

CP-39 Commission Position on Lease Options, Lease Purchase Agreements and Installment Land Contracts (4-5-2011)

The Commission recognizes that in order to maintain the resilience of the real estate market during times when conventional lending requirements are rigorous, alternative funding practices are utilized to sustain the market conditions of supply and demand. The Commission has received and investigated numerous complaints pertaining to lease options, lease purchase agreements and installment land contracts. Although the Commission does not have the authority to prohibit the types of real estate transactions that real estate brokers participate in, the Commission strongly cautions real estate brokers to utilize the services of an attorney licensed to practice law within the State of Colorado. It has been the Commission's observation, based on complaints received, that lease option and lease purchase transactions are complex and generally contain provisions with significant financial risk posed to the prospective buyer and seller. Installment land contracts and the other transactions mentioned in this position statement afford buyers the opportunity to take possession of the real property and make installment payments to the seller. There is a significant potential for harm to the seller, buyer or assignee if the installment land contract is not properly drafted. In all of the above transactions, the seller retains legal title to the property while the buyer may acquire equitable title. The Commission does not have an approved contract form necessary to memorialize the terms and nuances related to these complex transactions, or any jurisdictional regulations that may be germane. Pursuant to Rule F, the appropriate provisions of the license law and the brokerage relationship act (§§12-61-113, 12-61-804, 805 and 807, C.R.S.), real estate brokers are prohibited from drafting a contract document that would reflect the terms of such a transaction as it would exceed their level of competency and is a matter requiring the expertise and advice of an attorney. Additionally, such behavior may be construed as the unauthorized practice of law by the real estate broker and subject to civil penalties. The contracts for these transactions should not be prepared by a real estate broker; rather, the documents should be drafted by a licensed Colorado attorney-at-law engaged for each particular transaction.