

## **NEW LAW STANDARD FORMS DEFINED BY COLORADO**

During the 2017 legislative sessions, the Colorado Legislature passed a law affecting the use of real estate forms including leases and property management agreements. If there was any doubt regarding the use of real estate forms prior to 2017, the Colorado legislature eliminated all legal ambiguity from the law. Colorado real estate brokers cannot draft their own forms or obtain forms from the internet. Surprising to many real estate brokers and rental industry veterans, this has been the law for some time. Given the wide use of forms from the internet and the common practice of whipping up forms when needed, the previous law was either not clear or not understood.

The 2017 law is clear. Colorado real estate brokers can only utilize forms from approved sources. Approved sources are limited. Approved sources include the State (the Colorado Real Estate Commission), the broker's attorney, the Colorado Bar Association, or in limited circumstances the broker's client. The impact of this new law is that leases, property management agreements, and other rental-related forms must disclose that the lease is not a Colorado Real Estate Commission Approved form and that it was drafted by a law firm or attorney for the use of the broker.

Regular readers of Landlord News were aware that this issue was on the horizon. The form issue came up last summer in the form of a proposed rule change regarding Real Commission Rule F-7. The Real Estate Commission, despite months of debate and review, could not agree on the content of the rule revision on forms. The Commission was split between the brokers and the lawyers on how the rule should read, which led to the Commission abandoning efforts to make a change.

Given the impasse between the brokers and the lawyers, the Real Estate Commission decided to go a different route. The legal authority authorizing the Real Estate Commission was expiring this year (sun setting). For the Real Estate Commission to continue, the Real Estate Commission needed to be reauthorized. The reauthorization is made in what is called a sunset review and bill. As part of the Real Estate Commission sunset bill this year, language addressing forms was included. The bill including this language passed, and became effective on July 1, 2017.

The new law defines as "standard form" as 1) a Colorado Real Estate Commission approved form; 2) a form drafted by a Colorado attorney; 3) a form provided by a party to the transaction; 4) a form prescribed by a governmental agency; or 5) a form approved by the Colorado Bar Association. If a Real Estate Commission form covers an issue or transaction, the law requires a broker to use such form. Review the full law here [tinyurl.com/SenateBill17-215](http://tinyurl.com/SenateBill17-215).

Generally, if a broker is using forms other than Commission approved forms, a broker's use of such forms is limited to inserting transaction specific information. Brokers must also advise other parties of the effects of using standard forms, and any forms used must be appropriate to the transaction. Broker's should also advise the parties to the transaction that

forms have important legal consequences and that the parties should consult legal counsel before signing such forms.

The new law impacts property managers that are real estate brokers. Specifically, if you are either a real estate broker or required to have a real estate brokerage license, this rule applies to you. If you are not required to have a real estate broker's license, the law does not apply to you. Do we need a Colorado Real Estate Broker's License, is one of the most common questions that we are asked? The quick answer to this question is straightforward. If you own the property you manage, you do not need a broker's license. This is commonly referred to as the "owner's exemption". If you are a third-party fee manager you need a license. The question is not complicated for fee managers. Fee managers must be licensed. Whether an ownership and management relationship meets the owner's exemption can be extremely complicated given the various ownership structures that are used in real estate.

The key to the ownership exemption is common control of both the management and ownership entities. In some cases, the ownership entity of an apartment community is owned and controlled by a complex web of other legal entities. Let us know if you need assistance in sorting out this question. We are letting you know now that this is not a ten-minute phone call.

The definitions of a standard form went into effect July 1, 2017. To be compliant, the source must appear on the form (usually a law firm), and the fact that it was drafted for the broker. Simply noting in the file the source of the lease and that it was drafted by an attorney is not compliant. The information must appear on the form itself to be compliant. Many firm clients are familiar with this language because it has appeared on our leases for some time. However, if you have purchased a lease from the firm and that language does not appear, you will need to contact the firm to ensure that no modifications have been made to the lease terms before adding the language related to the drafting of the lease. Even if a broker is using a form that has been reviewed by an attorney or drafted by an attorney, the broker needs to have clear documentation that the lease is appropriate for the broker's use, and that opinion needs to come from the broker's attorney that is licensed in Colorado.

If you currently use the NAA Blue Moon lease, the Colorado Apartment Association Lease, or a Tschetter Hamrick Sulzer lease product, you will be ahead of the game, at least as far as getting your lease approved by us. Obviously, we would approve our own lease products. Because THS serves as Colorado counsel to both the NAA and the CAA, we work on these lease products as well. However, you must contact us for approval so we can issue appropriate documentation.

The form is not just limited to leases, and property management agreements. The form rule covers every document regularly used by a Broker in carrying out brokerage duties. In the past, we have been told that some brokers, when a situation arose that an assistant manager would whip up an addendum to address the issue. Those days are over. A licensed Colorado attorney must approve every form. Due to expected demand, we are requesting that clients, that have not had their forms reviewed, please schedule a call by going to -----  
[tinyurl.com/THSCallRequest](http://tinyurl.com/THSCallRequest).