



Landlord News

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PROPOSED RULE IMPOSES SIGNIFICANT COMPLIANCE REQUIREMENTS ON THIRD PARTY FEE MANAGERS

The Colorado Real Estate Commission's Rule F-7 governs the use of forms by real estate brokers. Over the last two years, the Colorado Real Estate Commission (CREC or Commission) has been working on a new rule (Rule F-8) that dramatically altered regulations governing the use of forms. Recently, CREC decided to scrap the proposed new Rule F-8, and implement changes, that affect the multifamily industry, by amending the current Rule F-7. Rule F-7 has for years required third party fee managers (TPFM) to use certain CREC approved forms, and also imposed other legal requirements. As proposed, the new version of Rule F-7 imposes additional legal requirements on TPFMs. Because the new requirements are significant, all management companies subject to CREC jurisdiction should be aware of these requirements, and start planning accordingly. Currently, it is anticipated that the new rules will be adopted by CREC in December 2015.

Does proposed Rule F-7 (PRF-7) apply to me? Yes, if you are either a real estate broker or required to have a real estate brokerage license. If you are not required to have a real estate broker's license, PRF-7 does not apply to you. Do we need a Colorado Real Estate Broker's License, is by far the most



common question 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 "owners' exemption". If you are a TPFM, you need a license. The question is not

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Take Advantage of the Service Recovery Paradox

PARADOX: A STATEMENT OR ACTION THAT SEEMS TO GO AGAINST COMMON SENSE BUT MAY STILL BE TRUE. (Or more commonly stated — when life unexpectedly gives you lemons learn to make lemonade)

In the rental industry service calls are a fact of life. Property management can mitigate tenant frustration over maintenance/service problems as a great opportunity. By utilizing these incidents to build outstanding



resident relations simply by providing excellent service demonstrates the service recovery paradox. Turning a negative into a positive. As John D. Rockefeller said, "the mark of a good leader is the ability to turn disasters or challenges into an opportunity to succeed." No property manager or maintenance staff member enjoys a service failure, but it does present an excellent opportunity to make residents more satisfied with the community and the company.

How is this possible? Through the service recovery paradox, which is the reality that customers can leave a service failure more satisfied and loyal to a company than if no failure had occurred if — and it all hinges on this if — the problem is resolved efficiently and effectively. It is a self-evident fact that no property is immune from having service failures. They will occur regardless of how focused and diligent you are in providing excellent service to your residents. When a failure occurs do not look at it as an unpleasant situation with an upset resident that you need to deal with. Approach the situation with the knowledge that this is a great opportunity to strengthen the relationship between your management team, your company and the resident.

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complicated for fee managers. Fee managers must be licensed. Whether an ownership and management relationship meets the owners' exemption can be extremely complicated.

The key to the owners' 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. Given the complexity of ownership entities, management company structures, and the relationships between the two, determining whether a specific owner and management relationship meets the owners' exemption can be complicated and problematic. We know this because we often review and advise clients on this issue. Let us know if you need assistance. However, be advised that this is not a ten minute phone call.

Because management companies claiming the owner's exemption (take the position that they are not required to be licensed) are not subject to routine Commission audits, CREC probably is only going to investigate an unlicensed management entity if a tenant files a



complaint. While a tenant may have filed a complaint (we are not aware of one) against a management company alleging that the management company (involved in a complex ownership and management web) is not licensed but is required to be licensed, the issue appears not to have reached the critical mass necessary for the Commission to specifically address through rule or other regulation. In other words, the Commission has not ruled on the issue of whether owners and management companies in these complex relationships are in fact exempt. It is anyone's guess if and when this will happen. On the one hand, there are a lot of management companies claiming the owner's exemption (are not licensed) that have complex structures and relationships with complex owner entities. On the other hand, a lot of management companies with these complicated structures and relationships have been managing apartments for years, and the Commission has not ruled on these relationships, provided guidance, or promulgated any regulations.

Under the PRF-7, there are two kinds of approved forms. There are Commission approved forms and there are standard forms. If there is a Commission approved form that applies to a transaction or

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In a recent article demonstrating how the Service Recovery Paradox works, a corporate maintenance training specialist cited the following service incident. Shortly after moving in, a new resident reported that their refrigerator had stopped working. And after a comprehensive discussion with the resident it was understood that the problem was very serious and probably not going to be quickly or easily resolved. Recognizing this fact, management arranged for the service tech to take a gift certificate for dinner to the resident when he went on the service call to evaluate the situation.



Once the problem had been assessed he was able to provide the resident with an accurate time frame for resolving the problem, assure them the company would reimburse them for the food that had been lost and presented them with the gift certificate. All of these steps combined demonstrated to the resident that management cared about them and was invested in seeing that they received the quality of timely, truthful, responsive service that they deserved. These actions helped re-enforce the new residents' decision that they had chosen the best apartment community in the first place, while also creating the type of relationship everyone would like to have with their residents.

To maximize the benefits of the Service Recovery Paradox it is important to not just listen to what the resident says about the service problem but to really "hear" them and let the resident know that you understand the



inconvenience of the situation. It is really important that the resident know that you truly empathize with their problem. Studies show that telling a resident "I'm Sorry" is perceived

as insincere about 80-90 percent of the time, whereas an apology using the phrase "I Apologize" is more likely to be perceived as sincere. And, of course, last but not least fixing the problem quickly and correctly is the key to making the paradox work for you. A service failure may not be your fault, but it is your problem and if you embrace the problem you can turn it into an opportunity to build loyalty and strong relationships with your residents.



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circumstance, brokers must use the Commission approved form. The two most common Commission Approved forms that TPFMs must use are the BDT-20 and the BDA-55. Under Colorado law, both statute and Commission Rules, a TPFM must disclose its brokerage relationship to both tenants (including prospects) and owners. A TPFM (broker) discloses brokerage relationships to tenants by using the BDT-20 (Brokerage Disclosures to Tenants). A TPFM (broker) discloses brokerage relationships to owners by using the BDA-55 (Brokerage Duties Addendum to Property Management Agreement (PMA)). Failure to use these forms is one of the most common non-compliance issues we see.

Under the Commission's definition of a standard form, a document must meet multiple requirements.

One, the document must contain fixed wording with spaces and/or blanks to be filled in by the broker. Two, the document must be intended to be used repeatedly by a broker in the performance of the broker's licensed duties. Three, the document must be visibly distinguishable from Commission-approved forms. Four, the document must be drafted by the broker's or brokerage firm's attorney or the owner's attorney. The attorney drafting and consulting with you regarding your standard forms must be a Colorado licensed attorney. Five, the document must contain the language (disclosures) set forth in the rule.

The required language (disclosures) on any standard form must be in capitalized font at least as large as the larger of the title or body of the document. The mandatory language reads **"THIS FORM HAS NOT BEEN APPROVED BY THE COLORADO REAL ESTATE COMMISSION. IT WAS PREPARED BY (INSERT NAME OF ATTORNEY OR LAW FIRM) AS LEGAL COUNSEL FOR (INSERT LICENSED NAME OF BROKER OR BROKERAGE FIRM OR NAME OF SELLER/BUYER/LANDLORD/TENANT)."** The attorney or law firm named must be the one most recently consulted concerning that Standard Form. Additionally, under the proposed rule you must consult with an actively licensed Colorado attorney concerning a Standard Form on at least an annual basis concerning the appropriate use of the Standard Form and its effectiveness and compliance with current law and Commission regulations.

What documents (forms) does the proposed rule apply to? The proposed revised rule states that "examples" of documents are disclosures, addenda, leases and

property management agreements. However, based on discussions with the Commission, previous drafts of the rule, and the rule itself, the proposed rule is intended to apply to any document regularly (systematically) used by a broker (property manager). Again, the rule states a standard form is a document that "is intended to be used repeatedly by a broker in the performance of the broker's licensed duties." Accordingly, any document regularly used by a TPFM is subject to the rule. In a previous draft of the proposed rule, example documents included key releases, notices to quit, notices for compliance or possession, tenant applications, tenant checklists, or letters of intent. Thus, the first step to achieve compliance is to generate a comprehensive list of every document that you use regularly.



If you currently use either the NAA Blue Moon lease, the Colorado Apartment Association Lease, or a Tschetter Hamrick Sulzer (THS) 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 both of these lease products as well. We are currently discussing the situation with both the NAA and the CAA. We anticipate that both of these lease products will bear the required disclosures in the near future. However, it is important to remember that review and approval of your lease by a Colorado attorney is not the only requirement that is imposed by PRF-7. Again, the rule requires that you also consult with a Colorado licensed attorney regarding the use of the form (your lease).

The proposed rule applies to much more than just your lease and PMA. The rule covers every document regularly used by you in carrying out your brokerage duties. Accordingly, the proposed rule requires an annual review of all tenant forms. In the past, when a situation arose onsite, an assistant manager would sometimes whip up an Addendum to address the issue. These days are over. Every form must be approved by a Colorado licensed attorney. Due to expected demand, in order to meet your needs, Please request we contact you by using this link: (Type in browser or Copy Paste)

tinyurl.com/ptozzgf

Finally, you should address this situation sooner rather than later. This rule in its present form or a very close iteration will be adopted. The rule has been discussed for nearly two years. The Commission probably feels that it hasn't rushed to judgment, the proposed rule has been

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Did You Ever Wonder . . .

- If you choke a Smurf, what color does it turn?
- Is it OK to use the AM radio after noon?
- What do chickens think we taste like?
- What do you call a male ladybug?
- What hair color do they put on the driver's license of a bald man?
- Why isn't phonetic spelled the way it sounds?
- Why are there Interstates in Hawaii?
- How does the guy who drives the snowplow get to work?
- If a firefighter fights fire and a crime fighter fights crime, what does a freedom fighter fight?
- If you are driving at the speed of light and you turn your headlights on, what happens?
- Why do they put Braille dots on the keypad of a drive-up ATM?
- Why don't sheep shrink when it rains?
- Why are they called apartments when they are all stuck together?
- If con is the opposite of pro, is Congress the opposite of progress?



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thoughtfully developed, and affected parties have been given plenty of opportunities to comment. Further, the industry has already made all possible objections and requests for modifications, and this input has either been rejected by the Commission, or taken into account resulting in the current iteration of the rule. Thus, after this next (final) comment round, the proposed rule is highly likely to be adopted in December of this year.

A copy of the current version of the proposed Rule F-7 can be downloaded at: (type in browser or copy & paste)

tinyurl.com/PRF-DOC



IMPORTANT THS SEPTEMBER DATES	
September 7th	ALL COURTS CLOSED LABOR DAY HOLIDAY THS Closed LABOR DAY HOLIDAY
September 10th	Advanced Fair Housing THS Lower Conference Center 3600 S. Yosemite Street Denver, CO 8:30 a.m. - 11:30 a.m.
September 18th	North Client Lunch Dave & Busters Westminster 11:30 a.m. - 1:00 p.m.

