGE RELATIONSHIP.

a. If the Seller Agency box at the top of page 1 is checked, Broker shall represent Seller as a Seller's Agent. If the Transaction-Brokerage box at the top of page 1 is checked, Broker shall act as a Transaction-Broker.

b. In-Company Transaction-Different Brokers. When Seller and buyer in a transaction are working with different brokers, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Seller acknowledges that Brokerage Firm is allowed to offer and pay compensation to brokers within Brokerage Firm working with a buyer.

c. In-Company Transaction-One Broker. If Seller and buyer are both working with the
same broker, Broker shall function as:

(1) SELLER’S AGENT. If the Seller Agency box at the top of page 1 is checked, the parties agree the following applies:

Check One Box Only (12)

☐ (a) Seller Agency. If this box is checked, Broker shall represent Seller as Seller's Agent and shall treat the buyer as a customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. Broker shall disclose to such customer Broker's relationship with Seller.

If box #1 (a) is checked, you still owe a customer "fair and honest" dealing. Remember who you are working for and your duties and obligations to your principal in whichever box you check.

Keep the seller agency and work with the buyer as a "customer" (no agency representation.)

A broker acting as an agent for the seller must also act as that person's advocate to bring about a sale on terms acceptable to the principal. In return for such advocacy, the principal is legally responsible for the acts of the agent performed within the scope of the agency.

☐ (b) Seller Agency Unless Brokerage Relationship with Both. If this box is checked, Broker shall represent Seller as Seller's Agent and shall treat the buyer as a customer, unless Broker currently has or enters into an agency or Transaction-Brokerage relationship with the buyer, in which case Broker shall act as a Transaction-Broker, performing the duties described in § 4 and facilitating sales transactions without being an advocate or agent for either party.

If box #1 (b) is checked, you may need to change your agency status and change to Transaction-Broker. Use the Change of Status Disclosure form when making this change.

Convert the seller to a transaction-broker relationship through a Change of Status Disclosure and work with both buyer and seller as a transaction-broker.

(2) TRANSACTION-BROKER. If the Transaction-Brokerage box at the top of page 1 is checked, or in the event neither box is checked, Broker shall work with Seller as a Transaction-Broker. If Seller and buyer are working with the same broker, Broker shall continue to function as a Transaction-Broker.
If the Transaction-Brokerage box at the top of page 1 is checked, as in 1(b) above, you may need to use the Change of Status Disclosure form. Remember, as a Transaction-Broker you cannot give your opinions to either client – you can only give them choices and let them make the decisions. (In some instances, they may need to seek legal advice.)

A transaction-broker may not act as an advocate for one party’s interests over those of the other party, but the parties are not legally responsible for the acts of the broker as they would be in an agency relationship.

7. SELLER'S OBLIGATIONS TO BROKER. Seller agrees to conduct all negotiations for the Sale of the Property only through Broker, and to refer to Broker all communications received in any form from real estate brokers, prospective buyers, tenants or any other source during the Listing Period of this contract. Seller represents that Seller is currently a party to any listing agreement with any other broker to sell the Property.

Check appropriate box. If the Seller is currently a party to any listing contract with another broker to sell the Property, then this listing contract cannot go into effect until the Seller obtains a written release from the other broker and contract. You need to make sure Sellers understand this paragraph regarding their obligations to this contract.

8. PRICE AND TERMS.

a. Price. U. S. $______________

b. Terms. □ Cash □ Conventional □ FHA □ VA □ Other: ____________________________

          ____________________________

          ____________________________

          ____________________________

          ____________________________

d. Buyer's Closing Costs (FHA/VA). Seller shall pay closing costs and fees that Buyer is not allowed to pay, in an amount not to exceed $________ for only the following items: third party document preparation, tax service, tax certificate and ____________________________

          ____________________________

          ____________________________

          ____________________________

e. Earnest Money. Minimum amount of earnest money deposit U. S. $______________ in the form of ____________________________.
f. **Seller Proceeds.** Seller will receive net proceeds of closing as indicated: (21)

- □ Cashier's Check at Seller's expense;  □ Funds Electronically Transferred (Wire Transfer) to an account specified by Seller, at Seller's expense; or □ Closing Company's Trust Account Check.

- [g. **Advisory-Tax Withholding.**](#) The Internal Revenue Service and the Colorado Department of Revenue may require closing company to withhold a substantial portion of the proceeds of this Sale when Seller either (1) is a foreign person or (2) will not be a Colorado resident after closing. Seller should inquire of Seller's tax advisor to determine if withholding applies or if an exemption exists.

Different forms of agency have different responsibilities. Sellers agents give advice regarding benefits and risks; Transaction-Brokers give advice regarding the transaction only.

(a) In this paragraph there are blanks provided for price and once the amount agreed on by Seller and Broker is inserted, this will be the only price the Broker can ever quote until new prices is agreed to.

(b) Check all appropriate boxes and add any additional information, i.e., Owner Carry, etc. Be sure that the intent is clear. Note if there is to be an assumption of the existing deed of trust, discount points or other costs paid by Seller, new financing, VA, FHA, owner carry back. Be specific, list all acceptable terms.

If a buyer offers a lower price or different terms than that agreed to in the listing agreement and the owner accepts these changed terms, the broker(s) is (are) entitled to a commission. It is said that the parties have agreed to, or have ratified, variations in the terms of the original contract between the buyer and/or seller and the broker.

(c) Explain to the seller that offering discount points to help lower the buyer’s loan interest may help promote the sale of their home.

(d) It's important that the seller is aware of all the costs involved in each of the possible financing scenarios that may come up. Do a variety of seller's net sheets showing FHA/VA points, tax certificates, etc. The dollar amount is usually $200 - $600 (FHA $200 - $350, VA $350 - $600). To initially prefect Seller use "none" or "no other".

(e) The minimum amount of earnest money should be a reasonable amount, enough to assure that the Buyer feels obligated to the contract and may be in the form of cash, personal check, cashier’s check, money order, certified check, electronic transfer, etc.

(f) Check appropriate box. A cashier’s check is necessary if the seller is going to be using the proceeds to close on another property shortly after the closing. A cashier’s check is the safest way to assure that your seller gets their proceeds.
(g) The closing agent will withhold 2% of the sale price or all the sellers proceeds, whichever is less. This applies only on sales of $100,000 or more to Sellers that currently are not, or will not be Colorado residents. For "foreign Sellers", the IRS could want 10% of net proceeds withheld.

You can’t be an expert on all things so advising sellers or buyers to seek experts is providing them excellent service.

Financing – It’s important that the seller is aware of all the costs involved in each of the possible financing scenarios that may come up. Do a variety of seller’s net sheets showing FHA/VA points, tax certificates, energy retrofit, etc.

Broker compensation and limitations - In order to be entitled to compensation, the real estate broker must:

1. Establish employment
2. Fulfill the terms of employment, and
3. The sale must be consummated, or defeated, by the refusal or neglect of the seller or buyer to consummate the sale as agreed upon.

The broker's compensation has traditionally come from a commission paid by the seller out of the transaction proceeds, which is determined as a certain percentage of the selling price of the property. This seller's payment often is then divided with a cooperating broker who may be acting as an agent of the buyer or a transaction-broker who is assisting the buyer. Brokers employed by buyers often seek compensation directly from that buyer. In recent years some brokers have turned to forms of compensation other than the traditional percentage commissions, such as retainer fees, hourly rates, or combinations of either, along with success fees. The commission is negotiable, established by agreement of the parties and not by law. To prevent controversy and clearly identify the intent of the parties, the commission or fee and terms of payment should be clearly stipulated in the employment contract. To avoid controversy and possible legal action, if the original fee or commission shown in the listing is changed, whether to facilitate a closing or to induce future business, this should be clearly spelled out in a written agreement.

Compensation may be paid by any party to the transaction or by any third party. Payment of compensation does not establish an agency relationship between a broker and the party who paid the compensation. Sellers, buyers, landlords or tenants may agree that transaction-brokers or single agents may share compensation with one another. The law requires disclosure of the identity of persons paying compensation to brokers be made prior to entering into a contract to buy, sell or lease.

9. DEPOSITS. Brokerage Firm is authorized to accept earnest money deposits received by Broker pursuant to a proposed Sale contract. Brokerage Firm is authorized to deliver the earnest money deposit to the closing agent, if any, at or before the closing of the Sale contract.
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COLORADO BROKER TRANSITION COURSE

This paragraph gives the broker the authority to receive the earnest money deposit and also to retain the deposit in a separate escrow account until the time of closing or defeat of the sale.

A real estate broker has a statutory duty to account to members of the public for all funds received in the course of a transaction. The broker must keep accurate records and accounts and must keep any funds received on behalf of others in an identified trust account separate from funds belonging to the broker.

Pricing/Terms – Different forms of agency have different responsibilities. Sellers agents give advice regarding benefits and risks; Transaction-Brokers give advice regarding the transaction only.

In Paragraph 8 there are blanks provided for price and once the amount agreed on by Seller and Broker is inserted, this will be the only price the Broker can ever quote.

Be sure the intent of the terms is clear. Note if there is to be an assumption of the existing deed of trust, discount points or other costs paid by Seller, new financing, VA, FHA, owner carry back. Be specific, list all acceptable terms.

If a buyer offers a lower price or different terms than that agreed to in the seller listing and the owner accepts these changed terms, the broker(s) is (are) entitled to a commission. It is said that the parties have impliedly agreed to, or have ratified, variations in the terms of the original contract between the buyer and/or seller and the broker.

10. INCLUSIONS AND EXCLUSIONS.

a. Inclusions. The Purchase Price includes the following items (Inclusions):

(1) Fixtures. If attached to the Property on the date of this contract, lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, inside telephone wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including (22) ___ remote controls; and (23)

(2) Personal Property. If on the Property whether attached or not on the date of this contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. If checked, the following are included: (24) □ Water Softeners □ Smoke/Fire Detectors □ Security Systems □ Satellite Systems (including satellite dishes); and (25) ___

The Personal Property to be conveyed at closing shall be conveyed, by Seller, free and clear of...
Determine if the items on the Property are to be included in the sale or whether they are to be excluded. Remember to be specific in description and number. Insert the # of remote controllers for garage door opener in sellers possession or N/A if there is no opener. If there’s an opener but no remote controls put "0".

List all fixtures or personal property that will be included, i.e., workbench, swing set, propane tanks (if owned), alarms, portable fencing, etc.

These exclusions are only for "attached fixtures" that will be removed prior to closing such as a door knocker or chandelier.

Check all appropriate boxes, add any additional personal property items that are to be included in the sale such as refrigerator, swing set in back yard, etc.

Itemize any items that are not free and clear that will have to be made known to any Buyer, and which they will have to agree to assume and pay for. If none use "N/A" or "none".

**Trade Fixtures.** The following trade fixtures: (27) ________________

The Trade Fixtures to be conveyed at closing shall be conveyed, by Seller, free and clear of all taxes (except personal property taxes for the year of closing), liens and encumbrances, except (28) ________________

Conveyance shall be by bill of sale or other applicable legal instrument.

Itemize any items that are not free and clear that the buyer will have to agree to assume or pay for. If none, use "N/A" or "None".

**Parking and Storage Facilities.** (29) □ Use Only □ Ownership of the following parking facilities: (30) ________________; and the following storage facilities: (31) ________________

For parking and Storage Facilities in paragraph 8(5), these blanks should only be used for condos and townhouses. If Property being listed is a single-family detached home, you would usually put "N/A" or "none" in the blank.
(5) **Water Rights.** The following legally described water rights:

Any water rights shall be conveyed by (32) ____________ deed or other applicable legal instrument. The Well Permit # is (33) ______________.

Water rights, if any, must be legally described. You can get that legal from the Sellers documents or in the event they are "shares" or "stock" in a water entity, from those documents or "entity".

In the blank, identify the type of deed that will be used to convey the Property. Usually it will be by "general warranty", but could be "special warranty" or "quit claim".

(6) **Growing Crops.** The following growing crops: (34)

List all crops that can be harvested.

b. **Exclusions.** The following are excluded: (35)

List in detail of what does not stay with the property.

11. **TITLE AND ENCUMBRANCES.** Seller represents to Broker that title to the Property is solely in Seller's name. Seller shall deliver to Broker true copies of all relevant title materials, leases, improvement location certificates and surveys in Seller's possession and shall disclose to Broker all easements, liens and other encumbrances, if any, on the Property, of which Seller has knowledge. Seller authorizes the holder of any obligation secured by an encumbrance on the Property to disclose to Broker the amount owing on said encumbrance and the terms thereof. In case of Sale, Seller agrees to convey, by a (36) ____________ deed, only that title Seller has in the Property. Property shall be conveyed free and clear of all taxes, except the general taxes for the year of closing.

For a property with a well, enter the well permit number or "no permit number issued". You or the Seller may have to speak to the State Engineer regarding how to transfer a well with no permit number. It may not be necessary to obtain one, or you may have to obtain a permit before closing.

Under this paragraph, the seller represents that the signators on the listing are in fact in title to the property. The seller also is required to disclose all easements, liens or encumbrances of which he has knowledge. (There could be recorded interests of which the seller has no knowledge.)
The listing also allows the lender to disclose the confidential information regarding the loan and the terms thereof.

Existing monetary encumbrances (such as mortgages, deeds of trust, liens, financing statements) shall be paid by Seller and released except as Seller and buyer may otherwise agree. Existing monetary encumbrances are as follows: (37) ________________

Existing monetary encumbrances: Try to give as much detail as possible. Current and subsequent years taxes (Unpaid balances, payments, interest rate, name and address of lender, etc.) Do not disclose this information until confirmed by lender or you could be accused of misrepresentation of material facts. If the property is free and clear, put N/A here.

A financing statement is the document which is used to encumber personal property. If this personal property is remaining with the property the lien must be paid off.

The Property is subject to the following leases and tenancies: (38) ________________

Again, use as much detail as possible, such as the term of the lease (month-to-month), 6 months, 1 year, etc.), the expiration date of the lease, amount of the rent, payable for what period of time, amount of the security deposit, proper notice, etc. Use N/A if the Property is owner occupied.

If the Property has been or will be subject to any governmental liens for special improvements installed at the time of signing a Sale contract, Seller shall be responsible for payment of same, unless otherwise agreed. Brokerage Firm may terminate this contract upon written notice to Seller that title is not satisfactory to Brokerage Firm.

If the seller does not agree to pay this at or before closing, the word "Seller" should be slashed out or lined through, and the word "Buyer" inserted.

This paragraph also gives the Broker the right to terminate the listing, in writing, if after the title search, the broker feels that the title is not saleable.

12. EVIDENCE OF TITLE. Seller agrees to furnish buyer, at Seller's expense, a current commitment and an owner's title insurance policy in an amount equal to the Purchase Price in the form specified in the Sale contract, or if this box is checked, (39) □ An Abstract of Title certified to a current date.

This paragraph gives the seller the option of furnishing his choice of either title insurance or an abstract, certified to current date. In our current real estate market, most often you will use the title insurance.
13. ASSOCIATION ASSESSMENTS. Seller represents that the amount of the regular owners' association assessment is currently payable at (40) $__________ per (41) ________ and that there are no unpaid regular or special assessments against the Property except the current regular assessments and except (42) ____________________________

Seller agrees to promptly request the owners' association to deliver to buyer before date of closing a current statement of assessments against the Property.

Fill in the blanks with information obtained from the Seller and their association documents.

Prior to your appointment ask the seller to have their homeowner association information available. Ask if there are special assessment (i.e., an extra monthly fee, a special improvement, such as new pavement, new pool, etc.)

14. POSSESSION. Possession of the Property shall be delivered to buyer as follows: (43)

subject to leases and tenancies as described in § 11.

Identify when the property will be delivered to buyer. If no time is stated then the law requires a seller to give possession at the time the deed is transferred. The title is passed to the buyer from the seller when the deed is delivered and accepted. Be specific as to the date the seller wants to give possession. Colorado is one of the only states in our country that allows possession of the Property to be routinely given to the Buyer 2 to 5 days after closing by custom. In virtually all other states possession is delivered to the Buyer at closing. If possession is not given at closing, there could be problems relating to "move-out" damage by the Sellers, insurance problems relating to fire, wind or other casualty, etc.

15. MATERIAL DEFECTS, DISCLOSURES AND INSPECTION.

a. Broker's Obligations. Colorado law requires a broker to disclose to any prospective buyer all adverse material facts actually known by such broker including but not limited to adverse material facts pertaining to the title to the Property 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. These types of disclosures may include such matters as structural defects, soil conditions, violations of health, zoning or building laws, and nonconforming uses and zoning variances. Seller agrees that any buyer may have the Property and Inclusions inspected and authorizes Broker to disclose any facts actually known by Broker about the Property.

b. Seller's Obligations.
(1) **Seller's Property Disclosure Form.** A seller is not required by law to provide a written disclosure of adverse matters regarding the Property. However, disclosure of known material latent (not obvious) defects is required by law. Seller (☐ Agrees  ☐ Does Not Agree) to provide a Seller's Property Disclosure form completed to the best of Seller's current, actual knowledge.

(2) **Lead-Based Paint.** Unless exempt, if the improvements on the Property include one or more residential dwellings for which a building permit was issued prior to January 1, 1978, a completed Lead-Based Paint Disclosure (Sales) form must be signed by Seller and the real estate licensees, and given to any potential buyer in a timely manner.

Check the appropriate box after discussing this paragraph with the Seller. If the Seller agrees to provide Buyer with a Seller’s Property Disclosure form, it must be completed by the Seller, to the best of the Seller’s current, actual knowledge.

(a) Form LC18-5-04 must be completed by the Seller NOT THE BROKER, and the Seller should be made aware that careful consideration is necessary and he must understand the significance of the statements made. If at the time of Contract there are changes in the property or inclusions, the Seller should complete another disclosure form.

(b) If the seller declines to use such a disclosure form, that provision should be stricken from the listing agreement, although the seller may later find that offers to purchase require completion of such a form, or the Seller may wish to use a Counter Proposal form, informing the potential Buyer that a Property Disclosure will not be provided.

(c) It would be a good idea for the Broker to carefully review (line-by-line) this form with the Seller after he has completed it.

Make sure that the seller understands that you are **REQUIRED** by law to disclose material facts about the property.

Have the Lead Base Paint Disclosure signed at the listing appointment. It is an excellent practice to place copies of the Property Disclosure and Lead Base Paint Disclosure in the property file so they are readily available for buyers and co-op brokers.

(1) Seller disclosure
   (a) Seller agrees to provide buyer with a Seller's Property Disclosure form completed to the best of Seller's current, actual knowledge
   (b) Form LC18-5-04 must be completed by the Seller NOT THE BROKER, and the Seller should be made aware that careful consideration is necessary and he must understand the significance of the statements made. If at the time of Contract there are changes in the property or inclusions, the Seller should complete another disclosure form.
   (c) The use of the form is mandatory for sellers. If the seller declines to use such a disclosure form, that provision should be stricken from the listing agreement, although the seller may later find that offers to purchase require completion of such a form.
(d) Energy Rated Homes of Colorado (ERHC) - is a program of the Colorado and Housing Finance Authority, with support from the Governor's Office of Energy Conservation. ERHC was designed to assist Colorado consumers and the state's real estate finance, appraisal, sales and construction industries in adding a consistent and reliable information function about residential energy efficiency into the market in much the same way as the market views information about location, view, neighborhood and surroundings.

This information is in turn used by real estate sales professionals, appraisers, lenders and contractors to help:

Borrowers take advantage of new secondary mortgage market programs that allow them to add the cost of energy improvements to their normal mortgage loan and/or receive qualifying ratio benefits for homes identified as "high energy efficient".

Sellers use high energy ratings to market their homes

Owners identify cost effective upgrades they may make to not only make their homes more comfortable, but potentially more marketable and valuable when they decide to sell their homes.

(e) Colorado's National Pilot Role - While the concept of Energy Mortgages (EM) has been in existence since the early 1980's several disincentives existed in early EM programs that made it difficult for real estate professionals to initiate energy loans. To overcome these early disincentives, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) in partnership with the Colorado Governor's Office of Energy Conservation (OEC), the Colorado Housing and Finance Authority (CHFA) the Colorado Division of Real Estate and relevant Colorado industry trade groups, developed the Colorado pilot program. As the only state in the nation working with both conventional secondary entities, Colorado's pilot program is serving as the national model for other states making application for the Colorado Energy Mortgage Guidelines. The Veteran's Administration, the U.S. Department of Housing and Urban Development's Federal Housing Administration (HUD/FHA) and major private mortgage insurance companies have also participated in the development of the Colorado program.

In addition, ERHC has worked closely with Colorado's regional office of Housing and Urban Development (HUD) in order to bring government and conventional guidelines more in line with one another. With Energy Mortgages also available here through Veterans Administration (VA), Rural Economic and Community Development (RECD, formerly Farmers Home Administration ) and Colorado Housing and Finance Authority (CHFA), the benefits provided by using the ERHC system are available to Colorado borrowers across the board.

(f) Energy Mortgages (EEM’s / EIM’s) - These are mortgage instruments that allow borrowers to receive credit for the energy efficiency of the property they are purchasing and/or add the cost of economic energy improvements to their normal mortgage loan. Two types of EEM's are available for use in Colorado. These are:
i) Energy-Efficient Mortgages (EEM's). These mortgages allow lenders to expand a borrower's debt-to-income qualifying ratios for homes identified as energy efficient. Lenders may use either an automatic 2% ratio stretch or the estimated monthly energy savings when qualifying the borrowers for their mortgage.

ii) Energy Improvement Mortgages (EIM's). These mortgages allow a borrower to add the cost of economic energy improvements to the loan and pay back the cost of such improvements monthly over the life of the mortgage loan. The program is designed to facilitate the closing of the loan in the normal way, i.e., using normal loan application, processing and closing procedures. Thus, the energy component of the loan is easily added without disturbing normal loan procedures.

(g) ERHC's Home Energy Rating System (HERS) - This is a system that allows a home to be rated on a zero to one hundred point scale. The scale is also divided into a one-to-five star designation that is used in marketing of highly energy rated homes (i.e., three-plus to five stars). The ERHC / HERS serves two major functions:

Information - the HERS provides homeowners, sellers and buyers with an analysis of the home's current energy use and cost patterns and a list of cost effective improvements that can be made to the property. This information is then used by lenders, REALTORS, appraisers, builders and others to help market the home and/or qualify the buyer using EEM, EIM or combined EEM/EIM mortgage instruments.

**BENEFITS OF ERHC**

**Benefits to Buyers**

* 2 % qualifying "stretch" or direct addition of energy savings
* Lower home operating costs with energy efficiency purchase or upgrade.
* More house for the money
* Increased comfort

**Benefits to Sellers**

* Homes that stand out in a crowd
* Increased pool of buyers
* Level playing field for new and existing homes
* Increased home value

**Benefits to REALTORS and Listing Agents**

* More sales; higher sales prices
* More qualified buyers
* Increased listings
* Selling affordability
* Level playing field for new and existing homes
* Customer service means customer loyalty
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* Better details for listings
* Guaranteed EEM financing/ratio expansion on repeat sales

Benefits to Builders

* More qualified buyers
* Higher level of quality
* Marketing edge through documented energy efficiency
* Appraisal recognition of high efficiency in the construction

Benefits to Colorado's Economy

* Increased value plus new business opportunity in lending and realty
* Stimulation of energy retrofit market
* Competitive edge for Colorado utilities
* Millions saved in residential energy bills
* Cumulative investment in energy efficiency generated

Benefits to Colorado's Environment

* Coal and natural gas conserved
* Emissions greatly reduced
* Smart growth
* More comfortable indoor living environment

(2) Property Inspection - the Seller agrees with his signature on the listing contract that "any buyer may have the Property and Inclusions inspected".

(3) Environmental concerns - The Seller's Property Disclosure addresses Hazardous Conditions with the question "are there any hazardous conditions on the Property such as":

Lead-based paint - Disclosure documents: HUD mandates that Seller & Buyer sign a"Lead-Paint" notice.

Methane Gas
Radon Gas (EPA encourages all buyers to test for radon.)
Radioactive Materials
Toxic Materials
Urea Formaldehyde Foam Insulation (UFFI)
Asbestos
Underground Storage Tank(s)
Underground Transmission Lines
Pets kept on the Property
Dead or diseased trees or shrubs
Governmentally designated Noxious Weeds (within the last 3 years only)
Property used as, situated on, or adjacent to, a dump, land fill or municipal solid waste land fill
Mine shafts, tunnels or abandoned wells on the Property
Within governmentally designated Flood Plain area
Sliding, settling, upheaval, movement or instability of earth, or expansive soil of the Property
Governmentally designated geological hazard or sensitive area
Received any notice that a portion of the Property is a governmentally designated wetland area
Sewage problems

Megan’s Law

Commission Position Regarding “Megan’s Law”
Adopted July 1, 1999

The Commission has been asked for its position as to the disclosure requirements for real estate licensees with regard to "Megan’s Law." In 1994, and primarily as a response to the murders of two young girls, a federal law was passed creating a registration and notification procedure to alert the public as to the presence of certain types of convicted sex offenders living in a neighborhood. This is commonly referred to as "Megan’s Law." Identified sex offenders are required to register with local law enforcement officials. The federal law also required states to establish registries of convicted sex offenders. It contains no disclosure requirements for real estate licensees when working with the public.

In compliance with federal law, Colorado enacted legislation that sets procedures and time frames for local registration. The office of chief of police is the designated place of registration for those offenders residing within any city, town or city and county. The office of the county sheriff is the designated place of registration for those living outside any city, town or city and county. In addition, the law enforcement agency is required to release information regarding registered persons. However, the duty to release information may differ depending on whether the inquiring party does or does not live within that jurisdiction.

While legislation in a few states has specifically imposed disclosure requirements on real estate licensees working with buyers and sellers, Colorado’s legislation imposes no such requirements. Colorado’s legislation clearly places the duty to release information on the local law enforcement agency, after considering a request.

It is the position of the Real Estate Commission that all real estate licensees should inform a potential buyer to contact local law enforcement officials for further information if the presence of a registered sex offender is a matter of concern to the buyer.

(4) Measuring the property

E-43. Square footage measurement (Previously E-41 – renumbered 10/1/02)
This rule applies to residential transactions when a licensee personally measures real estate or provides information from another source of measurement. The licensee listing property is responsible for accurately representing any source of square footage.
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COLORADO BROKER TRANSITION COURSE

(a) Licensee measurement. A licensee is not required to measure the square footage of a property. If the licensee takes an actual measurement it does not have to be exact, however, the licensee's objective must be to measure accurately and calculate competently in a manner that is not misleading, and:
   (1) The standard, methodology or manner in which the measurement was taken must be disclosed;
   (2) The buyer and seller must be advised that the measurement is for purposes of marketing and is not a measurement for loan, valuation or any other purpose; and
   (3) The buyer and seller must be advised that if exact square footage is a concern, the property should be independently measured.
(b) Other sources of square footage. If a buyer or seller is provided information from another source for square footage, that source (whether an actual measurement, building plans, prior appraisals, assessors office, etc.) must be disclosed in writing by the licensee, in a timely manner, including date of issuance. Such disclosure must advise the recipient to verify the information. A licensee may not provide information to a person from a source known to be unreliable and is responsible for indications pointing to obvious mismeasurement by others.
(c) A licensee working with a buyer may rely on a representation of square footage by a listing broker, however, such licensee is responsible for indications of obvious mismeasurement by others.

3. The Money
   a. It's important that the deposit is adequate for taking the property off the market for a period of time, in case the transaction fails. Paragraph 9 gives the broker the authority to receive the earnest money deposit and also to retain the deposit in a separate escrow account until the time of closing or defeat of the sale.

       Be very clear as to what the seller feels is the proper amount of earnest money and in what form. List all the forms, i.e., cash, personal check, money order, wire transfer, etc.

16. COMPENSATION TO BROKERAGE FIRM. Seller agrees that any Brokerage Firm compensation that is conditioned upon the Sale of the Property shall be earned by Brokerage Firm as set forth herein without any discount or allowance for any efforts made by Seller or by any other person in connection with the Sale of the Property.
   a. Amount. In consideration of the services to be performed by Broker, Seller agrees to pay Brokerage Firm as follows:
      (1) Sale Commission. (a) (45) ________ % of the gross sales price in U.S. dollars, or
      (b) (46) ____________________________
      (2) Lease Commission. (a) (47) ________ % of the gross rent under the lease in U.S. dollars,
In the blanks, place the percent of sales price to be paid to broker or N/A, and "other" consideration to be paid to broker or N/A.

The listing contract for the sale of real estate states the amount of the commission and indicates the party who is to pay said commission. The contract is valid without such provision, but it serves the purpose of removing all doubt as to whose responsibility it is to pay the commission.

In order to be entitled to compensation, the real estate broker must:

- Establish employment
- Fulfill the terms of employment, and
- The sale must be consummated, or defeated, by the refusal or neglect of the seller or buyer to consummate the sale as agreed upon.

The broker's compensation has traditionally come from a commission paid by the seller out of the transaction proceeds, which is determined as a certain percentage of the selling price of the property. This seller's payment often is then divided with a cooperating broker who may be acting as an agent of the buyer or a transaction-broker who is assisting the buyer. Brokers employed by buyers often seek compensation directly from that buyer. In recent years some brokers have turned to forms of compensation other than the traditional percentage commissions, such as retainer fees, hourly rates, or combinations of either, along with success fees. The commission is negotiable, established by agreement of the parties and not by law. To prevent controversy and clearly identify the intent of the parties, the commission or fee and terms of payment should be clearly stipulated in the employment contract. To avoid controversy and possible legal action, if the original fee or commission shown in the listing is changed, whether to facilitate a closing or to induce future business, this should be clearly spelled out in a written agreement and signed by the parties.

b. When Earned. Such commission shall be earned upon the occurrence of any of the following:

1. Any Sale of the Property within the Listing Period by Seller, by Broker or by any other person;

2. Broker finding a buyer who is ready, willing and able to complete the transaction as specified herein by Seller; or

3. Any Sale of the Property within (49) calendar days subsequent to the expiration of the Listing Period (Holdover Period) to anyone with whom Broker negotiated and whose name was submitted, in writing, to Seller by Broker during the Listing Period (including any extensions...
thereof). However, Seller shall owe no commission to Brokerage Firm under this subsection (3) if a commission is earned by another licensed real estate brokerage firm acting pursuant to an exclusive agreement entered into during the Holdover Period.

The "holdover" clause is the number of days following expiration of the listing that the broker’s commission is protected. Read and explain this thoroughly to the seller. The number of "holdover" days will usually be from 30 days to 180 days, as agreed to.

If a buyer offers a lower price or different terms than that agreed to in the listing and the owner accepts these changed terms, the broker is entitled to a commission. It is said that the parties have impliedly agreed to, or have ratified, variations in the terms of the original contract between the seller and the broker.

c. When Applicable and Payable. The commission obligation shall apply to a Sale made during the Listing Period or any extension of such original or extended term. The commission described in subsection 16a(1) shall be payable at the time of the closing of the Sale as contemplated by subsection 16b(1) or 16b(3), or upon fulfillment of subsection 16b(2) where either the offer made by such buyer is defeated by Seller or by the refusal or neglect of Seller to consummate the Sale as agreed upon.

By Colorado law, a seller’s broker is entitled to a commission if the sale is not consummated due to a defect in the title which the seller refuses or neglects to correct, provided the broker has obtained an enforceable contract which binds the purchaser to complete the sale when any such defect is corrected. If a buyer wrongfully refuses to complete the sale, a seller’s broker may receive compensation in the form of liquidated damages usually taken out of the earnest money made and forfeited by the purchaser. The broker’s right in this instance is usually set forth in the listing agreement or in the contract to purchase or both.

If the purchaser makes an offer to buy conditional on some event, such as the ability to secure a loan, then the buyer may rightfully cancel the contract of purchase if the condition does not occur and the buyer has, in good faith, pursued the loan application. In such event the broker is not entitled to a commission.

d. Lease and Lease Option Commissions. If the transaction consists of a lease or a lease and right to purchase the Property, the commission relating to the lease shall be as provided in subsection 16a(2), payable as follows: (50)

Usually payable upon "signature of lease agreement by all parties", and the commission upon the sale would be payable upon the transfer of the deed.
CONTINUING EDUCATION  
COLORADO BROKER TRANSITION COURSE

e. Other Compensation. (51)

Spell it out. This may also have to be approved by your managing broker and/or the Brokerage Firm.

17. LIMITATION ON THIRD-PARTY COMPENSATION. Neither Broker nor the Brokerage Firm, except as set forth in § 16, shall accept compensation from any other person or entity in connection with the Property without the written consent of Seller. Additionally, neither Broker nor Brokerage Firm shall assess or receive mark-ups or other compensation for services performed by any third party or affiliated business entity unless Seller signs a separate written consent.

Compensation may be paid by any party to the transaction or by any third party. Payment of compensation does not establish an agency relationship between a broker and the party who paid the compensation. Sellers, buyers, landlords or tenants may agree that transaction-brokers or single agents may share compensation with one another. A 1994 amendment to the law requires disclosure of the identity of persons paying compensation to brokers be made prior to entering into a contract to buy, sell or lease.

18. OTHER BROKERS' ASSISTANCE, MULTIPLE LISTING SERVICE AND MARKETING. Seller has been advised by Broker of the advantages and disadvantages of various marketing methods, the use of multiple listing services and various methods of making the Property accessible by other brokerage firms (e.g., using lock boxes, by-appointment-only showings, etc.), and whether some methods may limit the ability of another broker to show the Property. After having been so advised, Seller has chosen the following (check all that apply):

a. The Property:

(52) □ Shall □ Shall Not be submitted to one or more multiple listing services.

(54) □ Shall □ Shall Not be submitted to one or more property information exchanges.

Seller authorizes the use of electronic and all other marketing methods except:

Seller further authorizes use of the data by multiple listing services and property information exchanges, if any.

In the ordinary transaction the employment agreement (listing contract) is only between the broker and the buyer or seller. To help sell the property, it is common for the listing broker and seller to agree to offer compensation to other cooperating brokers, usually buyer agents and transaction-brokers. The responsibility of the seller to pay a commission is not to the cooperating broker but only to the listing broker.
Check the appropriate box or boxes.

Access to the Property by other brokerage firms may be by:

- Lock Box
- Other instructions: __________________________

b. Broker shall seek assistance from, and Brokerage Firm offers compensation to, the following brokers outside of Brokerage Firm:

- Buyer Agents: (57) _________% of the gross sales price in U.S. dollars.
- Transaction-Brokers: (59) _________% of the gross sales price in U.S. dollars.

Check the appropriate box or boxes. If the box under "Lock Box" is checked indicate how access is to be obtained, such as, get keys from listing office, etc.

A discussion of the various methods of allowing access to the seller’s property should include the advantages and disadvantages (i.e., no lockbox will make it difficult to show). Other instruction – this is where to place limitation (i.e., the time or day the property may be shown or other restrictions the seller requires). The more restrictions the harder it will be to get the property sold.

Check the box or boxes and follow the customary co-op percentage.

Commission approved seller listing contracts require the consent of the seller before a broker may offer commission splits to cooperating brokers. If it is the broker’s office policy to offer differing splits to various types of cooperating brokers, such as one amount to buyer agents and another to transaction-brokers, it must be clearly disclosed to the seller that such a policy could result in restricting market exposure or cooperation from other brokers. Once determined, commission splits are usually communicated to other brokers through a multiple listing service. In the absence of a multiple listing service, commission letters or agreements between brokers are a common method of establishing agreement on the terms of sharing commissions. Many disputes may be avoided if the terms of the commission sharing are specifically agreed to in advance and clearly communicated to potential cooperating brokers.

By dealing up front with the commission issue the listing broker solves two problems. First, the seller has been given good basic information about commissions and how they work. Second, the listing broker and seller have come to an understanding as to how they will deal with a buyer’s agent or transaction-broker should an offer be presented. Then, should a contract come in with the purchaser asking that a portion of the commission be paid to the broker working with the purchasers, there are no surprises, and this is by far the most common way that the offers will be presented to you.

By general custom the broker is also permitted to assist both parties, with their knowledge and consent, and receive compensation from each in an exchange of properties. Again, the Commission approved exchange agreement provides for such disclosure and consent.
CONTINUING EDUCATION
COLORADO BROKER TRANSITION COURSE

Keep the seller agency and work with the buyer as a "customer" (no brokerage relationship)

(1) A broker acting as an agent for the seller must also act as that person's advocate to bring about a sale on terms acceptable to the principal.

(2) Convert the seller to a transaction-broker relationship through a Change of Status Disclosure and work with both buyer and seller as a transaction-broker.

A transaction-broker may not act as an advocate for one party's interests over those of the other party, but the parties are not legally responsible for the acts of the broker as they would be in an agency relationship.

19. FORFEITURE OF PAYMENTS. In the event of a forfeiture of payments made by a buyer, the sums received shall be divided between Brokerage Firm and Seller, one-half thereof to Brokerage Firm but not to exceed the Brokerage Firm compensation agreed upon herein, and the balance to Seller. Any forfeiture of payment under this section shall not reduce any Brokerage Firm compensation under § 16.

If a buyer wrongfully refuses to complete the sale, a seller’s broker may receive compensation in the form of liquidated damages usually taken out of the earnest money and forfeited by the purchaser. The broker’s right in this instance is set forth in this paragraph.

20. COST OF SERVICES AND REIMBURSEMENT. Unless otherwise agreed upon in writing, Brokerage Firm shall bear all expenses incurred by Brokerage Firm, if any, to market the Property and to compensate cooperating brokerage firms, if any. Neither Broker nor Brokerage Firm shall obtain or order any other products or services unless Seller agrees in writing to pay for them promptly when due (examples: surveys, radon tests, soil tests, title reports, engineering studies). Unless otherwise agreed, neither Broker nor Brokerage Firm shall be obligated to advance funds for the benefit of Seller in order to complete a closing. Seller shall reimburse Brokerage Firm for payments made by Brokerage Firm for such products or services authorized by Seller.

The broker does not have the right to commit the seller to any expense unless specifically authorized by the seller in writing and the seller agrees to reimburse broker for these authorized expenses.

21. MAINTENANCE OF THE PROPERTY. Neither Broker nor Brokerage Firm shall be responsible for maintenance of the Property nor shall they be liable for damage of any kind occurring to the Property, unless such damage shall be caused by their negligence or intentional misconduct.
Be careful that the seller is aware that the broker is not responsible for any normal maintenance of the property such as lawn care, snow removal, etc. especially if the seller is out of town.

22. NONDISCRIMINATION. The parties agree not to discriminate unlawfully against any prospective buyer because of the race, creed, color, sex, marital status, national origin, familial status, physical or mental handicap, religion or ancestry of such person.

Counsel the seller as to the state and federal fair housing laws.

23. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Seller acknowledges that Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel before signing this contract.

This is the second time in this contract you have covered this item with the Seller(s). If they elect not to obtain legal, tax or other counsel, it would be prudent to have them initial this paragraph in the margin.

If there is not an attorney involved, then you, as the Seller’s agent are required to explain all aspects of this contract to the Seller. That is why you should read this contract to the Seller word-for-word (not paraphrased) and explain it before asking them to sign it.

24. MEDIATION. If a dispute arises relating to this contract, prior to or after closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party’s last known address.

Requires the parties to submit any dispute regarding THIS contract to mediation. It suggests that the seller and broker first try to resolve the dispute directly between themselves. After the 30 days has passed, the matter in dispute can then be arbitrated or litigated. The costs for this is spelled out in the next paragraph of the contract.
25. **ATTORNEY FEES.** In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

Judges are not bound to honor this provision, but it is more likely they will if a prior agreement exists.

26. **ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

Brokers may add language to "Additional Provisions", however this paragraph should be reserved only for terms which are transaction specific. It should NOT be used for "boilerplate" common to all transactions. If additional space is needed in any other section the continuation of the respective provision may be placed here. An employing broker may direct salespeople to add specific things in this section, such as excluding a specific buyer who has seen the property prior to the listing contract or a request that all offers be submitted by "specific performance" contracts. (The difference between a specific performance remedy and a "liquidated damages" remedy should have already been explained to the Seller(s), if not you will need to explain it now). This paragraph could also include items such as a sign, home warranty, survey, or prior appraisal, etc.

27. **ATTACHMENTS.** The following are a part of this contract:

This paragraph could include such items as an Improvement Location Certificate (ILC) or prior survey, floor plans, construction plans, home warranty, etc.

28. **NOTICE, DELIVERY AND CHOICE OF LAW.**

   a. **Physical Delivery.** Except for the notice requesting mediation described in § 24 and except as provided in § 28b below, any notice to the other party to this contract must be in writing, and is effective upon receipt.

   b. **Electronic Delivery.** As an alternative to physical delivery, any signed document and written notice may be delivered in electronic form by the following indicated methods only: 

      (62) □ Facsimile □ E-mail □ None. Documents with original signatures shall be provided upon request.
of any party.

c. **Choice of Law.** This contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state for property located in Colorado.

New title and wording in this section. Check the appropriate box or boxes. The main new feature is part (c) concerning the control being in accordance with Colorado law.

29. **MODIFICATION OF THIS LISTING CONTRACT.** No subsequent modification of any of the terms of this contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

Any and all future modifications must be made with the Agreement to Amend /Extend Contract with broker, and signed by all parties.

30. **COUNTERPARTS.** If more than one person is named as a Seller herein, this contract may be executed by each Seller, separately, and when so executed, such copies taken together with one executed by Broker on behalf of Brokerage Firm shall be deemed to be a full and complete contract between the parties.

This paragraph allows each owner to sign a different copy of the listing contract, and when all copies are brought together they constitute one contract.

31. **ENTIRE AGREEMENT.** This agreement constitutes the entire contract between the parties, and any prior agreements, whether oral or written, have been merged and integrated into this contract.

32. **COPY OF CONTRACT.** Seller acknowledges receipt of a copy of this contract signed by Broker, including all attachments.

All parties must receive a copy of the signed listing. As the seller signs, he is receipting for that copy. The listing agent keeps the "original" of the contract, and the Seller(s) get a copy.
Get all appropriate signatures and information.

You should get the Seller’s Property Disclosure Form completed now as well as the Lead-based Paint Disclosure, if appropriate, and the Closing Instructions form, and any other documents required by your Brokerage Firm. On the Closing Instructions form, be sure to get the Sellers social security numbers.

A real estate broker has the duty to perform according to the terms of the listing contract. The broker must use reasonable efforts to accomplish the sale of the property. If the broker does not exert reasonable efforts to sell the property, the owner is justified in canceling the listing agreement. It is a violation of the listing agreement and licensing law if the broker "sits" on a listing, that is, take a listing and makes no attempt to sell it. This sometimes happens when the broker knows that a seller is asking an unreasonable price. The broker uses the technique of delay to induce the seller to reduce the price.

At the time of taking the listing, the broker should call to the attention of the owner comparable properties and their prices. If a listing contract has been unilaterally canceled by a seller who wishes to list with another broker during the unexpired term of the original listing, the subsequent broker must
exercise caution in explaining, prior to listing the property, the potential liability for the payment of two commissions. This liability may result if the original broker brings civil action for breach of contract.

A question has resurfaced concerning 12-61-809 which states in part that brokerage relationships end one year after the date of the engagement.

This does **NOT** prohibit listings longer than one year.

A Commission interpretation of this statute was printed in the March 1995 Real Estate News. That position was upheld in the Colorado Court of Appeals Case #97CA2256, Property Asset Brokerage, LLC v. Magna Associates Liquidating Trust.

Both of the above cites hold that the General Assembly clearly intended that the "one year limitation applies only to those agreements as to which there has not been completion of performance in accordance with their terms".

In other words, "completion of performance defines the relationship. Only in the absence of completion of performance within the terms of the agreement do statutory alternatives (1 year limitation) apply".

With the exception of the parenthetical insert, the above quotes are directly from the court of appeals decision.
The listing office is RETC & Associates, 3225 S. Wadsworth Blvd., Lakewood, CO 80227, (303) 421-9078, fax (303) 984-0775, and email info@coloradorealestate.net. RETC & Associates has several brokers. You are the designated broker, but will be an agent for the seller and treat any buyer as a customer.

The owners of the property are Hans and Janet Pederson, 1647 Circle Drive, Arvada, CO 80003, (303) 402-4531. They are not parties to any other listing contracts.

The legal description is: Lot 3, Block 7, Honeymoon Acres Subdivision, Jefferson County, State of Colorado, according to the recorded plat thereof.

Seller will provide Title Insurance to Buyer. Today's date is January 17, 2006 and the listing will take effect on January 20, 2006 thru December 21, 2006.

The listing price is $220,000 and the sellers agree to sell FHA or VA as well as Conventional. They will pay up to $450 of non-allowable buyer closing costs, but no discount points. They will carry a 2nd trust deed not to exceed $15,000 for 5 years at 10% interest. The existing encumbrance is with Colonial Mortgage Company, the balance is $83,476.50 with interest at 7.5% per annum and payable in monthly installments of $594.15 including principal and interest only. The hazard insurance is $15.00 per month and the annual taxes are $1,100.00. The existing loan can be assumed with qualification and the interest rate will not increase. There are no special assessments and no homeowners association. The sellers would like to have an earnest money deposit of $6,000 cash.

The inclusions are a harvest gold GE refrigerator serial number 4357 and a white Maytag washer and dryer set serial numbers (washer - #8974 / dryer - #999847). There is a garage door opener but they have only one working remote control (they will buy another one if a buyer requests it.) The custom door knocker with their name on it will be replaced by one of equal value at closing. The custom window coverings in the master bedroom, the living and dining room are included. The water softener is leased and the satellite dish is leased as well. Seller will convey by general warranty deed. The agreed upon commission is 7%. You explain your office policy is to offer compensation to Buyer agents at 3.5% and Transaction Brokers the same, and they agree. The property will go into M.L.S. and they want you to use any marketing methods that will get their home sold. The holdover period is 60 days. They will give possession (5) days after closing and delivery of Deed. They are going to close on another home in Ohio the day after the close, so they need a wire transfer.

You explain Change of Status, in the case you would provide the buyer, to act as transaction broker for both parties. Seller does not agree to this however.

They agree to a lockbox, but the family would like to have their privacy at dinner time from 6-7 every evening and therefore would prefer that the property not be shown at that time. They would also like to exclude their cousin Martha Henry and her husband, Jack, from the listing, in case they decide to buy the house, because they’ve talked for years about how they’d like to have it if Hans and Janet ever decided to
sell. Oh, yes, they will offer the home warranty plan that you have suggested but they don’t want to 
commit to more than $350, if the buyer chooses another home warranty company and they don’t have a 
problem providing the buyer with a property disclosure. You explain the convenience of fax and 
electronic signatures. They don’t understand the internet but are okay with fax signatures.

Complete the blank form on pages 38 to 48 inclusive. After you have completed the form, turn to the 
answer page indicated in "ANSWERS PLEASE" box. DO NOT progress further until you have a 
complete understanding of all parts of this problem.

NOTE: Listing Exercise #1 is regarding an Exclusive Right-to-Sell Listing Contract (Seller Agency). 
There are approved forms on all listing contracts for Seller agency as well as Transaction-
Broker.

The only difference between the contracts is that in Agency, the broker has a fiduciary 
responsibility to promote the interests of the seller with the utmost good faith, loyalty and 
fidelity. This does not apply in Transaction Brokerage.

In addition, in Agency the principal may be vicariously liable for the actions of the broker if 
approved, directed or ratified by the seller.

All other items in the listing contracts are the same whether Agency or Transaction Brokerage.
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COLORADO BROKER TRANSITION COURSE

Exclusive Right-to-Sell Listing Contract - (LC50-04-05) "Blank Form"

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. LC 50-04-05

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Compensation charged by real estate brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY OR TRANSACTION-BROKERAGE.

EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT
(ALL TYPES OF PROPERTIES)

(1) □ SELLER AGENCY □ TRANSACTION-BROKERAGE

Date: (2) ______________________

1. AGREEMENT. Seller and Brokerage Firm enter into this exclusive, irrevocable contract as of the date set forth above.

2. BROKER AND BROKERAGE FIRM. (3)

□ a. Multiple-Person Firm. If this box is checked, the individual designated by Brokerage Firm to serve as the broker of Seller and to perform the services for Seller required by this contract is called Broker. If more than one individual is so designated, then references in this contract to Broker shall include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

□ b. One-Person Firm. If this box is checked, Broker is a real estate brokerage firm with only one licensed natural person. References in this contract to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm who shall serve as the broker of Seller and perform the services for Seller required by this contract.

3. DEFINED TERMS.

a. Seller: (4) ______________________
b. Brokerage Firm: (5) 

c. Broker: (6) 

d. Property. The Property is the following legally described real estate: (7) 
in the County of (8) ______________, Colorado, 
commonly known as No. (9) 

<table>
<thead>
<tr>
<th>Street Address</th>
<th>City</th>
<th>State</th>
<th>Zip</th>
</tr>
</thead>
</table>

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded. 

e. Sale. A Sale is the voluntary transfer or exchange of any interest in the Property or the voluntary creation of the obligation to convey any interest in the Property, including a contract or lease. It also includes an agreement to transfer any ownership interest in an entity which owns the Property. 

f. Listing Period. The Listing Period of this contract shall begin on (10) ______________, and shall continue through the earlier of (1) completion of the Sale of the Property or (2) (11) ______________ ______________. Broker shall continue to assist in the completion of any transaction for which compensation is payable to Brokerage Firm under § 16 of this contract. 

g. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" means not applicable. The abbreviation "MEC" (mutual execution of this contract) means the latest date upon which the parties have signed this contract. 

4. BROKERAGE SERVICES AND DUTIES. Brokerage Firm, acting through Broker, shall provide brokerage services to Seller. The Broker, acting as either a Transaction-Broker or a Seller's Agent, shall perform the following Uniform Duties when working with Seller: 

a. Broker shall exercise reasonable skill and care for Seller, including, but not limited to the following: 
   (1) Performing the terms of any written or oral agreement with Seller; 
   (2) Presenting all offers to and from Seller in a timely manner regardless of whether the Property is subject to a contract for Sale; 
   (3) Disclosing to Seller adverse material facts actually known by Broker; 
   (4) Advising Broker regarding the transaction and to obtain expert advice as to material matters about which Broker knows but the specifics of which are beyond the expertise of Broker; 
   (5) Accounting in a timely manner for all money and property received; and 
   (6) Keeping Seller fully informed regarding the transaction. 

b. Broker shall not disclose the following information without the informed consent of Seller:
(1) That Seller is willing to accept less than the asking price for the Property;
(2) What the motivating factors are for Seller to sell the Property;
(3) That Seller will agree to financing terms other than those offered;
(4) Any material information about Seller unless disclosure is required by law or
    failure to disclose such information would constitute fraud or dishonest dealing;
    or
(5) Any facts or suspicions regarding circumstances that could psychologically
    impact or stigmatize the Property.

c. Seller consents to Broker's disclosure of Seller's confidential information to the
   supervising broker or designee for the purpose of proper supervision, provided such supervising broker
   or designee shall not further disclose such information without consent of Seller, or use such information
   to the detriment of Seller.

d. Broker may show alternative properties not owned by Seller to other prospective buyers
   and list competing properties for sale.

e. Broker shall not be obligated to seek additional offers to purchase the Property while the
   Property is subject to a contract for Sale.

f. Broker has no duty to conduct an independent inspection of the Property for the benefit
   of a buyer and has no duty to independently verify the accuracy or completeness of statements made by
   Seller or independent inspectors. Broker has no duty to conduct an independent investigation of a
   buyer's financial condition or to verify the accuracy or completeness of any statement made by a buyer.

g. Seller shall not be liable for the acts of Broker unless such acts are approved, directed or
   ratified by the Seller.

5. ADDITIONAL DUTIES OF SELLER'S AGENT.

If the Seller Agency box at the top of Page 1 is checked, Broker is a limited agent of Seller
(Seller's Agent), with the following additional duties:

a. Promoting the interests of Seller with the utmost good faith, loyalty and fidelity.

b. Seeking a price and terms that are acceptable to Seller.

c. Counseling Seller as to any material benefits or risks of a transaction that are actually
   known by Broker.

6. BROKERAGE RELATIONSHIP.

a. If the Seller Agency box at the top of page 1 is checked, Broker shall represent Seller as
   a Seller's Agent. If the Transaction-Brokerage box at the top of page 1 is checked, Broker shall act as a
   Transaction- Broker.
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b. In-Company Transaction-Different Brokers. When Seller and buyer in a transaction are working with different brokers, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Seller acknowledges that Brokerage Firm is allowed to offer and pay compensation to brokers within Brokerage Firm working with a buyer.

c. In-Company Transaction-One Broker. If Seller and buyer are both working with the same broker, Broker shall function as:

(1) SELLER'S AGENT. If the Seller Agency box at the top of page 1 is checked, the parties agree the following applies:

Check One Box Only (12)

☐ (a) Seller Agency. If this box is checked, Broker shall represent Seller as Seller's Agent and shall treat the buyer as a customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. Broker shall disclose to such customer Broker's relationship with Seller.

☐ (b) Seller Agency Unless Brokerage Relationship with Both. If this box is checked, Broker shall represent Seller as Seller's Agent and shall treat the buyer as a customer, unless Broker currently has or enters into an agency or Transaction-Brokerage relationship with the buyer, in which case Broker shall act as a Transaction-Broker, performing the duties described in § 4 and facilitating sales transactions without being an advocate or agent for either party.

(2) TRANSACTION-BROKER. If the Transaction-Brokerage box at the top of page 1 is checked, or in the event neither box is checked, Broker shall work with Seller as a Transaction-Broker. If Seller and buyer are working with the same broker, Broker shall continue to function as a Transaction-Broker.

7. SELLER'S OBLIGATIONS TO BROKER. Seller agrees to conduct all negotiations for the Sale of the Property only through Broker, and to refer to Broker all communications received in any form from real estate brokers, prospective buyers, tenants or any other source during the Listing Period of this contract. Seller represents that Seller (13) ☐ Is ☐ Is Not currently a party to any listing agreement with any other broker to sell the Property.

8. PRICE AND TERMS.


b. Terms. (15) ☐ Cash ☐ Conventional ☐ FHA ☐ VA ☐ Other: ________________________

______________________________________________________

______________________

c. Loan Discount Points. (16) ____________________________

______________________________________________________
d. **Buyer’s Closing Costs (FHA/VA).** Seller shall pay closing costs and fees that Buyer is not allowed to pay, in an amount not to exceed (17) $________ for only the following items: third party document preparation, tax service, tax certificate and (18) ____________________________

e. **Earnest Money.** Minimum amount of earnest money deposit U. S. (19) $_____________ in the form of (20) ____________________________

f. **Seller Proceeds.** Seller will receive net proceeds of closing as indicated: (21)

- ☐ Cashier's Check at Seller's expense; ☐ Funds Electronically Transferred (Wire Transfer) to an account specified by Seller, at Seller's expense; or ☐ Closing Company's Trust Account Check.

g. **Advisory-Tax Withholding.** The Internal Revenue Service and the Colorado Department of Revenue may require closing company to withhold a substantial portion of the proceeds of this Sale when Seller either (1) is a foreign person or (2) will not be a Colorado resident after closing. Seller should inquire of Seller's tax advisor to determine if withholding applies or if an exemption exists.

9. **DEPOSITS.** Brokerage Firm is authorized to accept earnest money deposits received by Broker pursuant to a proposed Sale contract. Brokerage Firm is authorized to deliver the earnest money deposit to the closing agent, if any, at or before the closing of the Sale contract.

10. **INCLUSIONS AND EXCLUSIONS.**

a. **Inclusions.** The Purchase Price includes the following items (Inclusions):

   (1) **Fixtures.** If attached to the Property on the date of this contract, lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, inside telephone wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including (22) __ remote controls; and (23) ________________

   (2) **Personal Property.** If on the Property whether attached or not on the date of this contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. If checked, the following are included: (24) ☐ Water Softeners ☐ Smoke/Fire Detectors ☐ Security Systems ☐ Satellite Systems (including satellite dishes); and (25) ________________

   The Personal Property to be conveyed at closing shall be conveyed, by Seller, free and clear of all taxes (except personal property taxes for the year of closing), liens and encumbrances, except (26) ________________
Conveyance shall be by bill of sale or other applicable legal instrument.

(3) **Trade Fixtures.** The following trade fixtures: (27) ____________________________

The Trade Fixtures to be conveyed at closing shall be conveyed, by Seller, free and clear of all taxes (except personal property taxes for the year of closing), liens and encumbrances, except (28) _____

Conveyance shall be by bill of sale or other applicable legal instrument.

(4) **Parking and Storage Facilities.** (29) □ Use Only □ Ownership of the following parking facilities: (30) ___________; and the following storage facilities: (31) ____________

(5) **Water Rights.** The following legally described water rights:

Any water rights shall be conveyed by (32) ________________ deed or other applicable legal instrument. The Well Permit # is (33) ________________.

(6) **Growing Crops.** The following growing crops: (34)

b. **Exclusions.** The following are excluded: (35) ____________________________

11. **TITLE AND ENCUMBRANCES.** Seller represents to Broker that title to the Property is solely in Seller's name. Seller shall deliver to Broker true copies of all relevant title materials, leases, improvement location certificates and surveys in Seller's possession and shall disclose to Broker all easements, liens and other encumbrances, if any, on the Property, of which Seller has knowledge. Seller authorizes the holder of any obligation secured by an encumbrance on the Property to disclose to Broker the amount owing on said encumbrance and the terms thereof. In case of Sale, Seller agrees to convey, by a (36) ________________ deed, only that title Seller has in the Property. Property shall be conveyed free and clear of all taxes, except the general taxes for the year of closing.

All monetary encumbrances (such as mortgages, deeds of trust, liens, financing statements) shall be paid by Seller and released except as Seller and buyer may otherwise agree. Existing monetary encumbrances are as follows: (37) ____________________________

The Property is subject to the following leases and tenancies: (38) ____________________________

If the Property has been or will be subject to any governmental liens for special improvements installed at the time of signing a Sale contract, Seller shall be responsible for payment of same, unless otherwise agreed. Brokerage Firm may terminate this contract upon written notice to Seller that title is not satisfactory to Brokerage Firm.
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12. EVIDENCE OF TITLE. Seller agrees to furnish buyer, at Seller's expense, a current commitment and an owner's title insurance policy in an amount equal to the Purchase Price in the form specified in the Sale contract, or if this box is checked, (39) □ An Abstract of Title certified to a current date.

13. ASSOCIATION ASSESSMENTS. Seller represents that the amount of the regular owners' association assessment is currently payable at (40) $ _________ per (41) ________ and that there are no unpaid regular or special assessments against the Property except the current regular assessments and except (42) _________________________________. Seller agrees to promptly request the owners' association to deliver to buyer before date of closing a current statement of assessments against the Property.

14. POSSESSION. Possession of the Property shall be delivered to buyer as follows: (43) ___________________________

subject to leases and tenancies as described in § 11.

15. MATERIAL DEFECTS, DISCLOSURES AND INSPECTION.

a. Broker's Obligations. Colorado law requires a broker to disclose to any prospective buyer all adverse material facts actually known by such broker including but not limited to adverse material facts pertaining to the title to the Property 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. These types of disclosures may include such matters as structural defects, soil conditions, violations of health, zoning or building laws, and nonconforming uses and zoning variances. Seller agrees that any buyer may have the Property and Inclusions inspected and authorizes Broker to disclose any facts actually known by Broker about the Property.

b. Seller's Obligations.

(1) Seller's Property Disclosure Form. A seller is not required by law to provide a written disclosure of adverse matters regarding the Property. However, disclosure of known material latent (not obvious) defects is required by law. Seller (44) □ Agrees □ Does Not Agree to provide a Seller's Property Disclosure form completed to the best of Seller's current, actual knowledge.

(2) Lead-Based Paint. Unless exempt, if the improvements on the Property include one or more residential dwellings for which a building permit was issued prior to January 1, 1978, a completed Lead-Based Paint Disclosure (Sales) form must be signed by Seller and the real estate licensees, and given to any potential buyer in a timely manner.

16. COMPENSATION TO BROKERAGE FIRM. Seller agrees that any Brokerage Firm compensation that is conditioned upon the Sale of the Property shall be earned by Brokerage Firm as set forth herein without any discount or allowance for any efforts made by Seller or by any other person in connection with the Sale of the Property.

a. Amount. In consideration of the services to be performed by Broker, Seller agrees to
pay Brokerage Firm as follows:

(1) Sale Commission. (a) (45) ________% of the gross sales price in U.S. dollars, or

(b) (46) ________________________________

(2) Lease Commission. (a) (47) ________% of the gross rent under the lease in U.S. dollars, or (b) (48) ________________________________

b. When Earned. Such commission shall be earned upon the occurrence of any of the following:

(1) Any Sale of the Property within the Listing Period by Seller, by Broker or by any other person;

(2) Broker finding a buyer who is ready, willing and able to complete the transaction as specified herein by Seller; or

(3) Any Sale of the Property within (49)_______ calendar days subsequent to the expiration of the Listing Period (Holdover Period) to anyone with whom Broker negotiated and whose name was submitted, in writing, to Seller by Broker during the Listing Period (including any extensions thereof). However, Seller shall owe no commission to Brokerage Firm under this subsection (3) if a commission is earned by another licensed real estate brokerage firm acting pursuant to an exclusive agreement entered into during the Holdover Period.

c. When Applicable and Payable. The commission obligation shall apply to a Sale made during the Listing Period or any extension of such original or extended term. The commission described in subsection 16a(1) shall be payable at the time of the closing of the Sale as contemplated by subsection 16b(1) or 16b(3), or upon fulfillment of subsection 16b(2) where either the offer made by such buyer is defeated by Seller or by the refusal or neglect of Seller to consummate the Sale as agreed upon.

d. Lease and Lease Option Commissions. If the transaction consists of a lease or a lease and right to purchase the Property, the commission relating to the lease shall be as provided in subsection 16a(2), payable as follows: (50)______________________________

e. Other Compensation. (51) ________________________________

17. LIMITATION ON THIRD-PARTY COMPENSATION. Neither Broker nor the Brokerage Firm, except as set forth in § 16, shall accept compensation from any other person or entity in connection with the Property without the written consent of Seller. Additionally, neither Broker nor Brokerage Firm shall assess or receive mark-ups or other compensation for services performed by any third party or affiliated business entity unless Seller signs a separate written consent.

18. OTHER BROKERS' ASSISTANCE, MULTIPLE LISTING SERVICE AND MARKETING. Seller has been advised by Broker of the advantages and disadvantages of various marketing methods, the use of multiple listing services and various methods of making the Property available to prospective buyers. Seller has also been advised that Broker shall have the sole authority to negotiate, obtain, or accept offers, and that Broker shall have the sole authority to sign all contracts or agreements entered into by Seller. Seller has been advised that Broker shall have the sole authority to negotiate, obtain, or accept offers, and that Broker shall have the sole authority to sign all contracts or agreements entered into by Seller.

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accessible by other brokerage firms (e.g., using lock boxes, by-appointment-only showings, etc.), and whether some methods may limit the ability of another broker to show the Property. After having been so advised, Seller has chosen the following (check all that apply):

a. The Property:

   (52) ☐ Shall ☐ Shall Not be submitted to one or more multiple listing services.
   (54) ☐ Shall ☐ Shall Not be submitted to one or more property information exchanges.

   Seller authorizes the use of electronic and all other marketing methods except:

   Seller further authorizes use of the data by multiple listing services and property information exchanges, if any.

   Access to the Property by other brokerage firms may be by:

   (55) ☐ Lock Box

   Other instructions:

b. Broker shall seek assistance from, and Brokerage Firm offers compensation to, the following brokers outside of Brokerage Firm:

   (56) ☐ Buyer Agents: (57) _________% of the gross sales price in U.S. dollars.
   (58) ☐ Transaction-Brokers: (59) ____________% of the gross sales price in U.S. dollars.

19. FORFEITURE OF PAYMENTS. In the event of a forfeiture of payments made by a buyer, the sums received shall be divided between Brokerage Firm and Seller, one-half thereof to Brokerage Firm but not to exceed the Brokerage Firm compensation agreed upon herein, and the balance to Seller. Any forfeiture of payment under this section shall not reduce any Brokerage Firm compensation under § 16.

20. COST OF SERVICES AND REIMBURSEMENT. Unless otherwise agreed upon in writing, Brokerage Firm shall bear all expenses incurred by Brokerage Firm, if any, to market the Property and to compensate cooperating brokerage firms, if any. Neither Broker nor Brokerage Firm shall order any other products or services unless Seller agrees in writing to pay for them promptly when due (examples: surveys, radon tests, soil tests, title reports, engineering studies). Unless otherwise agreed, neither Broker nor Brokerage Firm shall be obligated to advance funds for the benefit of Seller in order to complete a closing. Seller shall reimburse Brokerage Firm for payments made by Brokerage Firm for such products or services authorized by Seller.

21. MAINTENANCE OF THE PROPERTY. Neither Broker nor Brokerage Firm shall be responsible for maintenance of the Property nor shall they be liable for damage of any kind occurring to the Property, unless such damage shall be caused by their negligence or intentional misconduct.

22. NONDISCRIMINATION. The parties agree not to discriminate unlawfully against any prospective buyer because of the race, creed, color, sex, marital status, national origin, familial status, physical or mental handicap, religion or ancestry of such person.
23. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Seller acknowledges that Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel before signing this contract.

24. MEDIATION. If a dispute arises relating to this contract, prior to or after closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party’s last known address.

25. ATTORNEY FEES. In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

26. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

27. ATTACHMENTS. The following are a part of this contract:

28. NOTICE, DELIVERY AND CHOICE OF LAW.

a. Physical Delivery. Except for the notice requesting mediation described in § 24 and except as provided in § 28b below, any notice to the other party to this contract must be in writing, and is effective upon receipt.

b. Electronic Delivery. As an alternative to physical delivery, any signed document and written notice may be delivered in electronic form by the following indicated methods only: [Facsimile □ E-mail □ None]. Documents with original signatures shall be provided upon request of any party.

c. Choice of Law. This contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state for property located in Colorado.

29. MODIFICATION OF THIS LISTING CONTRACT. No subsequent modification of any of the terms of this contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.
30. COUNTERPARTS. If more than one person is named as a Seller herein, this contract may be executed by each Seller, separately, and when so executed, such copies taken together with one executed by Broker on behalf of Brokerage Firm shall be deemed to be a full and complete contract between the parties.

31. ENTIRE AGREEMENT. This agreement constitutes the entire contract between the parties, and any prior agreements, whether oral or written, have been merged and integrated into this contract.

32. COPY OF CONTRACT. Seller acknowledges receipt of a copy of this contract signed by Broker, including all attachments.

Brokerage Firm authorizes Broker to execute this contract on behalf of Brokerage Firm.

Date: (63) ___________________________ Date: ___________________________

Seller (64) ___________________________ Seller ___________________________

Address: (65) ___________________________ ___________________________

Phone No.: (66) ___________________________ Fax No.: (67) ___________________________

Email Address: (68) ___________________________

Date: (69) ___________________________ (70) ___________________________

Broker’s Name: (71) ___________________________

Address: (72) ___________________________

Phone No.: (73) ___________________________ Fax No.: (74) ___________________________

Email Address: (75) ___________________________

Brokerage Firm’s Name: (76) ___________________________

Address: (77) ___________________________

Phone No.: (78) ___________________________ Fax No.: (79) ___________________________

Email Address: (80) ___________________________
C. Answers - Listing Exercise #1 - Exclusive Right-to-Sell Listing Contract - (LC 50-04-05)

1. Check Box "Seller Agency"
2. June 17, 2006
3. Check Box (a) Multiple-Person Firm
4. Hans and Janet Pederson
5. RETC & Associates
6. Your Name
7. Lot 3, Block 7, Honeymoon Acres Subdivision according to the recorded plat thereof.
8. Jefferson
9. 1647 Circle Drive Arvada, CO 80003
11. December 21, 2006
12. Check Box (a)
13. Check box (is not)
14. $220,000
15. Check all 5 boxes and in "other" add "assumption of existing loan with qualification, Sellers will carry back a 2nd Deed of Trust, not to exceed $15,000 for 5 years at 10% interest per annum."
16. -0- or None
17. $450
18. "none" or "no other"
19. $6,000
20. Cash
21. Check – "Wire Transfer"
22. "1"

23. Custom door knocker, water softener, satellite dish - Harvest gold G.E. refrigerator (serial number #4357), white Maytag washer and dryer set, (serial numbers - washer, #8974 / dryer #999847) and "custom" window coverings in master bedroom and living room. New door knocker of equal value will replace currently attached item that is excluded in paragraph 8a(2).:

24. Do not check any of the boxes

25. "None" or "no other"

26. "None"

27. "None"

28. N/A

29. Do not check any boxes

30. N/A or none

31. N/A or none

32. N/A or none

33. N/A or none

34. N/A or none

35. N/A or none

36. "General Warranty"

37. Note and Deed of Trust in the approximate amount of $83,476.50 with interest at 7.5% per annum, payable in monthly installments of approximately $594.15 principal and interest, to Colonial Mortgage Company.

38. N/A or none

39. Do not check box
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Answers - Listing Exercise #1
Exclusive Right-to-Sell Listing Contract - (LC 50-04-05)

40. N/A or none
41. N/A or none
42. N/A or none
43. 5 days after closing
44. Check box "agrees"
45. 7%
46. N/A
47. 7%
48. N/A
49. 60
50. "in full upon start of lease"
51. N/A
52. Check box "shall"
53. Check box "shall"
54. N/A or none
55. Check "Lockbox" and "No showing between 6-7 p.m. nightly"
56. 3.5% - check box
57. 3.5%
58. 3.5% - check box
59. 3.5%
60. (1) Jack and Martha Henry are excluded from this listing contract.
    (2) Seller will purchase home warranty plan not to exceed $350.00.
Answers - Listing Exercise #1
Exclusive Right-to-Sell Listing Contract - (LC 50-04-05)

61. Copy of Home Warranty Plan
62. Check box "facsimile"
63. January 17, 2006
64. Hans Pederson & Janet Pederson signatures
65. 1647 Circle Drive, Arvada, CO 80003
66. (303) 402-4531
67. None
68. None
69. January 17, 2006
70. Your signature
71. Your Name
72. Your Address
73. Your Phone Number
74. Your Fax Number (if you have a personal fax)
75. Your E-mail address
76. RETC & Associates
77. 3225 S. Wadsworth Blvd., Lakewood, CO 80227
78. (303) 421-9078
79. (303) 984-0775
80. info@coloradorealestate.net or www.coloradorealestate.net
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B Buyer Relationships - Probably the most important reminder concerning contracts and the Broker's duties, responsibilities and relationships with the buyer is that real estate licensees are required to read the contract word-for-word, and explain as necessary, before asking someone to sign it. This includes all addendum and disclosures.

This simple procedure has been either forgotten or just plain ignored by almost all real estate professionals in the practice of their profession today. To neglect to do this under law 12-61-801-811 could mean the suspension or revocation of their license.

In the instances where virtually the whole transaction is done through the mail and/or by FAX, a cover letter signed and dated by the person receiving the contract stating that they have "read and understand" the contract will help the licensee to fulfill their part of this requirement.

Licensees should also always recommend that the client or customer has the right to:

1. Have their attorney and/or tax consultant review the contract before they sign it.
2. Have their attorney review the title commitment.
3. Have their attorney do the closing or,
4. Have their attorney present at closing.

In the instance of a buyer offering to purchase a property, it should always be recommended they obtain a "pin survey" and a Home Warranty on the property. The Home Warranty can be paid for by anyone, buyer, seller, broker, Aunt Martha or Grandpa. The pin survey is generally a buyers cost and is more expensive, but it is cheap insurance.

EXCLUSIVE RIGHT TO BUY CONTRACT (All Types) (BC60-04-05)

The authority to act for a buyer in the purchase of real estate is given to the broker by means of an employment agreement between the broker and the buyer. The object of the agreement is for the broker to locate a property for the buyer at a price and on terms acceptable to that buyer. The general information concerning seller listings also applies to buyer listings, or right to buy agreements, including the requirement for a definite termination date and the inclusion of a holdover period.

Under this type of agreement, the broker agrees to assist or represent the purchaser or lessee by entering into a buyer "listing" agreement. The purchaser or lessee thus becomes the "client" or employer of the broker and may compensate the broker for locating suitable property. With proper consent of the parties, the broker working with the buyer may receive compensation from the seller or the seller’s broker. This is the "usual" way you will receive your commission. This agreement is exclusive in nature and the broker may act as either the buyer’s agent or a transaction-broker. It is extremely important that brokers thoroughly explain the exclusive nature of this agreement to potential buyers and lessees so that potential buyers and lessees do not unwittingly begin working with another broker or directly with an owner on the acquisition of a property. Such behavior, often unintentional and innocent, can create claims for payment
of multiple commissions and lead to serious legal arguments over issues such as breach of contract and procuring cause.

Buyer agency represents a steady and growing trend in Colorado and around the country. It comes into being when the licensee contractually represents the buyer in the real estate transaction. The practice has existed for some time in commercial transactions and has grown steadily in residential brokerage over the past decade. The broker receives compensation either directly from the buyer or more commonly out of the proceeds of the transaction.

The buyer’s agent, like the seller’s agent, must be careful to disclose the buyer’s agents relationship to the seller and the listing agent. Colorado’s law dealing with buyer agency requires that a buyer’s agent disclose that relationship to the seller or listing agent at the earliest reasonable opportunity.
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Exclusive Right to Buy Contract (All Types of Properties) - (BC 60-04-05) - "How To"

1 The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (BC60-04-05)

This indicates that this is a commission approved form. The letters BC stands for Buyer Contract, and the mandatory effective date was January 1, 2003. Any deletions to the form must conform to the Commission’s Statement of Policy of Rule F.

"If any portion of the printed body of the approved form is struck or crossed out during negotiations between the parties of a transaction, the deletion should be made so as not to obscure the language, in order that the parties will know specifically what has been deleted."

3 THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND

THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Compensation charged by real estate brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

12-61-803 (4), C.R.S. "...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."

Remember, if the Buyer(s) does not obtain legal counsel, it is your responsibility to make sure they understand this contract. That means you have to know it and understand it first, and then be able to explain it. Reading it word-for-word to the Buyer(s) and answering any questions they may have regarding it, is the best way to fulfill your responsibility. Not doing so could make you liable.

This is simply a reminder to the public that real estate commissions are not fixed but established by each individual brokerage company.

8 DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE

BUYER AGENCY, SELLER AGENCY OR TRANSACTION-BROKERAGE.

This is the point at which you discuss your office policy and the brokerage relationships available and provide the client with the disclosure form definitions for relationships offered by your firm. This is also a good place to go over the form BD24-5-04 (Brokerage Disclosure to Buyer) and get it signed.

11 EXCLUSIVE RIGHT-TO-BUY CONTRACT

(ALL TYPES OF PROPERTIES)

This is the identification of the type of contract you are using (Buyer Agency). If you are going to be a Transaction-Broker for your buyer you need to use the Transaction-Broker contract form (BC-27-5-04).
(1) □ BUYER AGENCY  □ TRANSACTION-BROKERAGE

Check appropriate box.

Date: (2)

The date is the date that the agreement is being signed, but not necessarily the date when the agency starts. That is covered in paragraph 2e.

1. AGREEMENT. Buyer and Brokerage Firm enter into this exclusive, irrevocable contract as of the date set forth above.

This statement identifies that this contract is between the Buyer and your Brokerage firm (not you personally) and that it gives your firm the "exclusive" right to act as an agent for the Buyer in the purchase of any property, as so defined in 3D of this contract, the Buyer wishes to acquire during the time this contract is in effect. It also states that it is "irrevocable", meaning that provided you fulfill all of your duties and obligations in this contract, they may not be able to get out of the contract easily. However, Buyer(s) have been able to get out of their contracts with brokers more often and easier than Seller(s) using almost the same kind of contract. "Designated Brokerage" may change this.

2. BROKER AND BROKERAGE FIRM. (3)

☐ a. Multiple-Person Firm. If this box is checked, the individual designated by Brokerage Firm to serve as the broker of Buyer and to perform the services for Buyer required by this contract is called Broker. If more than one individual is so designated, then references in this contract to Broker shall include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

☐ b. One-Person Firm. If this box is checked, Broker is a real estate brokerage firm with only one licensed natural person. References in this contract to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm, who serve as the broker of Buyer and perform the services for Buyer required by this contract.
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CHECK ONE of the boxes. In 2-a it says the "individual designated by the Brokerage Firm" is a limited agent of the buyer (usually this will be you). Others in your company could also be included as "broker", but this is only normally done if you become incapacitated, fired, or fail to perform as required. It also states the employing broker, the company and any other brokers in your company are not parties to this contract. "Limited Agent" means an agent whose duties and obligations to a principal are only those set forth in Colorado Revised Statutes 12-61-804 or 12-61-805.

2-b is self explanatory.

3. DEFINED TERMS.

a. Buyer: (4) 
and any other person or entity on whose behalf the named party acts, directly or indirectly, to Purchase the Property.

Identify the name or names of the Buyer(s) as they wish to take title to any Property they acquire. (This is a great place to get a photo copy of the Buyer(s) picture ID.)

b. Brokerage Firm: (5) 

(b) Insert the name of your Brokerage Firm or your name if you are an individual broker working under your own name.

(c) Insert your name

d. Property. Property means real estate that substantially meets the following requirements or similar real estate acceptable to Buyer: (7) 

It is probably not a good idea to get too specific identifying a property at this point. Most buyers have only a general idea of what to expect in a property. Quite often they find that they cannot afford or qualify for all the amenities they described.

It might be safe to simply insert "any property that is satisfactory to buyer(s)".
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Paragraph e stipulates that **ANY** voluntary acquisition of property (as defined in 3d) in any form will cause a commission to be due to the Broker.

As in the listing of real property, there is a requirement for a definite termination date. When suitable property is found and a contract entered into, be sure you extend the agency to the closing date. (Using an Agreement to Amend/Extend Contract with Broker).

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64  
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66  

Be sure that the appropriate box is checked and that N/A is placed in all "fill-in the blanks" when that space is not to be used or not appropriate to the contract.

4. BROKERAGE SERVICES AND DUTIES. Brokerage Firm, acting through Broker, shall provide brokerage services to Buyer. Broker, acting as either a Transaction-Broker or a Buyer’s Agent, shall perform the following Uniform Duties when working with Buyer:

The above part of paragraph 4 defines the minimum required of your services and duties.

At this point you can discuss pre-qualification or preapproval of a loan; and you can help the buyer become familiar with CMA’s so that when they decide on a particular property they can feel comfortable with the valuation placed on it.

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Presenting all offers to and from Buyer in a timely manner regardless of whether Buyer is already a party to a contract to Purchase the Property;

This paragraph indicates that you will be an active part of the negotiation. You are required to present any offer you receive from other agents or sellers to our buyers, even if they are under contract. You also must present any offers they wish to make to the seller (through the sellers agent).

Disclosing to Buyer adverse material facts actually known by Broker;

This is clearly a legal duty. As a "professional" there are certain things that you are expected to know about your market area.

Advising Buyer regarding the transaction and to obtain expert advice as to material matters about which Broker knows but the specifics of which are beyond the expertise of Broker;

This could include such things as the possibility of the development of contiguous vacant land, and at the same time you may point out the benefits of purchasing the property.

Such things as structural problems, possible environment hazards, sewer and water systems, natural hazards and possible encroachments are situations that call for you to advise that the buyer consult an expert in that field.

Accounting in a timely manner for all money and property received; and

All earnest money should be delivered with the offer so it can go into the listing broker’s escrow account. If the parties agree, the earnest money can be held by the Buyer’s agent in his trust account. You should also get a receipt to track the funds.

Keeping Buyer fully informed regarding the transaction.

b. Broker shall not disclose the following information without the informed consent of Buyer:
   (1) That Buyer is willing to pay more than the purchase price offered for the Property;
   (2) What Buyer’s motivating factors are;
   (3) That Buyer will agree to financing terms other than those offered;

Since the Seller of any property the Buyer tries to buy will be "at risk", anything pertaining to the Buyer’s ability to acquire financing for the property that is negative should be disclosed and as you see, in e(4) could constitute fraud or dishonest dealings. **BE CAREFUL!** If you aren't sure, check with your broker.
These are legal duties that the buyer cannot order you to ignore. You have a duty to disclose any information of a situation which would prevent the Buyer from carrying out the terms of the offer they are making. Remember you must protect the interests of both parties by law.

(4) Any material information about Buyer unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or

(5) Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property.

These items are required to be kept confidential as they can affect the Buyer(s) negotiating position.

Item #5 refers to the Colorado psychologically impacted or stigmatized property statute (38-35.5-101 C.R.S.) Which defines such information as "not material". The statute applies to all real estate licensees in performing their duties for either a buyer or a seller.

Items (1) thru (3) of this part of paragraph 4g(3) are things you are required to keep confidential as they could negatively affect the Buyer’s negotiating position if disclosed.

c. Buyer consents to Broker's disclosure of Buyer's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of Buyer, or use such information to the detriment of Buyer.

You should explain to the Buyer that only the Broker shall be held liable if the Broker commits a wrongful act in the course of the agency unless it was approved, directed or ratified by the Buyer. Reference Colorado Real Estate Manual (2004) 12-61-805(1)(c)(VII)

d. Broker may show properties in which the Buyer is interested to other prospective buyers without breaching any duty or obligation to such Buyer. Broker shall not be prohibited from showing competing buyers the same property and from assisting competing buyers in attempting to purchase a particular property.

e. Broker shall not be obligated to seek other properties while Buyer is already a party to a contract to purchase property.

f. Broker has no duty to conduct an independent inspection of the Property for the benefit of Buyer and has no duty to independently verify the accuracy or completeness of statements made by a seller or independent inspectors. Broker has no duty to conduct an independent investigation of Buyer's
CONTINUING EDUCATION  
COLORADO BROKER TRANSITION COURSE

112 financial condition or to verify the accuracy or completeness of any statement made by Buyer.

Although you do not have a duty to check out the items in this paragraph, it would be prudent for you to familiarize yourself with them as much as possible in order to prevent future surprises.

g. Broker shall disclose to any prospective seller all adverse material facts actually known by Broker, including but not limited to adverse material facts concerning Buyer's financial ability to perform the terms of the transaction and whether Buyer intends to occupy the Property as a principal residence.

Even though you are the Buyer(s) Agent, you are required by law to be "fair and honest" to the Seller.

Example: If the Buyer tells you to "keep looking for a better property for them and if you find one they like better, they will get out of the first contract someway", you are obligated to inform the Seller of this so that the Seller(s) can protect themselves.

h. Buyer shall not be liable for the acts of Broker unless such acts are approved, directed or ratified by the Buyer.

Self explanatory.

5. ADDITIONAL DUTIES OF BUYER'S AGENT. If the Buyer Agency box at the top of page 1 is checked, Broker is a limited agent of Buyer, with the following additional duties:

a. Promoting the interests of Buyer with the utmost good faith, loyalty and fidelity.

b. Seeking a price and terms that are acceptable to Buyer.

c. Counseling Buyer as to any material benefits or risks of a transaction that are actually known by Broker.

6. BROKERAGE RELATIONSHIP.

a. If the Buyer Agency box at the top of page 1 is checked, Broker shall represent Buyer as a Buyer's Agent. If the Transaction-Brokerage box at the top of page 1 is checked, Broker shall act as a Transaction-Broker.

b. In-Company Transaction-Different Brokers. When the seller and Buyer in a transaction are working with different brokers, those brokers continue to conduct themselves consistent
with the brokerage relationships they have established. Buyer acknowledges that Brokerage Firm is allowed to offer and pay compensation to brokers within Brokerage Firm working with a seller.

c. In-Company Transaction-One Broker. If the seller and Buyer are both working with the same broker, Broker shall function as:

This simply means that the brokers are working with their customers as if they were affiliated with another real estate company and not "in house".

(1) BUYER'S AGENT. If the Buyer Agency box at the top of page 1 is checked, the parties agree the following applies:

Check One Box Only (10)

☐ (a) Buyer Agency. If this box is checked, Broker shall represent Buyer as Buyer's Agent and shall treat the seller as a customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. Broker shall disclose to such customer Broker's relationship with Buyer.

ONLY CHECK ONE BOX – If box #1 is checked, the Broker will act as the agent of the Buyer. It is as if the Seller were working with an agent of another real estate company. This is the box you will check most often.

☐ (b) Buyer Agency Unless Brokerage Relationship with Both. If this box is checked, Broker shall represent Buyer as Buyer's Agent and shall treat the seller as a customer, unless Broker currently has or enters into an agency or Transaction-Brokerage relationship with the seller, in which case Broker shall act as a Transaction-Broker, performing the duties described in § 4 and facilitating purchase transactions without being an advocate or agent for either party.

If box #2 is checked and you have a brokerage relationship with both buyer and Seller, you will need to use the Change of Status form and change from Agent to Transaction-Broker.

(2) TRANSACTION-BROKER. If the Transaction-Brokerage box at the top of page 1 is checked, or in the event neither box is checked, Broker shall work with Buyer as a Transaction-Broker. If the seller and Buyer are working with the same broker, Broker shall continue to function as a Transaction-Broker.
7. BUYER'S OBLIGATIONS TO BROKER. Buyer agrees to conduct all negotiations for the Property only through Broker, and to refer to Broker all communications received in any form from real estate brokers, prospective sellers, or any other source during the Term of this contract. Buyer represents that Buyer (11) □ Is □ Is Not currently a party to any agreement with any other broker to represent or assist Buyer in the location or purchase of property.

Paragraph 5 spells out the Buyer’s obligation to you, the Broker. If Buyer is currently working with any other broker.

8. COMPENSATION TO BROKERAGE FIRM. In consideration of the services to be performed by Broker, Brokerage Firm shall be paid as set forth in this section, with no discount or allowance for any efforts made by Buyer or any other person. Brokerage Firm shall be entitled to receive additional compensation, bonuses, and incentives paid by listing brokerage firm or seller. Broker shall inform Buyer of the fee to be paid to Brokerage Firm and, if there is a written agreement, Broker shall supply a copy to Buyer, upon written request of Buyer.

a. Check Compensation Arrangement:

(12) □ (1) Success Fee. Brokerage Firm shall be paid as follows:

(a) Amount. A fee equal to (13) ____________% of the purchase price, but not less than (14) $______________ , except as provided in subsection 8a(1)(b).

(b) Adjusted Amount. (15) □ See Section 17. Additional Provisions or (16) □ Other. ________________

In the first part of paragraph 8, the contract identifies that the Buyer will pay the commission. However, in (4) of paragraph 8, it says you are authorized and instructed to request payment of the commission from — check the box or boxes. If none of these entities pays the commission, the Buyer remains responsible.
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COLORADO BROKER TRANSITION COURSE  

In paragraph 8 (1) you may use a percent or dollar amount or both.

Paragraph 8 (2) allows you to spell out changes to 8 (1) or to modify what was inserted in 8 (1).

Paragraph 8 (3) allows the Broker to keep any incentives or bonuses offered to the Broker. Without this paragraph in the contract or a written agreement inserted here in this contract these would belong to the Buyer, not the Broker.

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<th>(c) Earned. The Success Fee is earned by the Brokerage Firm upon the Purchase of the Property and is payable upon closing of the transaction. If any transaction fails to close as a result of the seller's default, with no fault on the part of Buyer, the Success Fee shall be waived. If any transaction fails to close as a result of Buyer's default, in whole or in part, the Success Fee shall not be waived; such fee shall be payable upon Buyer's default, but in any event not later than the date that the closing of the transaction was to have occurred.</th>
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<td>This is the traditional listing commission, payable if the Buyer closes on a property contracted for or if the Buyer defaults on the contract to purchase. This amount can be either a fixed dollar amount or fee; or a percentage of the purchase price. The fee should be appropriate to the marketplace. If the broker receives part of the fee from the listing broker and part from the Buyer, that is acceptable.</td>
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<th>(d) Holdover. This fee shall apply to Property contracted for during the Term of this contract or any extensions and shall also apply to Property contracted for within calendar days after this contract expires or is terminated (Holdover Period) if the Property is one on which Broker negotiated and if Broker submitted its address or other description in writing to Buyer during the Term. However, if a commission is earned by another real estate brokerage firm acting pursuant to an exclusive agreement with Buyer entered into during the Holdover Period, Buyer shall owe no commission to Broker under subsection 8a(1).</th>
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<tr>
<td>The &quot;holdover period&quot; is established here and it is specified that the fee is waived if the principal has hired a new buyer’s agent or exclusive transaction-broker who is responsible for getting the property under contract.</td>
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<th>(17) □ (2) Hourly Fee. Buyer shall pay Brokerage Firm (18) $_______ per hour for time spent by Broker pursuant to this contract, up to a maximum total fee of (19) $_______. This hourly fee shall be paid to Brokerage Firm upon receipt of an invoice from Brokerage Firm.</th>
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<tr>
<td>If you choose to select an hourly fee as all or part of your compensation, you should keep strict records of the time you spend and what you were doing to secure a property for the Buyer.</td>
</tr>
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</table>
(20)☐ (3) Retainer Fee. Buyer shall pay Brokerage Firm a nonrefundable retainer fee of (21)$____ due and payable upon signing of this contract. This amount (22)☐ Shall ☐ Shall Not be credited against other fees payable to Brokerage Firm under this section.

If you charge a retainer fee, you must specify whether it will be credited against success fees, hourly fees or other compensation to be paid. This must be pre-determined by company policy and the nature of the Buyer's assignment to you.

The retainer fee can be non-refundable. This is usually used in the case where the buyer only has two to four days to find a house and you have to live with them during that period of time -- again, anything is okay.

However, if you collect the fee and if it is refundable, or to be credited to the Buyer at closing, you have to keep accounting records for it and send a statement concerning it to the Buyer each month it is held by you. Rule E-2.

(23)☐ (4) Other Compensation: __________________________

This would include any alternative kinds of compensation, i.e., vehicle, boat, stocks, retail credit, etc.

b. Check Who Will Pay Compensation: (24)

☐ (1) Buyer Will Pay. Buyer shall be obligated to pay the Brokerage Firm's fee as described above in subsection 8a.

☐ (2) Listing Brokerage Firm or Seller May Pay. Buyer IS Obligated to Pay. Broker is authorized and instructed to request payment of the Brokerage Firm's fee from the listing brokerage firm or seller. Buyer shall be obligated to pay any portion of Brokerage Firm's fee as described above in subsection 8a which is not paid by the listing brokerage firm or seller.

☐ (3) Listing Brokerage Firm or Seller May Pay. Buyer is NOT Obligated to Pay. Broker is authorized to obtain payment of the Brokerage Firm's fee from the listing brokerage firm or seller. Buyer shall not be obligated to pay Brokerage Firm's fee.

Check one, two or all three boxes. If you check all three then after "other" you could insert "any third party". Usually, however, you will request your commission from the Listing Company.
NOTE: This is the 2nd place in the contract that tells the buyer that they are ultimately responsible for paying the commission. It is in bold caps for a reason.

A common misconception with regard to real estate transactions is that agency is determined by payment of a commission. Until recent years, it was historically understood and taught that if a licensee was receiving payment through the seller, this established an agent/principal relationship.

The agency relationship is consensual and fiduciary and brought about by an agreement between the parties. The splitting of fees between brokers can be a factor in determining agency, especially in the absence of any written contract with the seller. But it is consensual agreement which is of primary importance. However, where purchaser and seller are each clearly represented by their own agent or the purchaser is being assisted by a transaction-broker fee — splitting can be simply another item of negotiations between the parties, irrespective of agency.

Some listing agents feel that the buyer’s agent is illegally demanding a commission while representing the other side to the transaction. It should be emphasized that the payment of compensation does not determine agency. Parties to the transaction are free to negotiate all aspects of the sale including payment of commission. On the other hand, the listing agreement between the seller and listing company governs their relationship and determines the amount of commission for which the seller is liable. A buyer’s agent may not interfere with the listing contract or the commission arrangement between listing company and seller.

Much of the confusion stems from the fact that many listing brokers do not adequately discuss commission or commission split arrangements at the time the listing is taken. The seller, presented with a contract from a buyer requesting some form of commission payment to the buyer’s agent or transaction-broker, often has little understanding of the Multiple Listing Service and the traditional relationship between participants, let alone how to handle an offer from the buyer’s agent or transaction-broker. Initially, many sellers think any broker working with the buyer is the buyer’s agent to begin with. Many listing brokers have not anticipated dealing with a buyer’s broker at the time the listing is taken.

Buyer’s agents can lessen the confusion through better communication with the listing broker. Both sides should try to avoid ugly confrontations over commission arrangements by talking to each other in advance and discussing the offer before it is submitted.

9. LIMITATION ON THIRD-PARTY COMPENSATION. Neither Broker nor Brokerage Firm, except as set forth in § 8, shall accept compensation from any other person or entity in connection with the Property without the written consent of Buyer. Additionally, neither Broker nor Brokerage Firm shall be permitted to assess and receive mark-ups or other compensation for services performed by any third party or affiliated business entity unless Buyer signs a separate written consent for such services.

Should the Seller or their broker offer additional incentives, compensation or bonus to the Buyer Agent, be sure to get Buyer’s permission to keep it. Another way to protect yourself from losing additional
compensation would be to add wording in additional provisions having Buyer grant permission in advance.

10. COSTS OF SERVICES OR PRODUCTS OBTAINED FROM OUTSIDE SOURCES.

Broker will not obtain or order products or services from outside sources unless Buyer has agreed to pay for them promptly when due (examples: surveys, radon tests, soil tests, title reports, engineering studies, property inspections). Neither Broker nor Brokerage Firm shall be obligated to advance funds for Buyer. Buyer shall reimburse Brokerage Firm for payments made by Brokerage Firm for such products or services authorized by Buyer.

The Buyer is assured by this clause that the Broker will not order services without permission. The Broker is assured that he is not expected to order any services without assurances that the Buyer will pay for them when due.

11. SHOWING PROPERTIES.

Buyer acknowledges that Broker has explained the possible methods used by listing brokers and sellers to show properties, and the limitations (if any) on Buyer and Broker being able to access properties due to such methods. Broker's limitations on accessing properties are as follows: Broker, through Brokerage Firm, has access to the following multiple listing services and property information services:

This paragraph allows you to explain the showing of prospective homes to your buyer. It is a good time to talk to them about "open houses" held by other agents, "new homes" and "for sale by owner" properties, as well as your company’s policies regarding lock boxes, MLS and the internet.

This section applies to areas that may have different forms of access i.e., use both electronic and mechanical lock boxes. Typically the blank will state "none". The second section requires the listing of various sources of access the broker may have, i.e., MLS, internet, etc.

12. DISCLOSURE OF BUYER'S IDENTITY.

Broker (Does) Does Not have Buyer's permission to disclose Buyer's identity to third parties without prior written consent of Buyer.

There are some times when a buyer would prefer to remain anonymous until closing. Paragraph 10 allows the buyer to give or withhold permission to reveal their identity. If the buyer takes the option to have his identity withheld, under Colorado law you may simply state that you represent "a buyer" or a "buyer-client".
13. NONDISCRIMINATION. The parties agree not to discriminate unlawfully against any prospective seller because of the race, creed, color, sex, marital status, national origin, familial status, physical or mental handicap, religion or ancestry of such person.

These protected classes include all of those protected by either Colorado or Federal Fair Housing laws.

14. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer acknowledges that Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel before signing this contract.

This paragraph confirms that the buyer has received your suggestion that they confer with counsel if they have any questions about this or any other contracts that they consider signing. This is the 2nd time in this contract that you have advised them they should seek legal or tax counsel regarding the contract. It would be a good idea to have them initial this paragraph in the margin.

15. MEDIATION. If a dispute arises relating to this contract, prior to or after closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party's last known address.

As in the other contracts, if the parties to the contract (in this case Buyer and Broker) have a disagreement relating to this agreement, they agree to submit the dispute to mediation prior to any other legal action, and they will share the cost. Mediation is NOT BINDING and the parties would have to agree to accept the recommendation of the mediator. If a mediated settlement is not reached within 30 days of written notice to mediate, mediation is terminated unless the parties agree to extend (use an Amend/Extend contract with broker).

If mediation is terminated, then the parties may elect to go to arbitration or to litigate the dispute.

16. ATTORNEY FEES. In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.
Judges are not bound to honor this provision, but it is more likely they will than if no prior agreement exists.

17. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

This is where you put any items that the Buyer and Broker want to have as part of the contract. You may modify and clarify existing provisions and other promises of service here. Remember that this is NOT your opportunity to rewrite the contract.

18. ATTACHMENTS. The following are a part of this contract:

This is where you would list items such as disclosures about brokerage owned companies that may provide services for buyer, etc. per your brokerage policies and procedures.

19. NOTICE, DELIVERY AND CHOICE OF LAW.
   a. Physical Delivery. Except for the notice requesting mediation described in § 15, and except as provided in § 19b below, any notice to the other party to this contract must be in writing and is effective upon receipt.
   b. Electronic Delivery. As an alternative to physical delivery, any signed document and written notice may be delivered in electronic form by the following indicated methods only:
      (30) □ Facsimile □ E-mail □ None. Documents with original signatures shall be provided upon request of any party.

Don’t assume! Be sure to ask the buyer if they will accept the use of faxes or electronic signatures. You should become familiar with how electronic signatures work, its coming! If you are going to use electronic signatures check with the lender about their policy on electronic signatures. Most people will accept fax signatures.

c. Choice of Law. This contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado, that would be applicable to Colorado residents who sign a contract in this state for property located in Colorado.
20. MODIFICATION OF THIS CONTRACT. No subsequent modification of any of the terms of this contract shall be valid, binding upon the parties, or enforceable unless in writing and signed by the parties.

This item calls for the keeping of all agreements in writing. Again, you would use the Agreement to Amend/Extend Contract with Broker, for any and all changes agreed to.

21. COUNTERPARTS. If more than one person is named as a Buyer herein, this contract may be executed by each Buyer, separately, and when so executed, such copies taken together with one executed by Broker on behalf of Brokerage Firm shall be deemed to be a full and complete contract between the parties.

You can have different copies of the contract signed by the different buyers under this same contract and brought together they constitute a completed contract. Original signatures of both buyer(s) and broker are necessary on each copy.

22. ENTIRE AGREEMENT. This agreement constitutes the entire contract between the parties and any prior agreements, whether oral or written, have been merged and integrated into this contract.

Simply stated - there are no promises or agreements other than those in this contract.

23. COPY OF CONTRACT. Buyer acknowledges receipt of a copy of this contract signed by Broker, including all attachments.

Commission rules require that each party signing a contract receive a copy of that contract.

24. MEGAN'S LAW. If the presence of a registered sex offender is a matter of concern to Buyer, Buyer understands that Buyer must contact local law enforcement officials regarding obtaining such information.

Self explanatory.

Brokerage Firm authorizes Broker to execute this contract on behalf of Brokerage Firm.

This line in the contract is the legal authorization for you to sign the contract for your Brokerage Firm.
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You and the Buyer should fill in all appropriate blanks, in ink, preferably "blue". (Black ink looks too much like a "fax" signature)
Listing Exercise #4 - Information - Exclusive Right to Buy Contract - (BC 60-04-05)

You are an agent at RETC & Associates, 3225 S. Wadsworth Blvd., Lakewood, CO 80227 (303) 421-9078; fax # (303) 555-1234 and Email is RETC@att.net. The client will be coming into the office and today’s date (January 3, 2006) will be the date of the contract. You will be a Buyer Agency.

The buyers are Herman and Penny Wilson, they currently live in Wisconsin in a little town called Clayborne at 83725 Adams Avenue. (Zip code - 39272) Their phone number at home in Wisconsin is (222) 282-6016. They are moving to Colorado because of a job transfer which will take effect on March 1, 2003. That’s when Herman must be at his new position. They are going to lease out their current home in Wisconsin to her cousin, so that’s not an issue. They are ready to look for property today and are quite anxious to find something as soon as possible. They have driven around the area and have also been given some suggestions from the personnel department of his new company so they are fairly specific about the neighborhoods they’d like to live in - Moonlight Estates and Nob Hill. They like to entertain, so they want a large family room or great room as well as a very nice backyard and patio area. Penny is an artist and she definitely wants the southern light in at least one room which will be converted to a studio, or perhaps a separate building that can be used as a studio. The kids are away at college or married so they need a minimum of actual bedrooms. He’s getting a generous relocation allowance as well as a nice pay raise, and they would like to put about 40% down with a new loan of 60% of the purchase price. They’re willing to put forward 5% as earnest money and pull the rest of the down payment and closing costs out of a CD just prior to closing so that they won’t lose interest unnecessarily. Together you figure that they can get what they want for about $325,000, (and they do qualify) so you decide to look in the price range of $275,000 to $350,000 to make sure you don’t miss anything that might fit their needs.

Given the fact that they are serious buyers and are on a pretty tight time-frame, they suggest that they will give you a 30 day exclusive contract to find something for them, and you agree to that; You explain that an additional 30 days on the contract will cover the transaction to the closing and if you haven’t found something within the first 30 days you will cancel the contract. You will want a 30 day "holdover period". That’s agreeable to all parties. You explain the various methods that agents use to allow showing access and that you can use all methods so they won’t miss any homes available.

Since they have experience with a Wisconsin broker who charged a 5% commission, that’s what they will agree to pay you as a success fee. They don’t mind if you get a commission or a portion of your commission from the other side of the transaction.

They are pretty adamant about not paying an hourly fee or a retainer. Since Herman has already gotten publicity as coming into his new position as President of a large company which employs a lot of local people, he prefers that no one knows his identity. After explaining the use of fax and electronic signatures, the buyer thinks that it is a good idea.

Complete the blank form on pages 102 to 108 inclusive. After you have completed the form, turn to answer page indicated in "ANSWERS PLEASE" box. DO NOT progress further until you have a complete understanding of all parts of this problem.
EXCLUSIVE RIGHT-TO-BUY CONTRACT
(ALL TYPES OF PROPERTIES)

(1) □ BUYER AGENCY □ TRANSACTION-BROKERAGE

Date: (2)__________________________

1. AGREEMENT. Buyer and Brokerage Firm enter into this exclusive, irrevocable contract as of the date set forth above.

2. BROKER AND BROKERAGE FIRM. (3)

☐ a. Multiple-Person Firm. If this box is checked, the individual designated by Brokerage Firm to serve as the broker of Buyer and to perform the services for Buyer required by this contract is called Broker. If more than one individual is so designated, then references in this contract to Broker shall include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

☐ b. One-Person Firm. If this box is checked, Broker is a real estate brokerage firm with only one licensed natural person. References in this contract to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm, who serve as the broker of Buyer and perform the services for Buyer required by this contract.

3. DEFINED TERMS.

a. Buyer: (4)__________________________________________

and any other person or entity on whose behalf the named party acts, directly or indirectly, to Purchase the Property.

b. Brokerage Firm: (5)____________________________________

c. Broker: (6)__________________________________________
d. **Property.** Property means real estate that substantially meets the following requirements or similar real estate acceptable to Buyer: (7)

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**e. Purchase.** Purchase means the acquisition of any interest in the Property or the creation of the right to acquire any interest in the Property (including a contract or lease). It also includes an agreement to acquire any ownership interest in an entity that owns the Property.

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**f. Term.** The Term of this contract shall begin on (8) ________________, and shall continue through the earlier of (1) completion of the Purchase of the Property or (2) (9) ________________ ________________ ________________. Broker shall continue to assist in the completion of any transaction for which compensation is payable to Brokerage Firm under § 8 of this contract.

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**g. Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" means not applicable. The abbreviation "MEC" (mutual execution of this contract) means the latest date upon which the parties have signed this contract.

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4. **BROKERAGE SERVICES AND DUTIES.** Brokerage Firm, acting through Broker, shall provide brokerage services to Buyer. Broker, acting as either a Transaction-Broker or a Buyer's Agent, shall perform the following Uniform Duties when working with Buyer:

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**a.** Broker shall exercise reasonable skill and care for Buyer, including but not limited to the following:

1. Performing the terms of any written or oral agreement with Buyer;
2. Presenting all offers to and from Buyer in a timely manner regardless of whether Buyer is already a party to a contract to Purchase the Property;
3. Disclosing to Buyer adverse material facts actually known by Broker;
4. Advising Buyer regarding the transaction and to obtain expert advice as to material matters about which Broker knows but the specifics of which are beyond the expertise of Broker;
5. Accounting in a timely manner for all money and property received; and
6. Keeping Buyer fully informed regarding the transaction.

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**b.** Broker shall not disclose the following information without the informed consent of Buyer:

1. That Buyer is willing to pay more than the purchase price offered for the Property;
2. What Buyer's motivating factors are;
3. That Buyer will agree to financing terms other than those offered;
4. Any material information about Buyer unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or
5. Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property.

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**c.** Buyer consents to Broker's disclosure of Buyer's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker

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or designee shall not further disclose such information without consent of Buyer, or use such information to the detriment of Buyer.

d. Broker may show properties in which the Buyer is interested to other prospective buyers without breaching any duty or obligation to such Buyer. Broker shall not be prohibited from showing competing buyers the same property and from assisting competing buyers in attempting to purchase a particular property.

e. Broker shall not be obligated to seek other properties while Buyer is already a party to a contract to purchase property.

f. Broker has no duty to conduct an independent inspection of the Property for the benefit of Buyer and has no duty to independently verify the accuracy or completeness of statements made by a seller or independent inspectors. Broker has no duty to conduct an independent investigation of Buyer's financial condition or to verify the accuracy or completeness of any statement made by Buyer.

g. Broker shall disclose to any prospective seller all adverse material facts actually known by Broker, including but not limited to adverse material facts concerning Buyer's financial ability to perform the terms of the transaction and whether Buyer intends to occupy the Property as a principal residence.

h. Buyer shall not be liable for the acts of Broker unless such acts are approved, directed or ratified by the Buyer.

5. ADDITIONAL DUTIES OF BUYER'S AGENT. If the Buyer Agency box at the top of page 1 is checked, Broker is a limited agent of Buyer, with the following additional duties:

a. Promoting the interests of Buyer with the utmost good faith, loyalty and fidelity.

b. Seeking a price and terms that are acceptable to Buyer.

c. Counseling Buyer as to any material benefits or risks of a transaction that are actually known by Broker.

6. BROKERAGE RELATIONSHIP.

a. If the Buyer Agency box at the top of page 1 is checked, Broker shall represent Buyer as a Buyer's Agent. If the Transaction-Brokerage box at the top of page 1 is checked, Broker shall act as a Transaction-Broker.

b. In-Company Transaction-Different Brokers. When the seller and Buyer in a transaction are working with different brokers, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Buyer acknowledges that Brokerage Firm is allowed to offer and pay compensation to brokers within Brokerage Firm working with a seller.

c. In-Company Transaction-One Broker. If the seller and Buyer are both working with the same broker, Broker shall function as:
(1) BUYER'S AGENT. If the Buyer Agency box at the top of page 1 is checked, the parties agree the following applies:

Check One Box Only (10)

☐ (a) Buyer Agency. If this box is checked, Broker shall represent Buyer as Buyer's Agent and shall treat the seller as a customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. Broker shall disclose to such customer Broker's relationship with Buyer.

☐ (b) Buyer Agency Unless Brokerage Relationship with Both. If this box is checked, Broker shall represent Buyer as Buyer's Agent and shall treat the seller as a customer, unless Broker currently has or enters into an agency or Transaction-Brokerage relationship with the seller, in which case Broker shall act as a Transaction-Broker, performing the duties described in § 4 and facilitating purchase transactions without being an advocate or agent for either party.

(2) TRANSACTION-BROKER. If the Transaction-Brokerage box at the top of page 1 is checked, or in the event neither box is checked, Broker shall work with Buyer as a Transaction-Broker. If the seller and Buyer are working with the same broker, Broker shall continue to function as a Transaction-Broker.

7. BUYER'S OBLIGATIONS TO BROKER. Buyer agrees to conduct all negotiations for the Property only through Broker, and to refer to Broker all communications received in any form from real estate brokers, prospective sellers, or any other source during the Term of this contract. Buyer represents that Buyer Is Is Not currently a party to any agreement with any other broker to represent or assist Buyer in the location or purchase of property.

8. COMPENSATION TO BROKERAGE FIRM. In consideration of the services to be performed by Broker, Brokerage Firm shall be paid as set forth in this section, with no discount or allowance for any efforts made by Buyer or any other person. Brokerage Firm shall be entitled to receive additional compensation, bonuses, and incentives paid by listing brokerage firm or seller. Broker shall inform Buyer of the fee to be paid to Brokerage Firm and, if there is a written agreement, Broker shall supply a copy to Buyer, upon written request of Buyer.

a. Check Compensation Arrangement:

(12) ☐ (1) Success Fee. Brokerage Firm shall be paid as follows:

(a) Amount. A fee equal to (13) % of the purchase price, but not less than $ , except as provided in subsection 8a(1)(b).

(b) Adjusted Amount. (15) ☐ See Section 17. Additional Provisions or

(16) ☐ Other.

(c) Earned. The Success Fee is earned by the Brokerage Firm upon the Purchase of the Property and is payable upon closing of the transaction. If any transaction fails to close as a result of the seller's default, with no fault on the part of Buyer, the Success Fee shall be waived. If any
transaction fails to close as a result of Buyer's default, in whole or in part, the Success Fee shall not be
waived; such fee shall be payable upon Buyer's default, but in any event not later than the date that the
closing of the transaction was to have occurred.

(d) Holdover. This fee shall apply to Property contracted for during the Term of this
contract or any extensions and shall also apply to Property contracted for within calendar days
after this contract expires or is terminated (Holdover Period) if the Property is one on which Broker
negotiated and if Broker submitted its address or other description in writing to Buyer during the Term.
However, if a commission is earned by another real estate brokerage firm acting pursuant to an
exclusive agreement with Buyer entered into during the Holdover Period, Buyer shall owe no
commission to Broker under subsection 8a(1).

(17)☐ (2) Hourly Fee. Buyer shall pay Brokerage Firm (18) $________ per hour for time spent by
Broker pursuant to this contract, up to a maximum total fee of (19) $________. This hourly fee shall be
paid to Brokerage Firm upon receipt of an invoice from Brokerage Firm.

(20)☐ (3) Retainer Fee. Buyer shall pay Brokerage Firm a nonrefundable retainer fee of (21)$_______
due and payable upon signing of this contract. This amount (22)☐ Shall ☐ Shall Not be credited against
other fees payable to Brokerage Firm under this section.

(23)☐ (4) Other Compensation: __________________________

b. Check Who Will Pay Compensation: (24)

☐ (1) Buyer Will Pay. Buyer shall be obligated to pay the Brokerage Firm's fee as described
above in subsection 8a.

☐ (2) Listing Brokerage Firm or Seller May Pay. Buyer IS Obligated to Pay. Broker is
authorized and instructed to request payment of the Brokerage Firm's fee from the listing brokerage firm
or seller. Buyer shall be obligated to pay any portion of Brokerage Firm's fee as described above in
subsection 8a which is not paid by the listing brokerage firm or seller.

☐ (3) Listing Brokerage Firm or Seller May Pay. Buyer is NOT Obligated to Pay. Broker
is authorized to obtain payment of the Brokerage Firm's fee from the listing brokerage firm or seller.
Buyer shall not be obligated to pay Brokerage Firm's fee.

9. LIMITATION ON THIRD-P ARTY COMPENSATION. Neither Broker nor Brokerage Firm,
extcept as set forth in § 8, shall accept compensation from any other person or entity in connection with
the Property without the written consent of Buyer. Additionally, neither Broker nor Brokerage Firm
shall be permitted to assess and receive mark-ups or other compensation for services performed by any
third party or affiliated business entity unless Buyer signs a separate written consent for such services.

10. COSTS OF SERVICES OR PRODUCTS OBTAINED FROM OUTSIDE SOURCES.
Broker will not obtain or order products or services from outside sources unless Buyer has agreed to pay
for them promptly when due (examples: surveys, radon tests, soil tests, title reports, engineering studies,
property inspections). Neither Broker nor Brokerage Firm shall be obligated to advance funds for
Buyer. Buyer shall reimburse Brokerage Firm for payments made by Brokerage Firm for such products.
or services authorized by Buyer.

11. SHOWING PROPERTIES. Buyer acknowledges that Broker has explained the possible methods used by listing brokers and sellers to show properties, and the limitations (if any) on Buyer and Broker being able to access properties due to such methods. Broker’s limitations on accessing properties are as follows: (25) ___________________________. Broker, through Brokerage Firm, has access to the following multiple listing services and property information services: (26) ___________________________.

12. DISCLOSURE OF BUYER'S IDENTITY. Broker (27) ☐ Does ☐ Does Not have Buyer's permission to disclose Buyer's identity to third parties without prior written consent of Buyer.

13. NONDISCRIMINATION. The parties agree not to discriminate unlawfully against any prospective seller because of the race, creed, color, sex, marital status, national origin, familial status, physical or mental handicap, religion or ancestry of such person.

14. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer acknowledges that Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel before signing this contract.

15. MEDIATION. If a dispute arises relating to this contract, prior to or after closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party's last known address.

16. ATTORNEY FEES. In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

17. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.) (28)

18. ATTACHMENTS. The following are a part of this contract: (29)

19. NOTICE, DELIVERY AND CHOICE OF LAW.

a. Physical Delivery. Except for the notice requesting mediation described in § 15, and except as provided in § 19b below, any notice to the other party to this contract must be in writing and is effective upon receipt.
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COLORADO BROKER TRANSITION COURSE

b. Electronic Delivery. As an alternative to physical delivery, any signed document and
written notice may be delivered in electronic form by the following indicated methods only:
Facsimile □ E-mail □ None. Documents with original signatures shall be provided upon request
of any party.

c. Choice of Law. This contract and all disputes arising hereunder shall be governed by
and construed in accordance with the laws of the State of Colorado, that would be applicable to
Colorado residents who sign a contract in this state for property located in Colorado.

20. MODIFICATION OF THIS CONTRACT. No subsequent modification of any of the terms of
this contract shall be valid, binding upon the parties, or enforceable unless in writing and signed by the
parties.

21. COUNTERPARTS. If more than one person is named as a Buyer herein, this contract may be
executed by each Buyer, separately, and when so executed, such copies taken together with one
executed by Broker on behalf of Brokerage Firm shall be deemed to be a full and complete contract
between the parties.

22. ENTIRE AGREEMENT. This agreement constitutes the entire contract between the parties
and any prior agreements, whether oral or written, have been merged and integrated into this contract.

23. COPY OF CONTRACT. Buyer acknowledges receipt of a copy of this contract signed by
Broker, including all attachments.

24. MEGAN'S LAW. If the presence of a registered sex offender is a matter of concern to Buyer,
Buyer understands that Buyer must contact local law enforcement officials regarding obtaining such
information.

Brokerage Firm authorizes Broker to execute this contract on behalf of Brokerage Firm.

Date: ____________________________ Date: ____________________________

Buyer Buyer

Address: __________________________

Phone No.: __________________________ Fax No.: (35)

Email Address: __________________________

Date: ____________________________ (38)

Broker

Address: __________________________

Phone No.: __________________________ Fax No.: (42)

Email Address: __________________________

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COLORADO BROKER TRANSITION COURSE
Answers -Listing Exercise #4 - Exclusive Right to Buy Contract - (BC 60-04-05)

1. Check "Buyer Agency"
2. January 3, 2006
3. Check "Multiple-person Firm"
4. Herman Wilson and Penny Wilson
5. RETC & Associates
6. Your name (Broker that is establishing the relationship)
7. Any property acceptable to purchase(s)
8. January 3, 2006
9. March 4, 2006 (60 Days)
10. Check "Buyers Agent"
11. Check "is not"
12. Check box
13. 5
14-16 N/A
17. Do not check box
18. N/A
19. Do not check box
20. N/A
21. Do not check box
22. N/A
23. Check
24. Check all (3) boxes
25. List any limitations or N/A or None