

Lurking License Law Traps

By: Jon Goodman

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I. Disclosure of Brokerage Relationships:

a. Commercial Context:

- i. Listings Often not Signed Until Late in the Process
- ii. Other side does not have a broker

b. Forms:

i. Broker Disclosure to Tenant:

<https://drive.google.com/file/d/0B1QWwFfpPTbkSWE1V2hNTFNsTUK/view?resourcekey=0-BtseTjH4iYJJg-jwD93awA>

ii. Broker Disclosure to Landlord:

<https://drive.google.com/file/d/0B1VD36mBqe1EdU5STmRucGo5M3M/view?pli=1&resourcekey=0-lSajgl-bjVvGELpV3V5rw>

iii. Broker Disclosure to Buyer:

<https://drive.google.com/file/d/0B1VD36mBqe1EVmVGeVM2a0M4enc/view?resourcekey=0-NZGcX4mt-Y0Jo3grgOjRJw>

iv. Broker Disclosure to Seller:

<https://drive.google.com/file/d/0B1VD36mBqe1EOFJjVEVvMkF2OUk/view?resourcekey=0-QNbWFKmtWT53CWPTJ4YK3Q>

II. Disclosure of Adverse Material Facts:

a. Context:

- i. In commercial real estate parties have more of an ability to “pick the law of the deal” in the contracting documents (i.e. the “Economic Loss Rule.”)
- ii. The use of lease and contract forms that are not State approved forms.
- iii. Greater sophistication of the parties.
- iv. Institutional Parties.

b. Colorado State Approved Forms:

- i. §10.1. Seller’s Property Disclosure:

On or before Seller's Property Disclosure Deadline, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge and current as of the date of this Contract.

ii. 10.2 Disclosure of Adverse Material Facts:

Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing.

c. Brokers Have a Duty Independent of their Clients do Disclose.

- i. To what extent do commercial stakeholders have the ability to contract away the independent duty to disclose?
- ii. Dealing with the ambiguity.

III. Tale As Old as Time:

- a. Subleases Part I: <https://frascona.com/subleases-part-i/>
- b. Subleases Part II: <https://frascona.com/subleases-part-ii/>