

2009 COLORADO REAL ESTATE

COMMISSION FORMS

(Mid-Year 2009 forms)

By

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**New Laws Mean New Forms – Changes to the Colorado Real Estate
Commission Approved Forms**

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I. INTRODUCTION

2009 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 and other forms to be revised again. In 2007 the impetus was HB 07-1156 (Source of Water). 2008 it was H.B. 1014 (Well Registration) causing changes to the Contract form. Also in 2008 H.B. 1007 (Toll Roads and disclosure of transportation projects) has caused changes to the Seller’s Property Disclosure form. While the revised Contracts and other form changes made in 2008 became mandatory January 1, 2009, the 2009 Legislative Session enacted legislation mandating changes to the Colorado Real Estate Commission’s Contract to Buy and Sell form, among other forms, that are mandatory effective July 1, 2009.

The following legislation affected the Commission’s forms requiring mid-year changes to the forms.

**1. H.B. 1091 Carbon Monoxide Alarms.
Governor signed 3-24-09.**

Effective Date 7-1-09. Seller and Landlords must install of Carbon Monoxide Alarms in residential properties. Causes revisions to be made to the Listing Agreements (to disclose/inform the Seller of the Seller’s

obligation to equip the Property with monitors). The Contract to Buy and Sell also now has a provision addressing the Carbon Monoxide Alarms if residential property.

**2. H.B. 1109 – Foreclosure Protection Act extensions. (S.B. 71)
Governor signed 3-20-09.**

Effective Date 7-1-09. The Act’s language changes a “Residence in Foreclosure” by adding “is Delinquent or in Default more than 30 days (rather than the existing language that a Foreclosure has actually been “commenced”). Contract to Buy and Sell Real Estate was amended as well as the Listing Contracts. Foreclosure version of the Contract to Buy and Sell Real Estate was repealed as was the Foreclosure Property Addendum and related forms.

3. S.B. 87 Special District Disclosures (Revised language in the CBS on Special Taxing Districts). Governor signed 6-1-09.

Effective Date 7-1-09. The Act required a change to the PREPRINTED (Bold Print) language in the Contract to Buy and Sell Real Estate. The import of the revised language is to inform the Buyer to investigate Special Districts; it is more easier to understand and gives substantive suggestions including that a Buyer obtain and review a Certificate of Taxes Due as well as contact the County offices.

**4. S.B. 060 Drug Use Disclosure
Governor signed 4-20-09.**

Effective Date 4-20-09. Required changes to Contract to Buy and Sell Real Estate. The Methamphetamine “lab” provision is no longer restricted to manufacturing. If there is contamination, whether due to cooking, usage, etc., the Buyer has a right to terminate the contract if the test, i.e., methamphetamine or other contaminant results, are positive; that is, contamination beyond the standards established by the State Board of Health is present). The Contract to Buy and Sell Real Estate may NOT restrict the right of the Buyer to Test or to cancel the contract if the Property is contaminated (beyond the standards).

5. H.B. 1110 County Assessor – Adv Rental of Furnished Residential Governor signed 4-22-09.

Effective Date 8/5/09. The Owner or Agent of Owner (real estate broker, property management co., lodging co., etc.) who advertises furnished residential property for rent must, IF REQUESTED by the Assessor's Office (not more frequent than two times per year) provide to the Assessor's Office:

- a. Assessor's Schedule # for the Property
- b. Owner's Name and Address of the Property

**6. H.B. 1149 New Home Construction – Solar Energy
Governor signed 5-4-09.**

Effective Date 8/10/09. The Act applies to new home contracts entered into on or after 8/10/09. It requires that the Builder/Seller shall offer (if under contract at least 30 days before the Electric System is to be installed) a choice to include a Residential Photovoltaic Solar Generation System or Upgraded to permit future solar installation.

The Seller must also provide, to the Buyer, a List of businesses that offer Residential Solar Installation Services (from Governor's Energy Office).

No changes to the Contract to Buy and Sell Real Estate as the CBS form is to be used in previously existing re-sales, rather than new home construction, of residential houses to be built.

**7. HB 1085 Mortgage Broker (Safe Act changes)
Governor signed 5-21-09.**

Effective Date 8/5/09. The Act amends the Mortgage Broker law to be compliant with the Federal SAFE Act. The language used in the Act prohibits a Real Estate Broker from involvement in Financing involvement (unless the Real Estate Broker is also licensed as a Mortgage Loan Originator). Brokerage Disclosure forms clarified by deleting any reference to the Broker assisting in financing.

8. Utility Bill Disclosure. H.B. 1247 P.I. 3-19-09.

This bill (Governor's Office) would have required disclosure of the last 12 month utilities cost (public) for "residential" (similar definition as Source of Water). Initially the bill required disclosure, whether requested or not. Many problems were present had the bill been enacted. Before the bill

was killed, it was changed to require disclosure only upon the Buyer's request.

The Bill would have required changes to Listing Contract, and the CBS in addition to a new Utilities Disclosure form. As a result of HB 1247 not passing, there is no need to make these changes. -

A Rule Making Hearing was held May 1, 2009 and two additional Rule Making Hearings (Emergency and Permanent) were again held on June 2, 2009 to meet the July 1, 2009 deadline. It is interesting to note that the legislative session concluded May 6, 2009. The Commission adopted 16 revised forms, 2 new forms (for a total of 18 new and revised forms) and repealed 5 forms. The time table was extremely short for the printers, computer software forms developers, brokers, schools, etc. each to have the revised forms, training and related matters in place to fulfill the mandatory July 1, 2009 deadline. Rule F-7 was also amended to remove the necessity of submitting the forms to the Colorado Secretary of State's Office and for publication in the Code of Colorado Regulations. Rather, the forms will be posted on the Division of Real Estate's website. This will make the Division of Real Estate's practice coincide with other administrative agencies in Colorado.

The following revised, new and repealed forms were considered and adopted by the Commission:

Listing Contracts

1. Exclusive Right-to-Sell Listing Contract (~~All Types of Properties~~)
LC50-405-06 09
2. Exclusive Right-to-Buy Contract (~~All Types of Properties~~) BC60-045-05 09
~~Exclusive Brokerage Listing Contract (All Types of Properties) LC53-10-06~~
Open Listing Contract (All Types of Properties) LC54-10-06
3. Exclusive Right-to-Lease Listing Contract (~~All Types of Properties~~)
LC57-405-0609
4. Exclusive Tenant Contract (~~All Types of Premises~~) ETC59-405-05 09

Sales Contracts

5. ~~Contract to Buy and Sell Real Estate (All Properties) CBS1-115-0809~~
~~Contract to Buy and Sell Real Estate (All Properties)~~
~~(For Property in Foreclosure) CBSF1-11-08~~

Addenda to Contracts

Licensee Buy-Out Addendum to Contract to Buy and Sell Real Estate (see footnote # 2)
LB36-9-08

Source of Water Addendum to Contract to Buy and Sell Real Estate SWA35-8-07

Exchange Addendum to Contract to Buy and Sell Real Estate EX32-05-04

Lead-Based Paint Disclosures (Sales) LP45-05-04

Lead-Based Paint Disclosures (Rentals) LP46-05-04

6. Brokerage Duties Addendum to Property Management Agreement BDA55-045-05 09

~~Foreclosure Property Addendum FPAF 33 9 08~~

Short Sale Addendum SSA38-9-08

7. Exclusive Brokerage Listing Addendum to Exclusive Right-to-Sell Listing Contract EBA53-5-09

8. Open Listing Addendum to Exclusive Right-to-Sell Listing Contract OLA54-5-09

Disclosure Documents

9. Brokerage Disclosure to Buyer-Tenant (see footnote # 3) BD24-95-0809
10. Brokerage Disclosure To Tenant (see footnote # 3) BDT 20-95-0809.
11. Brokerage Disclosure to Seller (REO and Non-CREC Approved Listings) BDD56-95-08 09
12. Broker Disclosure to Seller (Sale by Owner) (see footnote # 3) SD16-95-08 09
13. Definitions of Working Relationships (see footnote # 3) DD25-95-08 09
Seller's Property Disclosure (All Types of Properties) SPD19-9-08
14. Seller's Property Disclosure (Residential) SPD29-95-08 09
Change of Status CS23-10-06
Square Footage Disclosure SF94-05-04
Dual Status Disclosure DSD 17-1-09

Notice Documents

Inspection Notice NTC43-8-07

~~Notice of Cancellation NCF34 9 08~~

15. Notice to Terminate NTT44-95-0809
16. Seller Authorization SA20-25-0809

Counterproposal

17. Counterproposal CP40-~~95-08~~ 09

Agreement to Amend/Extend Contract

18. Agreement to Amend / Extend Contract AE41-~~95-08~~ 09

Agreement to Amend / Extend Contract with Broker AE42-05-04

Closings

Closing Instructions CL8-9-08

Earnest Money Receipt EM9-8-07

Closing Statement (see footnote # 1) SS60-9-08

Deeds of Trust

Deed of Trust (Due on Transfer-Strict) TD72-9-08

Deed of Trust (Due on Transfer-Credit worthy) TD73-9-08

Deed of Trust (Assumable-Not Due-on Transfer) TD74-9-08

Promissory Notes

Earnest Money Promissory Note EMP80-05-04

Promissory Note for Deed of Trust (UCCC-No Default Rate) NTD82-10-06

Promissory Note for Deed of Trust NTD81-10-06

II. NEW and REVISED FORMS

NOTE: The forms included in this material are current through June 7, 2009. The forms and rules at the time of publication are available electronically 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 (CBS1-5-09)

Introduction.

As noted above, the impetus to revisiting the Contract to Buy and Sell again this year was primarily due to legislation mandating the contract form contain certain provisions. We took the opportunity to clarify and fix some other provisions as well.

1. Section 2.3, Dates and Deadlines, While this Section does not contain any new line items, the sequencing or order now follows the sequence as the items appear in the contract form.

2. Section 3.1.6, Water Rights, contains 3 new provisions. Separate items and check boxes are now provided to specify whether the sale includes any Water Stock Certificates, Water Tap and Sewer Tap. There is also an alert that Buyer or counsel should obtain written confirmation from the water or sewer provider whether the right to the water or sewer tap is in full force and effect, whether the assessments are current, how much if any will need to be paid, restrictions to any transfer. One ought to also confirm what documents and things are needed by the provider, who is to prepare the transfer documents, what they are and when they will occur in addition to cost. We have noted while developing the language that some taps are fully paid for, others are only partially paid for, the amount may potentially increase from time to time.

3. Section 4.3, Form of Funds, Time of Payment; Funds Available. Previously this Section was entitled "Cash at Closing, Good Funds". The new title more accurately describes its content. The new language now clarifies that any money to be paid at Closing, including the loan proceeds must be paid in "Good Funds." It is interesting to note that while "cash" is legal tender, it is not within the specified definition of "Good Funds" (technically "Available for immediate withdrawal as a matter of right") contained within § 38-35-125, C.R.S., accordingly, the term "cash" was removed from the provision to make the Section technically correct and to reflect the practice commonly present in closings and the requirements of closers including title companies.

§ 38-35-125. Closing and settlement services--disbursement of funds

(1) As used in this section, unless the context otherwise requires:

(a) "Available for immediate withdrawal as a matter of right" includes funds transferred by any of the following means:

(I) Any wire transfer;

(II) Any certified check, cashier's check, teller's check, or any other instrument as defined by federal regulation CC, 12 CFR 229.10(c).

(2) No person or entity that provides closing and settlement services for a real estate transaction shall disburse funds as a part of such services until those funds have been received and are either: Available for immediate withdrawal as a matter of right from the financial institution in which the funds have been deposited; or available for immediate withdrawal as a consequence of an agreement of a financial institution in which the funds are to be deposited or a financial institution upon which the funds are to be drawn. Any such agreement shall be made with or for the benefit of the person or entity providing closing and settlement services for a real estate transaction. Notwithstanding the provisions of this subsection (2), the person or entity providing closing and settlement services may advance funds, not to exceed five hundred dollars, on behalf of interested parties for the transaction to pay incidental fees for such items as tax certificates and recording costs or to cover minor changes in the closing adjustments. (Emphasis added).

While no policy change was made in this version of the Contract, substantial discussion has developed on the effect to a Buyer if the Loan Conditions deadline has passed, without objection or termination of the Contract, and the loan is not funded without fault of the Buyer. This policy decision was directed by the Commission itself in excess of 10 years ago. It has now resurfaced by discussion within the Bar as well as Realtor® organizations. This topic is to be separately studied this year to determine if there should be a different outcome, what the balance between Buyer and Seller should be when both are “innocent”.

4. Section 7.3, Survey. This Section 7.3 has merely been clarified by adding the term “or provide” to permit a current survey to be provided to a Buyer. There are some instances where the Seller will already possess a “current” survey and need not be required to “order” a survey, only provide it to the Buyer.

5. Section 8.1, Title Review. The Title Review Section was clarified to more clearly state what was intended by the drafters on when the Buyer’s deadline for submitting “Notice of Title Objection”. The provision now clearly states that if a Buyer does not receive the title work by the date specified (Section 2.3, Dates and Deadlines), the time clock for the Buyer to

object to Title does not start to run. The Title Objection Deadline (Section 2.3, Dates and Deadlines) will control so long as the Seller timely delivers the Title Documents as called for in the Contract. If the deadline is missed, the Buyer has 5 days from receipt of the Title Document to supply any Notice of Title Objection.

6. Section 8.4, Special Taxing Districts. The change to Section 8.4 is to parrot the language required by S.B. 09-087.

- a. The Act required a change to the PREPRINTED (Bold Print) language in the Contract to Buy and Sell Real Estate. The import of the revised language is to inform the Buyer to investigate Special Districts; it is more easier to understand and gives substantive suggestions including that a Buyer obtain and review a Certificate of Taxes Due as well as contact the County offices.
- b. The Bill as initially introduced would have added a new subsection (3) to 38-35.7-101, C.R.S. requiring the ACTUAL LISTING OF ALL Special Districts the Property is subject to at the time Buyer and Seller enter into the Contract (not Closing). However, the Act was amended to change the PREPRINTED (Bold Print) language in the CBS informing the Buyer to investigate Special Districts; it is more easier to understand and give substantive suggestions including obtain a Certificate of Taxes Due, contact the County offices, etc.
- c. There was a bill run last year that tried to do the same thing. We had a number of suggestions to avoid the need to have a list of all the special districts the Property is subject to. (One was to disclose these to the Buyer at the time the Buyer gets the title work (Title Insurance). That is, to further set forth within the Title Insurance Commitment disclosures – if anything further is really needed.
- d. For the Broker to know what the Special Districts are (and it is not 100% perfect as some Districts may be formed, but no taxes have been assessed yet) is to get a Title Insurance Commitment. Because TBDs (To Be Determined commitments) may not be permissible under the Title Insurance Regulation of 3-5-1, and

the Property would NOT be under contract, a cancellation fee or other fee would need to be assessed and paid for by SOMEONE (Listing Broker or Seller) to get the Listing of the various Special Districts. – Then, the Broker will need to have the competence to review the title work AND OBTAIN A TAX CERTIFICATE (and have someone pay for it) at the TIME OF LISTING, so that the Special Districts would be able to be LISTED and available when a Contract is prepared to be submitted as an offer.

The CBS-1-11-08 already contained the following statutorily prescribed language:

8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

The Act's Amendment caused the Contract to Buy and Sell Real Estate to be revised with replacement bold print Special Taxing District language:

REVISED 8.4.

Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE

POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES. SPECIAL TAXING DISTRICTS THE PROPERTY IS SUBJECT TO BY CONTACTING THE COUNTY TREASURER'S OFFICE, REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND OBTAINING ANY FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR."

Note: Until July 1, 2009 the "old" language was required to be used; on and after 7/1/09 the revised CBS contains the new language.

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7. Section 10.2, Inspection Objection Deadline. The provision was clarified that objection to any "Inclusions" must be based on the items' "physical condition."

8. Section 10.8, Carbon Monoxide Alarms. A requirement that the Seller "assure" in any residential (Single Family dwelling, 38-45-102 (1)(a), C.R.S.; or Multifamily Dwelling, 38-45-103, C.R.S.) that carbon monoxide alarms are installed within 15 feet of each bedroom is now placed within the Contract form. Any contracts for vacant land, industrial, commercial and agricultural properties may "omit" this provision if the property contains no residential units or dwellings. While the required the "Listing Contracts" to be revised, from a health and safety concern, as well as liability, it was concluded it was in the public's best interest to expressly provide in the Contract the obligation imposed on Sellers (and Landlord if a residential rental).

38-45-102. Carbon monoxide alarms in single-family dwellings - rules.

(1) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE SELLER OF EACH EXISTING SINGLE-FAMILY DWELLING OFFERED FOR SALE OR TRANSFER ON OR AFTER JULY 1, 2009, THAT HAS A FUEL-FIRED HEATER OR APPLIANCE, A FIREPLACE, OR AN ATTACHED GARAGE SHALL ASSURE THAT AN OPERATIONAL CARBON MONOXIDE ALARM IS INSTALLED WITHIN FIFTEEN FEET OF THE ENTRANCE TO EACH ROOM LAWFULLY USED FOR SLEEPING PURPOSES OR IN A LOCATION AS SPECIFIED IN ANY BUILDING CODE ADOPTED BY THE STATE OR ANY LOCAL GOVERNMENT ENTITY.

9. Section 11, Methamphetamine Disclosure. The Meth Lab disclosure Act was amended during the 2009 Legislative session. It expanded its coverage beyond merely Meth "Labs." The new Act now covers and residential property that is contaminated at levels beyond standards established by the State Board of Health. If there is contamination

in a residential property, it does not matter whether its cause was due to cooking, usage, etc., the Buyer has a right to terminate the contract if the test, i.e., methamphetamine or other contaminant results, are positive. That is, contamination beyond the standards established by the State Board of Health is present) grants to the Buyer a right to terminate the Contract. The Act clearly provides that the Contract to Buy and Sell Real Estate may NOT restrict the right of the Buyer to Test nor to Cancel the contract if the Property is contaminated (beyond the standards). Accordingly, the Contract does not contain a time limit, it would be unenforceable by the new Act.

S.B. 09-060, Drug Use Disclosure, provides in part

38-35.7-103. Disclosure - methamphetamine laboratory. (2) (a) Tests conducted pursuant to this section shall be performed by a certified industrial hygienist or industrial hygienist, as those terms are defined in section 24-30-1402, C.R.S., AND IN ACCORDANCE WITH THE PROCEDURES AND STANDARDS ESTABLISHED BY RULES OF THE STATE BOARD OF HEALTH PROMULGATED PURSUANT TO SECTION 25-18.5-102, C.R.S. If the buyer's test results indicate that the property has been used as a CONTAMINATED WITH methamphetamine laboratory but OR OTHER CONTAMINANTS FOR WHICH STANDARDS HAVE BEEN ESTABLISHED PURSUANT TO SECTION 25-18.5-102, C.R.S., AND has not been remediated to meet the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S., the buyer shall promptly give written notice to the seller of the results of the test, and the buyer may terminate the contract. **THE CONTRACT SHALL NOT LIMIT THE RIGHTS TO TEST THE PROPERTY OR TO CANCEL THE CONTRACT** BASED UPON THE RESULT OF THE TESTS. (Emphasis supplied).

10. Section 19, Causes of Loss, Insurance; Condition of, Damage to Property and Inclusions and Walk-Through. In addition to clarifying the title of the Section, the Risk of Loss provision was corrected to now accurately note that a loss may be caused by “perils” or other “causes of loss”, rather than a “casualty.” The term “casualty” is normally associated with a claim for “liability”, not property damage. It may be of interest to note that this provision in one form or another has been repeated for longer than 30 years – but at least it is now correct!!

11. Section 22, Legal Fees, Cost and Expenses. This Section now has its Section. Prior versions, for years, had it set forth as a subsection “c” or most recently in the last version as Section 22.3 Unfortunately, one could argue that it was limited to only the situation when the other party did not

perform as required by the Contract, i.e., first there must be a breach by the other party. While this will normally be the case, the provision was reorganized to provide that a prevailing party is entitled to their legal fees. For example, a Declaratory Judgment proceeding, a condition precedent has not been satisfied, etc. The Section also clarifies that the proceeding may occur prior to or following the Closing Date (whether Closing occurs or not).

12. Section 30, Colorado Foreclosure Protection Act. Previously the Section Title was "Foreclosure Disclosure and Protection." Due to Legislation enacted in the 2009 session, the Section in the Contract dealing with "foreclosure" was required to be changed. The Act's language changes a "Residence in Foreclosure" by adding "is Delinquent or in Default more than 30 days (rather than the existing language that a Foreclosure has actually been "commenced"). Contract to Buy and Sell Real Estate was amended as well as the Listing Contracts. Foreclosure version of the Contract to Buy and Sell Real Estate was repealed as was the Foreclosure Property Addendum and related forms.

H.B. 09-1109 contains a very short provision, but it is long on effect.

(8) "Residence in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence and ~~against which any type of foreclosure action has been commenced~~ THAT IS ENCUMBERED BY A RESIDENTIAL MORTGAGE LOAN THAT IS AT LEAST THIRTY DAYS DELINQUENT OR IN DEFAULT.

a. Many questions and problems surface if a transaction is subject to the Foreclosure Protection Act. Accordingly, it was ultimately concluded by the Forms Committee which recommendation was accepted by the Colorado Real Estate Commission to **not** have Brokers prepare a state-approved contract form in a transaction that is subject to the Foreclosure Protection Act.)

Some of the matters considered by the Forms Committee that counsel may need to consider are:

1. The Act does not specify whether the default may be non-monetary (e.g., violation of the Due on Sale provision of the Deed of Trust) or if the default must

be a monetary default (failure to pay).

2. The prior CBS-1-11-08 contract form, Section 29, contained the following:

29. FORECLOSURE DISCLOSURE AND PROTECTION. Seller acknowledges that, to Seller's current actual knowledge, the Property **Is** **Is Not** in foreclosure. Buyer **Will** **Will Not** occupy the Property as Buyer's personal residence for at least one year. In the event this transaction is subject to the provisions of the Colorado Foreclosure Protection Act (the Act) (i.e., generally the Act requires that the Property is residential, in foreclosure, and Buyer does not reside in it for at least one year), a different contract that complies with the provisions of the Act is required, and this Contract shall be void and of no effect unless the Foreclosure Property Addendum is executed by all parties concurrent with the signing of this Contract. Each party is further advised to consult with their own attorney.

3. HB 1109 required changes to CBS1-11-08 and CBSF1-11-08. While not a difficult task to change the language of the forms, due to the Colorado Administrative Procedures Act (APA) and the time frame of making the changes, cost to the industry, confusion of having yet another change in the Contract form occur mid-year will be problematic.

4. The real difficulty is the application of the changes.

- a. If the transaction is subject to S.B. 71 (Colorado Foreclosure Protection Act, as amended), then a SPECIAL CONTRACT FORM and perhaps addenda must be used, (if not, the violations are substantial, criminal, etc.).

- b. Currently, one can look online, contact the Public Trustee's Office, etc. to determine whether a Foreclosure has been commenced by filing a Notice of Election and Demand for Sale that will be recorded in the County Clerk's office. On and after 7/1/09

the Foreclosure Protection Act may be triggered without the necessity of a pending Foreclosure against the Property.

c. If there is ONLY a Default or Delinquency, (i.e., Payment is delinquent at least 30 days, that is, the Seller is in Default, there will often not be any recorded document showing the Seller is delinquent or in default at that time. The following items would need to be addressed to allow a proper form of contract be used in a transaction subject to the Colorado Foreclosure Protection Act.

1. At the time of taking the Listing, the Seller may be current. At the time of contracting, the Seller may be 1 day or more late with the mortgage payments, and thus in default under the loan, but not delinquent or in default by at least 30 days for purposes of the Act. So, whether the Buyer or Broker is aware that the Seller has not paid, a SPECIAL Contract form will be needed to be used to comply with the Colorado Foreclosure Protection Act, if the Seller is in default at least 30 days and the Act otherwise applies.

2. To determine which contract forms are to be used, it is necessary to determine whether the Act applies or not. The Buyer must be informed of the delinquency if the Broker is to prepare the respective forms. Accordingly, the Seller may need to inform the Broker in a timely fashion. One dilemma facing a Listing Broker is whether to disseminate (MLS, etc.) the fact that the Seller is in Default under the loan, and that special contract forms must be used.

3. For the Broker to disclose that the Seller is in default (which is not of public record as it is not yet in Foreclosure because no Notice of Election and Demand for Sale (NED) has been recorded, a CONSENT (in the Listing Contract) that the Seller consents the Broker may let prospective Buyers and Brokers know that the Seller is in Default (so they will use the proper contract forms that comply with the Act) may be required. The Seller should also be under an obligation to timely notify the Broker whenever the Seller becomes in default on the loan, i.e. fails to make payment to the lender by the 1st of the month.

As a side note, if the real purpose of H.B. 09-1109 is to require modification companies or assistance companies and their personnel be licensed as Mortgage Brokers or Originators, perhaps the best place to regulate and have oversight of this practice is within H.B. 09-1085 (changes for the SAFE Act).

Most importantly, it appears that the Colorado Foreclosure Protection Act, normally, does not apply. Most buyers are not in the business of buying properties in foreclosure as their business, occupation or vocation, i.e., foreclosure investors. Further, many of the “foreclosure investors” as Equity Purchasers have already prepared or have had counsel prepare a contract form for their use that is intended to comply with the Act. The existing Commission Approved CBSF1 contract form, when taken with the Foreclosure Property Addendum, quite often, does not permit the objectives of the Buyer and Seller to be accomplished. For example, Seller may have obligations related to the Property continue following Closing (Lender does not give a release of liability), Seller want to remain in the Property and rent it back from the Buyer, etc. Further, if the Buyer is to occupy the Property for the 1 year time period, the Act does not apply.

It is for these reasons that it was recommended that Section 30 (formerly Section 29) of the CBS1 be revised to provide that if the Colorado Foreclosure Protection Act is applicable that the Broker is not authorized to prepare such a document, that the existing CBSF1-11-08 (Contract to Buy and Sell Real Estate – Foreclosure) and the Foreclosure Property Addendum be repealed.

The Broker may still assist in the transaction. However, due to the extremely complicated and uncertain outcome of whether the Foreclosure Protection Act applies, an attorney, not a real estate broker, should assist a Buyer to determine whether the Act applies and to prepare a conforming contract. It is the author’s position that such analysis, conclusion and preparation is beyond the area a real estate broker should go. It should be the Buyer’s attorney, not the Broker, who concludes whether the Buyer is an “Equity Purchaser” and whether the Act applies.

If the Act applies, counsel should be preparing a contract (in at least 12 point **ALL BOLD PRINT**) addressing the various items required by the Act, in addition to what the Buyer and Seller intended to commit to undertaking.

Section 30, sets forth all four events or requirements that must be satisfied before the Colorado Foreclosure Protection Act applies:

- (1) the Property is residential; and
 - (2) any loan secured by the Property is at least thirty days delinquent or in default; and
 - (3) Buyer does not reside in the Property for at least one year;
- and
- (4) Buyer is subject to the Act.

The last item, number 4, that the Buyer is “subject to the Act” by necessity requires a review of the Act (Part 3) to determine if the Buyer is an “Equity Purchaser”. Merely because the Buyer will not owner occupy the Property for the 1 year time period, in and of itself, does not dictate the Act applies. Merely because the Buyer has purchased hundreds or rentals, if they were not in foreclosure or now, in default at the time of contracting, would not subject the Buyer to the grips of the Act.

Additional background information to assist in analyzing and preparing a contract that is subject to the Colorado Foreclosure Protection Act follows.

The Colorado Foreclosure Protection Act, S.B. 06-71, is now found in § 6-1-1101, et seq., C.R.S. If the Act applies, it requires certain provisions be contained in any real estate contract for the purchase of residential property. The Act has two major substantive parts. Sub-part 1 deals with requirements and limitations on "Foreclosure Consultants" and Subpart 3, Equity Purchasers. It is the latter that is addressed in the Contract to Buy and Sell Real Estate. The Equity Purchaser part of the Act requires special provisions and language be used (not the normal CBS form) if it applies. The Act will be triggered if the following are present:

- (A) It is a “Residence in Foreclosure” the home owner’s principal place of residence or dwelling (i.e., “is Delinquent or in Default more than 30 days”). [Query: residential property only, an owner occupant of an apartment or multi-family property?].

The definition of "residence" under the U.C.C.C., 5-1-201 (6), C.R.S. is quite broad where the definition section states:

"(6) For the purposes of this code (UCCC), the "residence" of a consumer is the address given by the consumer as the consumer's residence in any writing provided by the consumer in connection with a credit transaction. Until the consumer notifies the creditor of a new or different address, the given address is presumed to be unchanged."

5-1-301 (18), C.R.S. "Dwelling" means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives. It is appears that 5-1-301, C.R.S. was intended to be a limit on the Foreclosure Protection Act's application; i.e., only if the property is a 1-4 family dwelling.]

(B) The Seller or home owner "is Delinquent or in Default more than 30 days".

[Prior to H.B. 09-1109, the law required that the property be in Foreclosure, i.e., a "foreclosure action has been commenced" or when the Notice of Election and Demand for Sale is recorded under 38-38-103 (3), C.R.S.]

(3) Within ten working days following the receipt of such notice of election and demand for sale, the public trustee shall commence a foreclosure proceeding by causing a copy of the same to be recorded in the office of the county clerk and recorder of the county in which the property described in such notice of election and demand for sale is located, and the recording fee for the same shall be collected as part of the expense of such sale.

NOTE: H.B. 09-1109 has deleted the requirement of Foreclosure, **substituting in its place "is Delinquent or in Default more than 30 days."**

(C) Buyer is not to live in the home for at least one year; i.e., the Act targets the Buyer as an "Investor" purchaser rather than an "Owner-occupant." The Act speaks in the negative. That is, the Buyer is not purchasing the property "for the purpose of using such property as his or her personal residence for at least one year" (6-1-1103(2), C.R.S.).

The Courts or the Legislature will hopefully clarify whether this provision was intended to mean that the Buyer "intended to" owner-occupy for 1 year or if one needs to "actually" live in the property for at least 1 year.

(D) Buyer, to be an "Equity purchaser", must be a person who in the course of the person's:

(1) business,

(1) vocation, or
(1) occupation,
who acquires title to a “Residence in Foreclosure” (i.e., “is Delinquent or in Default more than 30 days”);

The Colorado Foreclosure Protection Act enumerates a number of exemptions including a Buyer that owner occupies the house for the 1 year time, Deed in Lieu of Foreclosure, Public Trustee Deeds, sales authorized by Statute, sales under a Court Order, purchases and sales in certain family transactions, sales by Banks and Savings and Loan Associations and others specified in the Act.

If the Act applies, here are some of its requirements:

1. § 6-1-1111, C.R.S.. Written contract required to be written in at **least twelve-point bold-faced type.**

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!!

2. § 6-1-1120, C.R.S.. Language

Any contract, rental agreement, lease, option or right to repurchase, and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a home owner, shall be written in English **and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English**

version. The translated version shall be presumed to have equal status and credibility as the English version.

3. The Contract must also contain the following under § 6-1-1112, C.R.S.

(1) Every contract shall contain the entire agreement of the parties and shall include the following terms:

(a) The name, business address, and telephone number of the equity purchaser;

(b) The street address and full legal description of the residence in foreclosure;

(c) Clear and conspicuous disclosure of any financial or legal obligations of the home owner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the home owner, the equity purchaser shall provide to the home owner a separate written disclosure that substantially complies with > section 18-5-802(6), C.R.S.

[§ 18-5-802. Equity skimming of real property.

(6) The provisions of this section shall not apply to any bona fide purchaser who acquires fee title in any real property without agreeing to pay all underlying encumbrances and takes fee title subject to all underlying encumbrances, **if the following written, verbatim warning was provided to the seller in capital letters of no less than ten-point, bold-faced type and acknowledged by the seller's signature:**

WARNING: PURCHASER, _____, WILL NOT ASSUME OR PAY ANY PRESENT MORTGAGE, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AGAINST THE PROPERTY. THE SELLER, _____, UNDERSTANDS HE/SHE WILL REMAIN RESPONSIBLE FOR ALL PAYMENTS DUE ON SUCH MORTGAGES, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AND FOR ANY DEFICIENCY JUDGMENT UPON FORECLOSURE.

I HAVE HAD THE FOREGOING READ TO ME AND UNDERSTAND THE PURCHASER, _____, WILL NOT ASSUME ANY PRESENT MORTGAGES, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AGAINST THE PROPERTY DESCRIBED AS _____.

DATE _____

SELLER _____.

(d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;

(e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the home owner before or after the sale;

(f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;

(g) The terms of any rental agreement or lease;

(h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price, closing costs, commissions, or other fees or costs;

(i) A notice of cancellation as provided in section 6-1-1114;

and

(j) The following notice , in at **least fourteen-point bold-faced type**, and completed with the name of the equity purchaser, immediately above the statement required by section 6-1-1114:

(This is the Notice to the Seller not to sign any deed or other document prior to the expiration of the Right to Cancel).

Additionally, § 6-1-1116, C.R.S., Waiver of rights-void, and § 6-1-1117, C.R.S., Prohibited Conduct, contain additional required reading including the prohibition of paying the Seller any monies prior to the expiration of the Right to Cancel.

An additional prohibition under § 6-1-1117, C.R.S., includes:

(b) Record with the county recorder any document, including, but not limited to, the contract or any lease, lien, or instrument of conveyance, that has been signed by the Equity Seller;

Most importantly is the 3 day right of the Seller or Home Owner (Equity Seller) to cancel the contract (the 3 (business) days runs from the earlier of the time the Seller signs a contract that complies with the Act or noon the day before the scheduled Foreclosure Sale). Section 6-1-1113, C.R.S. provides:

6-1-1113. Rescission - cancellation.

(1) In addition to any other right of rescission, the Equity Seller has the right to cancel a contract with an Equity Purchaser until 12 midnight of the fifth business day following the day on which

the Equity Seller signs a contract that complies with this part 11 or until 12 noon on the day before the day scheduled for the foreclosure sale of the Residence In Foreclosure, whichever occurs first.

(2) Cancellation occurs when the Equity Seller personally delivers written notice of cancellation to the address specified in the contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.

(3) A notice of cancellation given by the Equity Seller need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the Equity Seller not to be bound by the contract.

Due to the repeal of the prior version of CBSF1-11-08, Contract to Buy and Sell Real Estate (Foreclosure) and the Foreclosure Property Addendum, the forms are included in this material for reference purposes. Also included is an earlier “draft” of the Foreclosure Property Addendum with references to the Colorado Foreclosure Protection Act. These forms will need to be updated and revised to reflect that the trigger is no longer “foreclosure” but rather, a default of 30 days or more (and the other provisions of the Act are applicable).

13. Section 31, Notice, Delivery, and Choice Of Law. This year’s modification to the Notice provision clarifies that notice may be given to the Seller by supplying it to the principal (Seller), anyone who signed on behalf of the Seller, anyone who is named as the principal (Seller; e.g., if 4 individuals are named as Seller, notice may be given to just 1 of any of the 4 individuals), the Seller’s representative, the Seller’s Brokerage Firm. Likewise, the same is true for delivery of notice to the Buyer. Mediation demand, after Closing, may not be given to the Brokerage Firm, as the Broker’s normal duties conclude at Closing.

**~~B. Contract to Buy and Sell Real Estate (All Properties)
(For Property in Foreclosure) (CBSF1-11-08)~~**

As noted above, the Foreclosure Contract, (CBSF1-11-08), (and related forms) have been repealed.

C. Counter Proposal

The Counter Proposal form was updated to reflect the same order or sequence as in Section 2.3 of the Dates and Deadlines provision of the Contract to Buy and Sell Real Estate.

D. Agreement to Amend/Extend Contract

The Agreement to Amend/Extend Contract form was updated to reflect the same order or sequence as in Section 2.3 of the Dates and Deadlines provision of the Contract to Buy and Sell Real Estate.

E. Brokerage Relationship Disclosures - Buyer Disclosure, Seller Disclosure, Tenant Disclosures, Brokerage Duties Addendum to Property Management Agreement, Brokerage Disclosure to Seller (REO and Non-CREC Approved Listings), Definitions

The Brokerage Relationship Disclosure forms were amended primarily to remove language that the Broker would “discuss financing.” This deletion was prompted due to the language of H.B. 09-1085, definition of a real estate broker, who is exempt from holding a Mortgage Loan Originator’s license in Section 12-61-902 (7.7) (c):

“(c) NEGOTIATING, ON BEHALF OF ANY PARTY, ANY PORTION OF A CONTRACT RELATING TO THE SALE, PURCHASE, LEASE, RENTAL, OR EXCHANGE OF REAL PROPERTY, **OTHER THAN MATTERS RELATED TO FINANCING FOR THE TRANSACTION;**”

F. ~~Foreclosure Property Addendum (FPA 33-9-08)~~

The Foreclosure Property Addendum was repealed. See the discussion above noting that an attorney, not a real estate broker should prepare a contract in a transaction required to comply with the Colorado Foreclosure Protection Act.

G. ~~Notice of Cancellation (NCF34-9-08)~~

The form was repealed. See the discussion above noting that an attorney, not a real estate broker should prepare a contract in a transaction required to comply with the Colorado Foreclosure Protection Act.

H. Seller's Property Disclosure (Residential) (SPD29-5-09)

The form was corrected to delete the line in the title of the Improvements section of the form. The line deleted stated “ If this box is checked, there are no structures or improvements on the Property; do not complete Sections A-G.”

I. Exclusive Right-to-Sell Listing Contract (LC50-5-09)

1. Introduction. The form was revised. It was updated to adopt the same Dewey decimal numbering convention used in the Contract to Buy and Sell and other forms converted to the Dewey decimal format. Many of the provisions in the form were re-organized and the provisions between the various listing contracts were made consistent. Other changes were made as well.

2. Section 1, Agreement. The revised Listing Contract has coined a new term of “Seller Listing Contract” (to be distinguished from a Buyer Listing Contract or Tenant Listing Contract).

3. Section 3.8, Day; Computation of Period of Days, Deadline. A conforming change to the form to contain the definitions of day, time, deadline introduced in the 2008 Contract to Buy and Sell was made to the listing contracts.

4. Section 4.3.1, In-Company Transaction – One Broker. This Section was clarified and provided a “safe harbor” if no “box” was checked. That is, the Broker will function as a Seller’s Agent only (§4.3.1.1) unless the “box” in §4.3.1.2 is checked to then require the Broker to act as a Seller’s Agent (treating the Buyer as a customer unless the Broker is or will also act as a Buyer’s Agent or a Transaction-Broker resulting in the Broker then functioning as a Transaction-Broker).

5. Section 4.3.2, Transaction-Broker. The language in this Section was clarified to specify that the Broker has the duties set forth in Section 5 (Brokerage Duties).

6. Section 5.7, Brokerage Duties (No imputed liability to Seller). Conforming language is now used to more clearly track the requirements of S.B. 196 that created Designated Brokerage in 2003. The provision notes that the Seller is not liable for imputed liability caused by the wrongs of the Broker unless “approved, directed, or ratified by Seller”.

7. Section 5.8, Brokerage Duties (Disclosure of other offers). This Section was added for Brokers who are Realtors® to comply with Standard of Practice 1-15 of the Realtor® Code of Ethics. There have also been cases through out the country where this matter has been litigated as well.

• **Standard of Practice 1-15**

REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers’ approval, disclose the existence of offers on the property. Where disclosure is authorized, Realtors® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. (Adopted 1/03, Amended 1/09)

8. Section 6, Additional Duties of Seller’s Agent (Seek List Price). The Seller Listing now confirms that the “List Price” that agent of the Seller is to seek to obtain is the listing price set forth in the Seller Listing Contract.

9. Section 7, Compensation to Brokerage Firm. The compensation payable from the Seller to the Listing Brokerage Firm has been consolidated into Section 7.

10. Section 7.2.3, Compensation to Brokerage Firm (Holdover Compensation). A common practice with Commercial Real Estate Brokers is to “strike the holdover provision” so they will receive entitlement to a real estate brokerage commission if the Property sells during the Holdover Provision to a Buyer introduced to the Property during the base listing of the old Brokerage Firm (and the old Broker fulfills the requirements to preserve a fee under the Holdover Provision), even if the Seller is obligated to pay a second commission, ie., to the new broker as the “sale” (contract) occurred while the new Brokerage Firm had the Property Listed. The practice for

Residential Real Estate Brokers is just the opposite. Normally the “Holdover Provision” does not protect the former listing broker if the Property is relisted by the Seller with a subsequent broker. This divergence has been eliminated by the use of “check boxes” to have the parties agree whether the Seller will or will not be potentially liable for 2 real estate brokerage commissions (payable to the prior listing brokerage firm and to the current real estate brokerage firm). If no “box” is checked, the default is that “no” commission is payable to the “new” or current real estate brokerage firm.

11. Section 7.2.3, When Applicable and Payable. There was no change in intended meaning. The Section was substantially clarified to provide when the Broker’s commission is payable, including a transaction where the Buyer is produced during the Listing Period, but the Seller chooses not to accept it, whether due to the Seller’s refusal or neglect, but the Broker fulfilled the Broker’s job of bringing in an offer that satisfies the Seller Listing Contract. The date the fee is payable is the “contracted” Closing Date (whether the transaction closes or not).

12. Section 7.5, Cooperative Broker Compensation. The Coop Fee, or the amount or percentage to be paid to the Coop Broker has been brought within Section 7.

13. Section 9.1, MLS/Information Exchange. Section 9.1.4 was added to permit the Seller to consent or preclude displaying or showing the property address on the Internet. Section 9.1.5 was added to permit the Seller to consent or preclude displaying or showing the Property itself on the Internet. There may be times a Seller will permit the Property Listing to be shown, but does not want the address displayed to minimize security concerns, drive-bys, gated community may preclude one access to drive by without the owner’s permission given to the guard, etc. In any event, the National Association of Realtors® adopted changes to its MLS rules requiring the Boards/Associations to have the Seller choose on these two options.

14. Section 9.4, Brokerage Services. This provision was relocated to acknowledge what “consideration” the Broker is to provide to the Seller in marketing the Property. The “particular” marketing efforts are to be

described in or incorporated into the Seller Listing Contract and referenced in Section 9.3, Broker Marketing.

15. Section 10, Seller's Obligations To Broker; Disclosures and Consent. The title was revamped to clarify that the Seller is to make certain disclosures and consent to provisions in Section 10.

16. Section 10.5, Colorado Foreclosure Protection Act. The revised Section 10.5 is the companion provision to Section 30 of the Contract to Buy and Sell Real Estate. It informs the Seller that if a transaction is subject to the Colorado Foreclosure Protection Act, an attorney should prepare the actual "special" contract, the Broker is not authorized to do so.

Rule F-7 provides in part:

"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.**" (Emphasis supplied).

The author is not aware that a Colorado Real Estate Broker is permitted to prepare a contract form (not approved by the Commission) to deal with the Colorado Foreclosure Protection Act. The Buyer, as a principal, may prepare his own contract or the Buyer may have the Buyer's lawyer prepare the contract. The Broker, in the author's opinion, is not authorized or permitted to prepare such a form, and it would be prudent not to prepare such a contract – an attorney for the Buyer should be the one to draft the contract and assure compliance with the Act.

17. Section 11, Price and Terms. Section 11 confirms that the enumerated price and terms are acceptable to the Seller.

18. Section 13.1.1, Inclusions and Exclusions (Fixtures). Added to the preprinted boiler plate inclusions are two additions of "network" and "coaxial" cables.

19. Section 18.2.3, Carbon Monoxide Alarms. The addition to the Seller Listing Contract of this Section 18.2.3 was inserted to be compliant with H.B. 09-1091 and **38-45-102, C.R.S. (Single Family residential dwellings) and 38-45-103, C.R.S.(Multi-Family residential dwellings). In addition, its purpose is to inform the Seller that the statute requires the Seller**

to assure the installation of Carbon Monoxide Alarms within 15 feet of each bedroom (or as prescribed by the applicable building code). Note the language in the statute requires the devices to be in place prior to offering the Property for sale or lease, i.e., prior to the Property being “offered for sale or transfer”.

20. Section 19, Forfeiture of Payments. This Section was clarified to assure for the public’s protection, any Brokerage Fee compensation to be paid must first be “owed, earned and payable.”

21. Section 23, Nondiscrimination. This Section was updated to reflect the amendments to the Fair Housing Act that now include “sexual orientation.” 24-24-502, C.R.S., as amended provides in part:

(1) It shall be an unfair housing practice and unlawful and hereby prohibited:

(a) For any person to refuse to show, sell, transfer, rent, or lease, or to refuse to receive and transmit any bona fide offer to buy, sell, rent, or lease, or otherwise make unavailable or deny or withhold from any person such housing because of disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or ancestry; to discriminate against any person because of disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or ancestry in the terms, conditions, or privileges pertaining to any housing or the transfer, sale, rental, or lease thereof or in the furnishing of facilities or services in connection therewith; or to cause to be made any written or oral inquiry or record concerning the disability, race, creed, color, sex, **sexual orientation**, marital status, familial status, religion, national origin, or ancestry of a person seeking to purchase, rent, or lease any housing; however, nothing in this paragraph (a) shall be construed to require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others; (Emphasis added).

This change became effective May 29, 2008!!

22. Section 25, Mediation. The term “in writing” was inserted to assure compliance with the Colorado "Dispute Resolution Act" governing mediations or other ADR in Colorado.

§ 13-22-308. Settlement of disputes.

(1) If the parties involved in a dispute reach a full or partial agreement, the agreement upon request of the parties **shall be reduced to writing and approved by the parties** and their attorneys, if any. If reduced to writing and signed by the

parties, the agreement may be presented to the court by any party or their attorneys, if any, as a stipulation and, if approved by the court, shall be enforceable as an order of the court. (Emphasis added).

23. Section 30, Notice, Delivery and Choice of Law. Conforming changes as in the Contract to Buy and Sell Real Estate were made. This Section clarifies to whom notice may be supplied to give notice to the Seller.

M. Exclusive Right-to-Lease Listing Contract (LC57-5-09)

1. Conforming changes that were made to the Exclusive Right-to-Sell Listing Contract were made to the “Landlord” Listing Contract.

2. Section 10.6, Required Information to County Assessor. Additionally, this Section was added to address the provisions in H.B. 09-1110 that requires the Owner of the Property or the agent of the Owner (real estate broker, property management co., lodging co., etc.) who advertises furnished residential property for rent must, IF REQUESTED by the Assessor’s Office (not more frequent than two times per year) to provide the Assessor’s Office:

- Assessor’s Schedule # for the Property; and
- Owner’s Name and Address of the Property.

Section 10.6 authorizes the Broker to supply the “requested” information to the County Assessor’s Office (so they may then “assess” and tax the property owner for the ownership and use of the personal property used within the residential rental unit).

N. Exclusive Brokerage Listing Addendum to Exclusive Right-To-Sell Listing Contract (Eba53-5-09)

1. The Exclusive Brokerage Listing Contract is not frequently used. As a result, the Commission repealed the Exclusive Brokerage Listing Contract (All Types of Properties) LC53-10-06. In the seldom instance a Broker and Seller desire to enter into an Exclusive Brokerage Contract (i.e., exclusive agency – regardless of brokerage capacity – Agency or Transaction-Broker) the Forms Committee created an “Addendum” to

convert the Exclusive Right-to-Sell Listing Contract into an Exclusive Brokerage Contract. Meaning, the Seller may sell the Property himself without payment of a real estate brokerage commission, but a fee is owed if anyone else finds or procures a buyer.

2. The provisions superseded by the Addendum are Section 1, Agreement, Section 7, Compensation to Brokerage Firm; Compensation to Cooperative Broker, and Section 10, Seller's Obligations to Broker; Disclosures and Consent. These provisions were modified to allow a "Seller Sale", without the assistance of others, and not cause the Seller to be liable for a brokerage commission to the Broker.

O. Open Listing Addendum to Exclusive Right-To-Sell Listing Contract (OLA54-5-09)

1. The Open Listing Contract (All Types of Properties) LC54-10-06 is less frequently used than an Exclusive Brokerage Contract; it is extremely rare for this form to be used.

As a result of the form's seldom use, the Commission repealed the Open Listing Contract (All Types of Properties) LC54-10-06. In the rare, rare, rare instance a Broker and Seller desire to enter into an Open Listing the Forms Committee created an "Addendum" to convert the Exclusive Right-to-Sell Listing Contract into an Open Listing Contract. Meaning, the Seller will be liable for a real estate brokerage commission ONLY if the Broker is the one who finds or procures the buyer.

2. The provisions superseded by the Addendum are Section 1, Agreement, Section 7, Compensation to Brokerage Firm; Compensation to Cooperative Broker, and Section 10, Seller's Obligations to Broker; Disclosures and Consent. These provisions were modified to allow a "Broker Sale", that limits the Seller's liability for a brokerage commission to the Broker only if that Broker finds the Buyer.

P. Exclusive Right-to-Buy Listing Contract (BC60-5-09)

1. Conforming changes made to the Exclusive Right-to-Sell Listing Contract were carried over to the Exclusive Right-to-Buy Listing Contract. The major areas are identified below.

2. The Exclusive Right-to-Buy Listing Contract is appropriately referred to as the Buyer Listing Contract.
3. Section 3.8, Day; Computation of Period of Days, Deadline.
4. Section 4.3.1, In-Company Transaction – One Broker. This Section was clarified and provided a “safe harbor” if no “box” was checked. That is, the Broker will function as a Buyer’s Agent only (§4.3.1.1) unless the “box” in §4.3.1.2 is checked to then require the Broker to act as a Buyer’s Agent (treating the Seller as a customer unless the Broker is or will also act as a Seller’s Agent or a Transaction-Broker resulting in the Broker then functioning as a Transaction-Broker).
5. Section 4.3.2, Transaction-Broker. The language in this Section was clarified to specify that the Broker has the duties set forth in Section 5 (Brokerage Duties).
6. Section 7, Compensation to Brokerage Firm. The compensation payable to the Listing Brokerage Firm has been consolidated into Section 7.
7. Section 7.1, Listing Brokerage Firm or Seller May Pay. **Buyer IS Obligated** to Pay. The Broker will normally seek his fee from the Listing Brokerage Firm (or Seller), but, the Buyer is ultimately responsible to pay the Buyer’s Brokerage Firm’s commission if the box in this Section is checked.
8. Section 7.2, **Buyer Will Pay**. Some Buyer’s want their Broker to only be paid by the Buyer, thus this alternative while not normally the case, is available.
9. Section 7.3, Listing Brokerage Firm or Seller May Pay. **Buyer is NOT Obligated to Pay**. If this alternative is selected the Buyer is not liable for payment of the Brokerage Fee. This is fairly common in commercial real estate brokerage. While most residential brokers obviously prefer and typically select Section 7.1, there are instances where the Broker

is willing to try to get paid from the Listing Broker (or Seller), if not, the Broker does not get paid.

The “default”, if no box is checked in 7.1, 7.2 or 7.4, then alternative 7.2 applies and the Buyer is obligated to pay the real estate brokerage fee.

10. Section 7.4, Lease Fee, is included as some Buyer’s will want representation to either buy or lease, and thus the Brokerage fee for such services will then be specified in Section 7.4.

11. Section 7.5, Holdover Period. Like the Seller Listing Contract, Section 7.5 permits the parties to check the box whether the Broker will have entitlement if the Broker introduces the Buyer to a Property, negotiates and submits the address of the Property to the Buyer during the base Listing Period, but the contract is not entered into until the Holdover Period. This becomes important to a Buyer, especially if the Buyer enters into a subsequent Buyer Listing Contract with a separate Broker. The same issue of obligating to pay two real estate fees is present if the box “shall” owe is checked.

12. Section 11, Brokerage Services. This provision was relocated to acknowledge what “consideration” the Broker is to provide to the Buyer in locating and assisting the Buyer in the purchase of the Property.

13. Section 14, Nondiscrimination. This Section was updated to reflect the amendments to the Fair Housing Act that now include “sexual orientation.”

14. Section 20, Notice, Delivery and Choice of Law. Conforming changes as in the Contract to Buy and Sell Real Estate and Seller Listing Contract was made. This Section clarifies to whom notice may be supplied to give notice to the Buyer.

Q. Exclusive Tenant Contract (ETC59-5-09)

1. Conforming changes made to the Exclusive Tenant Contract that were made to the Exclusive Right-to-Lease Listing Contract.

2. The Exclusive Right-to-Lease Listing Contract is appropriately referred to as the Tenant Listing Contract.

R. Notice to Terminate (NTT44-5-09)

1. This form was only slightly modified. The selection “Objection to Title in § 8.5 was clarified to insert the terms “subject to correction” prior to § 8.5. This was necessary to clarify that the contract will not terminate due to an objection to title if the title problem is “corrected.” If not corrected, then this Notice to Terminate will confirm the objection and the contract will eventually terminate as the title objection was not cured.

2. The more accurate term “Causes of Loss” was substituted for the term “Casualty” in the title to § 19.1.

3. Due to the separation of Legal Fees into a stand-alone Section, the Termination Section is now found in Section 25 of the Contract to Buy and Sell Real Estate.

S. Rule F-7 (Approved Forms)

The Rule was revised to identify the revised forms, 2 new forms, and by their absence, the 5 forms repealed.

III. CONCLUSION

This paper highlighted the more significant changes to the Colorado Real Estate Commission’s new and revised Mid-year forms for 2009. 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. Black-lined comparison of NTT44 Notice to Terminate
- C. Repealed Foreclosure Property Addendum
- D. Reference draft of the Foreclosure Property Addendum with citations.
- E. Black-lined comparison of Exclusive Right-to-Sell Listing Contract