

**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
REAL ESTATE BROKERS
4CCR 725-1**

E-47 Short Sales

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Section 1. Authority

The statutory basis for the adoption of this rule regarding real estate brokers is Parts 1, 2 and 8 of Title 12, Article 61 C.R.S. The specific rulemaking provisions contained therein are sections 12-61-114(4) and 12-61-114.5, C.R.S.

Section 2. Scope and Purpose

Short sales have become increasingly more common in Colorado due to the economic downturn. The potential for foreclosure has escalated due to high unemployment rates and stringent lending regulations. A short sale transaction enables a property owner, who is unable to complete the terms of the finance agreement made with the lien holder, to negotiate a sale of the real property for an amount that is less than that owed on the note. A consummated short sale transaction relieves the seller of the monthly mortgage payment, but may require payment of the deficiency. The deficiency is the difference between the amount owed on the note less the negotiated short sale price. If the lien holder elects to waive payment of the deficiency, the seller may ultimately be liable to pay tax on the forgiven deficiency. These transactions are financially beneficial to lien holders as they do not have to expend legal fees to foreclose on property, nor do they bear the financial burden caused by maintaining an inventory of foreclosed real properties.

It has come to the attention of the Colorado Real Estate Commission (the "Commission") that many of these short sale transactions lack full disclosure to the seller and the lien holder(s) that there is the potential that an intermediary buyer, who during the negotiated purchase of the property through a short sale, has negotiated to sell the property at a profit to an ultimate buyer. The Commission has been notified of transactions that have occurred without the lien holder or seller having knowledge of the second, contingent transaction or the ultimate buyer being aware that a lower purchase price could have been negotiated if the ultimate buyer had dealt directly with the seller. The seller, lien holder

and ultimate buyer are frequently not apprised of the details by the intermediary buyer, who expects to profit from the simultaneous transactions.

In many short sale transactions, the purchase of the property from the seller by the intermediary occurs on the same day as the purchase of the property by the ultimate buyer from the intermediary buyer. These are commonly referred to as simultaneous closings with the funds from the ultimate buyer being used by the intermediary buyer to fund the purchase from the seller, thus violating provisions and rules regarding good funds.

The purpose of this rule is to ensure that real estate brokers disclose to the seller and the lien holder that there is a potential likelihood that an ultimate buyer may purchase the property at a price higher than the negotiated short sale price, resulting in a possible profit to an intermediary buyer. This rule would clarify the real estate broker's disclosure obligations when participating in a short sale transaction.

Section 3. Applicability

This rule applies to real estate brokers licensed by the Colorado Real Estate Commission.

Section 4. Short Sales

- A. When involved in a short sale transaction, a real estate broker is required to disclose to the seller the existence, potential and likelihood that there is an buyer that will ultimately purchase the property for more than the lien holder is willing to accept in the original short sale.
- B. The Contract to Buy and Sell and/or any amendments to the purchase contract must include a disclosure that the contract between the seller and any intermediary buyer may be contingent upon a sale of the property to an ultimate buyer and the ultimate buyer's ability to perform the terms of the purchase contract with the intermediary buyer.
- C. A real estate broker must disclose any incentives to the seller for additional compensation received as the result of net proceeds from the short sale if the buyer is willing to pay a price higher than the price established by the lien holder.
- D. If a real estate broker is aware that a short sale has occurred and a buyer will be paying an amount higher than the negotiated short sale price, the real estate broker must disclose to the buyer the date of the short sale and the sales price.
- E. Real estate brokers must comply with good funds requirements, particularly in transactions involving simultaneous closings. Brokers must inform the parties to the transactions of the good funds requirements.
- F. The real estate broker representing the intermediary buyer must ensure that the buyer is financially able to complete the terms of the purchase transaction and that good funds exist to close the transaction.
- G. Real estate brokers participating in short sales transactions must use the Commission approved Short Sale Addendum contract.

Section 5. Enforcement

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including but not limited to:
 - a. Revocation;
 - b. Refusal to renew a license; and
 - c. Imposition of fines.

Section 6. Effective Date

This permanent rule shall be effective _____.