



UPDATED DECEMBER 2019

COLORADO REAL ESTATE

SELLER ADVISORY



colorado association of
REALTORS®

*a publication of the Colorado
Association of REALTORS®*

Introduction

This Seller Advisory is intended as a resource for sellers of real estate in Colorado as they prepare for the sale of their property. It is designed to assist a property owner in understanding many of the important documents and other considerations they will encounter before, during, and after the sales transaction.

WHILE THIS ADVISORY IS INTENDED AS A GENERAL OVERVIEW OF COMMON SELLER CONSIDERATIONS IN A COLORADO REAL ESTATE TRANSACTION, IT IS NOT INTENDED TO BE COMPREHENSIVE.

Colorado REALTORS® provide valuable services to property owners seeking to market and sell their property. As real estate licensees in Colorado, REALTORS® may advise sellers on the Colorado Real Estate Commission approved contract forms, assist sellers in establishing a fair price, establish and implement marketing strategies, negotiate the contract and sale, and assist the seller with their contractual obligations.

A COLORADO REALTOR® IS NOT QUALIFIED OR LICENSED TO DISCOVER PROPERTY DEFECTS, EVALUATE THE PHYSICAL CONDITION OF A PROPERTY, PROVIDE LEGAL OR TAX ADVICE, OR OTHER SERVICES BEYOND THE SCOPE OF THEIR REAL ESTATE LICENSE.



This Seller Advisory is divided into three sections. Section 1 will describe the various transaction documents and Colorado Real Estate Commission approved contract forms that a seller may encounter during a Colorado real estate transaction. Section 2 will describe many of the common seller disclosure considerations that a seller may have during a Colorado real estate transaction. Section 3 will describe other general considerations that a seller may have during a Colorado real estate transaction.

SECTION 1

SELLER ADVISORY: REAL ESTATE TRANSACTION DOCUMENTS

EXCLUSIVE RIGHT TO SELL LISTING CONTRACT (“LISTING CONTRACT”)

This is one of the first contract documents that a seller will likely encounter during the real estate sales process. The Listing Contract establishes the contractual relationship between the REALTOR® and the seller and creates rights and obligations for each party. In most cases, the seller and listing broker will be utilizing the Colorado Real Estate [Commission approved contract](#) which will include a variety of details regarding brokerage relationships, listing term, list price, services provided, commissions payable, etc. It is important that a seller thoroughly understands the Listing Contract and the various rights and responsibilities it creates for both the seller and the REALTOR®.

COMPARATIVE MARKET ANALYSIS (“CMA”) OR BROKER PRICE RECOMMENDATION

One of the most important advantages in working with a Colorado REALTOR® is their ability to provide the seller with assistance in determining the appropriate list price for the property. Ultimately, the seller is exclusively responsible for establishing their own list price, but a REALTOR® may utilize a CMA to help the seller understand the market in which they will be competing for prospective buyers. A CMA is a document that evaluates a seller’s property value based on the prices of similar homes in the area. In preparing a CMA, a REALTOR® may consider recently sold, active, under contract, and expired listings to assist a seller in determining a reasonable list price for their property.

SELLER’S PROPERTY DISCLOSURE

In a Colorado real estate transaction, a seller is obligated to disclosure to a prospective buyer any and all adverse material facts (adverse material facts are discussed more in Section 2) known about the property and its condition. While seller

disclosure obligations may be created by Colorado statute, case law, and/or the contract, it is critical that such disclosures be made in writing so that there is evidence of the disclosure. The most common manner in which a seller may disclose property conditions to a buyer in Colorado is through the Colorado Real Estate Commission approved [Seller’s Property Disclosure form](#). It is critical that a seller completes this disclosure accurately and to the best of their current actual knowledge as of the time the contract is accepted. Moreover, a seller is obligated to update the Seller’s Property Disclosure, if it becomes necessary, throughout the entire contract period. Failure to do so may create significant legal liability for a seller that could potentially extend years beyond the sale of the property. Additional information regarding seller disclosures will be covered extensively in Section 2 of this Seller Advisory.

LEAD-BASED PAINT DISCLOSURE

In the case of a residential property built before 1978, a seller will almost certainly be obligated to complete a lead-based paint disclosure. Most commonly, the Colorado Real Estate Commission approved [Lead-Based Paint Disclosure form](#) will be utilized. In this disclosure, which is required by federal law, the seller will notify the buyer of any knowledge they may have related to the existence of lead-based paint on the property. Sellers are advised to complete this form promptly, honestly and accurately as important legal liability and/or health and safety concerns may be related to the existence of lead-based paint on a property.

SOURCE OF WATER

Colorado requires that sellers disclose a property’s water source (if any) to potential buyers in connection with a real estate transaction. This disclosure often comes in connection with the Seller’s Property Disclosure (above) and/or in connection with a [Source of Water Addendum](#) to the sales contract with the buyer. This document notifies the buyer of any applicable potable water sources for the property, including municipal water provider, well, cistern, etc. Even in the event the source of a property’s water may be obvious (municipal

water provider), it is still important for the seller to complete any disclosures accurately and completely.

SQUARE FOOTAGE DISCLOSURE

Another document that a seller will likely encounter in listing their property for sale is the Colorado Real Estate Commission approved [Square Footage Disclosure](#). This is a form that is required to be completed by the seller's REALTOR® and delivered to both the buyer and the seller. In this disclosure, the REALTOR® will describe the source of any representations they will be making regarding a property's improved square footage for the purposes of marketing (county records, architectural drawings, broker measurement, prior appraisal, etc.). It is important that the seller review and acknowledge receipt of this document from the REALTOR® as it will be the basis for describing the property's square footage for marketing purposes.

CONTRACT TO BUY AND SELL ("SALES CONTRACT")

This is one of the most important documents that the seller will receive, review and execute in the transaction. The sales contract establishes the contractual relationship between the seller and buyer and also specifically describes all of the parties rights and obligations for the purchase and sale of the property (price, closing, contingencies, due diligence, etc.). Most real estate sales transactions in Colorado will utilize some version of the Colorado Real Estate Commission approved [Contract to Buy and Sell](#). When entering into a Sales Contract, the seller is committing to a variety of important, time-sensitive obligations that have very important short-term and long-term legal consequences. As such, it is essential that the seller review and understand every aspect of this document prior to execution. Once the Sales Contract is fully executed by the seller and the buyer, it will require both parties to approve any changes or amendments.

PERSONAL PROPERTY AGREEMENT

In connection with some real estate (real property) transactions, personal property is also conveyed from a seller to a buyer. In a typical residential sale, this personal property might include large appliances or other traditional items that

can simply be included within the sales contract. In other cases, more unusual or extensive personal property items are included in the contemplated sales transaction (hot tubs, pool tables, furniture, all furnishings, etc.). When extensive, unusual, or high dollar items are included in the transaction, it often creates problems for the buyer in their loan process. If this is the case, another document the seller may encounter in a transaction is the Colorado Real Estate Commission approved [Personal Property Agreement](#). This is a separate contractual agreement between the seller and the buyer of the "real" property (under the Sales Contract) to also sell additional "personal" property for its "fair market value" in connection with the Sales Contract. This Personal Property Agreement comes with independent rights and obligations between the parties and it is important that the seller fully understands their legal obligations under the agreement before execution.

CLOSING INSTRUCTIONS

Closing Instructions are an agreement between the buyer, seller and the "closing company" (typically, in Colorado, the title company) in which the buyer and seller engage the closing company to provide the settlement services on a real estate transaction. The Closing Instructions give the closing company the authorization to receive the necessary information for the closing and to prepare, deliver and/or record all documents and funds necessary to close the real estate transaction pursuant to the Sales Contract. In Colorado, the preferred Closing Instructions are contained in the Colorado [Real Estate Commission approved form](#). Sellers should review and understand the Closing Instructions prior to executing them at the time the Sales Contract is signed.



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SECTION 1 CONT...

SELLER ADVISORY: REAL ESTATE TRANSACTION DOCUMENTS

TITLE COMMITMENT

The title commitment is a document generated by the title insurance company designated in the Sales Contract. It is a “commitment” by the insurance company to provide title insurance to the buyer (and the buyer’s lender) at closing. The title commitment will very specifically describe what things must be done (or documents provided) prior to the issuance of the insurance policy at closing (“Requirements”). The title commitment will also specifically describe any exceptions to the insurance policy or, things they will not insure (“Exceptions”). It is important for the seller to review and understand any Requirements of the title commitment as these will typically be the obligations of the seller (paying off the existing mortgage or other liens, providing additional documents for entities, probate documents, etc.). It is also important for the seller to understand that the buyer, per the terms of the Sales Contract, will typically be able to request that the seller address some of the Exceptions that may appear in the title commitment as well. The title commitment is a very important document with extensive legal implications that can last for many, many years. The seller should also recognize that advice and interpretation of the title commitment is a legal function that a Colorado real estate broker is not licensed to perform. If the seller has questions regarding the title commitment or a buyer’s title request(s), they are advised to consult with a Colorado attorney.

COMMON INTEREST COMMUNITY OR ASSOCIATION DOCUMENTS

In the event the seller’s property is located in a common interest community (“CIC”), it is likely that the Sales Contract will obligate the seller to deliver a very explicit set of documents to the buyer for their review in connection with purchasing the real estate. Generally, a common interest community is a community with mandatory assessments on property owners within the community (the most common example would be a condominium). Due to the very specific and extensive CIC documents that a seller is contractually obligated to provide to the buyer, it is important that the seller coordinate with their community’s board or the board’s contracted property

management company prior to the Sales Contract to determine what documents are available and the process/time-frame in which the documents will be provided.

DUE DILIGENCE DOCUMENTS

Depending on the type of real estate transaction (residential, commercial, investment, etc.), a seller may be required to provide a wide variety of due diligence documents to the buyer pursuant to the terms of the Sales Contract. At a minimum, this could include copies of any agreement related to the property that the seller has with any third parties (tenants, contractors, vendors, solar providers, etc.) that may impact the buyer’s use/ownership of the property. It could also apply more generally to property records that the seller may possess such as building plans, environmental reports, inspection reports, permits, etc. Prior to the execution of the contract, the seller should carefully reflect on any agreements or other property records that may be important to disclose and deliver to a buyer in connection with the Sales Contract.

POST-CLOSING OCCUPANCY

In certain situations, a seller may negotiate to remain in possession of the property for a certain period after the sale to the buyer. In that scenario, a seller essentially becomes a “tenant” and the buyer becomes the “landlord.” If a post-closing occupancy is required, the most common way that a buyer and seller might contract for this additional time is using the Real Estate Commission approved [Post-Closing Occupancy Agreement](#). It is important for the seller to understand that the Post-Closing Occupancy agreement is a separate contract between the buyer and seller that creates different rights and obligations between the parties.

CLOSING STATEMENT

In connection with the closing, the seller will receive a Closing Statement for their review. The final closing statement is typically prepared by the closing company and should be available for the seller's review prior to closing. On the Closing Statement, the seller will see a ledger format with their debits and credits for the transaction reflected as actual numbers. All of a seller's "debits" (fees, loan and lien payoffs, taxes, transfer costs, commissions, etc.) will be offset against their "credits" (purchase price, etc.) to clearly delineate their final settlement balance. Prior to closing, and certainly before signing any closing paperwork, the seller should thoroughly review the Closing Statement to make sure that it is accurate and reflects all of the parties agreements pursuant to the Sales Contract and any amendments.

CLOSING STATEMENT

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DEBITS \$325,000

CREDITS \$225,000

FINAL \$100,000



**Make sure your
agent is a
REALTOR®**



SECTION 2

SELLER ADVISORY: SELLER PROPERTY DISCLOSURE CONSIDERATIONS

“AS IS, WHERE IS AND WITH ALL FAULTS”

Every Colorado Real Estate Commission approved Sales Contract begins from the premise that the seller is conveying the property to buyer “in an ‘As Is’ condition, ‘Where Is’ and ‘With All Faults’” (Sales Contract Paragraph 10.2). In other words, sellers should understand that every contract is effectively “as is” unless the buyer and seller have negotiated alternative provisions within the contract itself.

ADVERSE MATERIAL FACTS/PROPERTY INSPECTION

Despite the “as is” nature of the Sales Contract, it is critical for the seller to understand that the contract also requires the seller to disclose to the buyer, in writing, “any adverse material facts actually known by seller.” A seller’s failure to disclose known adverse material facts to a prospective buyer consistent with the contractual commitment they are making could potentially result in very significant and long-term liability for a seller (well beyond the closing of the sale). Prior to completing the Seller’s Property Disclosure (as described in Section 1 above), the seller should have a very clear understanding of their contractual disclosure obligations as well as a full consideration of the property and its condition. A full discussion of the “adverse material fact” disclosure standard and a test to determine whether or not a specific property condition is an “adverse material fact” may be found in Colorado Real Estate [Commission Position Statement 46](#). While this Position Statement is directed towards Colorado real estate licensees, some valuable insight and knowledge can be obtained by the seller.

SUBSEQUENT CHANGE IN CONDITION(S)

The Sales Contract also requires that the seller update a buyer (in writing) if there is a change in the condition of the property or inclusions during the contract period. In other words, if something in or on the property breaks or becomes damaged after the contract is executed, but before closing, the seller is required to inform the buyer of this change in the condition

so that the buyer and seller can determine an appropriate solution. Due to the potential legal liability to a seller for their failure to disclose, it is essential that the seller broadly consider disclosure of any changes in the condition of the property after the execution of the contract.

WATER

In addition to the Source of Water Disclosure described in Section 1 above, the seller should consider any additional implications of existing water rights or limitations on any water rights that may be connected to the property. In metropolitan areas, considerations surrounding water may be limited due to the fact that the property is likely to have only a municipal water source for residential uses. However, sellers in rural and/or agricultural areas may have more unique considerations related to water including, but not limited to, well rights, ditch rights, water shares, etc. Early disclosure of information related to a seller’s unique water rights (and limitations) is important in a real estate transaction as a buyer will require time to investigate any concerns they may have and, likely, additional closing paperwork will be required to convey those rights (well transfers, conveyance deeds, etc.). In most cases, preparation of this additional closing paperwork will be a legal function that a Colorado real estate broker is not licensed to perform.

SEWER/SEPTIC

Due to the fact that sewer and septic systems are, for obvious reasons, less visible elements to a property, seller disclosure considerations are even more important as it relates sewer and septic matters on the real estate. Similar to potable water supply matters discussed above, many metro area sellers are on municipal sewer, but sewer line conditions are still an important financial concern for property owners. To the extent a seller has knowledge of any adverse facts concerning the condition of their sewer line, it is critical that such facts are disclosed to prospective buyers. On remote, rural, or other properties utilizing septic systems, sellers should similarly consider and disclose any implications to the condition of the septic

system, including cleaning or deferred maintenance, as well as compliance with any city or county requirements related to the transfer of the septic system.

INSURANCE CLAIMS

Generally, real estate buyers will either want to obtain or, more likely, be required to obtain, property insurance for casualties that may occur to the property after closing. One of the most important factors that insurance companies will have in determining the cost and availability of the buyer's property insurance are prior insurance claims that have been made on the property. As such, it is important that the seller fully consider and disclose of any insurance claims that have been made during the seller's ownership of the property.

UNRECORDED EASEMENTS/OTHER MATTERS

The seller's delivery of the title commitment (as described in Section 1) will inform the buyer of matters that have been recorded against the title to the property. Occasionally, other agreements (both formal and informal) occur in relation to the property that are not recorded in the property's record title. Such agreements may include easements, access rights, maintenance agreements, etc. between the seller and one or more third parties (typically neighbors). Despite the fact that some of these agreements may be informal and/or unrecorded, they are critical to disclose to prospective buyers. Often, the obligations of the seller in such an agreement can become binding on the buyer and subsequent property owners. Failure to disclose such agreements can create the potential for long term liability to a seller.

PREVIOUS INSPECTION REPORTS/ PROPERTY RECORDS

Occasionally sellers will have possession of formal or informal reports related to the condition of the property. Such reports may include previous inspection reports, engineering reports, or other paperwork from third party contractors related to the property, building, structure or building systems ("Property Records"). The seller should cautiously consider any contractual obligations to disclose such Property Records to potential buyers. In addition, many of these Property Records may contain clear, written evidence demonstrating that the seller

had "actual knowledge" of a specific property condition that a seller failed to disclose to the buyer as may be required by the Sales Contract.

PROPERTY STIGMATIZATION

Sellers of real estate in Colorado are generally not required to disclose facts that may "psychologically stigmatize real property" to a prospective buyer ("Stigmatizations"). Stigmatizations may include such things like murder, death, suicides, and "hauntings" in a certain property. That said, there are often situations where disclosure of such stigmatizations is appropriate from a sales/marketing perspective. In order for your REALTOR® to disclose any stigmatizations to potential buyers, they will require the seller's informed, written consent to disclose. In the event a seller determines that they have a potential property stigmatization, the seller should have a candid conversation with the REALTOR® to better determine how such disclosure may impact the marketing strategy for the property.

SPECIAL ASSESSMENTS

Seller of real estate in common interest communities (as described in Section 1 above) may become aware of actual or potential special assessments to community property owners prior to closing. Often, these assessments may have significant financial liability for the property owner. In the event that the seller becomes aware of any actual special assessment, the Sales Contract addresses which party will be responsible for payment. In the event the knowledge obtained by the seller is regarding potential special assessments during the contract period, seller should disclose this knowledge to the buyer so that the parties may consider the implications of such assessment.

SECTION 3

SELLER ADVISORY: ADDITIONAL SELLER CONSIDERATIONS

WIRE FRAUD

Sellers should take extreme caution when wiring funds in real estate transactions. Cybercriminals and hackers target all parties to real estate transactions. Cybercrime continues to have a significant impact on Colorado real estate transactions. The tactics employed by the scammers are sophisticated and continually changing, and require all parties to a real estate transaction to be on constant alert to identify and report questionable practices. Accordingly, in each real estate transaction, you are advised of the following:

- At the beginning of the transaction, always discuss in person or over the telephone with verified licensed professionals the wiring process, intended timelines, parties, and details of the planned transaction;
- Do not rely solely on electronic communications (e-mail, text messages, etc.) when conducting wire transfers;
- Always independently confirm wiring instructions (including account and routing information), either in person or by telephone, with a trusted and verified person before taking final steps to wire funds;
- Never send personal information, such as social security numbers, routing and account numbers, and/or credit numbers, unless it is done through a secure/encrypted e-mail or delivery system; and
- Monitor your e-mail account for unrecognized activity and never click on links or attachments in unverified e-mails.

If you believe you are the victim of a suspicious wire transfer, we advise that you immediately contact your bank, escrow agent, and REALTOR®. In addition, please contact the FBI at **303-629-7171** and file a complaint using the FBI's Internet Crime Complaint Center (IC3) at: <https://www.ic3.gov>.

ELECTRONIC SURVEILLANCE DEVICES

Sellers should be aware that significant state and federal laws are implicated by maintain cameras or other electronic surveillance devices ("cameras") in, on, or around the property. In Colorado, seller may subject themselves to civil or criminal penalties for the undisclosed monitoring or recording of conversations being held by third parties. Prior to maintaining any active cameras in, on, or around a property being shown to, or inspected by, any third parties (including the buyer and/or their representatives), the seller should consult with appropriate legal and/or other counsel regarding any state or federal laws that may apply.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA")

In the event the seller is a "foreign person" or entity as defined under FIRPTA, the federal law may require the buyer to withhold a significant percentage of the gross sales price of the real estate transaction and remit such withholding to the IRS on behalf of the seller. In the event the seller determines they may be a "foreign person" for the purpose of FIRPTA, the seller should consult with appropriate legal and/or tax counsel to clarify their status as a "foreign person" and to determine whether the withholding is appropriate or if exceptions/alternatives to withholding exist.

COLORADO WITHHOLDING

The seller should understand that the State of Colorado may require non-resident sellers of Colorado real property to withhold a percentage of the sales price or net proceeds from a transaction in anticipation of any Colorado income tax that could be due on the sale ("Colorado Withholding"). In the event the seller believes a Colorado Withholding may be applicable to the transaction, seller should consult with appropriate legal and/or tax counsel to determine the applicability of the withholding and or if any exceptions/alternatives to withholding exist.

SECTION 3 CONT...

SELLER ADVISORY: ADDITIONAL SELLER CONSIDERATIONS

MINERAL/SUBSURFACE RIGHTS

In addition to the surface land and structures which may be visible and obvious in connection with a real estate transaction, significant additional ownership rights may exist for minerals and/or other “subsurface” assets included with a property. Generally, when a seller conveys property to a buyer without expressly addressing or reserving any “subsurface” rights, those rights are conveyed to the buyer in connection with the surface rights. In the event that the seller wishes to reserve or sever any “subsurface” rights from the sales transaction, the seller should consult with appropriate legal and/or other counsel prior to executing any contracts for the sale of the real estate. The final course of action, after consultation with legal and/or other counsel, should be clearly conveyed to your listing broker.

FAIR HOUSING

The Fair Housing Act protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities. Sellers are prohibited from engaging in discrimination in offering housing to individuals based on their presence in a protected class. Federal and state law (and some local municipalities) provide protections for various classes of individuals. A seller can incur potentially significant legal liability for making real estate transaction decisions based on a prospective buyer’s presence in a federal, state or local “protected class.” For additional information on Fair Housing applicability, please consult with appropriate legal or other counsel.

PROPERTY TRANSFER FEES

In addition to explicitly negotiated fees that may be a result of the Sales Contract or Listing Contract, sellers may incur various additional fees in connection with the sale of their property. In addition to transfer taxes that may be applicable in some municipalities, sellers may also incur fees associated with their community associations (document production fees, record change fees, status letter fees, etc.). Sellers should consult with their association’s board of directors, management company, and/or legal counsel to determine what, if any, additional fees may be associated with their transaction and paid either in advance of closing or deducted from their proceeds at closing.

SECTION 4

SELLER ADVISORY: RESOURCES

Below are some helpful links to help you navigate the buying process. We encourage you to actively review, investigate and research any potential service providers or factors that may influence the value of your property.

COLORADO ASSOCIATION OF REALTORS®



Buying and Selling Tips

www.ColoradoRealtors.com

NATIONAL ASSOCIATION OF REALTORS®



Buying and Selling Tips

www.REALTOR.org

NATIONAL PROPERTY LISTINGS



Buying and Selling Tips & Property Listings

www.REALTOR.com

OTHER HELPFUL LINKS

- [Colorado Bar Association](#)
- [Find A Lawyer](#)
- [Colorado Division of \(Title\) Insurance](#)
- [Colorado Bureau of Investigation \(Cyber Crime\)](#)
- [Consumer Financial Protection Bureau](#)
- [Land Title Association of Colorado](#)
- [Colorado Division of Water Resources](#)

COLORADO REAL ESTATE

Seller Advisory



Learn more online

www.ColoradoREALTORS.com



SELLER ACKNOWLEDGEMENT

Seller acknowledges receipt of all 10 pages of this Seller Advisory. Seller further acknowledges that there may be other issues of concern not listed in this Advisory. Seller is responsible for making all necessary inquiries and consulting with appropriate persons or entities prior to the selling of any property.

The information in this Advisory is provided with the understanding that it is not intended as legal or other professional services or advice. These materials have been prepared for general informational purposes only. The information and links contained herein may not be updated or revised for accuracy.

If you have any additional questions or need for advice, please contact your own lawyer or other professional representative.

SELLER

DATE

SELLER

DATE



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