

Brokerage

Commercial brokers applaud adoption of new Rule F

by Eric Gold and Patrick Armbrust

With the adoption of the revised Rule F, specifically the expanded definition of "standard forms," commercial brokers in particular are feeling the love from the Colorado Real Estate Commission! Previously hamstrung, the rule modernizes and accommodates industry needs and the common practice of brokers.

To ensure compliance with Conway-Bogue, standard forms had been limited to only those approved by the commission. Yet we found ourselves in a vacuum when determining how to deal with the many forms provided by our clients, legal counsel, letters of intent and various disclosure forms that are not commission approved. Expanding the definition of Standard Forms allows all brokers to better meet the needs of clients without the possibility of a charge of unauthorized practice of law hanging over our heads.

So, let's take a quick look at the specifics of this expanded definition of Standard Forms and how it affects our brokerage practices.

■ **Commission-approved forms.** Of course, this one we are used to. The rule compels us to use a commission-approved form, when such a form exists and is appropriate for the trans-

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action. It remains problematic to use alternative forms if the commission has provided a standard form. As always, the licensee should explain the form being used.

■ **Attorney forms.** Again, not much different than before, if the broker, employing broker or brokerage hires counsel to create a form, if a commission forms does not exist. We are allowed to use attorney forms so as long as the disclosure "This form has not been approved by the Colorado Real Estate Commission" is included on the form along with the name of the attorney or law firm and the name of the broker, employing broker or brokerage firm for whom the form was prepared. Rule F compels us to explain the form to the parties.

■ **Client forms.** We are free to use forms provided by a party to the transaction so long as we retain, in the transaction file, written confirmation that the form

was provided by said party. Use of these forms, however, requires inserting transaction specific information within the form, which may not be explained by the brokers.

■ **Government and lender forms.** If such form is required by a lender or governmental agency, our use is limited to inserting transaction-specific information and brokers may not explain the form.

■ **Colorado Bar Association forms.** If the bar association develops a form specifically designated for use by brokers, provided a commission-approved form does not exist, a broker may use the form. The broker must use the form within the guidelines or conditions specified by the Colorado Bar Association. The form may not be altered other than completing blank spaces in the form and the broker must be prepared to explain the effects of the form to the parties.

The form must disclose "This form has been approved by the Colorado Bar Association for use by real estate brokers in Colorado in accordance with the guidelines provided with this form."

■ **Disclosure forms.** This is allowable for use, if the form is used for disclosure only, and does not claim to waive or create any legal rights or obligations affecting any party to the transaction. The disclosure form may only provide information concerning the real estate involved in the transaction specifically, or the geographic area in which the real estate is located generally. Again, the form must contain the language, "This form has not been approved by the Colorado Real Estate Commission" and the broker may advise the parties as to the effects of the form.

■ **Title company forms.** Defined as forms prescribed and completed by a title company that is providing closing services in a transaction. The broker may advise the parties as to the effects of the form.

■ **Letters of intent.** Created or prepared by a broker, employing broker or broker-

age firm, so long as the letter of intent is nonbinding and creates no legal rights or obligations. The language "This form has not been approved by the Colorado Real Estate Commission" must appear and the broker may advise the parties as to the effects of the form.

All in all, commercial brokers are pleased to see Rule F and standard forms allowing us to better accommodate the needs of our clients and practice contemporaneous brokerage. The only remaining caveat then is to ensure we have the competency to explain the forms, when allowed, or limit our use of these forms to insertion of transaction-specific information when not allowed. ■



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