

Disclosure of Adverse Material Facts and Latent Defects in Real Estate Transactions

BY ADAM F. ALDRICH AND AMY BRIMAH

This article discusses issues related to disclosure of latent defects and adverse material facts in transactions for the purchase and sale of real estate.

Real estate brokers and sellers have duties to disclose certain information in connection with real estate transactions. These duties are imposed by contract, statute, and common law. With limited exceptions,¹ all brokers—whether acting as a seller’s broker, buyer’s broker, or transaction broker—must disclose certain adverse material facts actually known by the brokers.² Sellers similarly must disclose adverse material facts actually known by them in accordance with the terms and conditions of the contract, and in addition must disclose latent defects under common law. Adverse material facts and latent defects may overlap in some instances, but there are differences between the two concepts.

A contract drafted and negotiated by an attorney allocates the risks between buyer and seller and generally requires representations by both buyers and sellers in connection with such risk allocation. However, the common law still requires all sellers to disclose latent defects actually known by them, regardless of whether the transaction is commercial or residential. Because attorneys are not often involved in residential real estate transactions and are not involved in some commercial real estate transactions, the parties often elect to use the Colorado Real Estate Commission’s (CREC) standard form contracts (standard form contracts), which require sellers to disclose all adverse material facts known by them, unless the language is modified.

This article discusses who must disclose latent defects and adverse material facts, when such disclosure is required, and the differences between latent defects and adverse material facts. This article also explains the contractual duties imposed by the standard form contracts, including the Seller’s Property Disclosure (SPD), which the parties to standard form contracts often elect to require.³ Finally, it discusses Colorado

case law related to disclosure of latent defects and adverse material facts.

What Are Adverse Material Facts and Latent Defects in the Sale of Real Property?

An adverse material fact is a material fact that a reasonable person would ascribe actual significance to and that is contrary to the interests of a party in a real estate transaction.⁴ Environmental hazards, zoning violations, water damage, structural issues, and health risks are examples of adverse material facts that require disclosure if either a seller or a broker has actual knowledge of such adverse material fact related to the property at issue.

The category of adverse material facts is broader than the category of latent defects. Latent defects are generally considered to be hidden or concealed defects that are not easily discoverable by a reasonable observation of the property (e.g., concealed water damage). An adverse material fact does not have to be a hidden defect (e.g., visible water damage or apparent subsidence). However, all known latent defects are included within the category of adverse material facts that require disclosure by a party to a transaction with actual knowledge of such defect.

Whether a party to a real estate transaction must disclose an adverse material fact is a question of law.⁵ Colorado law provides that sellers have a duty to disclose latent defects involving the physical condition of the property⁶ and structural conditions.⁷ The law is less clear regarding whether sellers and sellers’ brokers must disclose adverse material facts that do not pertain to something physical.

Disclosure Obligations

All brokers have duties to disclose adverse material facts in connection with the purchase

and sale of all real property, regardless of the specific use of the property or the status of the brokerage relationship. Requirements set forth by statute are generally referred to as the “uniform duties.”⁸ Additionally, the CREC requires that brokers enter into a written agreement with a party in a single agency transaction.⁹ As a result, most brokers enter into either an Exclusive Right to Buy or an Exclusive Right to Sell (either is referred to as an “Exclusive Right”) with a party buying or selling real estate. The broker’s duties and obligations as set forth in the Exclusive Right are identical to the statutory duties. This is important because even if a broker does not have a contractual relationship with a buyer or seller, the uniform duties still apply to the relationship regardless of whether an agency relationship is established by a contractual agreement, as CREC has statutory authority to enforce the uniform duties.

Buyers’ Brokers

When representing a buyer, the uniform duties require a broker to disclose to any prospective seller all material facts concerning the buyer’s financial ability to perform the terms of the transaction and whether the buyer intends to occupy the property to be purchased as a principal residence.¹⁰ However, under the uniform duties, a buyer’s broker owes no duty to conduct an independent investigation of the buyer’s financial condition for the benefit of the seller and owes no duty to independently verify the accuracy or completeness of statements made by the buyer or any independent investigator.¹¹ If the buyer’s broker acquires actual knowledge of an adverse material fact about the property, that fact must be disclosed to the parties to the transaction.

A broker representing a buyer must also disclose to that buyer adverse material facts

actually known by the broker in accordance with the uniform duties.¹² For example, if a buyer's broker actually knows that the property the buyer is considering purchasing has structural issues, the buyer's broker must disclose those issues; however, if the buyer's broker has no actual knowledge of structural issues with the property, the buyer's broker has no duty to investigate if structural issues exist on the property.

Sellers' Brokers

When representing a seller, the uniform duties require a broker to disclose to any prospective buyer all adverse material facts actually known by the broker and if a broker is aware of adverse material facts that the seller is not aware of, the broker must also disclose such adverse material facts to the seller. The adverse material facts may include, but are not limited to, facts pertaining

to the title and the physical condition of the property, any material defects in the property, and any environmental hazards affecting the property that are required by law to be disclosed (e.g., mold, soils issues, water damage, known indoor air quality issues from use, or hail or other related weather damage).¹³ Again, the uniform duties are limited by the fact that the seller's broker owes no duty to conduct an independent inspection of the property for the benefit of the buyer and owes no duty to independently verify the accuracy or completeness of any statement made by the seller or landlord or any independent inspector.¹⁴

A broker representing a seller must also disclose to that seller all adverse material facts actually known by the broker in accordance with the uniform duties.¹⁵ For example, if a seller's broker has an inspection report on a failed transaction that noted structural issues

in the property, the seller's broker is required to disclose the structural issues to the seller, however, the seller's broker has no duty to inspect the property or verify the information provided by the inspector. Additionally, if a broker observes an adverse material fact concerning the property that the seller is unaware of, the broker must inform the seller of that adverse material fact.

Transaction Brokers

A transaction broker (a broker for neither the buyer nor the seller) has statutory duties similar to those owed by a broker representing a buyer or a seller with respect to adverse material facts. A transaction broker is required to disclose to buyers all adverse material facts that a seller's broker would need to disclose and is required to disclose to sellers all adverse material facts that a buyer's broker would be required to disclose.¹⁶



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The limits are similar for a transaction broker in that a transaction broker is not required to conduct an independent investigation of the property and has no duty to inquire.¹⁷ Assuming the transaction broker obtains a written agreement (including, without limitation, an Exclusive Right) to act as a transaction broker, the uniform duties for transaction brokers are the same in the statute and the Exclusive Right.

Limits on Brokers' Disclosures

Brokers are only required to disclose facts of which the broker has actual knowledge.¹⁸ To be clear, actual knowledge does not include adverse material facts that should have been known, are in the public record, or would have been known upon further investigation, as no duty to inquire or investigate exists.¹⁹ The uniform duties are further limited by Colorado statute that provides that issues concerning psychologically impacted property are not material facts and that further prohibits disclosure of circumstances that may psychologically impact or stigmatize the property by any broker.²⁰

Sellers and Buyers

Under the standard form contracts, sellers of real property must disclose to buyers all known adverse material facts.²¹ All sellers of real property, whether using an attorney-drafted contract or the standard form contract, have a common law duty to disclose latent defects.²² The common law duty only requires disclosure of latent defects, so it is important to recognize that if using a contract other than the standard form, if a buyer desires disclosure of all adverse material facts and not just latent defects, a buyer must negotiate that provision in the contract. Under the standard form contracts, buyers do not have any affirmative disclosure requirements.

When Is Disclosure Required?

The uniform duties do not specify when a broker is required to disclose adverse material facts actually known by the broker, only that it is required. Presumably, disclosure is required within a reasonable period of time of learning about an adverse material fact. A seller must disclose adverse material facts in

accordance with the deadlines in the standard form contract. Disclosure of adverse material facts and latent defects must occur prior to the sale of the property.

SPD and Standard Form Contracts

As a matter of law, a broker is not obligated to require a seller to fill out the SPD, and some sellers elect not to provide an SPD as part

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Gattis confirms that sellers of residential property have an independent disclosure obligation beyond truthfully providing the information requested by the SPD.
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of the transaction. Likewise, standard form contracts are not required, and most commercial transactions and residential sales from builders do not use the standard form contracts or SPD. The primary method of making the required sellers' disclosures when using the standard form contract in a residential transaction is through the SPD, but as the case law discussed below indicates, the use of the SPD might not satisfy all required disclosures by sellers because

adverse material facts related to the property may exist in categories not covered by the SPD.

SPD

The SPD must be filled out by the seller, not the broker. The SPD contains broad categories of information such as the physical condition of the property, any improvements made, and whether repairs have been completed and permitted. The SPD is clear that the parties understand that the broker does not warrant or guarantee the information provided about the property.²³ A broker is never required to conduct an inspection of the property in connection with the SPD or otherwise.

Standard Form Contracts

The standard form contracts require a seller to disclose to a buyer any adverse material facts actually known by the seller. Such disclosures must be in writing and must be updated if the seller learns of additional adverse material facts.²⁴

Case Law

There are several court decisions that help flesh out what must be disclosed during a real estate transaction involving Colorado real property.

Disclosure of Latent Defects and Adverse Material Facts

In *Cohen v. Vivian*,²⁵ the plaintiffs entered into contracts to purchase unfinished homes in a new development. The sellers, who were novice developers, were alerted by their contractor of soil defects that required an alteration in the plans for the foundation of the homes to be constructed.²⁶ The soil conditions were not disclosed to the homebuyers. Following the sales, the homes sank, tilted, and cracked.²⁷ The trial court determined that the sellers were negligent in failing to disclose latent soil conditions.²⁸ The Colorado Supreme Court affirmed, and found that a “latent soil defect, known to the seller of a house built on such soil, creates a duty of disclosure in the seller.”²⁹

In *Gattis v. McNutt (In re Estate of Gattis)*,³⁰ the Colorado Court of Appeals affirmed the trial court's order holding the seller of a residential real property liable for nondisclosure of material facts. *Gattis* confirms that sellers of residential

property have an independent disclosure obligation beyond truthfully providing the information requested by the SPD.

The residential property at issue in *Gattis* was purchased by the defendants for purposes of repair and resale.³¹ Before the purchase, the defendants obtained engineering reports that discussed structural problems in the residence resulting from expansive soils.³² An entity controlled by the defendants oversaw the repair work to the structure.³³ When the repairs were completed, the defendants obtained title to the residence and listed it for sale.³⁴

The parties used Colorado's standard form residential real estate contract, which included an SPD.³⁵ The defendants were aware of the expansive soils but did not disclose the expansive soils, the engineering reports concerning the property, or their control of the entity that performed repairs at the property before the sale to the plaintiffs.³⁶ The plaintiffs asserted a claim for nondisclosure based on an independent seller disclosure obligation outside of the purchase contract.³⁷ The trial court held the defendants liable for nondisclosure of material facts.³⁸

In applying the economic loss rule, the Colorado Court of Appeals affirmed and held that under Colorado law, sellers of residential property have an affirmative and independent duty to disclose all latent defects known to the seller, regardless of whether the item is included in one of the categories listed in the SPD and regardless of whether the purchase contract requires the sellers to make such disclosures.³⁹

However, Colorado courts have determined that the seller has no duty to disclose an alleged latent defect to the buyer that does not involve "a physical defect on the property" when the buyer had actual, inquiry, or constructive notice of the alleged latent defect.⁴⁰ In *Burman v. Richmond Homes Ltd.*, the Colorado Court of Appeals upheld the trial court's order granting summary judgment against the plaintiffs, purchasers of real property, on their claims for negligent misrepresentation against the vendors, the brokers, and a title company.⁴¹ After the plaintiffs closed on the properties, they learned that they were included within a general improvement district and thus subject to additional taxes. The court

of appeals determined the seller did not have an affirmative duty to disclose the location of the properties in an improvement district because the ordinance adopting the improvement district was recorded in the real property records of El Paso County and the purchase agreements put the plaintiffs on inquiry notice as to the possibility that the properties were located in an improvement district.⁴²

Regarding other examples of latent defects, there are conflicting decisions about whether the lack of a building permit is a latent defect the seller must disclose.⁴³ Not surprisingly, uranium mine tailings underneath the home known to seller is a latent defect the seller must disclose.⁴⁴

In *Haney v. Castle Meadows, Inc.*,⁴⁵ the plaintiff filed suit against the seller for fraudulent misrepresentation and negligent misrepresentation for failing to disclose that a well on the property was contaminated by significant levels of radioactive compounds. The plaintiff alleged that the well was a latent defect.⁴⁶ The contract between the parties included an "as-is" clause and a broad disclaimer of "no representations and warranties" as to the condition of the property.⁴⁷ In dismissing the claim for negligent misrepresentation, a division of the US District Court for the District of Colorado determined that "[l]anguage in a contract providing that the purchaser takes the property 'as-is' places the risk on the purchaser as to the existence of latent defects as to which neither party had knowledge."⁴⁸ However, the court determined that the same as-is clause did not relieve the seller of the obligation to disclose known latent defects.⁴⁹

*Baumgarten v. Coppage*⁵⁰ arose from the sale of a residence owned by defendant Coppage.⁵¹ The plaintiffs alleged that the residence's foundation walls had substantial hidden damage that Coppage and his broker should have known about and disclosed.⁵² In addition, the plaintiffs alleged that the defendants had affirmatively misrepresented to them that there were no structural problems with the improvements on an SPD.⁵³

Based on these allegations, the plaintiffs sought to recover damages premised on the defendants' alleged breach of a statutory duty

of disclosure imposed on brokers under CRS § 12-10-404(3)(a) (renumbered in 2019 from CRS § 12-61-804(3)(a)).⁵⁴ This statute requires brokers to disclose "all adverse material facts actually known by such broker."⁵⁵ Further, they sought to recover damages on the basis that the defendants had engaged in deceptive trade practices in violation of CRS § 6-1-105(1)(e) and (1)(g) of the Colorado Consumer Protection Act. The trial court dismissed the plaintiffs' complaint for failure to file a certificate of review under CRS § 13-20-602.⁵⁶

The Colorado Court of Appeals affirmed the trial court's decision in part and reversed it in part. The court concluded that, to the extent that the plaintiffs' claims concerned allegations that the defendants breached statutory duties or standards that are based on the defendants' actual knowledge, no certificate of review was required.⁵⁷ Thus, to establish a claim under the statute, the plaintiffs needed to prove only that the broker had actual knowledge of adverse material facts pertaining to the physical condition of the residence and that they failed to disclose such facts to the plaintiffs. However, to the extent that the plaintiffs' claims involved allegations that the defendants breached a standard of care premised on what they should have known, such claims were properly dismissed for lack of a certificate of review because expert testimony would have been required to establish such claims under the facts alleged here.⁵⁸

Duties of Brokers

While the following cases involved transaction brokers, as discussed earlier in this article, a transaction broker has statutory duties similar to the duties a broker would owe when representing a buyer or a seller with respect to adverse material facts. Thus, cases involving transaction brokers are instructive of the duties applicable to different types of broker arrangements.

In *Sussman v. Stoner*,⁵⁹ the US District Court for the District of Colorado interpreted the duties of transaction brokers under CRS §§ 12-10-401 and -402 (renumbered from CRS §§ 12-61-801 and -802). The sale included water shares and 230 acres of land that the Sussmans owned.⁶⁰

Following the buyer's acceptance of the Sussmans' offer, the value of the shares of water increased from an estimated \$17,000 per share to an estimated \$42,000 per share.⁶¹ The Sussmans alleged that the defendant was acting as a transaction broker and had a duty to advise them of the rising value of the water shares.⁶² The Sussmans filed suit against the transaction broker for negligence per se, fraud, breach of statutory duty, and negligent misrepresentation.⁶³

The trial court granted the transaction broker's motion to dismiss. The trial court reviewed the duties of a transaction broker under §§ 12-61-802(6) and -807(2) (renumbered in 2019 as §§ 12-10-802 and -807) and determined that the statute did not address whether transaction brokers have a duty to inform one party that market forces have swung in their favor.

Following its review of the statute and applying established rules of statutory construction, the trial court determined that a transaction broker does not have a duty to keep track of land or water values once land is under contract, or a duty to inform the seller that their land or water is worth more than the asking price.⁶⁴ Nor does the statute require that a transaction broker advise a party that it is not in their best interest to accept a given offer.⁶⁵ Instead, the statute expressly states that a transaction broker is not a broker or an advocate for either party. Accordingly, the trial court dismissed the Sussmans' claims for breach of the statutory duty of brokers/negligence per se.

Next, the Sussmans alleged that the transaction broker fraudulently concealed from them the rise in the price of the water shares. The trial court ruled that the transaction broker had no duty under the statute to disclose this information to the Sussmans. Accordingly, the trial court dismissed the fraudulent concealment claim.

The trial court considered the Sussmans' remaining claim for professional negligence under CRS § 12-61-801 and found no statutory duty requiring transaction brokers to disclose the market value of property or water. Thus, the trial court dismissed the negligence claim.

In *Taylor v. Panico*,⁶⁶ the US District Court for the District of Colorado again interpreted the duties of transaction brokers under CRS §§ 12-10-401 and -407. The Taylors purchased a property in Aspen, Colorado, from the Panicos.⁶⁷ They lived in Florida and relied primarily on their real estate broker and an inspector to ensure that the property was acceptable.⁶⁸ After purchasing the property, the Taylors alleged the house was nearly uninhabitable due to design and construction defects, mold, rodents, and drainage problems.⁶⁹ They sued the transaction broker and the Panicos.

The Taylors' complaint asserted two claims for relief against the transaction broker. Their first claim was for fraudulent misrepresentation, alleging a duty of disclosure based on allegations that the property had been fully inspected and that the inspection results were acceptable.⁷⁰ Their second claim was for breach of statutory duty created by CRS § 12-10-407 and based on the allegations that the transaction broker failed to exercise reasonable skill and care when advising the Taylors regarding the transaction and disclosing adverse facts about the property known to her, including failing to advise the Taylors to retain a pest control expert.⁷¹ The trial court granted summary judgment in favor of the transaction broker on the claims brought against her.

The trial court determined that the Taylors could not establish reasonable reliance on representations made by the transaction broker because they reviewed and signed the inspector's contract for the inspection, which included an exclusion for mold inspections.⁷² Moreover, they reviewed the inspector's report, which allowed them to form their own opinions about whether it was acceptable and adequately addressed their concerns about the property.⁷³

Turning to the Taylors' statutory duty claim, the trial court determined that the plaintiffs could not establish damages because their inspector noted evidence of rodent infestation and recommended that they consult with a professional exterminator.⁷⁴ Accordingly, the trial court determined that the Taylors failed to establish that the transaction broker's failure to suggest retention of a pest control expert caused their injuries.

In *Barfield v. Hall Realty, Inc.*,⁷⁵ the Colorado Court of Appeals entered summary judgment for a transaction broker on Barfield's claims for negligent misrepresentation and fraudulent misrepresentation in connection with the purchase and sale of a resort that included an RV park in Gunnison, Colorado.⁷⁶

Hall Realty executed a form approved by the CREC whereby it agreed to act as the transaction broker in connection with the sale of the RV park.⁷⁷ It represented on the multiple listing service and in an advertising brochure that the resort was a "turn-key business opportunity" for the operation of, among other things, an RV park.⁷⁸ In May 2005, Barfield purchased the resort, which at the time was operating 12 RV sites.⁷⁹ The resort also included six cabins, a home, office space, and a grocery store.⁸⁰

Two years after the closing, the Colorado Department of Public Health and Environment (CDPHE) informed Barfield that the water supply system to the resort was not properly permitted to allow the resort to be operated as an RV park.⁸¹ A year later, Gunnison County informed Barfield that the resort was not permitted for use as an RV park and that such use violated the Gunnison County Land Use Resolution and must cease and desist.⁸² CDPHE and Gunnison County also informed Barfield that the sewage disposal system for the resort was not properly permitted to allow it to be operated as an RV park.⁸³

Barfield sued Hall Realty for (1) negligent misrepresentation, alleging that it "failed to act reasonably in ascertaining the accuracy" of its representation that the resort was a "turn-key business opportunity" for the operation of a 12-site RV park; (2) fraudulent representation, alleging that the defendant's representation of the resort as a "turn-key business opportunity" for the operation of an RV park was made either with knowledge on the part of the defendant that it was false or with utter indifference to its truth or falsity; and (3) fraudulent concealment, alleging that the defendant failed to disclose that the seller had never received proper permits from either Gunnison County or CDPHE to operate the resort as an RV park and that the defendant was either aware of the nonexistence of such permits or acted with utter indifference thereto.⁸⁴

Hall Realty filed a motion for summary judgment, arguing that because it acted as a transaction broker, pursuant to CRS § 12-10-407, it had no duty to investigate or verify that the resort was a “turn-key business opportunity” for the operation of a 12-site RV park.⁸⁵ The trial court agreed and granted judgment as a matter of law for Hall Realty. The court of appeals affirmed.⁸⁶

The Colorado Court of Appeals reasoned that since the resort was operating as an RV park when it was listed for sale, and because the transaction broker did not know that the resort lacked proper permits to operate the RV park, the transaction broker had no reason to believe that the resort was anything other than an ongoing, operating RV park.⁸⁷ Citing CRS § 12-01-407, the court of appeals determined that a transaction broker has no duty to conduct an independent investigation of the resort to verify that it could in fact operate as an RV park.⁸⁸ The court of appeals also concluded that a transaction broker has a duty to disclose adverse material facts of which it was actually aware. Because Barfield failed to allege and prove that Hall Realty actually knew of the material facts that were not disclosed, the court of appeals affirmed the order entering summary judgment for the transaction broker.

Causes of Action

Although the uniform duties governing disclosure for brokers are the same in the Exclusive Right as by statute, the statute does not create an independent private right of action claim, and any claims must be based in contract or in negligence. Only CREC may investigate and take administrative action against brokers.⁸⁹

The most common claims brought in cases involving allegations of nondisclosure of adverse material facts are claims for nondisclosure or concealment, negligence per se, negligence, and breach of contract.

For the tort claims of nondisclosure or concealment, the essential elements are a false representation of a past or present material fact, reasonable reliance by the plaintiff, and damages.⁹⁰ Factual information is material when a reasonable person would have ascribed actual significance to the information.⁹¹ A

negligence per se claim requires a showing that the broker violated a specific statute that caused injuries, damages, or losses to the plaintiff.⁹² For a negligence claim involving a broker, the most important element is establishing a duty owed by the broker to the plaintiff to disclose the material fact in question.

Best Practices

When representing a seller of real property and advising whether a seller should disclose a latent defect or an adverse material fact, it is better to err on the side of the seller making the disclosure in a timely manner and in writing. If written reports or findings are available to the seller regarding a latent defect or adverse material fact, they should be disclosed to the buyer as well. Similarly, if representing a broker, it is best to err on the side of disclosure, as brokers must disclose adverse material facts actually known. However, stigmatizing facts must not be disclosed. Moreover, sellers and brokers must also comply with fair housing laws and anti-discrimination laws. The disclosure of matters that a buyer has actual, inquiry, or constructive notice of is not, however, required. Matters of public record, including recorded documents and building permits, zoning issues, special districts, or other issues set forth in municipal codes or land use codes are not required to be disclosed by sellers or

brokers as buyers have constructive notice of all such matters. Under *Burman*, “matters pertaining to title” would not require a seller or a broker to disclose title exceptions as the court found no liability for failure to disclose public records or recorded documents.⁹³ However, items related to title that are actually known by a seller or broker that either would not be discovered by a reasonable inspection of the property or are in the public record are likely required to be disclosed. Claims to adverse possession, prescriptive easements, and unrecorded documents, if actually known, would all likely require disclosure by a broker and seller. If representing a buyer, conducting due diligence and investigating all aspects of the real property and its appurtenances is also critical, as not all adverse material facts are actually known, and the standard does not include “should have known.”

Conclusion

Overall, Colorado law requires a seller to disclose latent defects and a broker to disclose adverse material facts actually known by a broker. However, Colorado law does not require sellers or brokers to investigate or inquire into a matter of which they do not have actual knowledge. As a result, buyers should conduct their own due diligence prior to purchasing real property. CL



Adam F. Aldrich is the founder of Aldrich Legal, LLC, a Denver-based law firm focused on real estate and business transactions and litigation—(303) 325-5683, adam@aldrichlegal.com. **Amy Brimah** is the founding attorney of Brimah LLP in Denver. Her practice includes assisting owners, developers, and investors with their commercial real estate interests—(303) 985-8500, amy@brimahlaw.com.

Coordinating Editor: Christopher D. Bryan, cbryan@garfieldhecht.com

NOTES

1. Brokers must not disclose circumstances that may psychologically impact or stigmatize the property. CRS §§ 12-10-404(2)(e), -405(2)(e), and -407(3)(e), and 38-35.5-101(1).
2. CRS §§ 12-10-404(1)(c)(III), -403(3)(a), -405(1)(c)(III), and -405(3)(a).
3. CREC, through its forms committee, updates the standard form contracts frequently. We limit our analysis to the Contract to Buy and Sell Real Estate (Residential) (for use after August 7, 2023) and Contract to Buy and Sell Real Estate (Commercial) (2024).
4. *Moye White LLP v. Beren*, 320 P.3d 373, 378 (Colo.App. 2013).
5. *Burman v. Richmond Homes Ltd.*, 821 P.2d 913, 918 (Colo.App. 1991).
6. *Cohen v. Vivian*, 349 P.2d 366, 367-68 (Colo. 1960) (holding that seller’s failure to disclose latent soil defect known to seller and unknown to buyer resulted in liability for fraud).

7. *Id.* at 367-68.
8. See CRS §§ 12-10-404, -405, and -407.
9. See CRS § 14-10-403. The default is to be a transaction broker unless a written agreement establishes a single agency relationship.
10. CRS § 12-10-405(3)(a).
11. CRS § 12-10-405.
12. CRS § 12-10-405(1)(c)(III).
13. CRS § 12-10-404(3)(a).
14. CRS § 12-10-404(3)(b).
15. CRS § 12-10-404(1)(c)(III).
16. CRS § 12-10-407(2)(b)(VI), (VII).
17. CRS § 12-10-407(4), (5).
18. *Baumgarten v. Coppage*, 15 P.3d 304, 307 (Colo.App. 2000).
19. *Barfield v. Hall Realty, Inc.*, 232 P.3d 286, 291-92 (Colo.App. 2010).
20. See CRS § 38-35.5-101.
21. CREC Contract to Buy and Sell Real Estate (Residential).
22. *Cohen*, 349 P.2d at 369.
23. CREC Seller's Property Disclosure (Residential) at 9, <https://drive.google.com/file/d/1HKA1fymJPCLGoQBg9SJxMgnXrAWRdAtr/view>.
24. See Contract to Buy and Sell Real Estate (Residential) § 10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition.
25. *Cohen*, 349 P.2d at 367.
26. *Id.*
27. *Id.* at 368.
28. *Id.*
29. *Id.* at 367.
30. *Gattis v. McNutt (In re Estate of Gattis)*, 318 P.3d 549 (Colo.App. 2013).
31. *Id.* at 551.
32. *Id.* at 552.
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.* at 552-55.
40. *Burman*, 821 P.2d at 918.
41. *Id.* at 919.
42. *Id.*
43. *Compare Hardy v. Flood*, No. 17-cv-00677, 2019 U.S. Dist. LEXIS 177603, at *7 (D.Colo. Oct. 11, 2019) with *Biggers v. Sparks*, No. 2013CVO30315, 2014 WL 4410377, at *6 (Larimer Cnty. Dist. Ct. Mar. 27, 2014).
44. *Schnell v. Gustofson*, 638 P.2d 850, 851-52 (Colo.App. 1981).
45. *Haney v. Castle Meadows, Inc.*, 839 F.Supp. 753 (D.Colo. 1993).
46. *Id.* at 756.
47. *Id.* at 757.
48. *Id.*
49. *Id.*
50. *Baumgarten*, 15 P.3d at 306.
51. *Id.*
52. *Id.* at 306, 308.
53. *Id.* at 306.
54. *Id.*
55. *Id.* at 307.
56. *Id.* at 306.
57. *Id.*
58. *Id.*
59. *Sussman v. Stoner*, 143 F.Supp.2d 1232 (D.Colo. 2001) (Memorandum Opinion and Order).
60. *Id.* at 1234.
61. *Id.* at 1236.
62. *Id.*
63. *Id.*
64. *Id.* at 1238.
65. *Id.* at 1239.
66. *Taylor v. Panico*, No. 07-cv-00985, 2009 U.S. Dist. LEXIS 31678 (D.Colo. Apr. 14, 2009). *But see Biggers*, 2014 WL 4410377, at *6.
67. *Taylor*, 2009 U.S. Dist. LEXIS 31678, at *2.
68. *Id.*
69. *Id.* at *3.
70. *Id.* at *4.
71. *Id.* at *4.
72. *Id.* at *10-12.
73. *Id.*
74. *Id.* at *15-16.
75. *Barfield*, 232 P.3d 286.
76. *Id.* at 288.
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.* at 289.
86. *Id.*
87. *Id.* at 290.
88. *Id.* at 291.
89. CRS § 12-10-411.
90. CJI-Civ 19:1 (2023).
91. *Beren*, 320 P.3d at 378.
92. CJI-Civ. 9:14 (2023).
93. *Burman*, 821 P.2d at 918.

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