



DENVER METRO
ASSOCIATION OF REALTORS®

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DMAR **REPORT**

ON THE COLORADO REAL ESTATE COMMISSION

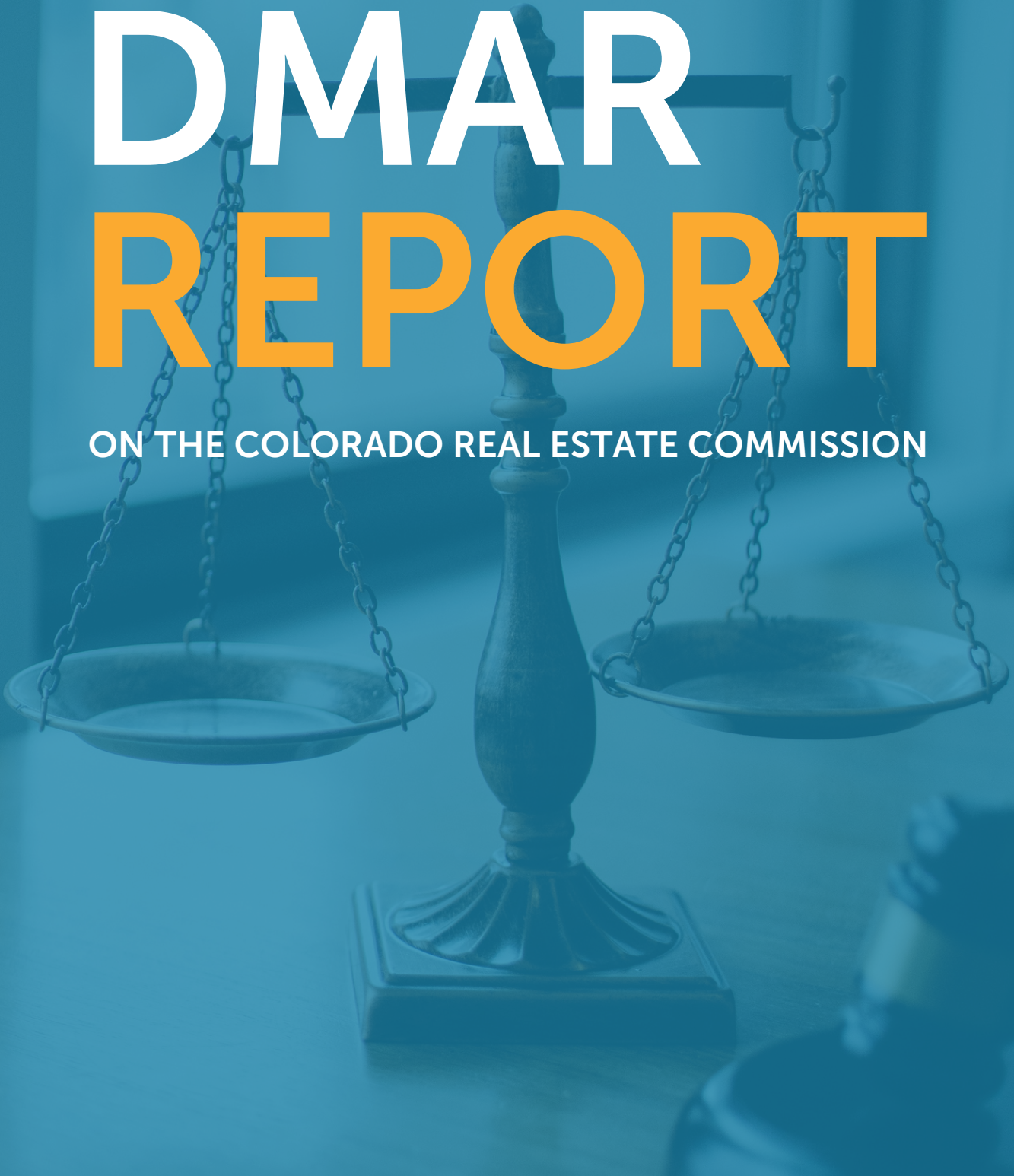


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EXECUTIVE SUMMARY

Broker disciplinary cases resolved in 2022 totaled 628. This number represents an increase from the previous year which closed with 557 resolved disciplinary cases. However, complaints filed with the Division of Real Estate continue to hover around 1,200 annual complaints filed.

In 2022, 491 licensees faced discipline for failure to meet continuing educational requirements. This violation was by far the most common violation of license law for 2022, and has been for at least the last five years. Licensees should ensure compliance with continuing education requirements.

Trust accounting issues continue to be a problem for brokers, especially property managers. Given the severity of discipline meted out to non-compliant property management operations, it is important for brokerage firm owners and employing brokers to redouble efforts to ensure compliance with trust accounting obligations. Further, brokers acting as landlords managing their own rentals and holding security deposits (or any money belonging to others) must take special care to comply with trust accounting rules applicable to such conduct. See [Commission Rule 5.11](#).

For the last five years, the Commission has seen a consistent number of cases involving the failure to make appropriate brokerage disclosures in writing. Prior to undertaking any brokerage activities, licensees should make certain to either:

- Provide the appropriate brokerage disclosure form; or
- Secure an executed listing/exclusive right to buy contract and ensure that a copy of such form or contract is retained in the broker's file.

Brokers should also think through making appropriate conflict of interest and license statute disclosures required when acting as a principal.

BACKGROUND

ANALYSIS OF 2022 LICENSE LAW VIOLATIONS

Colorado ended 2022 with 44,581 licensed active real estate brokers. This number excludes inactive brokers. For perspective, a decade ago, Colorado showed 28,647 real estate brokers as active. However, the growth in active licensed Colorado brokers appears to be leveling off. Colorado only added a net of 310 individuals to this list by year-end 2022 as compared with an annual net increase of 3,080 for year-end 2021.

For the 2022 calendar year, the Division of Real Estate received 1,216 complaints against brokers. This number has been in normal ranges for the last several years. Complaints against Colorado brokers peaked in 2017 at 1,661 and have thankfully leveled off at about 1,200 per year in recent years.

Division of Real Estate records show 628 brokers were disciplined in the 2022 calendar year. This number represents an increase in recent years. Up until 2019, the average number of finalized disciplinary cases hovered in the 300 range. In 2020, the number of broker disciplinary cases began to increase. It is hard to know the cause of this increase, but there are likely several factors, including the backlog of investigations that revealed some misconduct and an increase in the number of audits (both continuing education audits and broker practice and financial audits).

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MOST COMMON LICENSE LAW VIOLATION: EDUCATION VIOLATIONS

Unsurprisingly, the top violation of Colorado brokerage license law for 2022 was the failure to comply with continuing education requirements. With 491 brokers disciplined for violation of continuing education rules, Colorado brokers are performing progressively worse than previous years in compliance with continuing education requirements (430 CE-related cases in 2021, and 316 in 2020).

These violations typically resulted in light discipline, including relatively low fines (hundreds of dollars) and additional remedial 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. Historically, the Division of Real Estate has audited roughly 1,500 brokers each calendar year for continuing education compliance.

It is critically important for licensees to ensure compliance with continuing education requirements. As a reminder, there are a few different ways to satisfy the continuing education requirements, but most commonly, brokers should complete 24 hours of continuing education credit in each three-year cycle, including the mandatory 4-hour annual update course for each of the three years in the license cycle. Brokers are responsible for retaining records of completion for the prior continuing education cycle. There are some alternatives to satisfying the continuing education obligations, which can be found in [Commission Rule 4.2](#).

#1

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491

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SUBSTANTIAL NUMBER OF TRUST ACCOUNTING VIOLATIONS

The Commission disciplined a significant number of brokers for trust accounting violations. By way of example, trust accounting and related violations climbed to a total of 89 in 2022.

Common violations of this type include:

- failing to perform the mandatory monthly reconciliations of trust accounts;
- failing to maintain proper trust or escrow accounts designated as such with the financial institution holding the funds;
- failing to timely remit or account for money belonging to others;
- converting or diverting funds of others;
- comingling the licensee's funds with funds of others;
- failing to properly account for and manage trust funds;
- 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 trust accounting and financial record-keeping requirements, including monthly reconciliations. However, no brokerage is immune and brokerages engaging only in buy/sell transactions were still involved in these trust accounting types of cases.

These trust accounting issues are the types of cases that the Commission takes very seriously because of the potential for substantial consumer harm. Because the Commission perceives these types of violations as serious, discipline tends to be harsh. For example, accounting violations and mismanagement of funds belonging to others is a leading cause of license revocation.

Further, the Division is now actively auditing or investigating brokers who may be handling funds belonging to others outside of the brokerage context. For example, licensees who are landlords may be investigated or audited with regard to security deposits they are holding in connection with their own rentals.

As a reminder, Commission Rule 5.11 requires that licensees receiving money belonging to others outside of any brokerage relationship (e.g. as a landlord holding a security deposit, among other examples) hold such funds in an escrow account and perform a monthly two-way reconciliation.

Brokers overseeing trust accounts should also be aware that many banks and financial institutions may call an account a “trust” or “escrow” account, but these accounts often do not meet the Commission’s requirements for such an account. Brokers should ensure that the trust accounts they oversee are true fiduciary-type bank accounts and fully comply with Commission rules, including Rule 5.2.

CRIMINAL ISSUES

Colorado licensees continue to get into criminal trouble impacting their real estate licenses. 2022 saw a total of 63 such violations compared with 58 such violations in 2021. These cases involve brokers admitting to or being convicted of criminal conduct impacting their real estate license. Many of these disciplinary cases also include failure to timely self-report a criminal plea or conviction to the Commission.

For context, the Division of Real Estate generally receives an alert whenever a licensee is arrested anywhere in the United States. The Division will then monitor the resulting criminal case, if any, and wait for a criminal plea or conviction that would implicate a violation of Colorado license law. For this reason, it is vitally 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.



The best practice is for brokers facing criminal charges to understand the real estate license implications before entering into a plea arrangement or going to trial on a criminal case.

BROKERAGE DISCLOSURES

Disciplinary records from 2022, show a relatively high number of violations relating to the required provision of written brokerage disclosures, to prospective clients and consumers. Specifically, 2022 records show a total of 34 violations of the rules and statutes requiring brokers to make appropriate written disclosures of brokerage relationships to clients and consumers. Historic disciplinary records show that this is a consistent compliance issue for brokers.

34

total violations of the rules and statutes requiring brokers to make appropriate written disclosures of brokerage relationships to clients and consumers in 2022.

As the Commission continues to focus on consumer protection, this regulatory issue remains in the spotlight for several years running. Importantly, we have found that the failure to make appropriate written brokerage disclosures, in a case involving actual consumer harm, typically receives relatively harsh discipline.

As a reminder, every brokerage firm must have a clear brokerage relationship policy that identifies the types of relationships that brokers can enter into with clients. Employing brokers need to be cognizant of Licensees and 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:

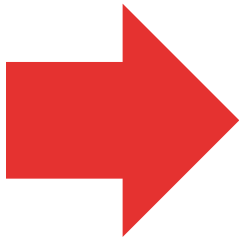
- Provide a party with the appropriate written brokerage disclosure form; or
- Enter into a written brokerage relationship using the appropriate form exclusive right contract.

Brokers must also make appropriate brokerage disclosure to the other unrepresented counterparty. Additionally, brokers must remember to document in writing, any change in brokerage relationship.

Brokers are reminded to ensure that brokerage disclosures must be made when brokers move past the “small talk” stage with a potential client or consumer; the specific trigger for making brokerage disclosures to a potential client or consumer is generally eliciting or accepting confidential information from such party. See Commission Rule 6.5.

Another common pattern leading to a violation of Commission Rule 6.5, is a Broker in the property management space failing to provide a Brokerage Disclosure to Tenant form to all prospective tenants at the time that such broker receives confidential information, which is usually the time of rental application.

Licensees should make certain to either provide clients with 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.



It is critically important for brokers to provide appropriate written brokerage disclosure forms in a transaction, as well as observe the triggers for providing such disclosures.

RECORDKEEPING CONTINUES TO BE A PROBLEM FOR BROKERS

The Commission continued to discipline a relatively high number of brokers for failing to keep records required under the Commission rules and statutes. In years past, the Commission saw either zero or a very small number of such violations on an annual basis. By contrast, there has been an increase in these violations culminating in 37 such violations in 2022.

Brokers are reminded that they must keep required transaction and accounting records in their possession for inspection by Division investigators for a period of four years. This requirement is imposed not only on brokerage firms, but also upon individual licensees. The records that must be maintained include not just contract and closing documentation for closed transactions, but also contract documents where a transaction did not close.

All CREC-Approved and other standard forms that are used in a transaction should be maintained. Financial documentation related to a given transaction must also be kept for four years. While such documents may be kept in an electronic format, they must be available for viewing or printing by CREC investigators upon request. The Commission has published a helpful transaction file checklist which can serve as a compliance tool for both buy/sell transactions, as well as property management and leasing deals

**Transaction File
Checklist**



COMMISSION INVESTIGATIONS AND AUDITS

According to the Division of Real Estate records, in 2022 the Colorado Division of Real Estate received 1,216 complaints against real estate brokers. Complaints against brokers have more or less remained at these same levels for the last few years. Fortunately, in 2022 a substantial portion of these broker complaints (484) were dismissed for various reasons and not further investigated. Typically, complaints over which the Commission has no jurisdiction or that are wholly unrelated to Colorado license law, are dismissed at the intake level.

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Currently, the barriers to filing a complaint against a broker are low. For example, complaints may be filed anonymously through the Division of Real Estate's website or an anonymous written letter to the Division, and only a small amount of time is needed to file and without any personal identifying information from the complainant. The moderately high number of complaints filed with the Division of Real Estate over the last few years has sometimes resulted in long timeframes for investigations and resolution of disciplinary cases.

1,288

brokerage firms across the state of Colorado selected for random audits by the Commission.

Currently, licensees under investigation can sometimes wait several months before an investigation is finalized and a resolution is proposed. Unfortunately, there is no applicable statute of limitations barring the Real Estate Commission from pursuing formal disciplinary charges, even after many years have passed since the relevant events transpired.

Separate and apart from complaint-based investigations, the Commission maintains a random audit program. In 2022, the Commission's records show that it randomly selected 1,288 brokerage firms across the state for random audits. This audit process generally requires the production of certain required documents, including an office policy manual and brokerage relationship policy, among others, as well as a description of the types of brokerage activities ongoing at the target brokerage. Failure to respond or responses that indicate compliance problems can lead to a formal complaint and investigation.

Brokers are reminded that some Colorado real estate broker errors and omission insurance policies (often referred to as E&O policies) provide for the defense of regulatory claims, including complaints to the Division of Real Estate. Further, under many of these E&O policies, any correspondence from the Division notifying a broker of a complaint generally qualifies as a "claim" under broker E&O policies requiring a broker to notify an E&O carrier of such claim in order to secure coverage under an E&O policy.

COMMISSION DISCIPLINE

With regard to the type and severity of discipline, at 629 disciplinary cases in 2022, the Commission addressed a much higher number of disciplinary cases than it did in 2021 and 2020 (557 and 453, respectively). The highest fine imposed in 2022 was \$46,000, while low-end fines hover at \$250. The average fine per case is approximately \$880 which represents a downtrend. The 2022 increase in annual disciplinary cases, along with the simultaneous decrease in average fines, is likely the result in a jump in continuing education violations which generally incur a relatively low fine.

629 disciplinary cases in 2022

557 disciplinary cases in 2021

453 disciplinary cases in 2020

\$46k highest fine imposed in 2022

\$250 approximate low-end fines in 2022

\$888 average fine per case in 2022

In terms of other discipline imposed, historical disciplinary trends prevail; numerous, repeated 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, like first-time continuing education violations, typically result in smaller fines and coursework.

Regarding 2022 discipline, 14 brokers were revoked and 5 brokers were suspended (for an average of 108 days). A total of 19 brokers were placed on probation in 2022, while 27 brokers were publicly censured. The average disciplinary case imposed just under 8.5 hours of remedial coursework in 2022, which is a slight decrease from the previous year.

COMMISSION REGULATORY & POLICY ISSUES

CHANGES TO COMMISSION POSITION ON CONFLICT OF INTEREST

The Commission has revised its position in nuanced ways with regard to broker conflicts of interest, which is set forth in [Commission Rule 6.17](#).

First, as always under [Commission Rule 6.17\(B\)](#), brokers must always disclose the fact that he or she holds a real estate license when acting as a principal (buyer, seller, tenant or landlord). For example, a broker acting as a buyer to purchase a property for a flip must insert into the Contract to Buy and Sell Real Estate language such as "Buyer is a licensed Colorado real estate broker acting on her own behalf." The same type of disclosure is required of brokers who act as landlords in the management of their own rentals.

However, more recently, the Commission has taken the position that in addition to the written disclosure of a broker-principal in the contracting instrument, brokers acting as principals in a real estate transaction must also provide the "Commission Approved Brokerage Disclosure and check the box indicating that the Broker will treat the buyer or seller as a Customer." [CREC Position Statement 14](#). This means that, for example, a broker acting as a landlord, should insert language into his lease agreement disclosing the fact that he or she holds a license, as well as provide his or her tenant with a Brokerage Disclosure form.

Further, brokers should also be mindful that the conflict-of-interest rule is far-reaching and broad requiring brokers to disclose "any known conflict of interest that may arise in the course of any real estate transaction." See [Commission Rule 6.17\(A\)](#). The Commission has taken the position that such conflict disclosure entitles the client receiving the disclosure, to waive or not waive the conflict, meaning that a client may discontinue a brokerage relationship upon receipt of disclosure.

Another nuanced change related to conflicts is the Commission's position that brokers engaged in real estate transactions as principals may use their own forms for such transactions. However, where the real estate activities are conducted through the brokerage

firm, brokers must only use Commission-Approved forms. For example, a broker owning rentals that are managed by the brokerage firm at which the broker hangs his license must only ever use Commission-Approved forms. See [CREC Position Statement 1](#).

The bottom line is that brokers must think carefully about compliance with the Commission's conflict of interest rule both by disclosing a broker's license status when acting as a principal, as well as disclosing any conflict of interest in all real estate transactions in which such broker is participating.

SCRUTINY OF EMPLOYING BROKERS

Historically, employing brokers were sometimes scrutinized for the misconduct of their employed broker associates. In 2022, however, a total of 7 brokers were disciplined for a failure to supervise their broker associates. The historical data suggests this represents a downtick in disciplinary cases involving an employing broker's failure to supervise. This decline might be driven in part by the Commission's 2020 repeal of prior [Commission Rule E-29](#), which actually called for an investigation to be made into whether the employing broker had failed to supervise a broker associate who had received a complaint and was under investigation. Current Commission Rules set out specific supervision requirements ([Rule 6.3](#)), as well as topics to be covered in brokerage firm policies ([Rule 6.4](#) and [CP-13](#)), no current Commission Rule calls for investigations of employing brokers, as did the previous rule.

Further, 2022 disciplinary records show no employing brokers were disciplined for a failure to maintain compliant office policies, suggesting that this is not a hot topic for the Commission currently. This has not necessarily always been the case as records from prior years show employing brokers were disciplined for deficient office policies. Nevertheless, it is a worthwhile exercise for employing brokers to review [Commission Rules 6.3](#) (supervision), [6.4](#) (office policies) and [CP-13](#) (office policies) to ensure compliance. Additionally, employing brokers are reminded that supervisory obligations extend to all employees and contractors of the brokerage firm, regardless of whether such individuals are licensed or not.

Lastly, rhetoric among the Commissioners suggests that the Commission is concerned about broker misconduct resulting from absentee or inattentive employing brokers. It seems possible that the Commission may renew its scrutiny of employing brokers as a cause of broker associate misconduct.