

**2009 COLORADO REAL ESTATE**

**COMMISSION FORMS**

**(2008 adopted forms)**

**By**

**Kent Jay Levine, Esq., DREI**

**Lurking Legal Issues**

**Denver Metro Commercial Association of Realtors®**

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**I. INTRODUCTION**

2008 is a continuation of the “trend” that we have been experiencing for a few years. Legislation enacted this last legislative session (2008) required the Contract to Buy and Sell Real Estate to be revised again. Last year, 2007, the impetus was HB 07-1156 (Source of Water). This year it was H.B. 1014 (Well Registration) causing changes to the Contract form. H.B. 1007 (Toll Roads and disclosure of transportation projects) has caused changes to the Seller’s Property Disclosure form. The revised Contracts and other forms are to become mandatory January 1, 2009. Other changes were proposed as well.

A Rule Making Hearing was held August 5, 2008. The CREC adopted the revised forms on September 9, 2008. This time table will allow as much time as possible for the printers, computer forms software companies, brokers, etc. to have the revised forms in place to fulfill the mandatory January 1, 2009 deadline. A revised version of the Contract to Buy and Sell Real Estate was adopted at an Emergency Rule Making Hearing on November 4, 2008 and a Permanent Rule Making Hearing on December 2, 2008, retaining the mandatory date of January 1, 2009.

The following revised and new forms were submitted for consideration by the Commission (**Bold are NEW FORMS**):

1. CBS1 Contract to Buy and Sell

2. **CBSF1 Contract to Buy and Sell (Foreclosure)**
3. CP40 Counter Proposal
4. AE41 Agreement to Amend/Extend
  
5. SSA38 Short Sale Addendum
6. LB36 Licensee Buyout Addendum
7. FPAF33 Foreclosure Property Addendum
8. SPD19 Seller's Property Disclosure (All Properties)
9. **SPD29 Seller's Property Disclosure (Residential)**
10. BD24 Buyer Disclosure
11. SD16 Seller Disclosure
12. DD25 Working Relationships Definitions
13. BDD 56 Broker Duties Discl REO
14. **BDT 20-9-08 Brokerage Disclosure To Tenant)**
15. NCF34 Notice of Cancellation
16. **NTT44 Notice to Terminate**
17. CL8 Closing Instructions
18. TD 72 Deed of Trust (Strict)
19. TD 73 Deed of Trust (Creditworthy)
20. TD 74 Deed of Trust (Assumable)
21. SS 60 Closing Statement
22. SS 61 Closing Statement Worksheet
23. Rule F-7 (Approved Forms)

## **II. NEW FORMS**

**NOTE:** The forms included in this material are current through December 15, 2008. The forms and rules at the time of publication are available electronically at:

**<http://www.dora.state.co.us/real-estate/rulemaking/index.htm>**. Once the forms become mandatory (1/1/09) they will be posted under the "Forms" tab at the Colorado Real Estate Commission's web site:

**<http://www.dora.state.co.us/real-estate/>**

### **A. Contract to Buy and Sell Real Estate (CBS)**

As noted above, the impetus to revisiting the Contract to Buy and Sell again this year was primarily due to legislation mandating the contract forms contain certain provisions.

1. H.B. 08-1014, Registration of Water Wells in "residential" properties mandates disclosure starting January 1, 2009 in the Commission approved contract. The pertinent provisions state:

**38-30-102. Water rights conveyed as real estate - well permit transfers - legislative declaration - definitions - rules.**

(b) (I) ON AND AFTER JANUARY 1, 2009, WHEN A BUYER OF RESIDENTIAL REAL ESTATE ENTERS INTO A TRANSACTION THAT RESULTS IN THE TRANSFER OF OWNERSHIP OF A SMALL CAPACITY WELL LISTED IN SECTION 37-90-105 (1) (a) OR (1) (b), C.R.S., OR A DOMESTIC EXEMPT WATER WELL USED FOR ORDINARY HOUSEHOLD PURPOSES THAT IS LISTED IN SECTION 37-92-602 (1) (b) OR (1) (e), C.R.S., THE BUYER SHALL, PRIOR TO OR AT CLOSING OF THE TRANSACTION, COMPLETE A CHANGE IN OWNERSHIP FORM FOR THE WELL IN COMPLIANCE WITH SECTION 37-90-143, C.R.S.; EXCEPT THAT, IF AN EXISTING WELL HAS NOT YET BEEN REGISTERED WITH THE DIVISION, THE BUYER SHALL COMPLETE A REGISTRATION OF EXISTING WELL FORM FOR THE WELL.

(II) THE RESIDENTIAL REAL ESTATE CONTRACT APPROVED BY THE REAL ESTATE COMMISSION CREATED IN SECTION 12-61-105, C.R.S., SHALL REQUIRE THE BUYER TO COMPLETE THE APPROPRIATE FORM FOR THE WELL AND, IF NO PERSON WILL BE PROVIDING A CLOSING SERVICE IN

CONNECTION WITH THE TRANSACTION, TO FILE THE FORM WITH THE DIVISION WITHIN SIXTY DAYS AFTER CLOSING.

(c) (I) IF A PERSON PROVIDES A CLOSING SERVICE IN CONNECTION WITH A RESIDENTIAL REAL ESTATE TRANSACTION SUBJECT TO THIS SUBSECTION (3), THAT PERSON SHALL:

(A) WITHIN SIXTY DAYS AFTER CLOSING, SUBMIT THE APPROPRIATE FORM TO THE DIVISION WITH AS MUCH INFORMATION AS IS AVAILABLE, AND THE DIVISION SHALL BE RESPONSIBLE FOR OBTAINING THE NECESSARY WELL REGISTRATION INFORMATION DIRECTLY FROM THE BUYER; AND

(B) NOT BE LIABLE FOR DELAYING THE CLOSING OF THE TRANSACTION IN ORDER TO ENSURE THAT THE BUYER COMPLETES THE FORM REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (3). IF THE CLOSING IS DELAYED PURSUANT TO THIS SUB-SUBPARAGRAPH (B), NEITHER THE BUYER NOR THE SELLER SHALL HAVE ANY CLAIM UNDER THIS SECTION FOR RELIEF AGAINST THE BUYER, THE SELLER, THE PERSON WHO PROVIDED CLOSING SERVICES, A TITLE INSURANCE COMPANY REGULATED PURSUANT TO ARTICLE 11 OF TITLE 10, C.R.S., OR ANY PERSON LICENSED PURSUANT TO ARTICLE 61 OF TITLE 12, C.R.S.

(II) IF NO PERSON PROVIDES SUCH CLOSING SERVICE, THE BUYER SHALL SUBMIT THE APPROPRIATE FORM WITHIN THE DEADLINE SPECIFIED IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) AND PAY THE APPLICABLE FEE.

Note the statute references “Small Capacity Wells” (37-90-105, C.R.S.), and Domestic Exempt Water Well Used For Ordinary Household Purposes. The pertinent provisions of the referenced statutory sections appear below.

**37-90-105. Small capacity wells.**

(1) The state engineer has the authority to approve permits for the following types of wells in designated ground water basins without regard to any other provisions of this article:

(a) Wells not exceeding fifty gallons per minute and used for no more than three single-family dwellings, including the normal operations associated with such dwellings but not including the irrigation of more than one acre of land;

**37-90-143 Owners of well permits - update for name and address**

(2) Effective January 1, 1995, any owner of an unexpired well permit issued pursuant to this article or article 92 of this title who changes a name or mailing address from that on file with the state engineer shall file, in person, by mail, or by fax, an update with the state engineer within sixty days after the date of the change, on a form prescribed by the state engineer.

**37-92-602 Domestic Exempt Water Well**

(1) The provisions of this article, except for sections 37-92-201 and 37-92-202, shall not be applicable to:

(a) Designated ground water basins as defined and established by article 90 of this title;

(b) Wells not exceeding fifteen gallons per minute of production and used for ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches and for the irrigation of not over one acre of home gardens and lawns but not used for more than three single-family dwellings;

Sellers, lawyers and brokers involved in a sale of real property, whether vacant land or an improved property used or to be used for residential purposes, should submit the registration of the change in ownership of the well to the Division of Water Resources in the Department of Natural Resources (or confirm that one is not required).

The 2007 version of the Contract contained a provision regarding Transfer of Well registration. The same purpose is being served with the new 2009 language as in last year’s change. Section 3.1.6 contains a provision to remind a Buyer purchasing Property with a Well that is transferred to the Buyer to register the well with the Colorado State

Engineer's office using the state form, Change in Ownership. In the past this practice or step was quite often overlooked. As a caution, if a well is to be transferred, obtain confirmation of the Well Permit number, and assure that it reflects the Seller as the current owner. If not, perhaps that missing link ought to be accomplished prior to Closing.

2. Section 2.3, Dates and Deadlines, contains a new line item, Number 10, Appraisal Objection Deadline (§ 6.2.2). This separate deadline allows greater flexibility and clarity when an “objection” to the valuation must be asserted. Realize that this provision is not applicable in an FHA or VA financed transaction, thus there is no deadline for those types of loans.

3. Computation of Time. Previously disputes have arisen on the method of counting or determining the date or deadline, especially if the contract utilizes the “MEC” (Mutual Execution of Contract) methodology. The form now specifies what a “day” is, meaning the entire day. The traditional day of the act or event is excluded and the last day is included.

A new “check box” was added to specify whether weekends and legal holidays are included or excluded if the deadline is a weekend or holiday. If the box is checked (to exclude the holidays and weekends) and the deadline falls on a legal holiday (as specified by either Federal or Colorado) the deadline is extended to the next day. It is the drafters’ intent that any holiday that occurs during the interim from start to the end of the period will be counted as one of the calendar days. The language of the form adds language that only if the deadline is a holiday or weekend (and the check box is checked noting that the deadline will be extended if it falls on a holiday or weekend) then, the period or deadline will be extended to the following day (not a Saturday, Sunday or legal holiday). With the addition of this section the term “calendar” (i.e., calendar days) has now been removed throughout the Contract and related documents.

4. Well Registration. Section 3.1.6 incorporates the revised language to parrot the provisions of H.B. 1014 discussed above.

5. Earnest Money. Section 4.2. The continuing saga of failing to have executed Closing Instructions explains yet another attempt to require Closing Instructions be fully executed no later than the time the Earnest Money Holder (i.e., Title Company) receives delivery of the Earnest Money. It is hoped that the parties and the title companies or other closing entity

will finally take the prudent steps to obtain signed Closing Instructions early in the transaction rather than at Closing, or not at all. The Closing Instructions address what the parties rights are and duties of the Earnest Money Holder in the event Closing does not occur.

6. Cash at Closing. The major change to Section 4.3 is to clarify that if the Buyer fails to have Buyer's "Cash at Closing" at the time of the Closing, a breach has occurred. Note that the provision does **not** address the very common occurrence that the lender does not have the funds wired or otherwise in the hands of the title company by the time the Closing occurs. This has disrupted many transactions and caused complications for Sellers who were relying on walking out with the closing proceeds to close on a replacement property. Hopefully this provision will be revised in the future to require Buyer's lender to have the loan proceeds on hand with the closing company no later than the hour of closing. Until then, it appears that no financed transaction should have a Closing scheduled before the lunch hour. The Buyer will still need to have the funds from the lender arrive before the end of the day on Closing to avoid a default. It would still be prudent to have an Amend/Extend be signed if all the monies, regardless of source, are not available to permit disbursement at Closing.

7. Property Approval (Appraisal Provision). Property Approval is in Section 6.1. The time trap of a late specification of Requirements by the Lender was removed. If a lender establishes "Requirements" that must be fulfilled (replace roof, repair, furnace, etc.) – even though the Inspection Objection Deadline in Section 10 has passed, the Seller may terminate the Contract unless the parties may enter into an acceptable written agreement resolving how and who will pay to satisfy the Requirements, or the Buyer may waive, in writing, the lender's Requirements (as between Buyer and Seller). This provision now answers the question raised in other states that suggested a Seller is obligated to pay for the repairs if the Seller agreed to allow a Buyer to obtain a particular type of loan; i.e., governmental insured or guaranteed loan as in the case of FHA, VA financing, etc.

8. Evidence of Title. Section 7.1 now contains a provision requiring a Seller who has possession of one or more Abstracts of title for the Property to furnish copies to the Buyer. Many times there is information in the Abstract that would be of importance to a Buyer (minerals, water rights, etc.). The Seller could surrender the original Abstracts to the title company for a surrender value credit or retain the Abstracts (sentimental

reasons, etc.). While most of the state typically uses title insurance as fulfilling the evidence of title obligation, in some of the southern part of the state an Abstract is still common in land and agricultural transactions, despite the elimination of licensing of Abstractors some years ago. Section 7.1's Note has been further clarified that a Buyer not satisfied with the Title Insurance Commitment may terminate under § 8.1 of the Contract.

9. Lead-Based Paint. Section 9 is clarified to require fully signed (Seller, Buyer and all real estate brokers) be delivered to the Seller prior to full execution of the Contract to Buy and Sell. This additional step is necessary to have the documentation in place to confirm compliance with the EPA/HUD joint rules on Lead-Based Paint. If not timely fulfilled, there is no legal contract formed; it is void. It would be best to prepare a "new" contract to be fully signed (reflecting the revised dates) if both Buyer and Seller still want to buy and sell. It will serve to not only protect the public, i.e., Seller from damages, but to allow timely disclosure to the Buyer in advance of a binding contract. The new language should not create a problem in most instances. If the completed Lead-Based Paint form (signed by Seller and the Listing Broker) is supplied to the Broker working with the Buyer in advance of a Buyer submitting an offer, the Broker and Buyer should sign the form, then the Contract to Buy and Sell and transmit both to the Listing Broker/Seller. If the Seller accepts the Buyer's offer, the Seller will have received the L-B Paint form (signed by all); the Seller may then freely sign the Contract at that point in time without worry as to the Lead-Based Paint form.

10. Closing Instructions. Section 15.4 contains new wording confirming that the parties agree to sign Closing Instructions. While the form was shortened by removing the Closing Instruction pages from the end of the document, retained was the specification of whether the Closing Instructions form is signed concurrently or not. See the discussion under Earnest Money, Section 4.2.

11. Tax Proration. Section 16.1 was amended to add a provision that the real estate tax proration will be adjusted, regardless of the method of proration (most recent assessment and levy or last year's taxes), if the Seller qualifies for the "qualifying seniors property tax exemption". With more Sellers qualifying for and receiving the reduced property tax, the form needed to address this status so the tax proration would be adjusted to permit the Seller to receive the legislative benefit and avoid a windfall to the Buyer.

As shown below, the statutory requirements, in addition to the submission of an application, require the owner occupant to be at least 65 years old and live in the property at least ten (10) years. If the requirements are satisfied, the homeowner will have the taxes cut in half for the first \$200,000.00 of the property's appraised value. The tax remains in effect for the entire year, so long as the owner qualified as of the "assessment date" of January 1<sup>st</sup>.

**39-3-203. Property tax exemption - qualifications.**

(1) For the property tax year commencing January 1, 2002, and for property tax years commencing on or after January 1, 2006, **fifty percent of the first two hundred thousand dollars of actual value of residential real property that as of the assessment date is owner-occupied** and is used as the **primary residence** of the owner-occupier **shall be exempt from taxation**, and for property tax years commencing on or after January 1, 2003, but before January 1, 2006, fifty percent of zero dollars of actual value of residential real property that as of the assessment date is owner-occupied and is used as the primary residence of the owner-occupier shall be exempt from taxation if: (a) (I) **The owner-occupier is sixty-five years of age or older** as of the assessment date and **has owned and occupied such residential real property as his or her primary residence for the ten years** preceding the assessment date;

**39-1-105. Assessment date.**

All taxable property, real and personal, within the state at twelve noon on the first day of January of each year, designated as the official assessment date, shall be listed, appraised, and valued for assessment in the county wherein it is located on the assessment date. Personal property shall be listed and valued separately from real property. Whenever construction of any new taxable building within the boundaries of a county occurs subsequent to the assessment date but before July 1 and such county has resolved to implement the procedures set out in section 39-5-132, such building shall be listed, appraised, and valued pursuant to section 39-5-132.

**39-3-205. Exemption applications - penalty for providing false information - confidentiality.**

(1) (a) To claim the exemption allowed by section 39-3-203 (1), an individual shall file with the assessor a completed exemption application no later than July 15 of the first property tax year for which the exemption is claimed. An application returned by mail shall be deemed filed on the date it is postmarked.

(b) To claim the exemption allowed by section 39-3-203 (1.5), an individual shall file with the division a completed exemption application no later than July 1 of the first property tax year for which the exemption is claimed. An application returned by mail shall be deemed filed on the date it is postmarked.

(2) (a) An exemption application shall be a form prescribed by the administrator, who shall consult with the division before prescribing the form of the application for the exemption allowed by section 39-3-203 (1.5), and shall require an applicant to provide the following information:

(I) The applicant's name, mailing address, date of birth, and social security number;

(II) The address and schedule or parcel number of the residential real property for which an exemption is claimed;

(III) The name and social security number of each individual who occupies as his or her primary residence the residential real property for which an exemption is claimed;

(IV) If a trust is the owner of record of the residential real property for which an exemption is claimed, the names of the maker of the trust, the trustee, and the beneficiaries of the trust;

(V) If a corporate partnership or other legal entity is the owner of record of the residential real property for which an exemption is claimed, the names of the principals of the corporate partnership or other legal entity;

(VI) An affirmation, in a form prescribed by the administrator, that the applicant believes, under penalty of perjury in the second degree, as defined in section 18-8-503, C.R.S., that all information provided by the applicant is correct; and

(VII) Any other information that the administrator may reasonably require as necessary for the proper and efficient administration of the exemption.

(b) The exemption application shall also contain a statement that an applicant, or in the case of residential real property for which the owner of record is a trust, the trustee, has a legal obligation to inform the assessor within sixty days of any change in the ownership or occupancy of residential real property for which an exemption has been applied for or allowed that would prevent an exemption from being allowed for the property.

(2.5) For the purpose of verifying the eligibility of each applicant for the exemption allowed to qualifying disabled veterans under section 39-3-203 (1.5) efficiently and with minimal inconvenience to each applicant, the division shall determine whether an applicant for the exemption is a qualifying disabled veteran. With respect to any application timely filed by July 1 pursuant to paragraph (b) of subsection (1) of this section, the division shall, if possible, determine whether the applicant is a qualifying disabled veteran and send notice of its determination to the applicant on or before the immediately succeeding August 1. If the division determines that the applicant is a qualifying disabled veteran, it shall also send notice of its determination and an edited copy of the exemption application from which the division has removed or permanently obscured the first five digits of the social security numbers of the applicant and of every other individual who occupies as his or her primary residence the residential real property for which the applicant has claimed the exemption to the assessor for the county where the property is located. If the division is unable to determine whether the applicant is a qualifying disabled veteran on or before said August 1, it shall send preliminary notice to both the applicant and the assessor that its determination is pending and shall follow up the preliminary notice by sending final notice of its ultimate determination to the applicant and, together with an edited copy of the exemption application from which the division has removed or permanently obscured the first five digits of the social security numbers of the applicant and of every other individual who occupies as his or her primary residence the residential real property for which the applicant has claimed the exemption, to the assessor as soon as possible thereafter.

12. Rents. Section 16.2 now informs the Seller (brokers and title company) to give written notification to tenants of the transfer of the Security Deposit to the Buyer (13-12-103 (4), C.R.S).

13. Possession. Section 17. The Per Diem accrues for the entire day if the Seller fails to deliver possession as contracted. This provision applies, despite the “entire day” provision in Section 2.5.1.

14. Earnest Money Dispute. Section 23. A new sentence was added to this Section to clarify that Section 23 only applies if the Earnest Money Holder is one of the real estate brokers in the transaction, and in possession of the Earnest Money Deposit. While substantial amount of time was devoted to this one sentence, it is clear that if an Earnest Money Holder desires to have the benefits of the language of Section 23, Closing Instructions must be signed by all; i.e., the Closing Company, Buyer and Seller, if the Closing Company is to hold on to the Earnest Money Deposit. It is hoped that behavior will match the provisions of Section 23 and 4.2 resulting in signed Closing Instructions at the time the Closing Company receives the Earnest Money Deposit. The Division of Real Estate and the Division of Insurance are to be issuing a writing that confirms this practice.

15. Foreclosure Disclosure and Protection. Section 29. The Colorado Foreclosure Protection Act, (6-1-1103 (2), C.R.S.) in essence excludes the Act’s applicability if the Buyer will be using the Property as his or her personal residence for at least one year. Accordingly, the Contract now has a check box choice whether the Buyer will or will not be occupying the Property as the Buyer’s principal home for at least one year. The provision was added to Section 29 to easily determine if the Act does not apply, rather than adjusting the language in Section 17 that also addresses owner occupancy.

16. Notice, Delivery and Choice of Law. Section 30 has added the word “document”. The purpose is to allow delivery to the party or the Broker working with that party to satisfy delivery of any document called for in the Contract.

17. Closing Instructions. While the Closing Instructions form has been removed from the document, as noted above, it is the preferred practice to have the Instructions supplied and signed at the same time of contracting.

## **B. Closing Instructions.**

There are several benefits of having the parties (and Title Company or other Earnest Money Holder) sign the Closing Instructions at the inception.

If the transaction closes, the title company will need written Closing Instructions to comply with Insurance Regulation 3-5-1. It is one less document that will be signed at Closing. If the Transaction fails and the Earnest Money is in dispute, the Earnest Money Holder needs express, written instructions what it is expressly allowed to do with the Earnest Money Deposit. The Closing Instructions form now contains the same Earnest Money Dispute provision (Section 9) as found in the Contract, Section 23. Section 11 was added to address the change in ownership of Water Wells under H.B. 1014.

### **C. Counter Proposal**

The Counter Proposal form was updated to reflect the same Section numbers as in the Dates and Deadlines provision of the Contract to Buy and Sell Real Estate.

### **D. Agreement to Amend/Extend**

The Agreement to Amend/Extend form was updated to reflect the same Section numbers in the Contract.

### **E. Brokerage Relationship Disclosures - Buyer Disclosure, Seller Disclosure, Definitions**

The Brokerage Relationship Disclosure forms now include the required disclosure under 12-61-803, 12-61-808, C.R.S., that the respective Buyer or Seller are not vicariously liable for the acts of the Broker unless they are approved, directed, or ratified. Disclosure that the brokerage relationship is at the Broker Associate level, rather than the Brokerage Firm level has been included. A new disclosure form, adapted from the BD24 was created for use of Brokers assisting Landlords and supplying the Disclosure form to a Tenant (BDT20-9-08). There is also an alert that the Buyer or Seller may shop for settlement services, quality and prices may vary among the different providers.

### **F. Foreclosure Property Addendum**

The Foreclosure Property Addendum was revised to coincide with the new Contract to Buy and Sell form so that both the Contract and the entire Addendum are now all in **BOLD** print. The new Contract is a mirror copy

of the Contract to Buy and Sell Real Estate (with the identical language) but in all **BOLD** print posted on the Commission website and has the letter "F", for Foreclosure in it form number. The all-bold print Contract (in 12 point font) is approximately 17 pages! The reason is due to the language in the statute, S.B. 06-71, the Colorado Foreclosure Protection Act.

**6-1-1111. Written contract required. EVERY CONTRACT SHALL BE WRITTEN IN AT LEAST TWELVE-POINT BOLD-FACED TYPE** AND FULLY COMPLETED, SIGNED, AND DATED BY THE HOME OWNER AND EQUITY PURCHASER PRIOR TO THE EXECUTION OF ANY INSTRUMENT QUIT-CLAIMING, ASSIGNING, TRANSFERRING, CONVEYING, OR ENCUMBERING AN INTEREST IN THE RESIDENCE IN FORECLOSURE.

**6-1-1112. Written contract - contents - notice. (1) EVERY CONTRACT SHALL CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES AND SHALL INCLUDE THE FOLLOWING TERMS: ...**

(Emphasis supplied.)

While the all-bold print is more difficult to read and in the end causes less emphasis on the more important provisions that were intended to be emphasized, our request to the legislature to have this be rectified was not acted upon. Accordingly, the instructions in the statute (requiring EVERYTHING in the contract) be in bold print are now in bold print!!

### **G. Licensee Buy-Out Addendum**

The form was updated to reflect the new Section numbers in the Contract to Buy and Sell that are referenced in the form.

### **H. Seller's Property Disclosure (SPD)**

The Commission revised the "All Types of Properties" SPD form last year. This year's changes were prompted by the Toll Road bill, H.B. 08-1007.

The SPD form now has a place for the Seller to make disclosure whether the Property is or may be affected by an existing or proposed transportation project.

Other changes were included to clarify the disclosures and address many of the matters that have been aired recently in Court or otherwise.

A separate “**Residential**” SPD form was created to shorten the form and make it easier to fill out and more relevant for the normal residential transaction and Property.

### **I. NCF34 Notice of Cancellation**

The form was revised with a new form number to assist in the selection of the form when the transaction requires the use of the “**Bold**” print Contract to Buy and Sell and related forms.

### **M. NTT44 Notice to Terminate**

A new form, Notice to Terminate, was created to address the preprinted provisions in the Contract to Buy and Sell when one of the parties has a right to terminate the Contract. Termination may be made due to financing, condition of title, etc. Previously language used to attempt to “terminate” (as allowed in the Contract) at times was less than artful, leaving the parties unclear whether the Contract was terminated or not.

### **N. SSA34 Short Sale Addendum**

The Short Sale Addendum was modified to allow either Buyer or Seller the right to terminate, so long as termination is done prior to the Lender’s Short Sale Acceptance. This provision practically makes the Contract a glorified Letter of Intent. This addition is to make the documents track the practice that either party may terminate. Short Sale transactions are unique in that they typically take an extended time to complete, are subject to the whim of the lender or lenders who may or may not compromise to take less than owed, etc. Additionally, many lenders are requiring that the Seller continue to market the Property, even after both Buyer and Seller entered into a contract. The Addendum now grants to both Buyer and Seller a similar right to walk from the transaction as long as this occurs prior to the Lender’s Short Sale Acceptance.

### **O. Deeds of Trust (TD 72, TD73, TD74)**

The three Deeds of Trust, Strict Due on Transfer, Credit Worthy and Assumable forms were clarified and updated with no substantive change. A signature line was created for a Limited Liability Company, rather than needing to doctor up the form. Section 3 of the Deed of Trust (exceptions to title) was revised to use consistent terms “subject to” rather than “except”. The notary address was deleted as no longer applicable.

### **P. Closing Statement**

The Closing Statement (formerly known as the Statement of Settlement) was updated to reflect many of the costs and charges that are typical today. The form also has new check boxes to specify whether it is an “estimate” or “final.” Brokers are commonly supplying an estimated “net sheet” to Seller or Buyer at the time of listing or at the time of contract submission to assist what the financial charges will be. The name was also changed to differentiate it from the HUD-1 Statement of Settlement.

### **Q. Rule F-7 (Approved Forms)**

The Rule was revised to identify the revised and new forms.

### **R. Joint Position Statement (Closing Instructions)**

The Colorado Real Estate Commission and the Division of Insurance adopted the new Position Statement reflecting the requirement that completed Closing Instructions need to be executed by Buyer, Seller and Closing Company (or the respective Holder of Earnest Money Deposit) by the time of receipt of the Earnest Money Deposit (by the Title Company).

## **III. CONCLUSION**

This paper highlighted the more significant changes to the Colorado Real Estate Commission’s new and revised forms for 2009. As noted, all of the forms as well as the Rules of the Colorado Real Estate Commission are available on the Commission's website:

**<http://www.dora.state.co.us/real-estate/>**

The Colorado Real Estate Commission's address:

**Division of Real Estate  
1560 Broadway, Suite 925  
Denver, CO 80202**

**Attachments**

- A. Black-lined comparison of Contract to Buy and Sell Real Estate
- B. **NTT44 Notice to Terminate**
- C. Seller's Property Disclosure (All Properties)
- D. **Seller's Property Disclosure (Residential)**
- E. Brokerage Disclosure Buyer-Tenant
- F. Brokerage Disclosure Seller
- G. **Brokerage Disclosure Tenant**
- H. Closing Instructions
- I. SSA34 Short Sale Addendum
- J. Joint Position Statement (CREC and DOI) Closing Instructions