



DENVER METRO
ASSOCIATION OF REALTORS®



2016 DMAR REPORT

**ON COLORADO REAL ESTATE
COMMISSION (CREC)**

DENVER METRO ASSOCIATION OF REALTORS®



EXECUTIVE SUMMARY

Broker disciplinary cases resolved in 2015 totaled 298. This number represents a substantial increase from the previous year which closed with 211 disciplinary resolved cases. In 2015, 222 licensees faced discipline for failure to meet continuing educational requirements.

This violation was by far the most common violation of license law for 2014 and 2015 (and several years prior). However, the 2015 total represented a substantial uptick as 2014 saw only 153 brokers disciplined for failing to complete continuing education requirements. The Division of Real Estate increased its random audits of education records to a peak of 250 brokers each quarter. While there is some recent indication that the Division is now auditing fewer brokers for education compliance, licensees should still be careful to ensure compliance with education requirements.

2015 also saw a substantial rise in cases involving failure to make appropriate brokerage disclosures in writing. In 2015, brokers accepted responsibility for 23 instances of violations of the rules and statutes requiring written brokerage disclosures, representing a 60% increase based on 2014 figures.



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Licensees should make certain to either provide the appropriate brokerage disclosure form or secure an executed listing/exclusive right contract and ensure that a copy of such form or contract is retained in the broker's file.



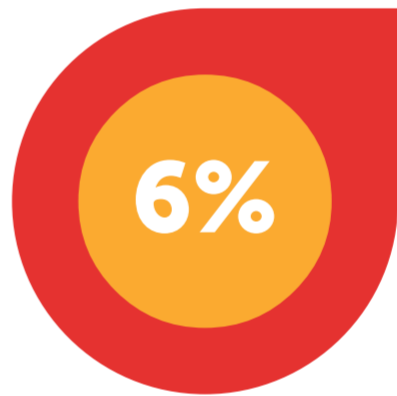
TOP CREC VIOLATIONS 2015



Education (113(1)(w) and B-10)



Other CREC (non 113(1)(k))



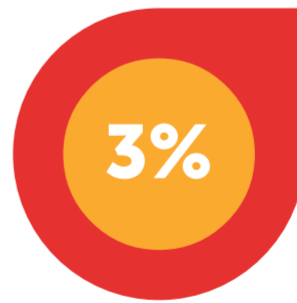
Incompetency/Unworthiness (113)(1)(n)



Accounting (113)(1)(g),(g.5), E-1



Brokerage Disclosures 808, E35



Criminal (113)(1)(m)(m.5), E-49



Transaction Brokerage 807



Advertising



Fraud/Dishonest Dealing

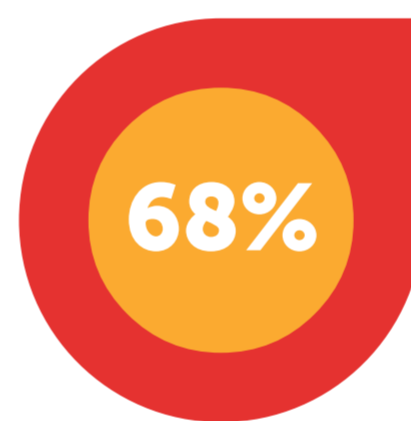


ANALYSIS OF 2015 LICENSE LAW VIOLATIONS

A. EDUCATION VIOLATIONS

Unsurprisingly, the top violation of Colorado brokerage license law for 2015 was failure to comply with continuing education requirements. With 222 violations of continuing education rules in 2015, Colorado licensees performed worse than 2014 which saw 153 such violations. These violations typically resulted in light discipline, including fines (hundreds of dollars) and additional coursework, but not public censure or other harsher disciplinary penalties. However, repeat offenders are likely to face harsher discipline.

The Colorado Division of Real Estate is continuing to conduct random education record audits of licensees each calendar quarter. While the number of total audits appears to have peaked at 250 per quarter and appears to be ramping down somewhat, all licensees should assume that they will be audited for continuing education requirements sooner rather than later. Failure to comply with continuing education requirements and retain records of completion is the most common license law violation for the last three years running. As a reminder, brokers must complete 24 hours of continuing education credit every 3 years, including the mandatory 4 hour annual update course for each of the three years in the licensing cycle.



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#1

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It is critically important for licensees to ensure compliance with continuing education requirements. As a reminder, brokers must complete 24 hours of continuing education credit every 3 years, including the mandatory 4 hour annual update course for each of the three years in the licensing cycle.



ANALYSIS OF 2015 LICENSE LAW VIOLATIONS

B. CRIMINAL ISSUES

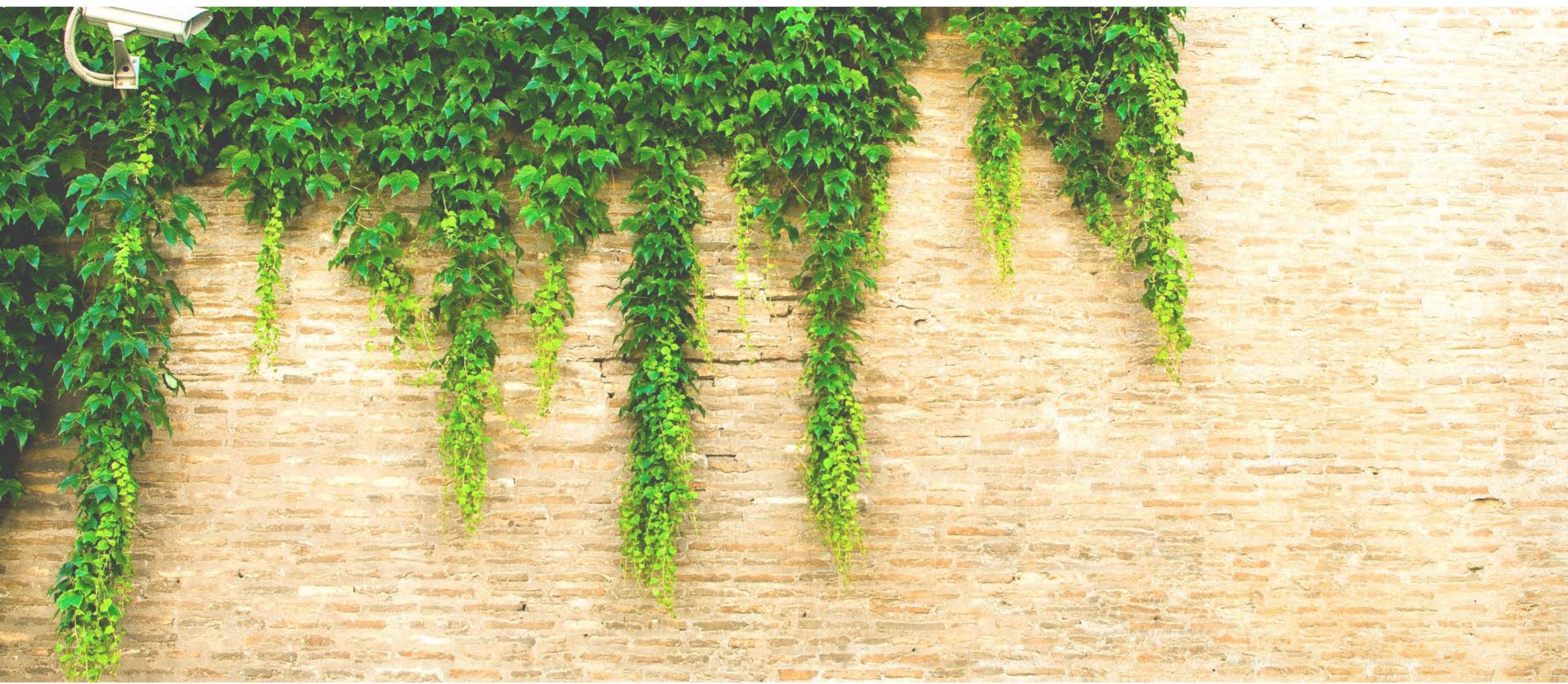
Colorado licensees continue to get into criminal trouble impacting their real estate licenses. 2015 saw 22 violations involving criminal conduct by brokers impacting their license, including failure to self-report a criminal plea to the Commission. The 2015 numbers represent a slight increase over 2014.

Given that the Commission's 2016 Annual Commission Update course focuses on this issue, the Commission wants licensees to understand their obligations with regard to self-reporting a plea or conviction to criminal misconduct. The Division of Real Estate generally receives an alert when a licensee is arrested. The Division will then monitor the case for a criminal plea or conviction that would implicate a violation of Colorado license law. For this reason, it is critically important that licensees understand whether their criminal plea agreement or conviction implicates Colorado license law and, if it does, self-report in writing to the Division of Real Estate within the 30 day window following the plea or conviction. Failing to self-report a plea or conviction to one of the enumerated crimes within 30 days of the plea or conviction is its own separate violation of the license law. Criminal pleas that trigger the self-reporting requirement can include pleas involving deferred judgment and deferred sentencing.



violations involving criminal conduct in 2015.

Self-reporting convictions or pleas within the 30 day time frame is critically important. The best practice is for brokers facing criminal charges to understand the brokerage license implications before entering into a plea arrangement or going to trial on a criminal case.



ANALYSIS OF 2015 LICENSE LAW VIOLATIONS

C. ACCOUNTING VIOLATIONS

Brokers continue to engage in conduct constituting various types of accounting violations. These common violations include:

- (i) failing to perform the mandatory monthly reconciliations of trust accounts;
- (ii) failing to maintain proper trust or escrow accounts designated as such with the financial institution holding the funds;
- (iii) failing to timely remit or account for money belonging to others;
- (iv) converting funds of others;
- (v) commingling the licensee's funds with funds of others;
- (vi) failing to properly account for and manage trust funds;
- (vii) not disclosing markups of vendor charges or profits from affiliated businesses, among certain other accounting violations.

Many of these cases involve brokers acting as property managers without the requisite understanding of the accounting requirements. This issue is one that the Commission takes very seriously. Accounting violations and mismanagement of funds belonging to others is a leading cause of license revocation. However, brokers seemed to be doing a better job where accounting is concerned in 2015. This is reflected by a downtrend in the number of violations year-on-year for a total of 24 such disciplinary instances involving accounting related violations compared with 33 for 2014.



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ANALYSIS OF 2015 LICENSE LAW VIOLATIONS

D. NEW TREND: BROKERAGE DISCLOSURES

2015 saw a substantial rise in cases involving failure to make appropriate brokerage disclosures in writing. Brokers accepted responsibility for 23 instances of violations of the rules and statutes requiring the provision of written brokerage disclosures to consumers. This number represents an over 60% increase in the number of violations based on the 2014 figures. As a reminder, every brokerage firm must have a clear brokerage relationship policy which identifies the types of relationships that brokers can enter into with clients. Licensees should be clear on the types of brokerage relationships they are authorized to enter into under their brokerage relationship policy.

Brokers must understand that when they enter into a brokerage relationship with a client, they must either: (i) provide a party with the appropriate written brokerage disclosure form; or (ii) enter into a written agency relationship using the appropriate form exclusive right contract. When acting as agents, brokers must make appropriate brokerage disclosure to the other unrepresented counterpart.

Brokers should also remember that the trigger for making brokerage disclosures to a potential buyer or tenant is eliciting or accepting confidential information from such party. Licensees should make certain to either provide clients the appropriate brokerage disclosure form or secure an executed listing contract and ensure that a copy of such form or contract is retained in the broker's file.



increase in brokerage disclosures violations compared to 2014.

Ultimately, it is critically important for brokers to provide appropriate broker disclosure forms in a transaction.

COMMISSION INVESTIGATIONS

According to disciplinary records, in 2015 the Colorado Division of Real Estate received 1282 complaints against real estate brokers. Close to half of these were dismissed at intake for various reasons and were not further investigated. However, this number of complaints filed represents an almost 50% increase in complaints filed against brokers compared with 2014. Currently, the barriers to filing a complaint against a broker are low; complaints may now be filed anonymously through the Division of Real Estate's website.

There was a decrease in brokerage firm audits from 2014, where the Division initiated 149 random audits, down to 100 random audits in 2015. None of these audits resulted in any formal or informal discipline in 2015.

Generally, these numbers suggest that the Division does: (i) dismiss many complaints as lacking merit or beyond the Commission's jurisdiction; and (ii) work with licensees being audited to help correct certain non-compliance issues where discipline may not be appropriate.



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COMMISSION DISCIPLINE

With regard to the type and severity of discipline, other than an increase in the average fine paid, the Commission has been more or less consistent across 2014 and 2015. Numerous or serious violations of license law garner relatively harsh discipline, including steeper fines, public censure, and, in certain cases, probation, suspension, or revocation. By contrast, minor infractions typically result in smaller fines and coursework.

Regarding 2015 discipline, the average actually-paid fine was \$620. This represents an increase from an average actually-paid fine of \$532 in 2014. To a degree, this average level of fine reflects the high number of brokers paying relatively small fines for first time continuing education violations. Other, non-education related license law violations tend to result in higher fines. The highest fine imposed for 2015 for broker misconduct was \$22,000.00. The Commission also increased the statutorily mandated administrative markup from 10% to 15% which may account for an increase for broker disciplinary fines going forward.

The average disciplinary case imposed slightly less than 14 hours of remedial coursework in both 2014 and 2015. In 2015, 23 licensees faced revocation; 6 faced suspension; and 9 brokers faced probation.

In 2014, 25 licensees faced revocation, one broker faced suspension and 10 brokers faced probation.

In 2015, 42 brokers were subject to public censure, up slightly from 2014 which saw 36 brokers publicly censured, which process includes publication on the Commission's website and inclusion in the Commission's quarterly newsletter.

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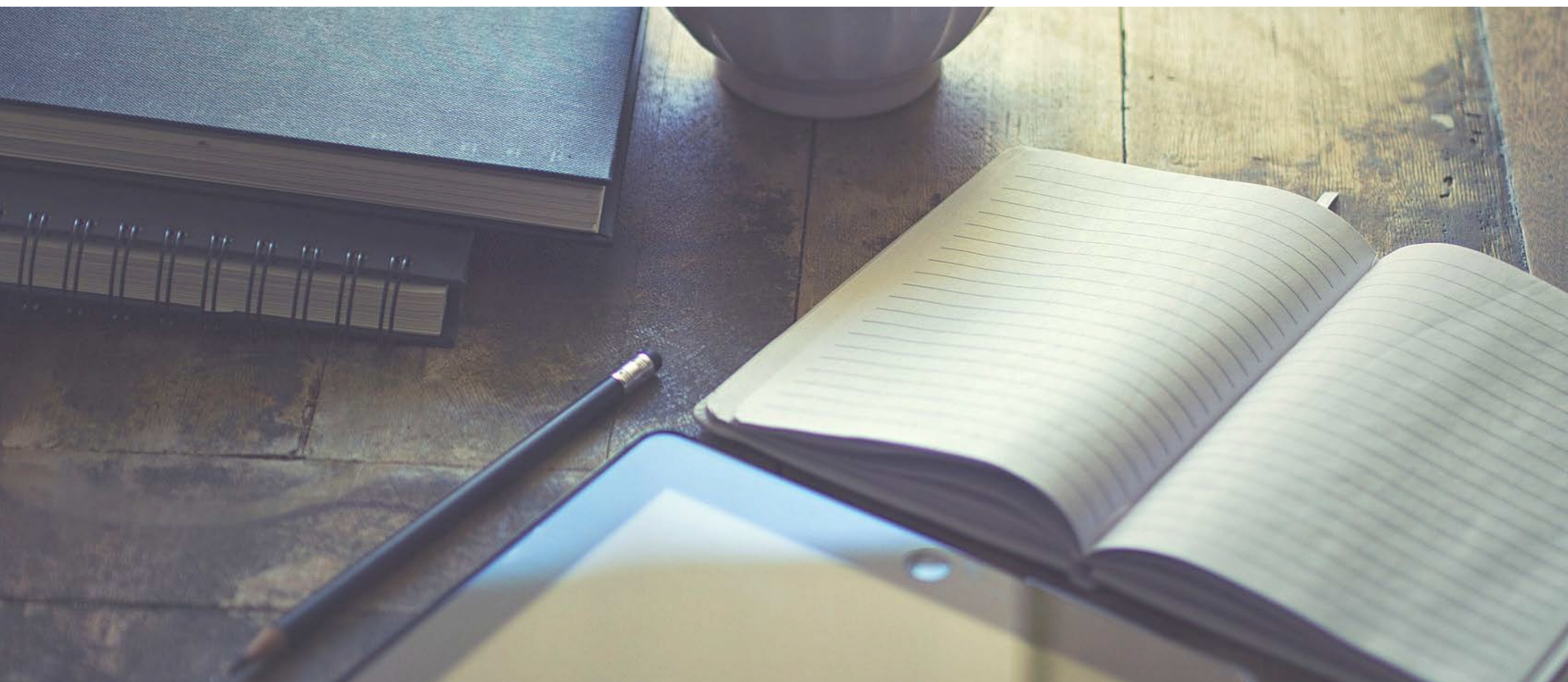
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COMMISSION REGULATORY AND POLICY ISSUES

A. MINIMUM SERVICE LISTINGS AND “MLS ENTRY ONLY” LISTINGS

Over the last two years, the Commission imposed increasingly harsher discipline for Colorado brokers who do not provide their clients the “uniform” or minimum duties as set forth in the brokerage statutes and Position Statement 36. For its part, the Commission is clear that Colorado brokers may not contract for less than the minimum brokerage duties when acting as a broker.

The Commission has investigated several licensees, including some that work with builders, who have entered into “MLS Entry Only” or “minimum service” listings. The Commission has recently seen several cases involving “minimum service” listings.

Discipline for these cases has become increasingly harsh with most violators subject to public censure, fines and remedial coursework. Repeat offenders face harsher discipline.

Further, in the 2016 Commission Annual Update Course, the Commission requests that brokers report other brokers engaged in minimum service listings. Specifically, the Commission asks that brokers report violations when they see MLS listings with the terms “entry only” or “communication only with seller.” While the Commission clearly perceives limited service type listings as a violation of Colorado brokerage law, some parties disagree and perceive such regulation to be anti-competitive and overreaching by the Commission.

In any event, the Commission takes this issue seriously and will continue investigate these types of relationship and impose discipline where a broker is engaged in a brokerage relationship that does not meet the minimum brokerage duties.



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COMMISSION REGULATORY AND POLICY ISSUES

B. MISREPRESENTATION OF ADVERSE MATERIAL FACTS

The Commission has expressed concern with clarifying the obligations of brokers to disclose adverse material facts. The Commission considers a relatively consistent number of cases involving brokers who are accused of misrepresenting or failing to disclose adverse material facts known to the broker. To address this issue, the Commission published Position Statement 46 (CP-46) which provides a framework for brokers to better understand when an issue may require disclosure as an adverse material fact.

While leaving certain matters open for interpretation, CP-46 attempts to provide guidance to brokers on the type and extent to which certain property-related issues need to be disclosed by way of offering examples of facts and circumstances that should or should not be disclosed in a Colorado real estate transaction.

Such examples include issues related to a property's physical condition and the legal title to the property.

CP-46 also makes clear that the Commission expects brokers to refrain from advising clients about clients' disclosure duties which may be different from those disclosure obligations imposed on brokers. It may be appropriate for a broker to advise their client to contact a lawyer to obtain advice regarding such client's disclosure obligations.

Lastly, CP 46 also endeavors to describe certain facts and circumstances not requiring disclosure, including facts or suspicions which may psychologically impact or stigmatize a property pursuant to C.R.S. § 38-35.5-101. The examples of stigmatizing information are information about an occupant diagnosed with HIV/AIDS, or the property was the site of a murder, suicide or other felony.



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COMMISSION REGULATORY AND POLICY ISSUES

C. APPROPRIATE USE OF FORMS

At the bimonthly hearing in April of 2016, the Commission heard public testimony and evaluated certain new rules regarding the use of forms by brokers. The Commission decided to adopt new rule F-1 which now provides brokers authority to make limited changes and deletions to Commission approved forms. The Commission also decided to adopt new rule F-2 which: (i) allows brokers to address their commission in the contract to buy and sell at the direction of such broker's principal; and (ii) requires brokers to retain attorney drafted forms for 4 years and identify the attorney or law firm that prepared the form upon request.

The Commission did not adopt the new proposed rules F-3 and F-7 regarding attorney prepared forms. The Commission appears to have abandoned the portion of proposed rules F-7 providing that brokers must annually check in with the attorney who drafted a form to ensure that the form is still current. The Commission has also requested additional information before making a decision on these rules, including the number of Colorado statewide Realtor boards that prepare and offer standard forms to their membership. The extent to which the ultimate rules erodes the current rights of brokers as established by the Colorado Supreme Court in the Conway-Bogue decision and its codification under C.R.S. § 12-61-803(4), if it erodes them at all, is not yet clear.



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CONCLUSIONS

LICENSE LAW ISSUES ABOUT WHICH BROKERS SHOULD BE AWARE:

Continuing Education Violations

Continuing education compliance is an obvious problem area for brokers. Brokers need to ensure compliance with continuing education requirements, especially because the Division audits brokers every quarter for continuing education compliance.

Limited Service Listings

It is clear that the Commission perceives that limited service listings are a violation of Colorado license law and brokers engaged in such practice will be disciplined. Brokers should avoid this business model as it is non-compliant with Colorado license law.

Brokerage Disclosures

Brokers must understand that when they enter into a brokerage relationship with a client, they must either: (i) provide a party with the appropriate written brokerage disclosure form; or (ii) enter into a written agency relationship using the appropriate form exclusive right contract. When acting as an agent, brokers must also make appropriate brokerage disclosure to the other unrepresented counterpart. Brokers need to focus on ensuring that either the correct disclosure is made or the client signs an exclusive right contract with such broker.