

**DESIGNATED BROKERAGE  
AND  
NEW & NEWLY-REVISED FORMS**

**Annual "Lurking Legal Issues" Seminar  
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HARK, THE FORMS COMMITTEE SINGS!  
GLORIES TO WHAT THE LEGISLATURE BRINGS!

The recent enactment of amendments to § 12-61-801, et. seq., C.R.S., concerning real estate brokerage relationships, will have a far-reaching and, we submit, a very positive effect on the practice of real estate brokerage in Colorado, because it brings the law more in line with both the expectations of the public about who represents them, and the behavior of real estate brokers out in the field. The amendments are effective January 1, 2003.

- I. What are the major points of the Designated Brokerage amendments to the real estate brokerage relationships statute?
  - A. Brokerage relationships now exist at the level of the individual broker and his or her client, rather than at the company level.
  - B. This means that different brokers within the same company can represent different sides of a transaction.
  - C. Clients are not liable for the negligence or wrongdoing of their brokers unless the negligence or wrongdoing was approved, directed or ratified by the client.
  - D. Dual agency is prohibited -- an individual broker who works with both sides of a transaction may only:
    1. Represent one party and treat the other as a customer, or
    2. Be a transaction broker
  - E. Subagency is outlawed!
  - F. The term "customer" is now defined in the statute: a party to the transaction with whom the broker has *no* brokerage relationship (either agency or transaction brokerage).
  - G. The concept and term, "designated broker" is new. It means the individual broker who is designated by the employing broker to perform the contract (i.e., either the listing contract or the buyer or tenant-broker contract) with the client. Other brokers within the company (including the employing broker) have no brokerage relationship with the client. More than one broker (a team) can be designated to work with a given client.
  
- II. What has *not* changed?
  - A. The broker's company still owns the listing or buyer/tenant-broker contract.
  - B. The company is still vicariously liable for the negligence or wrongdoing of its brokers, and the employing broker still has a duty to supervise the company's brokers.
  - C. Commissions are still paid to the company, and an individual broker must still be paid only through his or her company.
  - D. In the absence of a written contract, a broker working with a buyer, seller, landlord or tenant is presumed to be a transaction-broker.

- E. Appropriate and timely disclosures of brokerage relationships must still be made.
  - F. Duties of agents and transaction-brokers are unchanged; but the duties now exist at the level of the individual broker rather than extending to all brokers within the brokerage company.
- III. What changes will brokers and brokerage companies need to make changes to their office policies?
- A. Elimination of any references to subagency and dual agency, and modifications to policies about in-company transactions.
  - B. Decisions about:
    1. whether the employing broker will also work with clients, and if so, what will happen when a need arises to give guidance to or exercise supervision over the "opposing broker" in a transaction,
    2. what procedures will be implemented to protect the confidential information of clients,
    3. how broker designations will be made (see new Rule E-38),
    4. inclusion of the employing broker's right to substitute or add designated brokers to a client assignment,
    5. what policies need to be implemented to protect confidential information of clients when a broker is removed from designation as the broker to work with a client.
- IV. What forms implement the changes in the statute?
- A. Exclusive Right-to-Sell Contracts, both agency and transaction-brokerage (LC 10, 11, 12 and 20)
  - B. Exclusive Right-to-Buy Contracts (BC 17 and 27)
  - C. Exclusive Right-to-Lease Listing Contracts (LC 15 and 35) (*being finalized*)
  - D. Exclusive Tenant Contracts (ETC 9 and 39) (*being finalized*)
  - E. Definitions of Working Relationships (DD 25)
  - F. Brokerage Disclosure to Buyer ((BD 24) note that there is now one, unified form for disclosure to buyers)
  - G. Brokerage Disclosure to Seller (Sale by Owner) (SD 16)
  - H. Change of Status form (CS 23)
- V. Other new or newly-revised forms for your reading pleasure:
- A. Listing Company's Well Checklist (*no CREC number*) (new; optional)
  - B. Seller's Property Disclosure (Residential) form (LC 18 (revised; mandatory *if any* disclosure form is used)

- C. Seller's Property Disclosure (Vacant Land) form (LC 38) (new; mandatory *if any* disclosure form is used)
- D. Earnest Money Release form (EMR 83) (new; optional)
- E. Revised "broker acknowledgements" section in Contracts to Buy and Sell (CBS 1, 2 and 3)
- F. Affordable housing fund language which may be added to Contracts to Buy and Sell (CBS 1, 2 and 3)

VI. Transition Issues

- A. What about existing listings and buyer or tenant contracts with terms that extend into 2003?
- B. How should brokers handle listings and buyer or tenant contracts entered into during the next 19 days?

ATTACHMENTS - FORMS READY FOR USE:

1. LC 11-1-03 Exclusive Right-to-Sell Listing Contract (Commercial) (Seller Agency)
2. LC 12-1-03 Exclusive Right-to-Sell Listing Contract (F&R/VL) (Seller Agency)
3. LC 13-1-03 Exclusive Agency Listing Contract (All Types of Properties) (Seller Agency)
4. LC 14-1-03 Open Listing Contract (Agency) (All Types of Properties)
5. LC 21-1-03 Exclusive Right-to-Sell Listing Contract (Commercial) (T-B)
6. LC 22-1-03 Exclusive Right-to-Sell Listing Contract (F&R/VL) (T-B)
7. BC 17-1-03 Exclusive Right-to-Buy Contract (Buyer Agency)
8. BC 27-1-03 Exclusive Right-to-Buy Contract (T-B)
9. DD 25-1-03 Definitions of Real Estate Brokerage Relationships
10. BD 24-1-03 Brokerage Disclosure to Buyer
11. SD 16-1-03 Brokerage Relationships Disclosure (Sale by Owner)
12. CS 23-1-03 Change of Status
13. Well checklist [no number]
14. LC 18-1-03 Seller's Property Disclosure (Residential)
15. LC 38-1-03 Seller's Property Disclosure (Vacant Land)
16. EMR 83-1-03 Earnest Money Release
17. Broker acknowledgment language for contracts to buy & sell
18. Language to add regarding deposits of interest into affordable housing funds

Forms being finalized:

1. LC 15-1-03 Exclusive Right-to-Lease Listing Contract (Agency)
2. LC 35-1-03 Exclusive Right-to-Lease Listing Contract (T-B)
3. ETC 9-1-03 Exclusive Tenant Contract (Agency)
4. ETC 39-1-03 Exclusive Tenant Contract (T-B)