

CHAPTER 271

PROFESSIONS AND OCCUPATIONS

SENATE BILL 02-196

BY SENATOR(S) Perlmutter, Anderson, Hagedorn, Hernandez, McElhany, Phillips, Taylor, Teck, Chlouber, Epps, May, and Owen;
also REPRESENTATIVE(S) Spradley, Chavez, Groff, Grossman, Kester, Stafford, White, Harvey, Jameson, King, Paschall, Rippy, Vigil, and Williams S.

AN ACT**CONCERNING REAL ESTATE BROKERS WHO ARE ENGAGED BY MEMBERS OF THE PUBLIC.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-61-801 (1), Colorado Revised Statutes, is amended to read:

12-61-801. Legislative declaration. (1) The general assembly finds, determines, and declares that the public will best be served through a better understanding of the public's legal and working relationships with real estate brokers and by being able to engage any such real estate broker on terms and under conditions that the public and the real estate broker find acceptable. This includes engaging a broker as a single agent ~~subagent, dual agent,~~ or transaction-broker. INDIVIDUAL MEMBERS OF THE PUBLIC SHOULD NOT BE EXPOSED TO LIABILITY FOR ACTS OR OMISSIONS OF REAL ESTATE BROKERS THAT HAVE NOT BEEN APPROVED, DIRECTED, OR RATIFIED BY SUCH INDIVIDUALS. Further, the public should be advised of the general duties, obligations, and responsibilities of a THE real estate broker ~~in any particular real estate transaction~~ THEY ENGAGE.

SECTION 2. 12-61-802 (3) and (6), Colorado Revised Statutes, are amended, and the said 12-61-802 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-61-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1.3) "CUSTOMER" MEANS A PARTY TO A REAL ESTATE TRANSACTION WITH WHOM THE BROKER HAS NO BROKERAGE RELATIONSHIP BECAUSE SUCH PARTY HAS NOT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ENGAGED OR EMPLOYED A BROKER.

(1.5) "DESIGNATED BROKER" MEANS AN EMPLOYING BROKER OR EMPLOYED BROKER WHO IS DESIGNATED IN WRITING BY AN EMPLOYING BROKER TO SERVE AS A SINGLE AGENT OR TRANSACTION-BROKER FOR A SELLER, LANDLORD, BUYER, OR TENANT IN A REAL ESTATE TRANSACTION. "DESIGNATED BROKER" DOES NOT INCLUDE A REAL ESTATE BROKERAGE FIRM THAT CONSISTS OF ONLY ONE LICENSED NATURAL PERSON.

(3) "Limited agent" means an agent whose duties and obligations to a principal are only those set forth in section 12-61-804 OR 12-61-805, ~~or 12-61-806~~; with any additional duties and obligations agreed to pursuant to section 12-61-803 (5).

(6) "Transaction-broker" means a broker who assists one or more parties throughout a contemplated real estate transaction with communication, interposition, advisement, negotiation, contract terms, and the closing of such real estate transaction without being an agent or advocate for the interests of any party to such transaction. Upon agreement in writing pursuant to section 12-61-803 (2) ~~(a)~~ or a written disclosure pursuant to section 12-61-808 (2) (d), a transaction-broker may become a single agent. ~~subagent, or dual agent.~~

SECTION 3. 12-61-803 (1), (2), (3), and (4), Colorado Revised Statutes, are amended, and the said 12-61-803 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-61-803. Relationships between brokers and the public. (1) When engaged in any of the activities enumerated in section 12-61-101 (2) or (3), a broker may act in any transaction as a single agent, ~~subagent, dual agent~~, or transaction-broker. The broker's general duties and obligations arising from that relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to section 12-61-808.

(2) A broker shall be considered a transaction-broker unless A SINGLE AGENCY RELATIONSHIP IS ESTABLISHED THROUGH A WRITTEN AGREEMENT BETWEEN THE BROKER AND THE PARTY OR PARTIES TO BE REPRESENTED BY SUCH BROKER.

~~(a) A single agency or dual agency relationship is established through a written agreement between the broker and the party or parties to be represented by such broker; or~~

~~(b) A broker works with a buyer or tenant as a subagent of the seller or landlord by expressly agreeing with the seller or landlord to serve as a subagent or by impliedly agreeing to serve as a subagent by acting upon and thereby accepting an offer of subagency.~~

(3) A broker may work with a single party in separate transactions pursuant to different relationships including but not limited to selling one property as a seller's agent and working with that seller in buying another property as a transaction-broker OR buyer's agent, ~~or subagent~~, BUT ONLY if the broker complies with this part 8 in establishing the relationships for each transaction.

(4) A broker or salesperson licensed pursuant to part 1 of this article, whether acting as a single agent, subagent, dual agent, or transaction-broker, may complete standard forms including those promulgated by the Colorado real estate commission and may advise the parties as to effects thereof if the broker or salesperson is performing the activities enumerated or referred to in subsection (2) or (3) of section 12-61-101 (2) OR (3) in the transaction in which the forms are to be used. In any such transaction, the broker shall advise the parties that the forms have important legal consequences and that the parties should consult legal counsel before signing such forms.

(6) (a) IF A REAL ESTATE BROKERAGE FIRM HAS MORE THAN ONE LICENSED NATURAL PERSON, THE EMPLOYING BROKER OR AN INDIVIDUAL BROKER EMPLOYED OR ENGAGED BY THAT EMPLOYING BROKER SHALL BE DESIGNATED TO WORK WITH THE SELLER, LANDLORD, BUYER, OR TENANT AS A DESIGNATED BROKER. THE EMPLOYING BROKER MAY DESIGNATE MORE THAN ONE OF ITS INDIVIDUAL BROKERS TO WORK WITH A SELLER, LANDLORD, BUYER, OR TENANT.

(b) THE BROKERAGE RELATIONSHIP ESTABLISHED BETWEEN THE SELLER, LANDLORD, BUYER, OR TENANT AND A DESIGNATED BROKER, INCLUDING THE DUTIES, OBLIGATIONS, AND RESPONSIBILITIES OF THAT RELATIONSHIP, SHALL NOT EXTEND TO THE EMPLOYING BROKER NOR TO ANY OTHER BROKER EMPLOYED OR ENGAGED BY THAT EMPLOYING BROKER WHO HAS NOT BEEN SO DESIGNATED AND SHALL NOT EXTEND TO THE FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, CORPORATION, OR OTHER ENTITY THAT EMPLOYS SUCH BROKER.

(c) A REAL ESTATE BROKER MAY HAVE DESIGNATED BROKERS WORKING AS SINGLE AGENTS FOR A SELLER OR LANDLORD AND A BUYER OR TENANT IN THE SAME REAL ESTATE TRANSACTION WITHOUT CREATING DUAL AGENCY FOR THE EMPLOYING REAL ESTATE BROKER, OR ANY BROKER EMPLOYED OR ENGAGED BY THAT EMPLOYING REAL ESTATE BROKER.

(d) AN INDIVIDUAL BROKER MAY BE DESIGNATED TO WORK FOR BOTH A SELLER OR LANDLORD AND A BUYER OR TENANT IN THE SAME TRANSACTION AS A TRANSACTION-BROKER FOR BOTH, AS A SINGLE AGENT FOR THE SELLER OR LANDLORD TREATING THE BUYER OR TENANT AS A CUSTOMER, OR AS A SINGLE AGENT FOR A BUYER OR TENANT TREATING THE SELLER OR LANDLORD AS A CUSTOMER, BUT NOT AS A SINGLE AGENT FOR BOTH. THE APPLICABLE DESIGNATED BROKER RELATIONSHIP SHALL BE DISCLOSED IN WRITING TO THE SELLER OR LANDLORD AND BUYER OR TENANT IN A TIMELY MANNER PURSUANT TO RULES PROMULGATED BY THE REAL ESTATE COMMISSION.

(e) A DESIGNATED BROKER MAY WORK WITH A SELLER OR LANDLORD IN ONE TRANSACTION AND WORK WITH A BUYER OR TENANT IN ANOTHER TRANSACTION.

(f) WHEN A DESIGNATED BROKER SERVES AS A SINGLE AGENT PURSUANT TO SECTION 12-61-804 OR 12-61-805, THERE SHALL BE NO IMPUTATION OF KNOWLEDGE TO THE EMPLOYING OR EMPLOYED BROKER WHO HAS NOT BEEN SO DESIGNATED.

(g) THE EXTENT AND LIMITATIONS OF THE BROKERAGE RELATIONSHIP WITH THE DESIGNATED BROKER SHALL BE DISCLOSED TO THE SELLER, LANDLORD, BUYER, OR TENANT WORKING WITH THAT DESIGNATED BROKER PURSUANT TO SECTION

12-61-808.

(7) NO SELLER, BUYER, LANDLORD, OR TENANT SHALL BE VICARIOUSLY LIABLE FOR A BROKER'S ACTS OR OMISSIONS THAT HAVE NOT BEEN APPROVED, DIRECTED, OR RATIFIED BY SUCH SELLER, BUYER, LANDLORD, OR TENANT.

(8) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE EMPLOYING BROKER'S OR FIRM'S RESPONSIBILITY TO SUPERVISE LICENSEES EMPLOYED BY SUCH BROKER OR FIRM NOR TO SHIELD SUCH BROKER OR FIRM FROM VICARIOUS LIABILITY.

SECTION 4. 12-61-804 (1) (c) (VII) and (5), Colorado Revised Statutes, are amended to read:

12-61-804. Single agent engaged by seller or landlord. (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:

(c) To promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity, including, but not limited to:

(VII) Informing the seller or landlord that such seller or landlord ~~may~~ 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. ~~or any subagent when the broker is acting within the scope of the agency relationship.~~

(5) (a) ~~A seller or landlord may agree in writing with a seller's or landlord's agent that other brokers may be retained and compensated as subagents.~~

(b) ~~Any broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1), (2), (3), and (4) of this section.~~ A DESIGNATED BROKER ACTING AS A SELLER'S OR LANDLORD'S AGENT MAY COOPERATE WITH OTHER BROKERS BUT MAY NOT ENGAGE OR CREATE ANY SUBAGENTS.

SECTION 5. 12-61-805 (1) (c) (VII), Colorado Revised Statutes, is amended, and the said 12-61-805 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-61-805. Single agent engaged by buyer or tenant. (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:

(c) To promote the interests of the buyer or tenant with the utmost good faith, loyalty, and fidelity, including, but not limited to:

(VII) Informing the buyer or tenant that such buyer or tenant ~~may~~ SHALL NOT be vicariously liable for the acts of such buyer's or tenant's agent ~~when such agent is acting within the scope of the agency relationship~~ THAT ARE NOT APPROVED, DIRECTED, OR RATIFIED BY SUCH BUYER OR TENANT;

(5) A BROKER ACTING AS A BUYER'S OR TENANT'S AGENT OWES NO DUTY TO

CONDUCT AN INDEPENDENT INSPECTION OF THE PROPERTY FOR THE BENEFIT OF THE BUYER OR TENANT AND OWES NO DUTY TO INDEPENDENTLY VERIFY THE ACCURACY OR COMPLETENESS OF STATEMENTS MADE BY THE SELLER, LANDLORD, OR INDEPENDENT INSPECTORS; EXCEPT THAT NOTHING IN THIS SUBSECTION (5) SHALL BE CONSTRUED TO LIMIT THE BROKER'S DUTIES AND OBLIGATIONS IMPOSED PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(6) A BROKER ACTING AS A BUYER'S OR TENANT'S AGENT MAY COOPERATE WITH OTHER BROKERS BUT MAY NOT ENGAGE OR CREATE ANY SUBAGENTS.

SECTION 6. 12-61-806, Colorado Revised Statutes, is amended to read:

12-61-806. Dual agent. (1) A broker ~~may act as a~~ SHALL NOT ESTABLISH dual agent ~~only with the informed consent of all parties to the transaction. Such informed consent shall be evidenced by a written agreement pursuant to section 12-61-808 (2)~~ (e). The seller and buyer or the landlord and tenant shall be informed that they may both be vicariously liable for the acts of the dual agent when such agent is acting within the scope of the dual agency relationship AGENCY WITH ANY SELLER, LANDLORD, BUYER, OR TENANT.

(2) A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections 12-61-804 and 12-61-805 unless otherwise provided for in this section:

(3) Except as provided for in subsections (4) and (5) of this section, a dual agent may disclose any information to one party that such agent gains from the other party if such information is relevant to the transaction or party:

(4) The following information shall not be disclosed by a dual agent without the informed written consent of the parties to the proposed transaction:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(c) What the motivating factors are for any party buying, selling, or leasing the property;

(d) That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered; and

(e) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.

(5) (a) A dual agent shall not disclose to one party information made confidential by statute, regulation, or instructions from the other party except for information required to be disclosed pursuant to sections 12-61-804 (3) and 12-61-805 (3).

(b) No cause of action by any person shall arise against a dual agent for making

~~any required disclosure.~~

~~(c) A dual agent does not terminate the dual agency relationship by making any required disclosure.~~

~~(6) In a dual agency relationship there shall be no imputation of knowledge or information between any party and the dual agent or among persons within an entity engaged as a dual agent.~~

SECTION 7. 12-61-807 (6) (d) and (8), Colorado Revised Statutes, are amended to read:

12-61-807. Transaction-broker. (6) A transaction-broker may do the following without breaching any obligation or responsibility:

(d) Serve as a single agent ~~subagent, or dual agent~~ OR TRANSACTION-BROKER for the same or for different parties in other real estate transactions.

(8) A transaction-broker may cooperate with other brokers but shall not engage OR CREATE any subagents.

SECTION 8. 12-61-808 (1) (a), (1) (b), (1) (c), (2) (b), (2) (c), (2) (d) (I), and (2) (e), Colorado Revised Statutes, are amended, and the said 12-61-808 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-61-808. Broker disclosures. (1) (a) Any person, firm, partnership, limited liability company, association, or corporation acting as a broker shall adopt a written office policy ~~which~~ THAT identifies and describes the relationships ~~in which such broker may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities~~ OFFERED TO THE PUBLIC BY SUCH BROKER.

(b) A broker shall not be required to offer or engage in any one or in all of the brokerage relationships enumerated in sections 12-61-804, ~~to~~ 12-61-805, OR 12-61-807.

(c) Written disclosures and written agreements required by subsection (2) of this section shall contain a statement to the seller, landlord, buyer, or tenant that different brokerage relationships are available ~~which~~ THAT include buyer agency, seller agency, ~~subagency,~~ or STATUS AS A transaction-broker. Should the seller, landlord, buyer, or tenant request information or ask questions concerning a brokerage relationship not offered by the broker pursuant to the broker's written office policy enumerated in subsection (1) (a) of this section, the broker shall provide to the party a written definition of that brokerage relationship ~~which~~ THAT has been promulgated by the Colorado real estate commission.

(2) (b) Prior to engaging in any of the activities enumerated in ~~subsection (2) or (3)~~ of section 12-61-101 (2) OR (3), a broker intending to establish a single agency relationship with a seller, landlord, buyer, or tenant shall enter into a written agency agreement with the party to be represented. Such agreement shall disclose the duties and responsibilities specified in section 12-61-804 or 12-61-805, as applicable. ~~including a disclosure that the party to be represented may be vicariously liable for~~

~~the acts of the broker and of any subagents while such broker or subagent is acting within the scope of the agency relationship.~~ Notice of the single agency relationship shall be furnished to any prospective party to the proposed transaction in a timely manner.

~~(c) Prior to engaging in any of the activities enumerated in subsection (2) or (3) of section 12-61-101, a seller's or landlord's agent shall execute a written agreement with the seller or landlord specifying whether an offer of subagency may be made to any other broker. Such agreement shall indicate that a seller or landlord may be held vicariously liable for the acts of any subagent.~~

(d) (I) Prior to engaging in any of the activities enumerated in ~~subsection (2) or (3)~~ of section 12-61-101 (2) OR (3), a broker intending to work with a buyer or tenant as an agent ~~or subagent~~ of the seller OR LANDLORD shall provide a written disclosure to such buyer or tenant ~~which~~ THAT shall contain the following:

(A) A statement that the broker is an agent for the seller or landlord and is not an agent for the buyer or tenant; ~~unless the broker enters into a written agreement to act as a buyer's or tenant's agent;~~

(B) A list of the tasks that the agent ~~acting as a subagent~~ intends to perform FOR THE SELLER OR LANDLORD with the buyer or tenant; and

(C) A statement that the buyer or tenant shall not be vicariously liable for the acts of the agent ~~when acting as a subagent~~ UNLESS THE BUYER OR TENANT APPROVES, DIRECTS, OR RATIFIES SUCH ACTS.

~~(e) A broker intending to act as a dual agent shall obtain the written agreement of the seller and buyer or landlord and tenant permitting the broker to serve as a dual agent in the proposed transaction. Such agreement shall disclose and include a recitation of the responsibilities and obligations required pursuant to section 12-61-806. Such agreement shall also state that the seller and buyer or landlord and tenant can both be held vicariously liable for the acts of a dual agent when such agent is acting within the scope of the dual agency relationship.~~

(g) (I) PRIOR TO ENGAGING IN ANY OF THE ACTIVITIES ENUMERATED IN SECTION 12-61-101 (2) OR (3), THE SELLER, BUYER, LANDLORD, OR TENANT SHALL BE ADVISED IN ANY WRITTEN AGREEMENT WITH A BROKER THAT THE BROKERAGE RELATIONSHIP EXISTS ONLY WITH THE DESIGNATED BROKER, DOES NOT EXTEND TO THE EMPLOYING BROKER OR TO ANY OTHER BROKERS EMPLOYED OR ENGAGED BY THE EMPLOYING BROKER WHO ARE NOT SO DESIGNATED, AND DOES NOT EXTEND TO THE BROKERAGE COMPANY.

(II) NOTHING IN THIS PARAGRAPH (g) SHALL BE CONSTRUED TO LIMIT THE EMPLOYING BROKER'S OR FIRM'S RESPONSIBILITY TO SUPERVISE LICENSEES EMPLOYED BY SUCH BROKER OR FIRM NOR TO SHIELD SUCH BROKER OR FIRM FROM VICARIOUS LIABILITY.

SECTION 9. 12-61-809 (2) (a), Colorado Revised Statutes, is amended to read:

12-61-809. Duration of relationship. (2) (a) Except as otherwise agreed to in

writing and pursuant to paragraph (b) of this subsection (2), a broker engaged as a seller's agent OR buyer's agent ~~subagent, or dual agent~~ owes no further duty or obligation after termination or expiration of the contract or completion of performance.

SECTION 10. 12-61-810 (3) and (4), Colorado Revised Statutes, are amended to read:

12-61-810. Compensation. (3) A seller or landlord may agree that a transaction-broker OR single agent ~~or subagent~~ may share the commission or other compensation paid by such seller or landlord with another broker.

(4) A buyer or tenant may agree that a single agent OR transaction-broker ~~or subagent~~ may share the commission or other compensation paid by such buyer or tenant with another broker.

SECTION 11. Effective date - applicability. This act shall take effect January 1, 2003, and shall apply to acts committed on or after said date.

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2002