



**COLORADO ASSOCIATION OF
BUSINESS INTERMEDIARIES**

2017

March 15, 2017

12th Annual Conference




IZBIKY & ASSOCIATES
ATTORNEYS AT LAW
Specializing in the
Purchase & Sale of Businesses



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IV. 2017 CREC Real Estate Update Course

Presented by ~ Jon Goodman - Frasca, Joiner, Goodman and Greenstein, P.C.

Conference Schedule

7:00 a.m. - 7:45 am.

Registration/Continental Breakfast

7:45 a.m. - 8:15 a.m.

Welcome and Introduction

Presented by Al Fialkovich, CABI President

8:15 a.m. - 9:00 a.m.

Workshop - Who Is The Client?

Presented by Peter Nemkov

9:00 a.m. - 9:45 a.m.

Workshop - Deal Points In Asset Purchase Agreements

Presented by Julian Izbiky

9:45 a.m. - 10:15 a.m.

Morning Break & Exhibits

10: 15 a.m. – 11:45 a.m.

Legal Panel – Open Q&A About Legal Issues In Business Brokerage

Presented by Bradley Benson, Trevor Crow, Julian Izbiky, John Meininger, and Peter Nemkov

11: 45 a.m. - 1:00 p.m.

Networking Lunch & Exhibits

1:00 p.m. - 3:00 p.m.

CREC 2015 Real Estate Update Course – Part I

Presented by Jon Goodman - Frasca, Joiner, Goodman and Greenstein, P.C.

3:00 p.m. - 3:15 p.m.

Afternoon Break

3:15 p.m. - 5:00 p.m.

CREC 2015 Real Estate Update Course – Part II

Presented by Jon Goodman - Frasca, Joiner, Goodman and Greenstein, P.C.

5:00 p.m.

Adjourn



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Providing value without exception



**COLORADO ASSOCIATION OF
BUSINESS INTERMEDIARIES**

Speaker and Session Information

We are honored to have enlisted the following exceptional speakers to share their industry expertise and insight with you at this year's annual conference.

CABI



Al Fialkovich
CABI President

Al Fialkovich is the Managing Director at Transworld Business Advisors of Denver which provides merger and acquisition services for businesses under \$20 million in valuation. In his role, he oversees a team of brokers and the sale of an average of 30 small to medium size businesses a year. His focus is on running seamless transactions, constant honest communication, and maintaining relationships with clients has brought Al the most satisfaction in his career and has earned him multiple awards for the firm.

Al graduated with honors from Bentley University in Massachusetts. He began his career in the finance field with Liberty Mutual Group and Related Companies before embarking on his entrepreneurial ventures. Al and his wife Jessica have owned 5 companies, currently running 2 and selling 3. In his off time, Al serves as a board member for Junior Achievement.

He enjoys spending time with his wife, Jessica and their dog Sailor enjoying all Colorado has to offer.

2017 CABI Conference Welcome and Introduction

Dear Spring Conference Attendee,

Welcome to the annual Colorado Association of Business Intermediaries (CABI) conference. 2017 is going to be another inspiring year of high transaction potential, which I am sure everyone has already geared up to take on! As most of you have experienced, these past few years have seen a record number of listings across the state, as well as nationwide. It is certainly a great time to be working within the merger and acquisitions industry!

As such we have an illuminating conference prepared, for our attendees, to discuss some of the issues Colorado brokers come up against in the current business climate. A big focus of the CABI conference will center around the legal aspects of business brokerage touching on Asset Purchase Agreements as well as an open Q & A with industry experts. This is an especially important topic to dive into as the industry is quickly developing, and ensuring we grow on top of a solid foundation is more important than ever.

As we get ready to learn in the name of both self-development and overall industry improvement, I want everyone to keep in mind that something as simple as a superior work ethic is the key to future growth and maturation. Thomas Edison once wisely said that, "Vision without execution is just hallucination."

Sincerely,
Al Fialkovich



Peter M. Nemkov
Nemkov and Bonifazi, PLLC

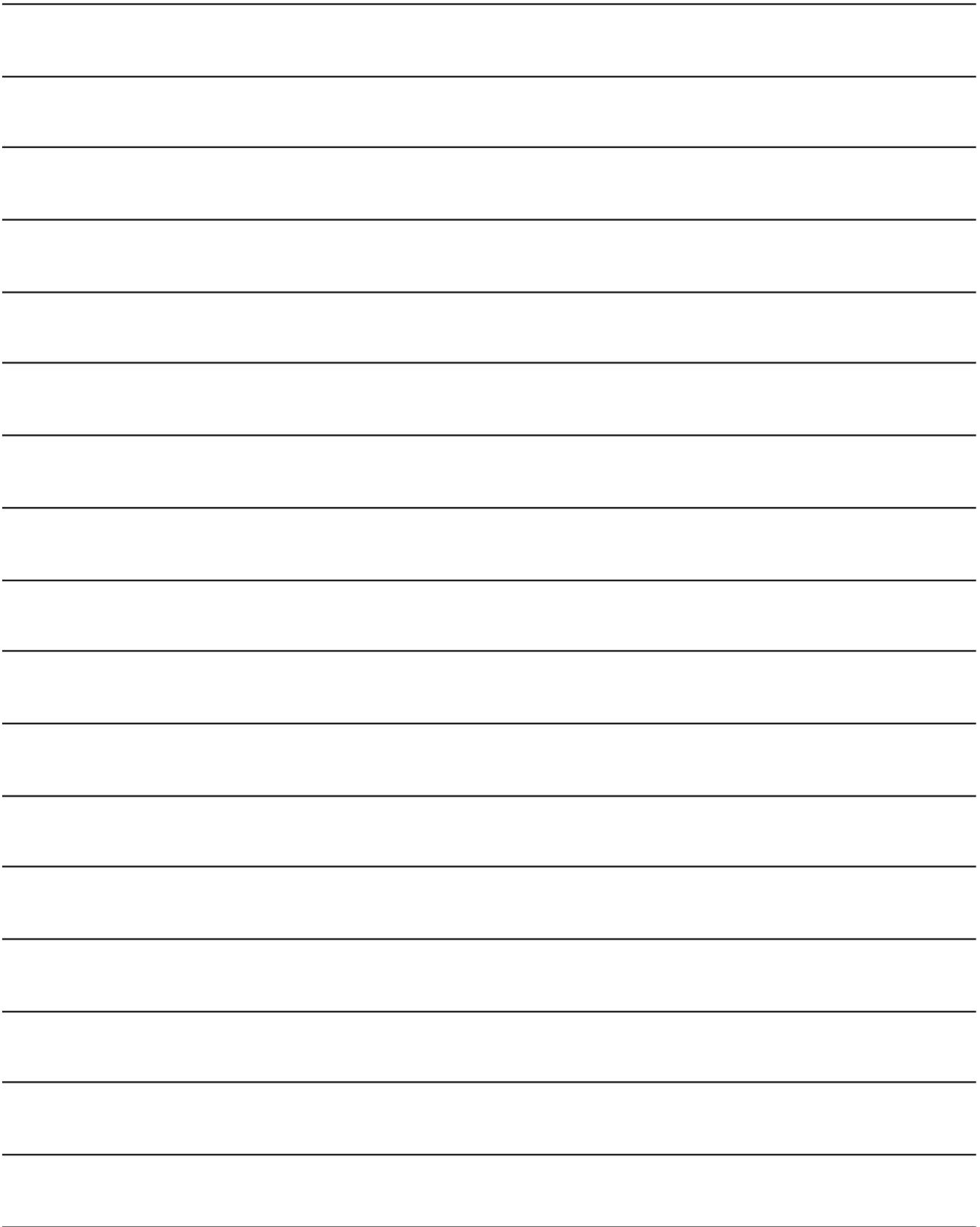
Who Is The Client?

Mr. Nemkov received his B.S. in history from the "Honors College" in 1967 from the University of Michigan, and received his J.D. "With Honors" in 1971, from George Washington University Law School in Washington, D.C.

Thereafter, he became an associate and later a partner at the law firm of Keller & Heckman, in Washington, D.C., representing of various industries before numerous federal regulatory agencies, including serving as Assistant General Counsel for the Society of the Plastics Industry (SPI).

He moved to Denver in 1979 and has specialized in the legal practice of corporate, real estate, business acquisition, liquor licensing and trade association matters. Such activities include the organization, structuring, financing and operation of corporations and LLCs, real estate transfers of residential, commercial, and industrial real property, and leasing matters. In the area of business acquisitions, activities include contract drafting and negotiations, preparation of financing and loan documents, and performing Escrow Closing functions. In this latter regard, he has been involved in over 2000 Closings.

Mr. Nemkov is a member of the bars of the State of Colorado; U.S. District Court and Court of Appeals for the District of Colorado; U. S. District Court and Court of Appeals for the District of Columbia; and the United States Supreme Court.



WHO IS THE CLIENT?

The Problem

A common problem faced by brokers (and lawyers) when completing an Asset Purchase Agreement or a Listing Agreement is determining who is the client. The problem arises when there is **an individual involved who is an owner of a business entity**. The typical scenario is that the individual gives confusing information intermixing himself with the entity or more commonly misidentifies the entity itself.

Who Signs What?

This problem can become magnified in the subsequent negotiation and preparation of related documents such as Leases or Lease Assignments, Franchise Agreements, Loan Documents, and Licensing.

Entities Involved

For a quick listing of the structures involved, the most common business entities are the -

S Corporation - comprised of -

- Shareholders - who are the owners

- Board of Directors - who make the business decisions

- Officers (President, Secretary, etc.) - who sign the documents

Limited Liability Company (LLC) - comprised of -

- Members - who are the owners

- Management (this is tricky)

 - Some LLCs are managed by Managers (similar to a corporation's Board of Directors)

 - Some LLCs are managed by the Members

 - There are no Officers in an LLC

Partnerships

Sole Proprietors

Understand the Entity Legal Function and Purpose

As an aside, the main purpose of S Corporations and LLCs (as opposed to sole proprietorships or partnerships) is to provide -

- certain tax benefits - as a tax "pass-through" structure - and
- protection against personal liability - as the "corporate veil".

The decision of whether to use either of the structures is usually driven by tax considerations.

New Client Checklist

When engaging a new client, the best **first step** is to determine the status of the client by checking the **Colorado Secretary of State's** website -

www.sos.state.co.us/biz/businessEntityCriteriaExt.do

and check for the Records Search/Summary.

The Records Search/Summary will accurately identify the entity's name, registered address and name of the registered agent (who is typically an owner). The Summary will also state whether the entity is in "Good Standing" or is "Delinquent" (which usually occurs when the Annual Report is not filed with the Secretary of State).

Second, check **other sources documents** for information about the structure of the client can be found in such documents as -

S Corporation -

ByLaws - to determine quorum and voting rights needed to sell or purchase a business

Organizational or Annual Minutes - to determine the identity of the Officers, Directors and Shareholders

Shareholder Buy-Sell Agreement - to determine the rights of the Shareholders in the event of a stock sale

Limited Liability Company (LLC) - all of the information contained in the series of corporate documents listed above are combined and contained in one document called the **Operating Agreement**.

Tradenname - Which Name to Use

Another area of confusing information is the business tradenname, where the client will intermix the entity name - which is the party with the legal right to enter into the transaction - with the tradenname - which is a name or a "doing business as" but which has no legal authority. The status of tradenames and their relationship to the actual entity name can also be determined by checking on the same Colorado Secretary of State website.

Conclusion

Making some initial determinations at the beginning of a transaction as to the actual identity of the client can prevent subsequent "pain and suffering" as the transaction progresses and the numerous documents are being negotiated and prepared.

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Mr. Nemkov has provided corporate legal services for CABI, is a transactional business attorney, and has been involved in over 2,000 business closings.

CABI



Julian Izbiky
Izbiky & Associates

Deal Points In Asset Purchase Agreements

Julian grew up in Lakewood, New Jersey, on the Jersey shore. After graduating from Lakewood High School in 1973, he received degrees from Brandeis University (B.A. economics, 1977, Phi Beta Kappa, Magna Cum Laude), and the University Of Michigan Law School (1980).

Julian is a member of the American Bar Association, the Colorado Bar Association, the Arapahoe County Bar Association, and the Colorado Association of Business Intermediaries (past member of the board of directors). Julian is also currently a member of the Board of Directors of the non-profit Jewish Family Service.

When not working, Julian spends time with his wife Jennifer and their teenage son Alex, rides his bicycle, walks his golden retriever Chloe, hikes, cross-country skis, snow shoes, and avidly follows the Colorado Rockies.



DEAL POINTS
IN
ASSET PURCHASE
AGREEMENTS

Presented to the
CABI 2017 Spring Conference

by

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ASSET PURCHASE AGREEMENT

Purchaser, Inc., a Colorado corporation (“Purchaser”), Aspen Machine Shop Inc., a Colorado corporation (“Seller”), John Smith, an individual, and Mary Smith, an individual (John Smith and Mary Smith each, a “Shareholder”, and together, “Shareholders”) (solely as to Sections 4.2, 5, 6.1, 7.1, 7.3, 7.4, 9.1, 9.3, 11, and 12), enter into this Asset Purchase Agreement (this “Agreement”) dated March 2, 2017.

RECITALS

A. Seller is engaged in the operation of a machine shop and a metal fabrication business (Seller’s business is referred to herein as the “Business”). Shareholders together are the record and beneficial owners of 100% of the issued and outstanding capital stock of Seller. The Business is located at 1234 S. Santa Fe St., Denver, CO 80018 (the “Premises”).

B. Seller desires to sell substantially all of the assets of the Business to Purchaser, and Purchaser desires to purchase such assets of the Business from Seller, pursuant to the terms set forth below.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, promises, agreements, representations, warranties, and conditions contained herein, the parties agree as follows:

1. Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell, assign, transfer, and deliver to Purchaser, and Purchaser agrees to purchase, accept, and acquire from Seller, all of the right, title, and interest of Seller in and to the assets of Seller used in the Business, free and clear of any and all liens, security interests, leases, or other encumbrances of whatever nature (the assets being transferred pursuant to this Agreement are collectively referred to herein as the “Assets”), but excluding the assets identified below in Section 1.14 as being retained by Seller (collectively, the “Excluded Assets”). The Assets include the following:

1.1. Tangible Personal Property and Leasehold Improvements. All of Seller’s tangible assets, including all furniture, equipment, fixtures, computer hardware and computer peripherals, vehicles, materials, and supplies (collectively, the “Tangible Personal Property”), and leasehold improvements owned by Seller. The Tangible Personal Property includes the personal property listed on **Exhibit 1.1** attached hereto.

1.2. Inventory. All of Seller’s inventory (collectively, the “Inventory”).

1.3. Records. All of Seller’s records, including electronic records, relating to the operation of the Business, including the following: customer records; supplier records; employee records; and database files (collectively the “Records”).

1.4. Deposits and Prepaid Expenses. All deposits and prepaid expenses and similar prepaid items paid by Seller. If any deposits are retained by the party currently holding them after the closing of this asset purchase transaction (the “Closing”) and such party credits Purchaser for such deposits (“Deposits”), Purchaser shall reimburse Seller for such Deposits at the Closing.

1.5. Contracts. All of Seller's rights, powers, and remedies under all contracts to which Seller is a party that Purchaser agrees to assume as of the Closing Date (as defined below), if and to the extent that they may be lawfully transferred by Seller to Purchaser.

1.6. Licenses. All licenses, permits, authorizations, approvals, consents, and other rights used in connection with the Business (collectively, the "Licenses"), if and to the extent that they may be lawfully transferred by Seller to Purchaser (software licenses are not included within the definition of "Licenses", for purposes of this Agreement, as they are covered in Section 1.11).

1.7. Warranties. All warranties, rights, and claims of Seller under all existing manufacturer's warranties relating to any of the Assets transferred hereunder.

1.8. Intellectual Property. All of Seller's intellectual property rights pertaining to the Business (collectively, "Intellectual Property"), including (a) all service mark, trademark, and trade name rights in the name and mark "Aspen Machine Shop", and any other marks used in the Business, including any federal registrations thereof, and any variations thereof and related logos; (b) Seller's domain name www.aspenmachineshop.com, the associated website, including content and software, and any other URLs registered by Seller; (c) all of Seller's social media pages, including content; and (d) all trade secrets and confidential information owned by Seller, including know-how, customer lists, prospect lists, supplier lists, specifications and similar information of Seller used in the Business.

1.9. Goodwill. All of Seller's goodwill as a going concern relating to the Business.

1.10. Telephone Numbers and Listings; E-Mail Addresses. Seller's telephone numbers and facsimile numbers, including (303) 932-1111, (888) 821-1111, and (303) 374-1111, and all e-mail addresses and telephone book listings pertaining to the Business.

1.11. Computer Software. All of Seller's computer software, media and programs used in the Business, all data and information contained therein, and the related licenses (collectively, "Software"), to the extent that they may be lawfully transferred to Purchaser.

1.12. Advertising. All of Seller's existing advertising, media, and promotional materials, including catalogs, in all formats including all hard copies and electronic copies, whether currently in use by Seller or used in past advertising.

1.13. Other Assets. All other assets of every kind and nature owned by Seller and used in connection with the Business, but excluding the Excluded Assets.

1.14. Excluded Assets. As used in this Agreement, "Excluded Assets" means (a) Seller's cash and cash equivalents as of the Closing Date; (b) Seller's money in bank accounts and in other accounts as of the Closing Date; (c) Seller's security deposits and prepaid accounts paid on or prior to the Closing Date; (d) accounts receivable arising from goods shipped or services performed by Seller prior to the Closing Date (collectively, the "Excluded Accounts Receivable"); (e) Seller's minute books and stock books; (f) Seller's records relating solely to (i) liabilities of the Business not assumed by Purchaser hereunder, or (ii) assets specifically excluded under this Section 1.14; (g) Seller's 401k plans; (h) all rights to refunds attributable to the cancellation of Seller's insurance policies; (i) all credits, deposits, rights to refund, claims or other assets of any nature whatever arising in respect of all federal,

state, and local taxes (including any associated interest) with respect to operation of the Business on or prior to the Closing Date; and (j) the personal property listed on **Schedule 1.14** attached hereto.

2. Purchase Price and Payment. Subject to the adjustments described below, the purchase price to be paid by Purchaser to Seller for the Assets is \$1,200,000.00 (the "Purchase Price"). The Purchase Price, as adjusted pursuant to this Agreement, including for Inventory, Deposits and pro-rations, shall be payable to Seller as follows:

2.1. Earnest Money Deposit. Purchaser has previously deposited an earnest money deposit to the trust account of Izbiky & Associates PLLC ("Izbiky") in the amount of \$50,000.00 (the "Earnest Money Deposit"). The Earnest Money Deposit shall be (a) applied to the Purchase Price at the Closing; (b) returned to Purchaser if this asset purchase transaction does not close due to the failure of a condition set forth in Section 4.5 to be satisfied; or (c) paid to Seller if Purchaser does not close this asset purchase transaction for a reason other than the failure of a condition set forth in Section 4.5 to be satisfied.

2.2. Promissory Note.

2.2.1. At the Closing, Purchaser shall make a promissory note (the "Note") payable to Seller in the principal amount of \$120,000.00 plus interest at the rate of five percent (5%) per year during the term of the Note. The Note shall be on full standby for the first twenty-four months, and no principal or interest payments shall be due or payable, but interest shall accrue during such twenty-four month period. Thereafter, payments of principal and interest shall be due and payable in sixty equal monthly payments, with the first payment due twenty-five months following the date of Closing, and each subsequent payment shall be due and payable on the same day of each subsequent month for sixty months. The Note shall provide for a ten day grace period, a five percent (5%) late fee, acceleration upon default after an additional ten days written notice and right to cure, a default rate of interest of ten percent (10%) per year, and no prepayment penalty. John Jones and Mary Jones (collectively, "Guarantors") shall execute a personal guaranty at the Closing guaranteeing the payment of the Note (the "Personal Guaranty"). The Note shall be secured by the Assets pursuant to a security agreement (the "Security Agreement"), which security interest will be subordinate to the security interest of Purchaser's lender, Wells Fargo Bank, National Association ("Lender"), and Seller shall execute the subordination agreement which Lender requires.

2.2.2. The Note shall be subject to a right of setoff as follows. If, after the Effective Time (as defined below), Purchaser receives notice that Seller has not paid any amount owed by Seller to a third party, then Purchaser shall provide Seller with written notice of such claim. Seller shall have thirty days within which to resolve such claim. If Seller does not resolve such claim to the reasonable satisfaction of Purchaser within such thirty-day period, then Purchaser may pay such amount(s) and receive a credit to be applied to the next unpaid principal amount(s), or to the next due monthly installment(s), as applicable, owed pursuant to the Note, up to the amount(s) so paid by Purchaser.

2.3. Funds Due at Closing. At the Closing, Purchaser shall pay Seller the remaining amount of the Purchase Price (\$1,030,000.00), subject to adjustment as set forth herein, including for items such as Inventory, Deposits, and pro-rations, in immediately available funds.

2.4. Inventory Adjustment. Within one day prior to the Closing, Seller and Purchaser shall jointly conduct a physical count and review of the Company's inventory to determine the value of the marketable Inventory as of the Closing. The value of the marketable Inventory will be mutually agreed to by the parties based upon Seller's cost to acquire the Inventory. If the aggregate value of the Inventory as determined pursuant to this Section is (a) less than \$100,000.00, then the Purchase Price shall be reduced dollar-for-dollar in the amount of such shortfall, and the funds due at Closing pursuant to Section 2.3 shall be reduced accordingly; and (b) greater than \$100,000.00, then the Purchase Price shall be increased dollar-for-dollar in the amount of such excess, and the funds due at Closing pursuant to Section 2.3 shall be increased accordingly.

Alternative provision for a bike shop: The parties shall, immediately before the Closing, jointly take a physical inventory of Seller's saleable inventory of new bicycles, parts, and accessories for sale to customers (collectively, the "Inventory"), with the value of the Inventory determined at Seller's cost, except that as to Inventory consisting of non-current model year bicycles the Inventory will be valued at eighty percent (80%) of Seller's cost of such Inventory.

3. Allocations, Pro-rations, and Sales/Use Taxes.

3.1. Allocations of the Purchase Price. The Purchase Price shall be allocated among the Assets in accordance with the allocation set forth in **Exhibit 3.1** attached hereto. Each of the parties shall report the purchase and sale of the Assets in accordance with such allocation for federal, state, and local tax purposes, including such reports to be filed on Internal Revenue Service Form 8594 by each of the parties.

3.2. Pro-rations. All items of income or expense regarding the Assets or the Business which properly apply to periods commencing prior to and ending after the Effective Time shall be prorated between Seller and Purchaser as of the close of business on the day prior to the Closing Date. These items shall include, if applicable: rent, personal property taxes, advertising, and accrued employee vacation time.

3.3. Sales/Use Taxes. Purchaser shall pay any sales, use, or other transfer taxes owed as a result of the purchase and sale of the Assets.

4. The Closing.

4.1. The Closing. Upon the terms and subject to the conditions of this Agreement, the Closing shall take place on or before March 24, 2017, or such earlier date acceptable to the parties when Lender is able to close its loan with Purchaser (the Closing date shall be referred to herein as the "Closing Date" or "date of Closing"), at such time and place as may be agreed upon by the parties. The Closing shall be effective as of 12:01 a.m. on the Closing Date (the "Effective Time").

4.2. Seller's and Shareholders' Deliveries. At the Closing, Seller shall deliver to Purchaser (a) a bill of sale and assignment and a subordination agreement in a form acceptable to Lender, each executed by Seller; (b) the non-competition and non-solicitation agreement as provided for in Section 5 (the "Non-Competition Agreement"), executed by Seller and Shareholders; and (c) corporate resolutions approving this transaction executed by Shareholders and Seller's board of directors. In addition, Seller and Shareholders shall execute and deliver other documents at the Closing

as appropriate.

4.3. Purchaser's Deliveries. At the Closing, Purchaser shall pay the cash portion of the Purchase Price, as adjusted as set forth herein, and Purchaser shall deliver to Seller (a) the Note and the Security Agreement, each executed by Purchaser; (b) the Personal Guaranty executed by Guarantors; and (c) corporate resolutions approving this transaction executed by Purchaser's board of directors. In addition, Purchaser shall execute and deliver other documents at the Closing as appropriate.

4.4. Seller's Conditions to Close. Seller's obligation to close the transaction contemplated hereby at the Closing shall be subject to Seller's receipt of Purchaser's deliveries set forth in Section 4.3 and the complete satisfaction and fulfillment of all of the following conditions precedent, any or all of which may be waived in whole or in part by Seller (but no such waiver of any such condition precedent shall be or constitute a waiver of any other covenant, promise, agreement, representation, or warranty made by Purchaser in this Agreement):

4.4.1. All representations and warranties made by Purchaser in this Agreement shall be true and accurate in all material respects as of the Effective Time;

4.4.2. All covenants, promises, and agreements made by Purchaser in this Agreement and all other actions required to be performed or complied with by Purchaser under this Agreement prior to or at the Closing shall have been fully performed or complied with by Purchaser; and

4.4.3. The parties shall have agreed upon the items that, pursuant to the terms of this Agreement, are to be agreed upon by the parties prior to the Closing, which items include the terms of the Closing documents.

4.5. Purchaser's Conditions to Close. Purchaser's obligation to close the transaction contemplated hereby at the Closing shall be subject to Purchaser's receipt of Seller's and Shareholders' deliveries set forth in Section 4.2 and the complete satisfaction and fulfillment of all of the following conditions precedent, any or all of which may be waived in whole or in part by Purchaser (but no such waiver of any such condition precedent shall be or constitute a waiver of any covenant, promise, agreement, representation, or warranty made by Seller or any Shareholder in this Agreement):

4.5.1. All representations and warranties made by Seller and Shareholders in this Agreement shall be true and accurate in all material respects as of the Closing Date;

4.5.2. All covenants, promises, and agreements made by Seller and/or Shareholders in this Agreement and all other actions required to be performed or complied with by Seller and/or Shareholders under this Agreement prior to or at the Closing shall have been fully performed or complied with by Seller and/or Shareholders;

4.5.3. There is no material adverse change in the Business or the Assets on or prior to the Closing Date;

4.5.4. Purchaser shall have received a written loan commitment from Lender for the financing of the transaction contemplated hereby on terms acceptable to Purchaser in its sole

discretion, and such loan shall be funded at the Closing;

4.5.5. Subject to the time limitations set forth in Section 7.7 below, Purchaser shall be satisfied, in its sole discretion, with the results of its due diligence investigation of Seller, the Assets, the Real Estate, and the Business; and

4.5.6. The parties shall have agreed upon the items that, pursuant to the terms of this Agreement, are to be agreed upon by the parties prior to the Closing, which items include the terms of the Closing documents.

4.6. Notice of Termination. Purchaser and Seller each shall have until and including the date of Closing to notify the other party in writing that it is terminating this Agreement because a condition set forth above has not been satisfied, in which case this Agreement shall become null and void, all parties shall be fully and completely released herefrom, and the Earnest Money Deposit shall be returned to Purchaser.

5. Non-Competition/Non-Solicitation Agreement. For a period of seven (7) years after the Closing Date, Seller and each Shareholder agrees not to (a) directly or indirectly solicit any past, present, or future customers or employees of the Business; or (b) compete with Purchaser, directly or indirectly, regarding the machine shop or metal fabrication business anywhere within the United States of America. For purposes of this Agreement, direct and indirect competition shall include, but not be limited to, competition as a sole proprietor, partner, corporate officer, director, shareholder, member, manager, employee, agent, independent contractor, trustee, or in any other manner in which either Seller or any Shareholder holds any beneficial interest in a competitive business, derives any income from such business, or provides any service, including the benefit of its/his/her reputation or know-how, to such business. However, notwithstanding the foregoing, Seller and Shareholders may (i) own less than 1% of the issued and outstanding shares of stock of a publicly traded company; (ii) work for Purchaser as an independent contractor; or (iii) manufacture and sell fishing rods and reels without being considered to be in violation of the Non-Competition Agreement. At the Closing, Seller and Shareholders shall enter into a separate Non-Competition Agreement including these terms.

6. Representations and Warranties.

6.1. Representations and Warranties by Seller and Shareholders. Seller and Shareholders, jointly and severally, each represents and warrants to Purchaser as follows:

6.1.1. Title to the Assets. Seller has good and merchantable title to all of the Assets, or, as to Software not owned by Seller, valid software licenses. All of the Assets are sufficient to operate the Business in the ordinary course, consistent with past practice.

6.1.2. Assets Transferred Free of Liens. The Assets will be transferred at the Closing free and clear of any and all liens, encumbrances, or claims of any nature, including liens for taxes, except for liens relating to the sales or use taxes arising from the sale hereunder, which Purchaser shall pay.

6.1.3. Condition of Assets. Each item of Tangible Personal Property is in good operating condition and repair and free of defects, subject to ordinary wear and tear.

6.1.4. Insurance. Seller shall maintain its existing insurance in full force and effect through the Closing Date. Since January 1, 2016, (a) Seller has received no notice of default, cancellation, or termination with respect to any of its existing insurance policies; and (b) Seller has not been refused any insurance, nor has coverage been reduced, with respect to any aspect of its operations. There are no pending or, to the knowledge of any Shareholder, threatened disputes relating to coverage or other disputed claims under any of Seller's insurance policies.

6.1.5. Tax Matters. Seller has timely filed all federal, state, and local tax returns or reports required to be filed by Seller. Seller has paid, or has properly provided for their payment when due, all federal, state, and local taxes (and all interest, penalties, or additions to tax thereon, if any), including, without limitation, all income, sales, use, property, payroll, unemployment withholding, occupation, gross receipts, value added, excise, and estimated taxes due or which later become due and payable by Seller with respect to all taxable periods up to and including the period ending on the Closing Date. There are no due and unpaid assessments or proposals by any taxing authority for taxes for which Seller does not have adequate reserves, there are no pending audits of Seller, and Seller has not waived restrictions on assessment or collection of taxes or consented to the extension of any statute of limitations related to any federal, state, or local taxes. All taxes that Seller is or was required by law to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper governmental or regulatory official, body, or authority ("Governmental Authority") or person.

6.1.6. Compliance with Laws. To the knowledge of Seller and the Shareholders, Seller and the Business are in compliance with all laws, statutes, rules, regulations, codes, and ordinances of any Governmental Authority (collectively, "Laws") which apply to the Business or the Assets. Neither Seller nor any Shareholder has received any written or oral notice that Seller or the Business is not in compliance with any Laws.

6.1.7. Licenses. Seller has all Licenses necessary to operate the Business, and the Licenses are valid and in effect as of the date hereof. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any License.

6.1.8. Software. Seller has fully paid, valid, and enforceable licenses to use all Software. Seller shall provide the Software, including any related documentation, to Purchaser at Closing. Seller does not own any Software and does not use any Software except for commercially available off-the-shelf Software.

6.1.9. Legal Proceedings. No claim, action, demand, lawsuit, audit, inquiry, litigation, arbitration, investigation, or other proceeding of any nature of or before any court, arbitrator, or Governmental Authority (collectively "Claims") which relates to Seller, any Asset, or the Business is pending or, to the knowledge of any Shareholder, threatened. Neither Seller nor any Shareholder is a party to or subject to the provisions of any judgment, order, writ, injunction, decree, or award of any court, arbitrator, or Governmental Authority which would adversely affect Seller, the Business, the Assets, or the transaction contemplated hereby.

6.1.10. Intellectual Property. Seller's rights in the Intellectual Property are valid

and enforceable. The conduct of the Business does not infringe or otherwise violate and has not at any time infringed or otherwise violated any intellectual property or other proprietary rights of any individual or company, and there is no claim or other action pending, or to the knowledge of Seller and Shareholders, threatened, alleging any such infringement or violation or challenging Seller's rights in or to any Intellectual Property, and, to the knowledge of Seller and Shareholders, there is no existing fact or circumstance that would be reasonably expected to give rise to any such claim or other action. To the knowledge of Seller and Shareholders, no person is infringing or otherwise violating any rights of Seller in any of its Intellectual Property.

6.1.11. Financial Statements. The financial statements concerning the Business which Seller has provided to Purchaser, which are listed on **Exhibit 6.1.11** attached hereto (collectively, the "Financial Statements"), fairly and accurately present the financial condition of Seller and the results of its operations as of the dates thereof and throughout the periods covered thereby in all material respects. There has been no material adverse change in the financial condition or the results of operations of the Business since the date of the most recent Financial Statements, and there shall be no material adverse change in the financial condition or the results of operations of the Company during the period between the execution of this Agreement and the Closing Date. There have been no expenses required to operate the Business that are not included in the Financial Statements, except for those incurred in the ordinary course of the Business since the date of the most recent Financial Statements.

6.1.12. Accounts Payable. Seller has timely paid or will timely pay any and all accounts payable and liabilities due and payable by Seller as of the Closing Date in connection with the operation of the Business, except to the extent that the same are being duly contested by Seller and such contest does not adversely affect Purchaser's ability to operate the Business from and after the Closing Date.

6.1.13. The Records. The Records that have been delivered by Seller to Purchaser or that shall be delivered by Seller to Purchaser after the Closing are true, complete, and correct in all material respects.

6.1.14. Employment Matters.

(a) Seller has provided Purchaser with, or will provide Purchaser with prior to the Closing, (i) a complete and accurate list of all employees and independent contractors employed or engaged by Seller in connection with its Business (including any employee who is an inactive employee on paid or unpaid leave of absence) as of the Closing, including each such person's name, title, date of hire, and current compensation rate and other compensation, and (ii) a complete and accurate list of all benefits Seller provides to its employees.

(b) As of the Closing Date, Seller will have paid to its employees and independent contractors all wages, bonuses, commissions, and other benefits and sums due or accrued to such employees and independent contractors, including accrued employee vacation time, as of the Effective Time (and all required taxes, insurance, social security, and withholdings thereon).

6.1.15. Suppliers. Neither Seller nor any Shareholder has received any written or oral notice that any of the suppliers of goods or services material to Seller or the Business during the one year period prior to the date of this Agreement will cease to continue to provide goods or services to the

Business or Purchaser, or will materially change the terms pursuant to which goods or services are sold to the Business after Closing.

6.1.16. No Conflicting Agreements. Seller is not a party to any contract, agreement, or other obligation which is in default or which will become in default by reason of the execution and consummation of this Agreement or the transactions contemplated hereby. There are no agreements in effect that would prevent Seller or any Shareholder from concluding the transaction described in this Agreement.

6.1.17. No Material Omissions or Misrepresentations. This Agreement, any exhibits hereto, and any documents furnished by Seller or any Shareholder in connection with the negotiation and completion of the transactions contemplated by this Agreement do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not misleading.

6.1.18. Corporate Status. Seller is a corporation duly incorporated and existing in good standing under the laws of the State of Colorado. Shareholders are the sole shareholders and members of the Board of Directors of Seller.

6.1.19. Corporate Actions. All actions required of Seller hereunder, including the execution of this Agreement, the Non-Competition Agreement, and the subordination agreement, and the consummation of all transactions provided for herein and therein, have been duly authorized by appropriate actions of Shareholders and Seller's board of directors. This Agreement, the Non-Competition Agreement, the subordination agreement, and each of the other Closing documents have been, and shall be, duly executed and delivered by Seller and Shareholders, and are, or shall be when delivered, valid and enforceable against Seller and Shareholders in accordance with their respective terms.

6.1.20. Adverse Conditions. Neither Seller nor any Shareholder has any knowledge of any existing condition, state of facts or circumstances which is reasonably likely to adversely affect the Business or prevent Purchaser from profitably carrying on the Business.

6.1.21. Customers. Seller maintains generally good relationships with its customers and there have been no material disputes with any customer since January 1, 2016. Since January 1, 2016, Seller has operated the Business in the ordinary course and has not made agreements with customers that would (a) have the impact of accelerating items to the benefit of Seller or Shareholder prior to the Effective Time; or (b) create discounts or other obligations of the Business after the Effective Time outside of the ordinary course. To the knowledge of Seller and Shareholder, since January 1, 2016, none of Seller's customers has informed Seller or Shareholder, either orally or in writing, that such customer (i) will cease to be a customer of Seller; (ii) will reduce the extent to which, or materially alter the terms on which, such customer will in the future utilize the services of Seller or purchase goods or services from Seller, or (iii) is having financial difficulties or will not pay in full any of Seller's accounts receivable. **Schedule 6.1.21** sets forth a complete and accurate list of Seller's top twenty customers by sales revenue for the calendar years 2015 and 2016 and year to date 2017, including the amount of sales revenue attributable to each such customer.

6.1.22. Work in Process. With respect to all projects that Seller has commenced working on and that will not be completed by Seller as of the Closing Date, which projects are listed on **Schedule 6.1.22** (Seller will update **Schedule 6.1.22** as of the date of the Closing (collectively, the “Open Projects”), (a) neither Seller nor Shareholder has received any notice, oral or written, that any Open Project will be terminated, that the extent of business to be provided by Seller or the Business with respect to any Open Project will be materially reduced, or that the terms of any Open Project as it relates to Seller or the Business will be materially altered other than in the ordinary course of performance under the terms of such Open Project.

6.1.23. Quality of the Company’s Work. To the knowledge of Seller and Shareholder: (a) all of the customer projects that Seller has completed have been satisfactorily completed, or, to the extent that they were not initially satisfactorily completed, Seller has already remedied any defects in regard to such projects to the satisfaction of Seller’s applicable customers; and (b) there are no known liabilities relating to warranty work or defects with respect to completed projects or work in process.

6.1.24. Representations Accurate as of the Closing Date. All of Seller’s and Shareholders’ representations and warranties contained in this Agreement shall be correct, accurate, and effective as of the Closing Date.

6.2. Representations and Warranties by Purchaser. Purchaser represents and warrants to Seller as follows:

6.2.1. No Conflicting Agreements. Purchaser is not a party to any contract, agreement, or other obligation which is in default or which will become in default by reason of the execution and consummation of this Agreement or the transactions contemplated hereby. There are no agreements in effect that would prevent Purchaser from concluding the transaction described in this Agreement.

6.2.2. Corporate Status. Purchaser is a corporation duly organized and existing in good standing under the laws of the State of Colorado.

6.2.3. Corporate Actions. All actions required of Purchaser hereunder, including the execution of this Agreement, the Note, and the Security Agreement, and the consummation of all transactions provided for herein and therein, have been duly authorized by appropriate actions of Purchaser’s board of directors. This Agreement, the Note, the Security Agreement, and each of the other Closing documents have been, and shall be, duly executed and delivered by Purchaser, and are, or shall be when delivered, valid and enforceable against Purchaser in accordance with their respective terms.

6.2.4. Representations Accurate as of the Closing Date. All of Purchaser’s representations and warranties contained in this Agreement shall be correct, accurate, and effective as of the Closing Date.

7. Additional Covenants.

7.1. Conduct of Business Prior to Closing. Between the date of this Agreement

and the Closing, Seller and Shareholders shall: (a) operate the Business only in the ordinary course of business in a manner consistent with the past practices of Seller; (b) except as otherwise directed by Purchaser in writing, use its best efforts to preserve intact Seller's current business organization, keep available the services of Seller's employees, and independent contractors and maintain Seller's relations and good will with suppliers, customers, creditors, employees, agents, and others having business relationships with the Business; (c) confer with Purchaser prior to implementing operational decisions of a material nature; (d) report periodically to Purchaser concerning the status of Seller's business operations, finances, and Inventory levels; (e) make no material changes in management personnel without prior consultation with Purchaser; (f) maintain the Assets in good working condition, ordinary wear and tear excepted; (g) keep in full force and effect, without amendment, all material rights relating to the Business; (h) comply with all legal requirements and contractual obligations applicable to the operations of the Business; (i) continue in full force and effect the insurance coverage which the Business currently has, or substantially equivalent policies; (j) maintain all books and records of Seller relating to the Business in the ordinary course of business consistent with the past practices of Seller; and (k) not sell any of the Assets, except in the ordinary course of business consistent with past practices.

7.2. Exclusivity. Until March 31, 2017, unless this transaction is sooner terminated as set forth herein, Seller and Shareholders shall negotiate exclusively with Purchaser with respect to the sale of the Assets or the stock of Seller, and neither Seller nor any Shareholder shall, directly or indirectly, discuss or negotiate with any entity or person, or entertain or consider any inquiries or proposals, relating to the possible disposition of the Assets or stock of Seller.

7.3. Transition Assistance. For a period of sixty days following the Closing Date (the "Initial Training Period"), Shareholders shall each provide Purchaser with training and familiarization regarding the operation of the Business, during normal business hours, for no additional consideration, as follows: _____ [TBD]. Thereafter, Shareholders shall be reasonably available to answer Purchaser's questions by telephone or email for no additional consideration. Immediately following the Closing, Seller shall provide Purchaser with Seller's Ebay and Amazon seller's ID's, accounts, and login information.

7.4. Availability of Records. After the Closing Date, Seller and Shareholders will have, at reasonable times and with reasonable notice, access to the Records Purchaser has obtained from Seller to the extent that Seller will require access to such Records for tax or other legitimate business reasons; provided, however, that nothing in this section shall impose a duty on Purchaser to maintain such Records in any particular form or for any particular period of time and Seller and Shareholders shall maintain as confidential any trade secrets or confidential information set forth in such Records.

7.5. Loss/Damage. In the event there is any loss or damage to any of the Assets at any time prior to the Effective Time, the risk of loss shall be upon Seller. After the Effective Time, all risk of loss or damage shall be upon Purchaser.

7.6. Storage Facility. Following the Closing, Seller will permit Purchaser to use Seller's storage facility for two months rent free.

7.7. Purchaser's Due Diligence Prior to Closing. Upon execution of this Agreement, Purchaser and its representatives will be afforded reasonable access, upon reasonable notice

to Seller, to inspect any and all items relating to the Business and the Assets, including, but not limited to, Seller's financial information, Seller's contracts, the Records, the Inventory, all other Assets, and the Real Estate, in a manner that does not unreasonably interfere with the operation of the Business; provided, however, that Purchaser shall not contact Seller's employees (other than the General Manager who Purchaser may contact after full execution of this Agreement with the introduction and cooperation of Seller) without the prior consent of Seller and not until Purchaser has completed all of its other due diligence, and Purchaser has received a written loan commitment from Lender for the financing of this transaction. Subject to the foregoing, Seller shall, upon request of Purchaser, promptly make available to Purchaser such key employees (other than the General Manager) and all such items for Purchaser's review, and Purchaser shall maintain the confidentiality of such items pursuant to Section 10 of this Agreement. Purchaser's due diligence period and right to terminate this Agreement and receive the return of its earnest money deposit, except in regard to interviewing Seller's key employees other than the General Manager, shall expire on the date that is twenty-one days after the execution of this Agreement, and with regard to interviewing key employees other than the General Manager, shall expire one week after Purchaser's meeting with such key employees.

7.8. Warranty Work. If Seller delivered, or delivers following the execution of this Agreement, any projects to customers that are defective and under a valid warranty issued by Seller to such customer, and following the Closing Purchaser after consultation with Seller and Shareholders remedies such defects, then Seller shall reimburse to Purchaser the actual direct out-of-pocket costs which Purchaser pays to remedy such defects, including materials and employee costs relating to the time spent on warranty work. Purchaser shall promptly consult with Shareholders regarding such warranty work claims prior to remedying them. In order to make a claim for warranty work performed, Purchaser must submit to Seller documentation reasonably acceptable to Seller evidencing the warranty claim, the identity of the warranty claimant, the nature of the claim, the amount of direct costs expended by Purchaser in satisfaction of such claim, and a calculation of the warranty claim amounts.

7.9. Work in Progress. Within five (5) business days prior to the Closing, the parties shall review each of the Projects, and, as to each such project, jointly determine the following: (i) the estimated percentage of the work which will be completed by Seller as of the Effective Time; (ii) the remaining estimated percentage of the work which will need to be completed by Purchaser after the Effective Time; (iii) the corresponding amounts of revenue to be received by Seller and Purchaser relating to each Project; (iv) the remaining amounts to be paid by the customers relating to each Project; and (v) the estimated costs incurred by Seller as of the Effective Time relating to the Projects, and the corresponding costs to be incurred by Purchaser following the Effective Time to complete the Projects (the "WIP Statement"). Based on this information, the parties shall determine how to apportion the responsibility for costs, and the entitlement to revenue, relating to the Projects. The parties agree that should any change occur between the date of the WIP Statement and the Effective Time that would require a revision to the WIP Statement, they will jointly agree on a revised WIP Statement prior to the Closing. Following the Closing, the parties will confer regularly to confirm that the apportionment of revenue between Buyer and Seller in the WIP statement was reasonably accurate, and if they jointly agree, make reasonable changes to any apportionment of revenue based on costs incurred and revenue received on the Projects after Closing.

8. Liabilities of Seller. Seller shall be and remain solely liable and responsible for all of its debts, obligations, duties, and liabilities relating to the operation of the Business prior to the Effective Time (the "Retained Liabilities"). Purchaser does not and shall not assume, agree to pay, or pay any of

the Retained Liabilities. The only contracts of Seller that Purchaser shall assume after the Closing are those listed on **Exhibit 8** attached hereto, but only to the extent that the obligations under such contracts are required to be performed after the Effective Time, were incurred in the ordinary course of the Business, and are not the result of breaches, violations or other actions or omissions or violations of law occurring or taken on or prior to the Effective Time.

9. Indemnification.

9.1. Indemnification by Seller and Shareholders. Seller and Shareholders, jointly and severally, on behalf of themselves and their respective heirs, personal and legal representatives, successors and assigns, shall defend, indemnify, and hold harmless Purchaser and its [members, managers], officers, agents, servants, and employees, and their respective heirs, personal and legal representatives, guardians, successors, and assigns, from and against any and all claims, threats, liabilities, taxes, interest, fines, penalties, suits, actions, proceedings, demands, damages, losses, costs, and expenses (including attorneys' and experts' fees and court costs) of every kind and nature arising out of, resulting from, or in connection with:

9.1.1. Any misrepresentation, omission, or breach by Seller and/or any Shareholder of any representation or warranty contained in this Agreement, including any exhibit hereto, or in any of the documents executed and delivered by Seller and/or any Shareholder pursuant hereto;

9.1.2. Any nonperformance, failure to comply, or breach of or default by Seller and/or any Shareholder of any covenant, promise, or agreement of Seller and/or any Shareholder contained in this Agreement, including any exhibit hereto, or in any of the documents executed and delivered by Seller and/or any Shareholder pursuant hereto;

9.1.3. Any and all debts, obligations, duties, or liabilities of Seller and/or any Shareholder relating to the Business or any of the Assets which arise prior to the Effective Time, and any debts, obligations, duties, or liabilities of Seller relating to any asset retained by Seller, regardless of whether any notice, invoices, or bills for such debts, obligations, duties, or liabilities are received on or after the Closing Date; and

9.1.4. Any matter, act, thing, or occurrence caused by or resulting from any act or omission of Seller and/or any Shareholder prior to the Effective Time.

9.2. Indemnification by Purchaser. Purchaser, on behalf of itself and its successors and assigns, shall defend, indemnify, and hold harmless Seller, its shareholders, directors, officers, agents, servants, and employees and their respective heirs, personal and legal representatives, guardians, successors, and assigns, from and against any and all claims, threats, liabilities, taxes, interest, fines, penalties, suits, actions, proceedings, demands, damages, losses, costs, and expenses (including attorneys' and experts' fees and court costs) of every kind and nature arising out of, resulting from, or in connection with:

9.2.1. Any misrepresentation, omission, or breach by Purchaser of any representation or warranty contained in this Agreement, including any exhibit hereto, or in any of the documents executed and delivered by Purchaser pursuant hereto;

9.2.2. Any nonperformance, failure to comply, or breach by Purchaser of any covenant, promise, or agreement of Purchaser contained in this Agreement, including any exhibit hereto, or in any of the documents executed and delivered by Purchaser pursuant hereto;

9.2.3. Any and all debts, obligations, duties, or liabilities of Purchaser which relate to the business activity of the Business which arises after the Effective Time; and

9.2.4. Any other debts of the Business which are specifically assumed by Purchaser pursuant to this Agreement.

9.3. Defense of Third Party Claims.

9.3.1. Indemnification Procedures. In the event of any third party claim, threat, liability, tax, interest, fine, penalty, suit, action, proceeding, demand, damage, loss, cost, or expense with respect to which indemnity is or may be sought hereunder (an “Indemnity Claim”), the indemnified party shall promptly notify the indemnifying party of such Indemnity Claim, specifying in reasonable detail the Indemnity Claim and the circumstances under which it arose, although the failure to provide written notice shall not discharge the obligations of the indemnifying party. The indemnifying party may elect to assume the defense of such Indemnity Claim, at its expense, by providing written notice to the indemnified party within ten days after the indemnifying party receives notice of the Claim, and the indemnifying party shall promptly engage counsel reasonably acceptable to the indemnified party to direct and conduct such defense; provided, however, that the indemnified party shall have the right to engage its own counsel, at its own expense, to participate in such defense. In the event the indemnifying party does not so elect to assume the defense of such Indemnity Claim in the manner specified above, or if, in the reasonable opinion of counsel to the indemnified party, there are defenses available to the indemnified party that are different from or additional to those available to the indemnifying party or that give rise to a material conflict between the defense of the indemnified party and of the indemnifying party, or the indemnifying party fails to diligently defend or contest any Indemnity Claim, then upon notice to the indemnifying party, the indemnified party may elect to engage separate counsel to conduct its defense, at the expense of the indemnifying party, and the indemnifying party shall not have the right to direct or conduct such defense.

9.3.2. Right to Settlement. The indemnifying party shall not enter into any settlement of any Indemnity Claim without the prior written consent of the indemnified party, except as provided in this Section 9.3.2. If the indemnifying party assumes the defense of any Indemnity Claim pursuant to Section 9.3.1, it shall provide prompt written notice to the indemnified party of the indemnifying party’s receipt of any firm offer to settle, compromise, or satisfy such Indemnity Claim. If the indemnified party does not consent to such firm offer or assume the defense of such Indemnity Claim within twenty days following receipt of such notice, the indemnifying party may make such settlement, compromise, or satisfaction (at its own expense and cost) with respect to such Indemnity Claim on the terms set forth in such firm offer. If the indemnified party has assumed the defense of such Indemnity Claim pursuant to Section 9.3.1, it shall not agree to any settlement without the written consent of the indemnifying party, which consent shall not be unreasonably withheld or delayed.

9.3.3. Cap on Liability. The total amount recoverable from Seller and/or Shareholder for all such claims asserted, shall not exceed the funds actually paid by Purchaser to Seller.

9.3.4. Basket. Neither Seller nor Shareholder shall be liable to Purchaser for indemnification under Section 9.1 until the aggregate amount of all losses in respect of such indemnification exceeds \$13,950 (the “Basket”), after which Seller and Shareholder shall be required to pay or be liable for losses from the first dollar. Purchaser shall not be liable to Seller or Shareholder for indemnification under Section 9.2 unless the aggregate amount of all losses in respect of such indemnification exceeds the Basket, after which Purchaser shall be required to pay or be liable for losses from the first dollar.

10. Employee Matters. Purchaser does not assume any liabilities, duties, or obligations of Seller with respect to any current or past employees of Seller, any of Seller’s employee benefits or benefit plans, or any other employment related liability, duty, or obligation of Seller whatsoever, except that it assumes Seller’s obligations to its employees for paid time off, paid vacation, and sick leave to the extent that Purchaser has received a credit for such amounts at the Closing.

11. Confidentiality. Each party shall maintain the confidentiality of the trade secrets and other confidential information provided to such party by the other party, except that such information may be disclosed to any attorneys, accountants, and other advisers advising the party in regards to this transaction and to any Governmental Authority for a proper purpose.

12. Miscellaneous.

12.1. Survival of Representations, Warranties, and Agreements. All of the representations, warranties, covenants, promises, and agreements of the parties contained in this Agreement, including exhibits hereto, and any documents delivered or to be delivered pursuant to this Agreement, shall survive the execution and delivery of this Agreement [alternative version: shall survive the execution and delivery of this Agreement for a period of two years.

Alternative versions: a time limit on survival, with certain essential reps and warranties surviving for the term of the applicable statute of limitations.

12.2. Entire Agreement. This Agreement, including exhibits hereto, constitutes the entire, integrated agreement of the parties with respect to the subject matter hereof, and supersedes any and all prior understandings, correspondence, negotiations, and agreements of the parties with respect to the subject matter hereof.

12.3. Amendment; Waiver. No provision of this Agreement may be amended, waived, or otherwise modified without the prior written consent of all of the applicable parties hereto. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant, or agreement herein contained. The waiver by any party hereto of a breach of any provision or condition contained in this Agreement shall not operate or be construed as a waiver of any subsequent breach or of any other conditions hereof.

12.4. Section Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

12.5. Assignability. This Agreement shall not be assignable by any party hereto

without the prior written consent of the other parties.

12.6. Binding Effect; Benefit. Subject to the limitations set forth in Section 12.5, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal and legal representatives, guardians, successors, and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights, remedies, obligations, or liabilities, except that Section 9 is intended to benefit the indemnified parties referenced therein.

12.7. Severability. Any provision of this Agreement which is held by a court or arbitrator of competent jurisdiction to be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating or rendering unenforceable the remaining provisions of this Agreement.

12.8. PDF; Counterparts. This Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures exchanged by facsimile or other electronic means (including .pdf by email) shall be deemed original signatures for all purposes.

12.9. Governing Law. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Colorado.

12.10. Attorneys' Fees. If any action is instituted by a party to enforce any provisions of this Agreement, attorneys' fees and costs shall be awarded to the prevailing party.

12.11. Dispute Resolution. Any dispute which arises under this purchase and sale transaction, or under any of the documents executed at the closing of this purchase and sale transaction, which the parties cannot otherwise resolve, shall be initially submitted to mediation in Boulder, Colorado before a mediator agreed upon by the parties; if the parties cannot agree upon a mediator, then they shall submit their dispute to the Judicial Arbitrator Group, or, if that company no longer exists, to the American Arbitration Association, for mediation. If a dispute is not resolved within thirty days of the holding of a mediation session, then it shall be submitted for binding arbitration to the Judicial Arbitrator Group, or, if that company no longer exists, to the American Arbitration Association in Denver, Colorado pursuant to its Commercial Arbitration Rules, except that: (a) disputes concerning \$15,000 or less shall be resolved in the small claims or county courts of the City and County of Denver, Colorado; and (b) disputes in which a party seeks injunctive relief shall be resolved in the district courts of the City and County of Denver, Colorado, in which case all claims shall be resolved in such lawsuit. The parties consent to personal jurisdiction and venue being proper in such courts. In an arbitration, the arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof.

12.12. Notices. All notices, requests, demands, consents, and other communications which are required or may be given under this Agreement (collectively, the "Notices") shall be in writing and shall be given either (a) by personal delivery against a receipted copy, or (b) by certified or registered United States mail, return receipt requested, postage prepaid, to the addresses set forth below, or to such other address of which written notice in accordance with this Section 12.12 shall have been provided by such party, and a copy of any notice to Purchaser will be sent to Julian M. Izbiky, Izbiky & Associates PLLC, 7400 E. Caley Avenue, Suite 300, Centennial, CO 80111, and any copy of notice to

Seller or Shareholders will be sent to _____[Seller's attorney]. Notices may only be given in the manner described in this Section 12.12 and shall be deemed received when given in such manner.

12.13. Further Assurances. Each of the parties to this Agreement shall cooperate with the other and execute and deliver to the other party to this Agreement such other instruments and documents and take such other actions as may be reasonably requested from time to time by the other party to this Agreement as necessary to carry out or evidence the purposes of this Agreement.

12.14. Costs and Expenses. Each of the parties shall be solely responsible for its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, except that, notwithstanding the foregoing, Purchaser's attorney will handle the Closing for a fee of \$2,000.00, and Seller shall reimburse Purchaser for \$1,000 of this amount.

[Signature Page(s) to Follow.]

IN WITNESS WHEREOF, the parties have executed this Asset Purchase Agreement as of the date first set forth above.

SELLER:

ASPEN MACHINE SHOP, INC.

By: _____
John Smith, President

Address: 1234 S. Santa Fe
Denver, CO 80018

SHAREHOLDERS:

John Smith, individually
(solely as to Sections 4.2, 5, 6.1, 7.1, 7.3, 7.4, 9.1, 9.3, 11, and 12)

Mary Smith, individually
(solely as to Sections 4.2, 5, 6.1, 7.1, 7.3, 7.4, 9.1, 9.3, 11, and 12)

Address: 1234 S. Santa Fe
Denver, CO 80018

PURCHASER:

PURCHASER, INC.

By: _____
Name: John Jones
Title: President

Address: 1234 Main Street
Littleton, CO 80222



Moderator:

Robert J. Faus, MBA
Broker Associate
Touchstone Business
Advisors, LLC

Legal Panel – Open Q&A About Legal Issues In Business Brokerage



Bradley K. Benson
Volant Law LLC



Trevor A. Crow
Otten, Johnson,
Robinson,
Neff & Ragonetti, P.C.



Julian M. Izbiky
Izbiky & Associates



John A. Meininger
Meininger Law Firm



Peter M. Nemkov
Nemkov and Bonifazi,
PLLC

Bradley K. Benson - Volant Law LLC. Brad represents business and real estate clients from formation through growth, emergence, financing and culmination, including strategic sale or acquisition. He specializes in negotiation and documentation of commercial transactions, including related financing counsel for both borrowers and lenders. Brad's transactional representation extends to his clients' day-to-day operations, including contract review, drafting and negotiation and handling of regulatory matters. Brad is rated AV PREEMINENT, the highest possible rating by the Martindale Hubbell Peer Review Rating system, indicating his peers rank him at the highest level of professional excellence.

Trevor A. Crow - Otten, Johnson, Robinson, Neff & Ragonetti, P.C. Trevor is a shareholder with the firm and advises closely-held entities through the whole business life cycle, including entity selection, formation, equity and debt financing transactions, acquisitions and the eventual transfer or sale of the business. In addition, he counsels business entities and individuals on tax planning related to real estate and other business transactions. Trevor represents entrepreneurs and promoters in organizing entities, including negotiating and documenting corporate, joint venture, partnership, or limited liability company agreements, and preparing buy-sell and shareholder agreements for the owners. He also represents investors in the negotiation and structuring of financing transactions. While in law school, Trevor was the managing editor of The Race to the Bottom, a corporate governance online journal, and he is currently the host of the Colorado Entrepreneur Show. Trevor received his law degree and LL.M in Taxation degree from the University of Denver College of Law.

Julian M. Izbiky - Izbiky & Associates. Julian grew up in Lakewood, New Jersey, on the Jersey shore. After graduating from Lakewood High School in 1973, he received degrees from Brandeis University (B.A. economics, 1977, Phi Beta Kappa, Magna Cum Laude), and the University Of Michigan Law School (1980). Julian is a member of the American Bar Association, the Colorado Bar Association, the Arapahoe County Bar Association, and the Colorado Association of Business Intermediaries (past member of the board of directors). Julian is also currently a member of the Board of Directors of the non-profit Jewish Family Service. When not working, Julian spends time with his wife Jennifer and their teenage son Alex, rides his bicycle, walks his golden retriever Chloe, hikes, cross-country skis, snow shoes, and avidly follows the Colorado Rockies.

John A. Meininger - Meininger Law Firm. John has practiced over 40 years licensed in both Colorado and California practicing in the areas of real estate, commercial, bankruptcy and litigation. A Colorado native from Fort Morgan, John obtained his B.A. in Economics from Yale University (1970-71) and J.D. from University of California at Berkeley, Boalt Hall School of Law (1974). John returned to Colorado and commenced a real estate centered practice which included representation of the Denver Urban Renewal Authority (1977-78), and, from 1980, real estate centered bankruptcy including reorganizations. In 1984-1985, he authored the Agricultural Stabilization Act which forestalled farm foreclosures. John served as in-house counsel for Van Schaack Real Estate (1988-1989) and as head of the litigation team for Frasca, Joiner and Smittkamp in Boulder (1990 to 1993). John has represented small businesses, farmers, and individuals in real estate and commercial sales and purchases, condominium conversions, commercial and real estate litigation, construction, financing and work-outs, foreclosures, liens, bankruptcy reorganizations, and government contracts. He is admitted to federal and state courts in Colorado and California. In 1988, he was awarded the AV Preeminent rating by Martindale-Hubbell, the highest possible rating for both legal ability and professional ethics, and has held the rating since.

Peter M. Nemkov - Nemkov and Bonifazi, PLLC. Peter received his B.S. in history from the "Honors College" in 1967 from the University of Michigan, and received his J.D. "With Honors" in 1971, from George Washington University Law School in Washington, D.C. Thereafter, he became an associate and later a partner at the law firm of Keller & Heckman, in Washington, D.C., representing of various industries before numerous federal regulatory agencies, including serving as Assistant General Counsel for the Society of the Plastics Industry (SPI). He moved to Denver in 1979 and has specialized in the legal practice of corporate, real estate, business acquisition, liquor licensing and trade association matters. Such activities include the organization, structuring, financing and operation of corporations and LLCs, real estate transfers of residential, commercial, and industrial real property, and leasing matters. In the area of business acquisitions, activities include contract drafting and negotiations, preparation of financing and loan documents, and performing Escrow Closing functions. In this latter regard, he has been involved in over 2000 Closings. Peter is a member of the bars of the State of Colorado; U.S. District Court and Court of Appeals for the District of Colorado; U. S. District Court and Court of Appeals for the District of Columbia; and the United States Supreme Court.




CABI

**COLORADO ASSOCIATION OF
BUSINESS INTERMEDIARIES**

**2017 CREC
UPDATE**





Jon Goodman

*Frascona, Joiner, Goodman
and Greenstein, P.C*

*4750 Table Mesa Drive
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Facsimile (303) 494-6309
Telephone (303) 494-3000
www.frascona.com*

CREC 2017 Annual Real Estate Update Course

- Attorney. Frasca, Joiner, Goodman and Greenstein, P.C., Boulder, Colorado, 1985 to present. Shareholder since 1994.
- Instructor. Presents various programs, workshops and seminars for real estate professionals, including real estate brokers, lawyers, mortgage brokers and appraisers.

Jon Goodman has been a real estate attorney in Colorado for over twenty-five years. He is a shareholder at Frasca, Joiner, Goodman and Greenstein P.C., and has been since 1994. Jon has published hundreds of real estate articles and is a frequent speaker on dozens of topics for the real estate industry.

Clients include mortgage lenders (banks, savings and loans, mortgage companies), real estate brokers and salespersons, real estate companies, developers, property management companies, builders, subcontractors, suppliers, buyers and sellers. As an experienced real estate attorney, Jon has been quoted in various publications, including the Wall Street Journal, the Denver Post, and the Rocky Mountain News.

**2017 Annual Commission Update Course
presented by Colorado Continuing Education**

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 Jon Goodman e-mail jon@frascona.com
 Mike Smeenk e-mail mike@frascona.com Jordan May e-mail jordan@frascona.com

2017 Annual Commission Update Course presented by Colorado Continuing Education



1

Compliance Issues

- **Top E&O claims**
- Sellers Property Disclosure
- Employing Brokers
- Three Issues Concerning Brokerage Relationships
- Deeds
- Sign Crossing
- Reducing The Buyer/Seller Pool



4

Topics

- **Welcome**
- Compliance Issues
- General Practice Issues
- 2017 Approved Contracts and Forms Changes
- New Regulations
- Resources and Commission News



2

Errors and Omissions Insurance RISC Stats 2013-2015

RISC Claims Information:



Category	Total Amount
Closed Claims- Total Incurred	\$3,319,047
Open Claims- Total Incurred	\$1,199,329
Total Incurred	\$4,518,376



5

Welcome

- It is recommended that brokers take the Annual Commission Update (ACU) Course between January and June.
- Brokers should also consider taking a contracts course every year.
- These courses offer fresh information brokers need to know.



3

Errors and Omissions Insurance RISC Stats 2013-2015

Average Damage Payment Info	Total Amount
All Closed Claims with Payments - Average per Claim	\$7,537.58
Closed Claims in which Damages were Paid - Average per Claim	\$16,757.58



6

Errors and Omissions Insurance

The following allegations made the top ten claims for the past 3 years:

7. Bodily Injury/Property Damage
6. Negligence
5. Failure to Restore Security Deposit
4. Breach of Property Management Agreement
3. Breach of Duties
2. Misrepresentation of Contract Terms
1. Escrow/ Earnest Money



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Practical Application - More Facts

- Buyer was provided original disclosure without roof leak information.
- Roof was certified during inspection, and "appeared within its useful life", according to inspection report.
- After closing another roof leak appeared. Buyer hired roofing company and were informed roof was "near the end of its useful life" and needed replacement.
- Buyer replaced the roof for \$17,500 and sued the sellers and sellers' broker.



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Compliance Issues

- Top E&O claims
- **Sellers Property Disclosure**
- Employing Brokers
- Three Issues Concerning Brokerage Relationships
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What Questions Does this Raise?

1. Did the listing broker do something wrong?
2. What could have been done differently?
3. What if seller tells their broker not to disclose?
4. If you are listing a property and you are the Property Manager, what is your role in the Sellers Property Disclosure?



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Practical Application Sellers Property Disclosure

- A couple selling their home filled out a Property Disclosure.
- After signing the disclosure, a severe rainstorm led to leaks in the roof and stains on the ceiling.
- Couple hired contractor and issue was "fixed".
- An offer was made and accepted.



9

Practical Application - The Result

Claim Settled

Sellers and their Broker paid for cost of roof

- Broker's E&O policy paid a majority of the settlement
- Sellers were left with a substantial settlement bill



12

Case Study - Good Practices



1. Broker should have asked sellers (in writing) to update the property disclosure form prior to closing
2. Broker should review disclosure form to check if there are any answers that contradict the broker's knowledge
3. If Sellers did not disclose the leak, the broker should inform the buyer's broker prior to closing
4. Broker should have any updated disclosure forms initialed and signed by the buyer



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What to Expect from Employing Broker as an Unlicensed On-site Manager

Unlicensed On-Site Manager: Rule C-23

The employing broker for a brokerage firm employing an unlicensed on-site manager must ensure the following:

1. Active supervision
2. Proper on-site manager reporting
3. Management of rents, security deposits, and monies collected on behalf of the broker or owner
4. Property maintenance is performed properly
5. On-site manager is properly compensated
6. Ensure that on-site manager does not negotiate material terms



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Compliance Issues

- Top E&O claims
- Sellers Property Disclosure
- **Employing Brokers**
- Three Issues Concerning Brokerage Relationships
- Deeds
- Sign Crossing
- Reducing The Buyer/Seller Pool



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Authority of Employing Broker

Rule E – 29

Employing Broker has statutory requirement to oversee licensee's conformance with licensing statutes and commission rules.

Whenever a complaint is filed with the Real Estate Commission against a broker associate, the Commission will investigate the employing broker for supervision requirements.



17

What to Expect from Employing Broker as an Associate Broker

Employing Broker Availability: Rule C-3

Any employing broker must be reasonably available to manage and supervise their brokerage firm.



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Supervision

Delegation of supervision is allowed to an experienced licensee, if done so in writing

Supervision requirements include, but are not limited to licensees, their assistants, secretaries and bookkeepers



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When to Contact your Employing Broker

When managing transactions, associates can encounter a number of issues which they are unsure how to navigate. Contact Employing Broker when:

1. Unsure of proper procedure
2. Possibility of Fair Housing complaint/issue
3. Issues with clients
4. Issues with other licensees
5. Anything that may cost your client money



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Agency vs Transaction Broker

- **Breach of Fiduciary Relationship**
- What Is A Fiduciary Duty?
- Who Has Fiduciary Duties?
- Agency vs. Transaction Broker



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Compliance Issues

- Top E&O claims
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- **Three Issues Concerning Brokerage Relationships**
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What is a Fiduciary Duty?

*"A legal obligation of one party to act in the best interests of another. The obligated party is typically a **fiduciary**, that is, someone entrusted with the care of money or property."*

businessdictionary.com



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Brokerage Relationships

- 1) **Agency vs. Transaction Brokerage**
- 2) Seller Reduction of Uniform Duties
- 3) Use of the Brokerage Duties to Seller (REO & Non-CREC Listings)



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Who Has Fiduciary Duties?



Licensee with Agency Relationship?

Transaction Broker?



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2 Issues

- 1) Licensee with Agency Relationship not performing Fiduciary Duties
- 2) Transaction Broker acting as if s/he is a Fiduciary



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Transaction Broker is a “Referee”



Can assist one or more parties in a transaction

Performs communication, interposition, advisement, negotiation, contract terms, and the closing without being an agent or advocate

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Agency vs. Transaction Broker

Licensee with Agency Relationship is a “Coach”



Represents only one party in a transaction

Owes the duties of care, obedience, accountability, loyalty (including confidentiality) and disclosure

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Transaction Broker is a “Referee”

Meaning...In addition to Uniform Duties obligated to:

- 1) **NOT** promote the interests of **ANY** party with utmost good faith, loyalty, and fidelity
- 2) **NOT** seek a price or lease rate and terms that are acceptable to **ANY** party
- 3) **NOT** counsel **ANY** party as to any material benefits or risks of a transaction



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Agency vs. Transaction Broker

Licensee with Agency Relationship is a “Coach”

In addition to Uniform Duties obligated to:

- 1) Promote the interests of **ANY** party with utmost good faith, loyalty, and fidelity
- 2) Seek a price or lease rate and terms that are acceptable to **ANY** party
- 3) Counsel **ANY** party as to any material benefits or risks of a transaction



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Brokerage Relationships

- 1) Agency vs. Transaction Brokerage
- 2) **Seller Reduction of Uniform Duties**
- 3) Use of the Brokerage Duties to Seller (REO & Non-CREC Listings)



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Client Reduction of Uniform Duties

1. Broker is acting either as an Agent or as a Transaction-Broker in Colorado
2. 17 Uniform Duties Brokers MUST be performed
3. Three Additional Duties for Agents MUST be performed

Uniform Duties are required under Colorado Law and spelled out in CRS 12-61-804, 12-61-805 and 12-61-807.



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Seller Reduction of Uniform Duties

Builders

- No Entry-Only for builders
- If broker is representing a builder, the same duties apply



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Client Reduction of Uniform Duties

Broker must perform all Uniform Duties. Uniform Duties cannot be reduced!

Any broker that is acting in the capacity as an Agent or Transaction broker, that does not provide the Uniform Duties, is in violation of Colorado law and Colorado real estate commission rules!



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Brokerage Relationships

- 1) Agency vs. Transaction Brokerage
- 2) Seller Reduction of Uniform Duties
- 3) **Use of the Brokerage Duties to Seller (REO & Non-CREC Listings)**



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Client Reduction of Uniform Duties

If a seller, buyer, tenant or landlord crosses off any of the uniform duties in the listing agreement, the broker has these options:

1. Sign the listing and provide ALL of the uniform duties even though some have been crossed out of the listing.
2. Walk away! Tell the client that you will not violate the laws and rules and risk your real estate license.



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Use of the Brokerage Duties to Seller REO and Non-CREC Listings

Commission Rule F: Commission Approved Forms Use Requirement

Approved Form Exists = Licensee Must Use It

ONE Exception = Listing Agreements



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When Using A Non-Approved Listing Agreement

- ✓ Mandatory that brokerage relationships are disclosed
- ✓ Brokerage Duties Disclosure To Seller (REO and Non-CREC Approved Listing Agreements) form satisfies this requirement



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Brokerage Duties to Seller REO and Non-CREC Listings

shall act for or assist Seller when performing activities in the capacity as shown by the box checked at the top of this page 1.

3. BROKERAGE RELATIONSHIP.

3.1. If the Seller Agency box at the top of page 1 is checked, Broker shall represent Seller as a limited agent of Seller (Seller's Agent). If the Transaction-Brokerage box at the top of page 1 is checked, Broker shall act as a Transaction-Broker.

3.2. **In-Company Transaction – Different Brokers.** When Seller and buyer in a transaction are working with different brokers, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Seller shall remain free to select the Broker to be used in the transaction.

Broker shall continue to function as a Transaction-Broker.

4. **BROKERAGE DUTIES.** Brokerage Firm, acting through Broker, as either a Transaction-Broker or a Seller's Agent, shall perform the following **Uniform Duties** when working with Seller:

4.1. Broker shall exercise reasonable skill and care for Seller, including, but not limited to the following:

4.1.1. Performing the terms of any written or oral agreement with Seller;

4.1.2. Presenting all offers to and from Seller in a timely manner regardless of whether the Property is subject to a

on the Property and whether the offers were obtained by Broker, a broker within Brokerage Firm or by another broker.

5. **ADDITIONAL DUTIES OF SELLER'S AGENT.** If the Seller Agency box at the top of page 1 is checked, Broker is Seller's Agent, with the following additional duties:

5.1. Promoting the interests of Seller with the utmost good faith, loyalty and fidelity.

5.2. Seeking a price and terms that are set forth in the Listing Agreement.

5.3. Counseling Seller as to any material benefits or risks of a transaction that are actually known by Broker.



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The Brokerage Duties to Seller REO and Non-CREC Listings

Supplements a Non-CREC listing agreement

Sets forth the Brokerage Relationship

Informs the seller/landlord of:

- the items the broker is required to disclose to them by law
- the Uniform Duties the broker is responsible to provide under Colorado law



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Brokerage Duties to Seller REO and Non-CREC Listings

5.2. Seeking a price and terms that are set forth in the Listing Agreement.

5.3. Counseling Seller as to any material benefits or risks of a transaction that are actually known by Broker.

6. MATERIAL DEFECTS, DISCLOSURES AND INSPECTION.

6.1. **Broker's Obligations.** Colorado law requires a broker to disclose to any prospective buyer all adverse material facts actually known by such broker including but not limited to adverse material facts pertaining to the title to the Property, the physical condition of the Property, any material defects in the Property, and any environmental hazards affecting the Property required by law to be disclosed. These types of disclosures may include such matters as structural defects, soil conditions, violations of health, zoning or building laws, and nonconforming uses and zoning variances. Seller agrees that any buyer may have the Property and Inclusions inspected and authorizes Broker to disclose any facts actually known by Broker about the Property. Broker shall not be obligated to conduct an independent investigation of the buyer's financial condition except as otherwise provided in the Listing Agreement.

6.2. Seller's Obligations.

6.2.1. **Seller's Property Disclosure Form.** A Seller is not required by law to provide any particular disclosure form. However, disclosure of known material latent (not obvious) defects is required by law.

6.2.2. **Lead-Based Paint.** Unless exempt, if the improvements on the Property include one or more residential dwellings for which a building permit was issued prior to January 1, 1978, a completed Lead-Based Paint Disclosure (Sides) form must be signed by Seller and the real estate licensee, and given to any potential buyer in a timely manner.

6.2.3. **Carbon Monoxide Alarms.** Seller acknowledges that, unless exempt, if the Property includes one or more rooms lawfully used for sleeping purposes (bedrooms), an operational carbon monoxide alarm must be installed within fifteen feet of the entrance to each bedroom or in a location as required by the applicable building code, prior to offering the Property for sale or lease.

6.2.4. **Source of Potable Water (Residential Land and Residential Improvements Only).** Seller acknowledges that if the Property is residential, Seller must timely make certain disclosures on the source of water to a buyer.

7. ADDITIONAL DISCLOSURES:

SELLER ACKNOWLEDGMENT:

Seller acknowledges receipt of this document on _____

Seller _____

Seller _____



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Brokerage Duties to Seller REO and Non-CREC Listings

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (BDDDS-5-09) (Mandatory 7-09)

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE LANDLORD AGENCY, TENANT AGENCY, BUYER AGENCY, SELLER AGENCY OR TRANSACTION-BROKERAGE.

BROKERAGE DUTIES DISCLOSURE TO SELLER (REO and Non-CREC Approved Listing Agreements)

SELLER AGENCY TRANSACTION-BROKERAGE

Date: _____

This Brokerage Duties Disclosure to Seller (Disclosure) is made in conjunction with a listing agreement dated _____ between Brokerage Firm and Seller (Listing Agreement). This Disclosure supplements the Listing Agreement.

1. BROKER AND BROKERAGE FIRM.

1.1. **Multiple-Person Firm.** If this box is checked, the individual designated by Brokerage Firm to perform the services for Seller required by the Listing Agreement is called Broker. If more than one individual is so designated, then references in this Disclosure and the Listing Agreement to Broker shall include all persons so designated, including substitute or additional brokers. The brokerage

2. DEFINED TERMS.

2.1. **Seller:** _____

2.2. **Brokerage Firm:** _____



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Compliance Issues

- Top E&O claims
- Sellers Property Disclosure
- Employing Brokers
- Three Issues Concerning Brokerage Relationships
- **Deeds**
- Sign Crossing
- Reducing The
- Buyer/Seller Pool



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Types of Colorado Deeds

Name the types of deeds in Colorado:

- General Warranty
- Special Warranty
- Bargain and Sale
- Quit Claim



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Which Deed Do Your Clients Want?

If they are the:
Buyer? Seller?

How do you advise the Buyer
if the Seller is an estate or REO?



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All Deeds Are Not The Same - Exercise

	General	Special	Bargain & Sale	Quit Claim
Convey Title				
After Acquired Property				
Warrant for time Seller Owned				
Warrant for Previous Owner				



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Compliance Issues

- Top E&O claims
- Sellers Property Disclosure
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- Three Issues Concerning Brokerage Relationships
- Deeds
- **Sign Crossing**
- Reducing The Buyer/Seller Pool



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All Deeds Are Not The Same

	General	Special	Bargain & Sale	Quit Claim
Convey Title	X	X	X	X
After Acquired Property	X	X	X	
Warrant for time Seller Owned	X	X		
Warrant for Previous Owner	X			



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Practical Application – Sign Crossing

- Commercial property was listed for sale
- Another broker contacted seller to solicit the listing claiming to have a potential buyer
- Seller notified Listing Broker
- Listing Broker delivered brochures to the soliciting broker
- After receiving the brochures, the soliciting broker contacted the seller to express disappointment in not getting the listing



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Practical Situation – More Facts

Soliciting broker then:

- disparaged the Listing Broker
- offered to list the property for a lesser commission
- informed the seller that the property was listed \$750,000 under value



Listing broker contacted soliciting broker a final time, requesting that all correspondence go through him if the soliciting broker had a buyer. That request was ignored.



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Commission Position 3 on Sign Crossing

Purpose of Rule E-13:

1. To prevent Brokers from interfering with an existing listing contract to the detriment of the owner
2. To protect owner from multiple claims for commissions



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What Rules Were Broken If Any?

By Listing Broker?

By Seller?

By Soliciting Broker?



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Sign Crossing Rule E-13

- A Licensee shall not negotiate a sale, exchange, lease or listing agreement with knowledge of an unexpired "Exclusive Right to Buy and Sell or Lease" contract with another licensee
- OK to negotiate future sale, exchange, lease or listing agreement if initial contact with licensee is initiated by owner
- The burden of inquiry of status of listing is on the licensee



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Practical Application – The Result

Listing Broker filed a complaint with the Division against Soliciting Broker

Public Censure/Formal Discipline

- Fine of \$2,500.00
- Twelve or more hours of Commission approved education (over and above the normal CE requirement).



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Good Practices To Avoid Sign Crossing

Suggested Approach:

1. Always clarify whether or not the seller already has a Listing Contract with another broker.
2. If Seller is under contract, WALK AWAY!
3. Do not solicit business from a seller that is already under contract with another broker.



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Compliance Issues

- Top E&O claims
- Sellers Property Disclosure
- Employing Brokers
- Three Issues Concerning Brokerage Relationships
- Deeds
- Sign Crossing
- **Reducing The Buyer/Seller Pool**



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Questions to Consider...

"2.8% coop fee for a Buyer Agency or Transaction Broker. Any real estate agent that submits an offer without ACME contracts will receive 2% coop at closing."

Is this intended for the benefit of the Seller or Broker?

What are the pros and cons for the Seller?

Would this have likely been approved by Seller if pros and cons were fully discussed?

Must this be fully discussed and disclosed to Seller in Listing Agreement?



58

Reducing The Buyer/Seller Pool

Brokers placing their interests before those of their clients is a clear violation of license rules, Uniform and Fiduciary Duties

Some examples...



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Does This Increase Or Decrease The Buyer Pool?

Quote From An MLS...

"Commissions: Cut-rate agents in our market who are offering Professional Buyers Agents ridiculous low flat fees on their respective listings will receive a \$1,000 flat fee on this listing. Agents who have offered Professional Buyer Agents any commission less than 2.8% in the past 36 months will be paid that same commission on this listing no matter the reason or excuse. Just keeping it fair for the Professionals who are out there doing most of the work in this market."



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Does This Increase Or Decrease The Buyer Pool?

Quote From An MLS...

"2.8% coop fee for a Buyer Agency or Transaction Broker. Any real estate agent that submits an offer without ACME contracts will receive 2% coop at closing."



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Questions to Consider...

"Commissions: Cut-rate agents in our market who are offering Professional Buyers Agents ridiculous low flat fees on their respective listings will receive "

Is this intended for the benefit of the Seller or Broker?

What are the pros and cons for the Seller?

Would this have likely been approved by Seller if pros and cons were fully discussed?

Must this be fully discussed and disclosed to Seller in Listing Agreement?



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Received By A Seller Page 1 of 2

Dear Mr. and Mrs. Seller,

The reason your house is not selling is because NO normal realtor is going to show a [REDACTED] listing.

You are offering to pay a seller agent \$10,000 on a sale that a normal 2.8 coop fee equates to around \$13,000. On MANY [REDACTED] listings, they offer a \$3,000 coop fee. This makes us normal realtors disdain [REDACTED] and avoid any of their listings because of their unfair business practices in the general marketplace. When a normal realtor complains to [REDACTED] agent about their commission structure, they say we can always negotiate for a higher fee.

Would you work for less?

Also, any seller who chooses a company like [REDACTED] is most likely a personality type who resents having to pay realtors in the first place and you end up with a much more difficult transaction all the way around. If they don't want to pay the person who brought the buyer, got the buyer through financing.



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Topics

- Welcome
- Compliance Issues
- **General Practice Issues**
- 2017 Approved Contracts and Forms Changes
- New Regulations
- Resources and Commission News



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Received By A Seller Page 2 of 2

etc. etc. etc.

So the remedy for 99.999% of us who hate [REDACTED] is that we just do not show their listings.

Any time my buyer wants to see a [REDACTED] listing, I will actually tell them anything I can think of to NOT show it.

Just keep that in mind as you reduce your price over and over that it could have been sold a long time

You are getting you are paying for -



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General Practice Issues

- **Common Contract Issues**
- Lead Based Paint Disclosure
- Managing Multiple Offers
- Home Warranties



65

Reducing The Buyer/Seller Pool

A Broker placing personal interests over those of a client is a violation of license rules and duties

When in doubt:

- Have a complete and frank discussion with the client.
- The client will tell you what they want you to do.
Do that.

Disclose all in writing



63

Common Contract Issues

- 1) **Poorly Drafted Clauses**
- 2) Insertion of Legal Descriptions Into Contract to Buy and Sell
- 3) Good Faith Clause in Contract to Buy and Sell



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Poorly Drafted Clauses

Although Conway-Bogue confines licensee to the use of approved forms –



Poorly drafted clauses can cause problems and liability for the broker as well as the parties



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Questions

What does “certify foundation” mean?

Is seller agreeing to provide:

- a certification there are no structural issues
- a certified evaluation of the foundation with recommendations
- certify the foundation exists?

Assuming a common understanding is dangerous



70

Poorly Drafted Clauses Can Cause Problems

This is an education topic



Here are a few simple guidelines if used when drafting many clauses can:

- ✓ Assist in better communicating the meaning of a clause
- ✓ Reduce legal risk
- ✓ Provide better service to clients



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Questions

Does “Structural Engineer” adequately describe who is to perform the work?

Does this person need:

- to meet any professional standards?
- to be approved by a licensing or certification board?



71

Practical Application Poorly Drafted Clauses

Entered into Inspection Resolution:

“Seller agrees to have Structural Engineer certify foundation”

What questions does this raise?



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Questions

What if getting a certification that there are no structural issues will first require \$50,000 repairs on \$100,000 home?

- Does this clause enable seller to not certify?
- Can seller or buyer terminate or renegotiate purchase agreement without penalty?



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Good Practice Drafting Clauses

Most clauses should contain the 3 elements of the ABC Rule:

- **About**
- **By when**
- **Consequences**



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Consequences of Failure

What should happen if agreed terms are not performed.

For example:

"In the event Seller does not provide ABC Engineering's report on or before MM/DD/YY the Contract automatically terminates.

Upon receipt of ABC Engineering's report both parties agree to negotiate in good faith towards a resolution of ABC Engineering's report recommendations if any. In the event the parties can not agree on ABC's Engineering's report recommendations this Contract will automatically terminate on MM/DD/YY."



76

What Is It About?

Clause should contain a full description of the subject.

For example:

"Seller to provide Buyer an evaluation of the foundation's structural integrity prepared by ABC Engineering Inc."



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Legal Counsel

When in doubt, know the limitations of your abilities and license

A recommendation to seek legal counsel is always a good idea

KEEP IT LEGAL



77

By When Must It be Done?

Clause should contain a completion date.

For example:

"Seller will deliver ABC Engineering Report to Buyer on or before MM/DD/YY."

Note: Whereas Inspection Resolution addresses completion dates, Additional Provisions does not.



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Common Contract Issues

- 1) Poorly Drafted Clauses
- 2) Insertion of Legal Descriptions Into Contract to Buy and Sell**
- 3) Good Faith Clause in Contract to Buy and Sell



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Good Idea or Bad Idea?

Broker Inserting Legal Description From
County Assessor Records into
Contract to Buy and Sell



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Buyer Was Under Impression That:

The Facts (cont.) -

- 1) Legal Description was accurate
- 2) Survey was unnecessary because lender did not require it
- 3) Title Insurance will cover errors if wrong

Was the Buyer Correct?



82

Good Idea or Bad Idea?

Broker entering "Title Company to Insert" into
legal description section of Contract to Buy and
Sell



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1) Is The Legal Description Accurate?

No...

- Description of Lot 11 is missing
- Address is not enough
- Purchase contract needed to adequately describe property



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Practical Application

- Buyer purchases house consisting of lots 10 and 11
- All parties unaware house is on lot 10 and garage on lot 11
- Each lot has separate legal description and is owned by Seller
- Title to insert legal description as per Contract to Buy and Sell
- Title Commitment only shows lot 10
- Seller gives deed only showing lot 10
- Buyer 12 years later goes to sell, discovers s/he does not own lot 11 with garage



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2) Was the Survey Unnecessary?

Necessary in this case

**Survey would have probably
discovered error**



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3) Will Title Insurance Cover Error?

Title insurance will cover Legal Description inserted indicating Lot 10, but **may not** cover omitted Lot 11

Why maybe not?

- Description was inserted “as a courtesy” – no guarantee of accuracy
- Title Company responsible for inserting legal may no longer exist
- Title Company issuing insurance may feel policy coverage is only Lot 10 as specified in policy

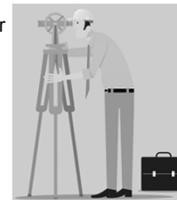


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Avoid Problems - Good Practices 2 of 3

- Recommend survey as best way to verify the legal description
- Lender not needing a survey does not mean your Buyer doesn't
- Getting a survey is Buyer's decision, but they need to know risks in not having a survey
- Protect Yourself - Get client's decision to decline survey in writing



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Immediate Fallout

Does Buyer wish legal description was verified on purchase?

Does Broker wish legal description was verified on purchase?

Is Broker checking Tail Coverage on his/her old E&O Insurance?



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Avoid Problems - Good Practices 3 of 3

Have client and/or expert counsel:

- Compare survey with Vesting Deed (Seller Deed) and, if available, Seller Title Commitment
- Ensure that Legal Descriptions in Contract, Deed and Title Commitment are identical

Recommending expert counsel is always good



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Avoid Problems - Good Practices 1 of 3

- Do not use Assessor descriptions when possible – often inaccurate
- Do not rely on Title Company to insert – not verified, nor can they read minds
- Vesting Deed (original Seller Deed) or prior title document is better but...
 - Do not assume seller deed or prior title document is accurate
 - Grantor may have acquired parcels in separate deeds
 - Grantor may have conveyed away some of property



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Common Contract Issues

- 1) Poorly Drafted Clauses
- 2) Insertion of Legal Descriptions Into Contract to Buy and Sell
- 3) **Good Faith Clause in Contract to Buy and Sell**



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“Good Faith” Is A Common Phrase In Contract to Buy and Sell

10.3. **Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to inspect the property to be purchased.

23. **MEDIATION.** If a dispute arises relating to the performance of this contract, the parties must first proceed, in good faith, to mediation.

29. **GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations, Title Insurance, Record Title and Off-Record Title, New ILC, New Survey and Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence, Buyer Disclosure and Source of Water.**



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Practical Situation

A buyer went under contract to purchase a house and put down \$12,000 in earnest money

The buyer terminated the contract using the loan objection and said s/he was not happy with the interest rate



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What Is Good Faith?

“In a general assumption of the law of contracts, that people will act in good faith and deal fairly without breaking their word, using shifty means to avoid obligations or denying what the other party obviously understood”

Law.com



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Practical Situation cont'd

The buyer then went down the street to a newly listed house that was more expensive

The buyer contracted to buy the new listing

Closed on the transaction using the same lender and loan terms offered on the first house, including the interest rate



95

What Is Bad Faith?

opposite of “Good Faith”

“A term that generally describes dishonest dealing. Depending on the exact setting, bad faith may mean a dishonest belief or purpose, untrustworthy performance of duties, neglect of fair dealing standards, or a fraudulent intent”

Cornell University Law School



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Two Questions:

- 1) Did the buyer operate in bad faith?
- 2) Can the seller prove it in court?



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Courts Generally Recognize

The duty of good faith and fair dealing:

“prevents one party to the contract from exercising a judgment conferred by the express terms of agreement in such a manner as to evade the spirit of the transaction or so as to deny the other party the expected benefit of the contract.”



Amecks, Inc v Southwestern Bell Telephone Company,
937 SW2d 240, 243 (MoCtApp1997).



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CAUTION

Licensees should not assume objection deadlines may be used for purposes other than intended

Advising a client to invent a false objection to remove themselves without penalty from a transaction may:

- violate license rules
- provide proof to a claim of Bad Faith

“My broker told me to do it”



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However...No Easy Way To Prove Bad Faith

Courts have decided:

- No set rules exist to prove a claim of Bad Faith
- Must be decided on a case-by-case basis



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General Practice Issues

- Common Contract Issues
- **Lead Based Paint Disclosure**
- Managing Multiple Offers
- Home Warranties



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State of Mind Important

One factor the Seller **must prove** is there was a **conscious** doing of a wrong



What if the Buyer really did object to the interest rate and changed their mind after termination?



99

Lead Based Paint Disclosure

Residential CBS 10.10 - Lead Based Paint:

- “This contract is void unless



- 1) a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller, the required real estate licensees and Buyer, and
- 2) Seller receives the **completed and fully executed form prior to the time when the Contract is signed by all parties.**”

- Buyer needs the opportunity to solidify his offer based on knowledge of the LBPD information from the Seller, prior to submitting his offer.



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Practical Application Lead Based Paint Disclosure

- Listing Broker lists a home built in 1942
- Discloses possible lead based paint to buyers Broker, but does not provide a signed lead based paint disclosure
- At closing, Listing Broker provides the buyer with a signed Lead Based Paint Disclosure
- Buyer doesn't close claiming contract is void



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Case Study - Good Practices

Suggested Approach:

- Listing Broker provides and signs the LBPDP along with the Seller.
- LBPDP is made available to all buyer brokers **prior** to making an offer. Put a copy on MLS or in the house.
- LBPDP is fully executed and sent to the Seller along with any offer.



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Practical Application – The Result

Both brokers have put their clients at risk in this scenario

Both brokers have:

- opened the potential of litigation
- may have been negligent in their responsibility to properly represent client interests



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Environmental Protection Agency Action

- The environmental protection agency is paying attention!!!
- Fines have been levied against brokers and brokerage firms.
- The Lead Based Paint Hazard Reduction Act requires disclosure.



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Lead Based Paint Disclosure

1. How did the buyer's broker put client at risk?
2. How did the listing broker put client at risk?
3. What does buyer's broker do if they cannot get listing broker participation?

**Do not have the buyer sign before the seller.
Seller must make the disclosure.**



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General Practice Issues

- Common Contract Issues
- Lead Based Paint Disclosure
- **Managing Multiple Offers**
- Home Warranties



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Managing Multiple Offers

1. Buyers vs. Sellers
2. Manage Client Expectations



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Managing Multiple Offers For Buyers

- Brokers should be extremely cautious when advising buyers on making competitive offers in multiple offer situations
- Waiving clauses in the contract designed specifically to protect buyers can present problems
- Brokers must always exercise care to perform Uniform Broker Duties



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Managing Multiple Offers For Sellers

All Brokers should have a standard of practice in place regarding how they manage multiple offers.

There must be a level playing field.

All Buyers making offers must:

- have the same information
- be treated equally



110

Record Retention and Transaction Files

Does license law require ALL OFFERS received on a property be maintained in the transaction file?



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Listing Broker Obligations

Present 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

Sellers may direct listing broker not to present additional offers, **BUT**:

1. Get this instruction in writing
2. Sellers cannot discharge uniform duties
3. Broker must make Seller aware of the existence of offers
4. Seller can decide whether to receive them or not



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General Practice Issues

- Common Contract Issues
- Lead Based Paint Disclosure
- Managing Multiple Offers
- **Home Warranties**



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Home Warranties

What is it?

- An insurance product that is available for purchase at the time of listing or time of closing

Covers:

- A multitude of items that may fail on a property before or after closing
- However, brokers should encourage buyers and sellers to check the coverage at the time of purchase



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2017 New Forms

- 1) Brokerage Disclosure to Buyer
- 2) Brokerage Disclosure to Landlord
- 3) Appraised Value Objection Notice
- 4) Title Related Objection Notice



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Benefits of Home Warranties

- Very popular in other states as a mechanism to help brokers avoid potential claims after closing
- Some E&O carriers will reduce/waive the deductible in a claim if a Home Warranty was purchased



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Brokerage Disclosure Buyer/Tenant

The printed portions of this form, except for the shaded portions, have been approved by the Colorado Real Estate Commission.
880(4.4.16) (Monday 1.27)

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE SELLER AGENCY, BUYER AGENCY OR TRANSACTION BROKERAGE.

BROKERAGE DISCLOSURE TO:
 BUYER TENANT

DEFINITIONS OF WORKING RELATIONSHIPS

For purposes of this document, the term "tenant" includes a tenant (which includes a tenant in common), but does not include a tenant in common who is also a tenant.

New Form ↓ **Current Form**

The printed portions of this form, except for the shaded portions, have been approved by the Colorado Real Estate Commission.
880(4.4.16) (Monday 1.27)

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE SELLER AGENCY, BUYER AGENCY OR TRANSACTION BROKERAGE.

BROKERAGE DISCLOSURE TO BUYER
 DEFINITIONS OF WORKING RELATIONSHIPS

The printed portions of this form, except for the shaded portions, have been approved by the Colorado Real Estate Commission.
880(7.1.16) (Monday 7.19)

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE LANDLORD AGENCY, TENANT AGENCY OR TRANSACTION BROKERAGE.

BROKERAGE DISCLOSURE TO TENANT
 DEFINITIONS OF WORKING RELATIONSHIPS

The shaded portions of this form are not approved by the Colorado Real Estate Commission.



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Topics

- Welcome
- Compliance Issues
- General Practice Issues
- **2017 Approved Contracts and Forms Changes**
- New Regulations
- Resources and Commission News



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2017 New Forms

- 1) Brokerage Disclosure to Buyer
- 2) **Brokerage Disclosure to Landlord**
- 3) Appraised Value Objection Notice
- 4) Title Related Objection Notice



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Brokerage Disclosure Seller/Landlord

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (2016-5-09) (Mandatory 2-09)
DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE SELLER AGENCY, BUYER AGENCY OR TRANSACTION BROKERAGE.
BROKERAGE DISCLOSURE TO SELLER (FOR SALE BY OWNER)
 SELLER LANDLORD
DEFINITIONS OF WORKING RELATIONSHIPS

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (2016-6-16) (Mandatory 1-17) DRAFT 22 6-16-16
DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE SELLER AGENCY, BUYER AGENCY OR TRANSACTION BROKERAGE.
BROKERAGE DISCLOSURE TO SELLER (FOR SALE BY OWNER)
DEFINITIONS OF WORKING RELATIONSHIPS

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DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE SELLER AGENCY, BUYER AGENCY OR TRANSACTION BROKERAGE.
BROKERAGE DISCLOSURE TO LANDLORD
DEFINITIONS OF WORKING RELATIONSHIPS


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Appraised Value Objection Notice 2 of 2

Terms used herein shall have the same meaning as in the Contract.

I. BUYER'S APPRAISED VALUE OBJECTION NOTICE.

1.1. Buyer gives notice to Seller that Buyer objects to the Appraised Value of the Property.

1.2. Appraised Value (appraisal or lender verification must be attached).

1.2.1. Appraisal Is Is Not attached.

1.2.2. Lender Verification Is Is Not attached.

If Buyer and Seller have not agreed in writing to a settlement of the above matters on or before the Appraisal Resolution Deadline, the Contract will terminate unless Seller receives written notice from Buyer withdrawing this Appraised Value Objection Notice on or before expiration of the Appraisal Resolution Deadline.


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2017 New Forms

- 1) Brokerage Disclosure to Buyer
- 2) Brokerage Disclosure to Landlord
- 3) **Appraised Value Objection Notice**
- 4) Title Related Objection Notice


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2017 New Forms

- 1) Brokerage Disclosure to Buyer
- 2) Brokerage Disclosure to Landlord
- 3) Appraised Value Objection Notice
- 4) **Title Related Objection Notice**


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Appraised Value Objection Notice 1 of 2

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (2016-6-16) (Mandatory 1-17)
THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.
APPRAISED VALUE OBJECTION NOTICE
 Date: _____
 This Appraised Value Objection Notice relates to the contract dated _____ between _____ (Seller) and _____ (Buyer) relating to the sale and purchase of the _____ of the Property.


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Title Related Objection Notice 1 of 4

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (TON45-6-16) (Mandatory 1-17)
THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.
TITLE-RELATED OBJECTION NOTICE
 Date: _____
 This Title-Related Objection Notice to one or more title-related matters involving Record Title, Off-Record Title, New ILC, New Survey or Due Diligence (Title-Related Objection Notice) relates to the contract dated _____ between _____ (Seller) and _____ (Buyer) relating to the sale and purchase of the Property known as: _____ (Contract). Terms used herein shall have the same meaning as in the Contract.
I. BUYER'S NOTICE OF OBJECTION TO RECORD TITLE, OFF-RECORD TITLE, NEW ILC, NEW SURVEY, OR DUE DILIGENCE DOCUMENTS.
 Note to Buyer: Real estate brokers should not give legal advice concerning Record Title, Off-Record Title, New ILC (Improvement Location Certificate), New Survey or Due Diligence Documents. An attorney should be consulted concerning these matters as they may negatively affect the value, ownership and use of the Property.


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Title Related Objection Notice 2 of 4

I. BUYER'S NOTICE OF OBJECTION TO RECORD TITLE, OFF-RECORD TITLE, NEW ILC, NEW SURVEY, OR DUE DILIGENCE DOCUMENTS.

Note to Buyer: Real estate brokers should not give legal advice concerning Record Title, Off-Record Title, New ILC (Improvement Location Certificate), New Survey or Due Diligence Documents. An attorney should be consulted concerning these matters as they may negatively affect the value, ownership and use of the Property.

1.1. Buyer gives notice to Seller that Buyer objects to the matters as checked:

1	<input type="checkbox"/>	Record Title	3	<input type="checkbox"/>	New ILC or New Survey
2	<input type="checkbox"/>	Off-Record Title	4	<input type="checkbox"/>	Due Diligence Documents

1.2. Buyer's Specific Objections:



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2017 Revised Forms

- 1) Earnest Money Release
- 2) Exclusive Right-To-Sell Listing Contract
- 3) Inspection Objection Notice
- 4) Inspection Resolution
- 5) Post-Closing Occupancy Agreement
- 6) Closing Statement



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Title Related Objection Notice 3 of 4

1.2. Buyer's Specific Objections.

The following are Buyer's specific objections to the matter(s) checked above.
Note: Broker may only act as a scrivener in the preparation of these specific objections.

Buyer withdraws this Title-Related Objection Notice to the matters checked above and elects to proceed with the Contract.

Important

**Licensee CANNOT give legal advice as to the Objection
May act only as scrivener**



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Earnest Money Release 1 of 3

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission (EMR 93-6-16) (Mandatory 1-17)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

EARNEST MONEY RELEASE

Date: _____



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Title Related Objection Notice 4 of 4

If Buyer and Seller have not agreed in writing to a settlement of the above matters on or before the applicable Record Title, Off-Record Title, New ILC, New Survey or Due Diligence Documents Resolution Deadline, the Contract will terminate unless Seller receives written notice from Buyer withdrawing this Title-Related Objection Notice on or before expiration of the applicable Resolution Deadline.

Buyer _____ Date _____ Buyer _____ Date _____

2. BUYER'S WITHDRAWAL OF TITLE-RELATED OBJECTION NOTICE.

Buyer withdraws this Title-Related Objection Notice to the matters checked below and elects to proceed with the Contract.

1	<input type="checkbox"/>	Record Title	3	<input type="checkbox"/>	New ILC or New Survey
2	<input type="checkbox"/>	Off-Record Title	4	<input type="checkbox"/>	Due Diligence Documents

Buyer _____ Date _____ Buyer _____ Date _____



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Earnest Money Release 2 of 3

1. Parties, Property, Contract, Earnest Money Deposit:

- a. Seller _____
- b. Buyer _____
- c. Property _____
- d. Date of Contract _____
- e. Earnest Money \$ _____

2. Buyer and Seller agree that the Earnest Money will be distributed as follows:

- a. \$ _____ payable to: _____
- b. \$ _____ payable to: _____
- c. Other: _____

If the Contract required the Earnest Money to be placed in an interest bearing account, the interest shall be disbursed as follows:



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Earnest Money Release 3 of 3

3. If this box is checked, the parties mutually release each other from any and all claims, demands, obligations, damages and causes of action pertaining to the Contract or the Property except the parties do not release each other from any claims arising under the Section entitled "Damage, Liens and Indemnity" of the Contract, which specifically survives this Earnest Money Release. If the box is **Not** checked, the parties do **Not** release each other.

This Earnest Money Release may affect legal rights or claims of the parties. Buyer and Seller are advised of their right to obtain legal counsel.

Date: _____ Date: _____

Buyer _____ Buyer _____

Date: _____ Date: _____

Seller _____ Seller _____

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2017 Revised Forms

- 1) Earnest Money Release
- 2) Exclusive Right-To-Sell Listing Contract
- 3) Inspection Objection Notice**
- 4) Inspection Resolution
- 5) Post-Closing Occupancy Agreement
- 6) Closing Statement



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2017 Revised Forms

- 1) Earnest Money Release
- 2) Exclusive Right-To-Sell Listing Contract**
- 3) Inspection Objection Notice
- 4) Inspection Resolution
- 5) Post-Closing Occupancy Agreement
- 6) Closing Statement



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Inspection Objection Notice 1 of 2

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (NTE-41-6-16) (Mandatory 1-17)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

INSPECTION OBJECTION NOTICE

Date: _____

This Inspection Objection Notice relates to the contract dated _____ between _____ (Seller) and _____ (Buyer) relating to the sale and purchase of the Property known as: _____ (Contract).

Terms used herein shall have the same meaning as in the Contract.

1. BUYER'S INSPECTION OBJECTION NOTICE.

- 1.1. Buyer gives notice to Seller that that the Property or Inclusions are unsatisfactory.
- 1.2. Description of what is unsatisfactory that Buyer requires Seller to correct:

If more space is required, attached are _____ additional pages.



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Exclusive Right-To-Sell Listing Contract

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (LC50-6-16) (Mandatory 1-17)

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Compensation charged by brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY, OR TRANSACTION-BROKERAGE.

EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT

SELLER AGENCY TRANSACTION-BROKERAGE

Date: _____

1. **AGREEMENT.** Seller and Brokerage Firm enter into this "exclusive, irrevocable contract (Seller Listing Contract) and agree

20. **FORFEITURE OF PAYMENTS.** In the event of a forfeiture of payments made by a buyer, the sums received will be: (1) 100% will be paid to Seller; (2) divided between Brokerage Firm and Seller, one-half thereof to Brokerage Firm but not to exceed the Brokerage Firm compensation agreed upon herein, and the balance to Seller; (3) Other: _____ If no box is checked in this Section, choice (1) 100% is paid to Seller, applies. Any forfeiture of payment under this section will not reduce any Brokerage Firm compensation owed, earned and payable under § 7.



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Inspection Objection Notice 2 of 2

NOTE: Resolution of inspection or other items agreed to by the parties may alter the terms of the Contract and require disclosure by Buyer to Buyer's lender. Buyer is encouraged to consult Buyer's lender prior to entering into a final resolution on inspection as well as other matters as the resolution may (1) have a detrimental impact on the Buyer's ability to get the loan; (2) cause delays in the lender's processing and funding of the loan by Closing; and (3) require further inspections and repairs. Communication with the lender should be in writing.

1.3. Inspection Report Is Is Not attached.

If Buyer and Seller have not agreed in writing to a settlement of the above matters on or before the Inspection Resolution Deadline, the Contract will terminate unless Seller receives written notice from Buyer withdrawing this Inspection Objection Notice on or before expiration of the Inspection Resolution Deadline.

Buyer _____ Date _____ Buyer _____ Date _____

2. BUYER'S WITHDRAWAL OF INSPECTION OBJECTION NOTICE.

Buyer withdraws this Inspection Objection Notice and elects to proceed with the Contract.

Buyer _____ Date _____ Buyer _____ Date _____



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2017 Revised Forms

- 1) Earnest Money Release
- 2) Exclusive Right-To-Sell Listing Contract
- 3) Inspection Objection Notice
- 4) Inspection Resolution**
- 5) Post-Closing Occupancy Agreement
- 6) Closing Statement



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2017 Revised Forms

- 1) Earnest Money Release
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Inspection Resolution 1 of 2

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (NTC43R-6-16) (Mandatory 1-17)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

INSPECTION RESOLUTION (Amendment To Contract To Buy And Sell Real Estate)

Date: _____

1. This Inspection Resolution amends the contract dated _____ between _____ (Seller) and _____ (Buyer) relating to the sale and purchase of the Property known as: _____ (Contract).

Terms used in this document have the same meaning as in the Contract.

2. **RESOLUTION OF UNSATISFACTORY PHYSICAL CONDITION.** Pursuant to the Inspection Resolution provision in the Contract, Buyer and Seller agree that Seller, on or before _____, will do the following to resolve Buyer's Inspection Objection Notice:



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Post-Closing Occupancy Agreement 1 of 6

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (PCO70-6-16) (Mandatory 1-17)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

POST-CLOSING OCCUPANCY AGREEMENT (Seller Rent-Back Agreement)

Note: This form is to be used only for short-term residential occupancy for a term not to exceed 60 days. A residential lease must be used for a term longer than 60 days.

1. This Post-Closing Occupancy Agreement (Agreement) is entered into between _____ (Seller), and _____ (Buyer), relating to the occupancy of the following legally described real estate in the County of _____, Colorado:



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Inspection Resolution 2 of 2

3. **SELLER'S COST.** Pursuant to the Damage, Liens and Indemnity provision in the Contract, correcting or resolving the unsatisfactory physical condition set forth in this document, will be paid by Seller.

4. **SURVIVAL.** If any agreed upon correction requires action after Closing, the obligations agreed upon survive Closing.

Note: This document amends the Contract. Buyer must provide a copy of this Inspection Resolution to Buyer's Lender.

Buyer _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Seller _____ Date _____



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Post-Closing Occupancy Agreement 2 of 6

2. Buyer and Seller entered into that certain Contract to Buy and Sell Real Estate dated _____, and any amendments (Contract). All terms of the Contract are incorporated herein by reference. In the event of any conflict between this Agreement and the Contract, this Agreement controls, subject to subsequent amendments to the Contract or this Agreement. This Agreement is conditional upon Closing. If Closing does not occur this Agreement is terminated.

3. Seller may retain possession of the Property from date of Closing to _____ days after Closing, not to exceed 60 days (Term). Provided however, upon 5 days written notice to Buyer, the Term will automatically adjust to the last day of Seller's possession of the Property if Seller vacates the Property early. Notice must be provided to the address, fax number or email address of the recipient as specified below or as otherwise specified, in writing, by the recipient. Seller agrees to use the Property for Seller's personal residence only. Seller's rights and obligations may not be transferred or assigned in whole or in part, voluntarily or involuntarily. The rights and remedies of the parties under this Agreement will survive the Term.

4. During the Term, Seller, at Seller's sole expense, will keep the improvements and any personal property on the Property.



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Post-Closing Occupancy Agreement 3 of 6

4. During the Term, Seller, at Seller's sole expense, will keep the improvements and any personal property on the Property and owned by Buyer in the same condition and repair, normal wear and tear excepted, as of Closing, except as set forth in § 5. Unless the services are provided by a third-party, e.g., homeowner's association, Seller will maintain the Property as Seller previously maintained the Property to include, but not limited to, landscaping, remove snow, water and mow the lawn. Seller will provide timely notice to Buyer of any improvement requiring maintenance or repair.
5. If necessary, Buyer will, at Buyer's sole expense, maintain, repair and replace the heating and cooling systems including ventilation and ducts, plumbing, electrical wiring, roof and structural components of the Property, and all appliances in the Property owned by Buyer, and the lawn sprinkler system, if any. Seller is responsible for any misuse, waste, neglect or damage to the Property or personal property on the Property caused by Seller or Seller's family or visitors after Closing.
6. Upon not less than 24 hours prior notice to Seller, Buyer will have access to the Property at all reasonable times and Buyer, or Buyer's designee, may enter the Property without interference or disturbing Seller's possession of the Property. However, in the event of an emergency, Buyer may enter the Property without notice to Seller.
7. Buyer has the right, but not the obligation, to restore the Property and any items of personal property owned by Buyer to the same condition of repair and cleanliness as existed at the date of this Agreement, or Closing, whichever is later, excluding normal wear and tear, and, in such event, Seller will pay Buyer, in addition to the Rent, the costs of such repair or replacement. Additionally, Buyer may apply Seller's security deposit towards the cost of any such repair or replacement in accordance with Colorado law.

Rent is at the rate of \$_____ per day for the Term of the occupancy, payable in advance at Closing and delivered to Seller.

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Post-Closing Occupancy Agreement 6 of 6

Buyer's Name: _____ Buyer's Name: _____

Buyer's Signature _____ Date _____ Buyer's Signature _____ Date _____

Address: _____ Address: _____

Phone No.: _____ Phone No.: _____

Fax No.: _____ Fax No.: _____

Email Address: _____ Email Address: _____

Seller's Name: _____ Seller's Name: _____



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Post-Closing Occupancy Agreement 4 of 6

8. Rent is at the rate of \$_____ per day for the Term of the occupancy, payable in advance at Closing and delivered to Seller. Should Seller vacate before the end of the Term, the unearned rent Will Will Not be refunded to Seller.
9. During the Term, Seller agrees to abide by all federal, state and local laws as well as any applicable Owner's Association rules and regulations. Seller agrees that Seller will not store or use any hazardous materials on the Property other than those materials customarily used or stored for a residential home and only so as not to adversely affect coverage or cost of hazard insurance on the Property.
10. Should Seller not timely surrender possession of the Property to Buyer, Seller will be subject to eviction and additionally liable to Buyer for payment of \$_____ per day from and after the Term, until possession is delivered to Buyer.
11. Water and sewer charges incurred for use during the Term will be paid by Seller Buyer.
12. Electric and gas service incurred for use during the Term will be paid by Seller Buyer. Arrangements for the final reading and payments for said utilities and services may be made by either party. Any other utility or service used by Seller during the Term will be paid for by Seller.
13. Seller Will Will Not maintain and pay the cost of (1) a Seller's "Renters Policy" covering Seller's personal property on the Property and (2) Will Will Not maintain and pay the cost of adequate liability insurance in favor of both Seller and Buyer and apply to Buyer evidence of such insurance at or before Closing. During the Term, Seller agrees to indemnify and hold Buyer harmless from all injury, loss, claim or damage to any person or property caused by Seller during the Term that is not paid by Seller's insurance.
14. Buyer agrees to maintain and pay the cost of Homeowner's Property Insurance Policy (which may be endorsed as a non-owner occupant/Buyer) from Closing.



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2017 Revised Forms

- 1) Earnest Money Release
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Post-Closing Occupancy Agreement 5 of 6

14. Buyer agrees to maintain and pay the cost of Homeowner's Property Insurance Policy (which may be endorsed as a non-owner occupant/Buyer) from Closing.
15. Seller agrees that a security deposit in the amount of \$_____ will be paid to and held by Buyer Seller from Closing. The security deposit must be held and disbursed within 30 days after the Term in accordance with Colorado law.
16. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Agreement, prior to or after the Term, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.
17. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)



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Closing Statement 1 of 2

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (SS60-6-16) (Mandatory 1-17)

ESTIMATE FINAL

CLOSING STATEMENT
 SELLER'S BUYER'S

PROPERTY ADDRESS _____



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Closing Statement 2 of 2

APPROVED AND ACCEPTED

I (We) have carefully reviewed this Closing Statement and, to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of this Closing Statement.

Buyer/Seller _____ Buyer/Seller _____

Brokerage Firm's Name: _____

Broker



2017 Annual Commission Update

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MLO Regulation

Two bills passed the 2016 Legislative Session:

1. SB16-014 – Alignment of state and federal mortgage originator disclosure requirements
2. HB 16-1306 – Alignment of state statutes governing MLO with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE ACT)



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Topics

- Welcome
- Compliance Issues
- General Practice Issues
- 2017 Approved Contracts and Forms Changes
- **New Regulations**
- Resources and Commission News



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New Regulations

- Mortgage Loan Originators
- **HOA**
- Title
- Sunset Review and Recommendations



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New Regulations

- **Mortgage Loan Originators**
- HOA
- Title
- Sunset Review and Recommendations



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HOA Regulation

Two bills passed the 2016 Legislative Session:

1. HB16-1149 – Requires Common Interest Communities created prior to July 1, 1992 to comply with the budget reporting provisions of the Colorado Common Interest Ownership Act (CCIOA)
2. HB16-1005 – The use of rain barrels to collect precipitation from residential rooftops



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New Regulations

- Mortgage Loan Originators
- HOA
- **Title**
- Sunset Review and Recommendations



2017 Annual Commission Update

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New Regulations

- Mortgage Loan Originators
- HOA
- Title
- **Sunset Review and Recommendations**



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Division of Insurance revised Regulation 3-5-1 (Title Insurance)

Separated into smaller more manageable regulations consisting of the following:

1. 8-1-1 Rates and Fees;
2. 8-1-2 Consumer Protection;
3. 8-1-3 Standards of Conduct; and
4. 8-1-4 Fiduciary Duties.



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What Is A Sunset Review?

- The Sunset Process Allows the General Assembly to Review Regulatory Functions
- The Executive Branch Conducts an Initial Review of Entities and Functions
- The General Assembly Conducts Public Reviews of the Regulatory Functions



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New Items in Regulation 8-1-3

1. Prohibits the title industry from entering into marketing service agreements (MSAs).
2. If a title entity provides or sponsors an educational course they provide the "Title Insurance Closing Protection Letters" notice to all individuals taking the course.



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Sunset Review

- Review of Entities & Functions Based on Statutory Criteria
- Several Options for Recommendations
- Sunset Bills Follow the Same Procedures As Other Bills During the Legislative Session



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Real Estate Broker Sunset Recommendations

Sunset Recommendations:

1. Real Estate brokers and subdivision developers should continue to be regulated.
2. Delete the words "standard" and "including those" from section 12-61-803(4), C.R.S.
3. Create a license endorsement for property managers that requires prescribed education and financial surety as conditions for the endorsement.



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Topics

- Welcome
- Compliance Issues
- General Practice Issues
- 2017 Approved Contracts and Forms Changes
- New Regulations
- **Resources and Commission News**



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Real Estate Broker Sunset Recommendations

4. Strengthen the requirements to become an employing broker by directing the Commission to establish, by rule, the number of transactions that must be completed in order to become an employing broker.
5. Amend the statutes to conform to the Real Estate Settlement Procedures Act of 1974 concerning referral fees.
6. Create one cash fund for all Division programs.
7. Revise the license renewal laws such that all licenses expire on December 31.



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Resources and Commission News

- **Colorado Connects**
- License Inquiry Process
- eLicense Account Reminder
- Real Estate Manual
- Feedback



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Real Estate Broker Sunset Recommendations

8. Authorize the Commission to consider deferred judgments as a condition for licensure.
9. Require the Commission to develop guidelines for the Annual Commission Update course rather than developing the course itself.
10. Modify the Commission's composition to include a licensee who mainly works as a property manager.



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www.ColoradoHousingConnects.org

Who should call:

Colorado renters, homeowners and landlords looking for housing resources, services or assistance can speak with a housing navigator to receive education and local referral information to assist them with their housing needs.

What should a caller expect:

- Education and referrals to housing resources
- Bilingual, English and Spanish representative
- Educational and referral information free of charge



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Callers Receive Referrals To Local Housing Resources For:

- Affordable housing
- Landlord/tenant counseling (general disputes, evictions, security deposit disputes, habitability concerns)
- Homeownership and foreclosure prevention counseling
- Programs for seniors and those with special housing needs
- Minor repair, rehab, and accessibility modification programs
- Fair housing concerns
- Emergency housing



2017 Annual Commission Update

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New DRE License Inquiry Process

- Legal and Operations Advice
- New Inquiry Process
dora_dre_licensee_inquiries@state.co.us
- Platinum Customer Service



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The CFPB accepts consumer complaints related to financial products and services

They will forward a consumer complaint to the company and work to get a response from them

**Consumers can visit:
www.consumerfinance.gov/complaints/
or call 855-411-2372**



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Resources and Commission News

- Colorado Connects
- License Inquiry Process
- **eLicense Account Reminder**
- Real Estate Manual
- Feedback



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Resources and Commission News

- Colorado Connects
- **License Inquiry Process**
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- Feedback



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Using The eLicense Licensing Platform

All licensees and business entities licensed with the Division of Real Estate are required to register and create an account to use eLicense.

The eLicense database and online service enhancements:

- allows licensees to handle all aspects of their license online on their own time
- reduces regulatory red tape and licensing cost



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eLicense Functionality

- Create/Save Initial licensing applications
- Check Status of Applications
- Renewal or Reinstatement
- Change a License Level
- Update Account and License Information
- Print Certificates
- Change License Status
- Update Employment Information
- Search Licensees
- Create Rosters
- File Complaints



2017 Annual Commission Update

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Resources and Commission News

- Colorado Connects
- License Inquiry Process
- eLicense Account Reminder
- Real Estate Manual
- **Feedback**



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Resources and Commission News

- Colorado Connects
- License Inquiry Process
- eLicense Account Reminder
- **Real Estate Manual**
- Feedback



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Feedback Requested

- The Commission's Education Task Force wants input from YOU
- Your feedback is incorporated into future versions of the ACU Course and used as a guide to help improve instruction of the course.
- All identities are kept confidential and the feedback will help the committee and instructors analyze their performance – PLEASE GIVE US YOUR HONEST OPINION.

Take the survey at: www.surveymonkey.com/r/2017_ACU



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2017 Real Estate Manual

- The Manual is not only a beneficial resource for new licensees but for existing real estate brokers, appraisers, and other real estate professionals
- Provides current relevant statutes and requirements for practicing in Colorado
- eBook download - benefit of a searchable digital Manual for quick access to new information, statutes, rules, and position statements



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EXAM

2017 Annual Commission Update Course
presented by Colorado Continuing Education



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