



## **STANDARDIZED CONFIDENTIALITY AGREEMENT AND CONFIDENTIAL BUYER PROFILE FORM**

The Colorado Association of Business Intermediaries, Inc. (CABI) has developed a standardized Confidentiality Agreement and Confidential Buyer Profile Form for prospective buyers to use when working with business intermediaries in the state of Colorado. Many of the intermediaries in our state will accept these forms in lieu of their company's forms. You may find that some intermediaries have forms specific to their firm or their client that they will ask you to complete instead of the following standardized forms.

In Colorado, there are different types of agency relationships between the intermediary and the buyer and seller. Attached is a Brokerage Disclosure form which is shown for informational purposes. You, as the buyer, do not need to complete this form at this time. The intermediary will complete and return this Brokerage Disclosure form disclosing his or her agency relationship when he or she returns the signed Confidentiality Agreement to you.

### **I. HOW TO COMPLETE THESE FORMS**

**Confidentiality Agreement** - If you are an individual, please fill in the first blank at the top of the form and mark "N/A" in the blanks referencing a company name or type of company. Please fill in the date but leave the name of the brokerage firm blank so that you can use this form with more than one firm. Then fill in the bottom left hand portion of the form and sign where it says "Individually".

If you have formed a company, please fill in the first blank at the top of the page as well as your company's information. Please fill in the date but leave the name of the brokerage firm blank so that you can use this form with more than one firm. Then fill in the bottom left hand portion of the form signing both for your company and individually.

**Confidential Buyer Profile Form** – The purpose of this form is to help the intermediary determine if you have the financial capability and business skills needed for the business you are inquiring about. Please complete this form as fully as possible and if available, include a copy of your resume.

### **II. SENDING THESE FORMS TO A BUSINESS INTERMEDIARY**

Once you have identified a business that might be of interest to you, please fax or scan and email all of the completed forms to the business intermediary representing that business. The intermediary will then fill in the brokerage firm's name and will sign the bottom right hand portion of the Confidentiality Agreement. The intermediary will also complete the Brokerage Disclosure form and will mark the appropriate relationship between you and the broker. The intermediary will then fax or email the signed Confidentiality Agreement and Brokerage Disclosure forms to you for your records.

A list of all CABI members is available on the CABI website, [www.coloradobusinesses.com](http://www.coloradobusinesses.com).



**CONFIDENTIALITY AGREEMENT**

\_\_\_\_\_, an individual, and \_\_\_\_\_ (company name, if applicable), a \_\_\_\_\_ (state) \_\_\_\_\_ (type of company – corporation, LLC, etc.) (collectively "Buyer") and \_\_\_\_\_ ("Broker") enter into the following Confidentiality Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. Buyer requests that Broker provide Buyer with confidential and proprietary information relating to one or more businesses being offered for sale by Broker (each such business is referred to as "Seller"). (Information Broker provides to Buyer is referred to herein as the "Information".) Buyer agrees to maintain the confidentiality of the Information, including that Seller is for sale. Buyer will neither (i) disclose the Information to any other person or entity except for lenders and advisors assisting Buyer to evaluate and/or acquire Seller; nor (ii) use the Information to the detriment of Seller, including that Buyer will not solicit any of Seller's employees.
2. If a party notifies the other party that it does not intend to close a transaction with the other party, then Buyer shall immediately thereafter return to Broker, or destroy, all Information without retaining any photocopies or electronic copies of the Information.
3. Descriptions of Seller prepared by Broker are based solely upon information which Seller provided to Broker. Broker has not verified the accuracy or completeness of any of the Information, nor does Broker make any representations or warranties to Buyer regarding the accuracy or completeness of the Information. It is Buyer's responsibility to conduct whatever investigation of Seller Buyer reasonably deems appropriate. Buyer's decision to complete a transaction shall be based solely on Buyer's investigation, assisted by legal, tax, and other advisors of Buyer's choosing, and not that of Broker. Buyer releases Broker, including Broker's agents and employees, from any and all claims arising from or relating to the accuracy or completeness of the Information.
4. Buyer shall neither (i) contact Seller or its employees, customers, suppliers, or landlords, nor (ii) visit Seller's business, without Broker's consent. Buyer shall direct all inquiries, correspondence, and purchase offers concerning Seller to Broker. Buyer shall conduct all negotiations concerning Seller exclusively through Broker.
5. Buyer shall not purchase all or any part of Seller, or acquire any interest in Seller, without Broker's participation, or in any way interfere with or circumvent Broker's right to receive a commission relating to the sale of any interest in Seller. If Buyer violates this provision, then Buyer shall be liable to Broker for the commission that would have otherwise been payable to Broker, and any other damages suffered by Broker as a result of Buyer's acts, including Broker's reasonable attorney's fees and costs.
6. Buyer represents and warrants that any information about Buyer, including financial information, which Buyer provides to Broker to be conveyed to Seller will be accurate.
7. This Confidentiality Agreement constitutes the parties' entire agreement as to its subject matter and supersedes all such prior agreements between the parties. Modifications to this Confidentiality Agreement must be in writing. Waiver of a breach of this Confidentiality Agreement shall not be a waiver of any later breach.
8. If any action is instituted by a party to enforce the provisions of this Confidentiality Agreement, attorney's fees and costs shall be awarded to the prevailing party. This Confidentiality Agreement shall be governed by the laws of the State of Colorado. The venue for any action instituted to enforce any terms of this Confidentiality Agreement shall be exclusively in the state courts of the county in which the principal office of Seller is located, and Buyer consents to venue and personal jurisdiction being proper in such courts.
9. This Confidentiality Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
10. Any provision of this Confidentiality Agreement which is held by a court of competent jurisdiction to be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating or rendering unenforceable the remaining provisions of this Confidentiality Agreement.
11. Seller and Seller's successors and assigns are intended to be third party beneficiaries of this Confidentiality Agreement and may prosecute any action at law or in equity necessary to enforce its provisions as though a party hereto. Seller shall be entitled to seek a temporary restraining order and a permanent injunction to prevent a breach of this Agreement, and Seller may do so without the requirement of posting a bond or other security.

IN WITNESS WHEREOF, the parties have executed this Confidentiality Agreement effective as of the date first set forth above.

BUYER: \_\_\_\_\_  
(Company Name, if applicable)

BROKER: \_\_\_\_\_  
(Firm Name)

Signed: \_\_\_\_\_  
Print Name, Title \_\_\_\_\_, \_\_\_\_\_

Signed: \_\_\_\_\_  
Print Name, Title \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_, Individually



**DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE SELLER AGENCY, BUYER AGENCY OR TRANSACTION-BROKERAGE.**

## **BROKERAGE DISCLOSURE TO**

**BUYER**    **TENANT**

## **DEFINITIONS OF WORKING RELATIONSHIPS**

For purposes of this document, seller also means landlord (which includes sublandlord) and buyer also means tenant (which includes subtenant).

**Seller's Agent:** A seller's agent works solely on behalf of the seller to promote the interests of the seller with the utmost good faith, loyalty and fidelity. The agent negotiates on behalf of and acts as an advocate for the seller. The seller's agent must disclose to potential buyers all adverse material facts actually known by the seller's agent about the property. A separate written listing agreement is required which sets forth the duties and obligations of the broker and the seller.

**Buyer's Agent:** A buyer's agent works solely on behalf of the buyer to promote the interests of the buyer with the utmost good faith, loyalty and fidelity. The agent negotiates on behalf of and acts as an advocate for the buyer. The buyer's agent must disclose to potential sellers all adverse material facts actually known by the buyer's agent, including the buyer's financial ability to perform the terms of the transaction and, if a residential property, whether the buyer intends to occupy the property. A separate written buyer agency agreement is required which sets forth the duties and obligations of the broker and the buyer.

**Transaction-Broker:** A transaction-broker assists the buyer or seller or both throughout a real estate transaction by performing terms of any written or oral agreement, fully informing the parties, presenting all offers and assisting the parties with any contracts, including the closing of the transaction, without being an agent or advocate for any of the parties. A transaction-broker must use reasonable skill and care in the performance of any oral or written agreement, and must make the same disclosures as agents about all adverse material facts actually known by the transaction-broker concerning a property or a buyer's financial ability to perform the terms of a transaction and, if a residential property, whether the buyer intends to occupy the property. No written agreement is required.

**Customer:** A customer is a party to a real estate transaction with whom the broker has no brokerage relationship because such party has not engaged or employed the broker, either as the party's agent or as the party's transaction-broker.

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### **RELATIONSHIP BETWEEN BROKER AND BUYER**

Broker and Buyer referenced below have NOT entered into a buyer agency agreement. The working relationship specified below is for a specific property described as:

\_\_\_\_\_ or real estate which substantially meets the following requirements:

\_\_\_\_\_  
Buyer understands that Buyer shall not be liable for Broker's acts or omissions that have not been approved, directed, or ratified by Buyer.

#### **CHECK ONE BOX ONLY:**

**Multiple-Person Firm.** Broker, referenced below, is designated by Brokerage Firm to serve as Broker. If more than one individual is so designated, then references in this document to Broker shall include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

**One-Person Firm.** If Broker is a real estate brokerage firm with only one licensed natural person, then any references to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm who shall serve as Broker.

**CHECK ONE BOX ONLY:**

**Customer.** Broker is the seller’s agent and Buyer is a customer. Broker, as seller’s agent, intends to perform the following list of tasks:  **Show** a property  **Prepare and Convey** written offers, counteroffers and agreements to amend or extend the contract. Broker is not the agent of Buyer.

**Customer for Broker’s Listings – Transaction-Brokerage for Other Properties.** When Broker is the seller’s agent, Buyer is a customer. When Broker is not the seller’s agent, Broker is a transaction-broker assisting in the transaction. Broker is not the agent of Buyer.

**Transaction-Brokerage Only.** Broker is a transaction-broker assisting in the transaction. Broker is not the agent of Buyer.

Buyer consents to Broker’s disclosure of Buyer’s confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of Buyer, or use such information to the detriment of Buyer.

**DISCLOSURE OF SETTLEMENT SERVICE COSTS.** Buyer acknowledges that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

**THIS IS NOT A CONTRACT.**

If this is a residential transaction, the following provision shall apply:

**MEGAN’S LAW.** If the presence of a registered sex offender is a matter of concern to Buyer, Buyer understands that Buyer must contact local law enforcement officials regarding obtaining such information.

**BUYER ACKNOWLEDGMENT:**

Buyer acknowledges receipt of this document on \_\_\_\_\_.

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

**BROKER ACKNOWLEDGMENT:**

On \_\_\_\_\_, Broker provided \_\_\_\_\_ (Buyer) with

this document via \_\_\_\_\_ and retained a copy for Broker’s records.

Brokerage Firm’s Name: \_\_\_\_\_

\_\_\_\_\_  
Broker