

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

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
April 5, 2016**

RULE F. USE OF COMMISSION APPROVED FORMS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Real Estate Commission (the "Commission") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Commission.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Parts 1 and 8 of Title 12, Article 61, Colorado Revised Statutes, as amended. The specific rulemaking provisions contained therein are sections 12-61-114.5 and 12-61-803(4), C.R.S.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to amend or repeal existing rules with respect to the proper use of standard and Commission approved forms and ensures compliance with the Colorado Supreme Court Conway-Bogue decision.

PROPOSED NEW, AMENDED AND REPEALED RULES

Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced.

Proposed New, Amended and Repealed Rules

Rule F. USE OF COMMISSION APPROVED FORMS

~~F-7. Commission Approved Forms~~ **USE OF FORMS**

PURSUANT TO SECTION 12-61-803(4), C.R.S., A BROKER IS AUTHORIZED ONLY TO COMPLETE FORMS AND TO COMPLETE ONLY TWO TYPES OF FORMS: (i) FORMS PROMULGATED BY THE COMMISSION ("COMMISSION-APPROVED FORM(S)"), AND (ii) STANDARD FORMS ("STANDARD FORM(S)") PREPARED FOR USE BY A LICENSEE IN MULTIPLE TRANSACTIONS AS DESCRIBED IN (B) THROUGH (D) BELOW.

(A) IF THERE IS A COMMISSION-APPROVED FORM APPLICABLE TO THE TRANSACTION OR CIRCUMSTANCES, THE BROKER MUST USE THE COMMISSION-APPROVED FORM. BROKERS CAN SEE THE CURRENT LIST OF COMMISSION-APPROVED FORMS AT THE

DIVISION OF REAL ESTATE'S WEBSITE ONLINE. THE ONLY EXCEPTION TO THE REQUIRED USE OF AN APPLICABLE COMMISSION-APPROVED FORM IS A BROKER'S USE OF A LISTING CONTRACT DRAFTED BY AN ACTIVELY LICENSED COLORADO ATTORNEY IN LIEU OF THE COMMISSION-APPROVED LISTING CONTRACT.

(B) A STANDARD FORM MEANS A DOCUMENT THAT:

- 1) CONTAINS FIXED WORDING WITH SPACES AND/OR BLANKS TO BE FILLED IN BY THE BROKER; AND
- 2) IS INTENDED TO BE USED REPEATEDLY BY A BROKER IN THE PERFORMANCE OF THE BROKER'S LICENSED DUTIES; AND
- 3) IS VISIBLY DISTINGUISHABLE FROM COMMISSION-APPROVED FORMS; AND
- 4) IS DRAFTED BY ONE OF THE FOLLOWING:
 - i. THE BROKER'S OR BROKERAGE FIRM'S ATTORNEY (EXAMPLES INCLUDE DISCLOSURES, ADDENDA, LEASES AND PROPERTY MANAGEMENT AGREEMENTS); OR
 - ii. THE ATTORNEY FOR THE BROKER'S PRINCIPAL IF THE BROKER IS THE AGENT FOR A PARTY TO A TRANSACTION, OR THE ATTORNEY FOR A PARTY ASSISTED BY THE BROKER IF THE BROKER IS A TRANSACTION BROKER IN THE TRANSACTION, AND IN EITHER CASE FOR THE BROKER TO USE IN A SERIES OF TRANSACTIONS IN WHICH THE BROKER REPRESENTS THAT PRINCIPAL OR ASSISTS THAT PARTY; OR
 - iii. A GOVERNMENTAL AGENCY OR A LENDER REGULATED BY STATE OR FEDERAL LAW.
- 5) IF COVERED BY (4)(i) OR (4)(ii), CONTAINS AT THE TOP OF THE DOCUMENT THE LANGUAGE IN (D)(2) BELOW.

(C) A STANDARD FORM COVERED BY (4)(i) OR (4)(ii) *CANNOT*:

- 1) CONTAIN THE SAME FONT OR FORMATTING AS THE COMMISSION-APPROVED FORMS; OR
- 2) HAVE ANY OF ITS FIXED OR PRE-PRINTED LANGUAGE DELETED OR OTHERWISE MODIFIED FOR ANY USE OF THE FORM UNLESS THE BROKER OR BROKERAGE FIRM HAS CONSULTED WITH THE BROKER'S OR BROKERAGE FIRM'S ATTORNEY AS TO THAT SPECIFIC USE OF THE FORM REGARDING THE PROPOSED CHANGE(S) AND RESULTING CONSEQUENCES; OR
- 3) BE SPECIFICALLY DRAFTED OR TAILORED TO SUIT ONLY A SPECIFIC TRANSACTION IN WHICH IT WILL BE USED; OR
- 4) BE USED WHEN A COMMISSION-APPROVED FORM EXISTS FOR THE SAME PURPOSE, EXCEPT AS STATED IN (A) ABOVE.

(D) BROKERS AND BROKERAGE FIRMS ARE REQUIRED TO DO ALL OF THE FOLLOWING IN ORDER TO COMPLETE A STANDARD FORM COVERED BY (4)(i) OR (4)(ii):

- 1) CONSULT WITH AN ACTIVELY LICENSED COLORADO ATTORNEY CONCERNING THAT STANDARD FORM ON AT LEAST AN ANNUAL BASIS CONCERNING THE

- APPROPRIATE USE OF THE STANDARD FORM AND ITS EFFECTIVENESS AND COMPLIANCE WITH CURRENT LAW AND COMMISSION REGULATIONS; AND
- 2) INCLUDE THE FOLLOWING LANGUAGE AT THE TOP OF THE FIRST PAGE OF THE STANDARD FORM IN CAPITALIZED FONT AT LEAST AS LARGE AS THE LARGER OF THE TITLE OR BODY OF THE DOCUMENT:

"THIS FORM HAS NOT BEEN APPROVED BY THE COLORADO REAL ESTATE COMMISSION. IT WAS PREPARED BY (INSERT NAME OF ATTORNEY OR LAW FIRM) AS LEGAL COUNSEL FOR (INSERT LICENSED NAME OF BROKER OR BROKERAGE FIRM OR NAME OF SELLER/BUYER/LANDLORD/TENANT)."

THE ATTORNEY OR LAW FIRM NAMED MUST BE THE ONE MOST RECENTLY CONSULTED CONCERNING THAT STANDARD FORM UNDER PARAGRAPH (1) ABOVE.

- 3) PROVIDE TRAINING ON USE OF THE STANDARD FORM TO THEIR BROKERAGE ASSOCIATES ON AT LEAST AN ANNUAL BASIS CONCERNING APPROPRIATE USE OF THE STANDARD FORM AND ITS EFFECTIVENESS AND COMPLIANCE WITH CURRENT LAW AND COMMISSION RULES, POSITION STATEMENTS AND REGULATIONS (TOGETHER "COMMISSION REGULATIONS").

(E) DESPITE ANYTHING TO THE CONTRARY STATED IN THIS RULE F-7, ANY FORM USED BY A BROKER MUST:

- 1) NOT BE USED TO VIOLATE STATE OR FEDERAL LAW OR COMMISSION REGULATIONS; AND
- 2) BE APPROPRIATE TO THE TRANSACTION OR CIRCUMSTANCE IN WHICH IT IS USED; AND
- 3) BE UNDERSTOOD BY THE BROKER; AND
- 4) BE COMPLETED AND USED CORRECTLY AND IN COMPLIANCE WITH THEN CURRENT LAW AND COMMISSION REGULATIONS; AND
- 5) BE A COMMISSION-APPROVED FORM IF IT IS APPROPRIATE TO THE TRANSACTION OR CIRCUMSTANCE IN WHICH SUCH A FORM IS TO BE USED, EXCEPT AS STATED IN (B) ABOVE.

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

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

A hearing on the above subject matter will be held on Tuesday, April 5, 2016 at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250C, Denver, Colorado 80202 beginning at 9:00 a.m.

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

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