

In Colorado, Real Estate Brokers Are Granted the Limited Practice of Law

Colorado is a great state to buy and sell real estate — and to be a real estate broker. In other states, as many as four lawyers must be retained in the typical real estate transaction — one by each party to the contract, and one by the broker for each side. This can make the cost of buying and selling real estate in such states unduly expensive.

Although I have only been a licensed real estate broker in Colorado, I have bought and sold real estate in New York, Virginia and Hawaii. Colorado is definitely the best.

In Colorado, the only costs of selling real estate are the 1) title insurance, 2) real estate commissions, and 3) the fee charged by the title company for closing the transaction, although there may be additional costs charged by your HOA or its management company, when applicable. There are no state transfer fees or taxes. Since the above fees are typically paid by the seller, a buyer who does not require a mortgage to purchase real estate pays only his share of the title company's closing fee (\$100 to \$400 typically), plus the cost of recording the transaction with the county, which is 1/10th of 1% of the sales price. Buyers who take out a mortgage loan to finance their purchase are the only ones with significant additional costs when purchasing real estate in Colorado.

In 1957, the Colorado Bar Association sued to require lawyers' involvement in real estate transactions, but the Colorado Supreme Court ruled in the Conway Bogue decision that real estate licensees could provide the limited legal service of

interpreting and completing state-approved forms for buyers and sellers.

REAL ESTATE TODAY



By **JIM SMITH, Realtor®**

Among the arguments in support of that decision, the court cited the lack or shortage of lawyers in many Colorado counties and the fact that real estate licensees had been performing that function for 50 or more years with no evidence that the public — or lawyers — had been harmed.

The court did require that this service only be performed by licensees who were retained to represent one or both parties in the transaction and that no separate fee be charged for completing the forms beyond the compensation already being earned by the licensee for the transaction.

Sixty-three years later, the Conway Bogue decision is still the law in Colorado, allowing the limited practice of law by real estate brokers, and we can all be glad for it. Imagine if you had to pay \$100 or more per hour to a lawyer to counsel you through every step of a real estate sale or purchase!

As I said, we licensees only have the ability to interpret and complete state-approved forms, such as listing agreements, buyer agency agreements, purchase contracts, counterproposals, amendments, disclosures, inspection objections, post-closing occupancy agreements, and the numerous other forms approved by the Colorado Real Estate Commission.

Any seller is allowed to replace those state-

approved forms with ones created by an attorney, and home builders routinely use their own contracts. While we can and do represent buyers of new homes, we may not counsel our buyers regarding those documents, since that *would* constitute practicing law without a license. Instead, we must recommend that buyers hire a real estate lawyer to review them. Of course, we only *recommend* legal advice (just as we recommend getting tax advice), but the buyer is free to ignore that recommendation, which many of them do, opting instead to study the documents by themselves and ask questions of the builder's sales personnel.

Do You Really Need a Buyer's Agent?

Like most real estate professionals, my broker associates and I make a living representing both sellers and buyers of real estate. Occasionally I encounter a buyer who doesn't want to have an agent of his own, preferring to deal directly with the listing agent.

The most common reason given is that the buyer thinks he can negotiate a better deal by saving the seller the 2.8% commission typically paid to a buyer's agent. In fact, doing so usually saves the seller nothing since the buyer's agent is paid by the listing agent, not by the seller. Although our policy at Golden Real Estate is to reduce the listing commission if we don't have to share it with the buyer's agent, that's not the practice among the majority of listing brokerages.

Also, there's the issue of representation. If you deal directly with the listing agent, the best you can expect is that the agent will be a neutral party, but in most cases that agent will continue to work in the seller's best interest and treat you as a "customer." As a buyer, you should really want someone on your side, negotiating in *your* best interest, not just regarding the contract price but later when it comes to inspection and other issues. In the case of buying from a builder, such representation is even more important.

Real Estate Agents Have a Responsibility to Report Wrongdoing

As with many professions, we real estate professionals are largely, though not completely, self-policing. Indeed, in a recent continuing education class, we were taught that we have an "affirmative responsibility" to report wrongdoing by our colleagues, whether the offense is illegal, contrary to real estate commission or MLS rules, or, in the case of Realtors, is unethical.

(Many real estate agents belong to brokerages where membership in the Realtor association is not required, and only Realtors are bound by the Realtor Code of Ethics and can be disciplined for violating it. Ask if *your* broker is a Realtor.)

Of course, the public can also file complaints against licensees. You can do it online (Google "Colorado Division of Real Estate complaint process") or you can mail a complaint to the Division at 1560 Broadway, Suite 925, Denver CO 80202. You can ask to remain anonymous, but an investigator will call to interview you.

Unless a broker is independent, you can also complain to his brokerage. Ask to speak with the managing broker. If he's a Realtor, you can file an ethics complaint with his Realtor association.

I have filed complaints about illegal behavior with the Division. I have also sent numerous emails to our MLS about violations of MLS rules and regulations — including last week when a listing agent listed himself instead of one of our

broker associates as the selling agent for his listing. (Email compliance@REcolorado.com.) I have also filed ethics complaints against a fellow Realtor through my Realtor association.

By accepting that "affirmative responsibility" to report wrongdoing of any kind by fellow licensees and fellow Realtors, we protect and advance the reputation of our industry and of the Realtor brand. As managing broker at Golden Real Estate, I promote this responsibility, as I did at our weekly office meeting earlier this month.

Although some people like to demean real estate licensees and even Realtors, I have found that the vast majority of us are true professionals who put our clients' interests above our own, as required by both law and ethics, and I am proud to be a member of this profession.

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