

Jim Smith

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Sent: Monday, December 13, 2010 3:15 PM
To: Jim Smith
Subject: Colorado Division of Real Estate - CP-36 Commission Position on Minimum Service Requirements



Dora Division of
Real Estate
Department of Regulatory Agencies

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From: The Colorado Division of Real Estate

Subject: New Position Statement

CP-36 Commission Position on Minimum Service Requirements

The Commission has received numerous inquiries regarding the minimum services that brokers must provide to buyers or sellers of real property. §12-61-803, C.R.S. requires that any broker performing the activities requiring a real estate broker's license as set forth in §12-61-101(2), C.R.S., act in the capacity of either a transaction broker or a single agent in the transaction. The minimum duties required to be performed by a real estate broker acting in the capacity of a single agent are set forth in §§12-61-804 and 12-61-805, C.R.S. §12-61-804, C.R.S. Single agent engaged by seller or landlord states, in part:

- (1) *A broker engaged by a seller or landlord to act as a seller's agent or a landlord's agent is a limited agent with the following duties and obligations:*
 - (a) *To perform the terms of the written agreement made with the seller or landlord;*
 - (b) *To exercise reasonable skill and care for the seller or landlord;*
 - (c) *To promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity, including, but not limited to:*
 - (I) *Seeking a price and terms which are acceptable to the seller or landlord; except that the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;*
 - (II) *Presenting all offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or a lease or letter of intent to lease;*
 - (III) *Disclosing to the seller or landlord adverse material facts actually known by the broker;*
 - (IV) *Counseling the seller or landlord as to any material benefits or risks of a transaction which are actually known by the broker;*
 - (V) *Advising the seller or landlord to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of such broker;*
 - (VI) *Accounting in a timely manner for all money and property received; and*

- (VII) *Informing the seller or landlord that such seller or landlord shall not be vicariously liable for the acts of such seller's or landlord's agent that are not approved, directed or ratified by such seller or landlord.*
- (d) *To comply with all requirements of this article and any rules promulgated pursuant to this article; and*
- (e) *To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.*

§12-61-805, C.R.S. Single agent engaged by buyer or tenant states, in part:

- (1) *A broker engaged by a buyer or tenant to act as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:*
 - (a) *To perform the terms of the written agreement made with the buyer or tenant;*
 - (b) *To exercise reasonable skill and care for the buyer or tenant;*
 - (c) *To promote the interests of the buyer or tenant with the utmost good faith, loyalty, and fidelity, including but not limited to:*
 - (I) *Seeking a price and terms which are acceptable to the buyer or tenant; except that the broker shall not be obligated to seek other properties while the buyer is a party to a contract to purchase property or while the tenant is a party to a lease or letter of intent to lease;*
 - (II) *Presenting all offers to and from the buyer or tenant in a timely manner regardless of whether the buyer is already a party to a contract to purchase property or the tenant is already a party to a contract or a letter of intent to lease;*
 - (III) *Disclosing to the buyer or tenant adverse material facts actually known by the broker;*
 - (IV) *Counseling the buyer or tenant as to any material benefits or risks of a transaction which are actually known by the broker;*
 - (V) *Advising the buyer or tenant to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of such broker;*
 - (VI) *Accounting in a timely manner for all money and property received; and*
 - (VII) *Informing the buyer or tenant that such buyer or tenant shall not be vicariously liable for the acts of such buyer's or tenant's agent that are not approved, directed, or ratified by such buyer or tenant;*
 - (d) *To comply with all requirements of this article and any rules promulgated pursuant to this article; and*
 - (e) *To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.*

The minimum duties required to be performed by a real estate broker acting in the capacity of a transaction broker are set forth in §12-61-807, C.R.S. which states, in part:

- (1) *A broker engaged as a transaction-broker is not an agent for either party;*
- (2) *A transaction-broker shall have the following obligations and responsibilities:*
 - (a) *To perform the terms of any written or oral agreement made with any party to the transaction;*
 - (b) *To exercise reasonable skill and care as a transaction-broker, including, but not limited to:*
 - (I) *Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or letter of intent;*
 - (II) *Advising the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction-broker knows but the specifics of which are beyond the expertise of such broker;*

- (III) *Accounting in a timely manner for all money and property received;*
- (IV) *Keeping parties fully informed regarding the transaction;*
- (V) *Assisting the parties in complying with the terms and conditions of any contract including closing the transaction;*
- (VI) *Disclosing to prospective buyers or tenants any adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the title, the physical condition of the property, any defects in the property, and any environmental hazards affecting the property required by law to be disclosed;*
- (VII) *Disclosing to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the buyer's or tenant's financial ability to perform the terms of the transaction and the buyer's intent to occupy the property as a principal residence; and*
- (VIII) *Informing the parties that as a seller and buyer or as landlord and tenant they shall not be vicariously liable for any acts of the transaction-broker;*
- (c) *To comply with all requirements of this article and any rules promulgated pursuant to this article; and*
- (d) *To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.*

§12-61-803, C.R.S. allows real estate brokers to perform duties in addition to those established in §§12-61-804, 12-61-805 and 12-61-807, C.R.S. The additional duties may include, but are not limited to, holding open houses, property showings, providing a lockbox, use of multiple listing services or other information exchanges, etc. Additional services that brokers agree to provide their clients must be documented in writing. A broker is not allowed to solely perform “additional” services which require a real estate broker’s license, i.e. offering the real property of another for sale through advertisements, without providing the minimum duties required by single agency or transaction brokerage. The Commission does not regulate the fees or commissions charged by brokers for minimum or additional services provided. Fees and commissions are negotiable between the broker and the principal.

Thank you,

The Colorado Division of Real Estate

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