



Happily Engaged—Part 1

Updating Your Engagement Letter to Comply
With Colorado's New Pricing Laws

BY KRISTIN DITTUS

Colorado has two relatively new laws on conveying information regarding the price of legal services and related fees to clients: CRS § 6-1-737 (effective January 1, 2026), requiring the disclosure of pricing information to clients, and CRS § 5-2-212 (passed in 2022), regarding permitted credit card surcharge fees. Part 1 of this two-part series provides information regarding these new laws as well as suggested language to include in your engagement letter if appropriate to your practice. Part 2 will explore flexible flat fee agreements, with a focus on defining the scope of work covered by the flat fee, managing client expectations, and billing hourly for work that falls outside that scope.

Requirement to Disclose Pricing Information Under CRS § 6-1-737

CRS § 6-1-737 (Section 737) went into effect under the Colorado Consumer Protection Act (CCPA) to protect people from the deceptive, unfair, or unconscionable pricing of goods,

services, or property.¹ The statute outlines requirements for a person or business to “clearly and conspicuously” disclose the total price for the offered product or service as a single number without separating the total price into separate fees, charges, or amounts.² It also provides an exception to the total price rule where the seller can demonstrate that “the total price of the service cannot reasonably be known at the time of the offer” due to factors beyond the control of the service provider, including factors that may be influenced by consumer selections.³ In such cases, the seller should clearly and conspicuously disclose the factors that determine the total price, any mandatory fees associated with the transaction, and the possibility that the total price of the services may vary.⁴

There was initial skepticism that this law was intended to include attorneys, accountants, and other professionals who bill at an hourly rate, given the numerous specific references to landlords and restaurants.⁵ Despite these references, the legislative declaration provides

that the act “should be broadly interpreted to achieve its intended purposes and policies.”⁶ Recent developments have also confirmed that hourly rate professionals, including attorneys, are obligated to meet the requirements of the new law.⁷

Recent Updates Affirming CRS § 6-1-737 Application to Attorneys

Colorado Rule of Professional Conduct 1.5, which governs attorney fees, was amended and adopted by the Colorado Supreme Court on December 18, 2025, effective January 1, 2026, in response to Section 737.⁸ Among other changes, the amendment added comment [3] and revised the flat fee agreement form accompanying Rule 1.5. The form now advises that Section 737 “may require lawyers to add other language to the following form agreement.” Similarly, new comment [3] provides that “[a] lawyer offering services, including an offer of services through a fee agreement, may be required to comply with other law pertaining to the offer of services. e.g., C.R.S. § 6-1-737.”

The Colorado Office of Attorney Regulation Counsel (OARC) also addressed Section 737 in its January 2026 newsletter, noting that “[l]egal services were not excepted from the new law.”⁹ The newsletter also discussed the Rule 1.5 amendments and identified seven factors that legal professionals may wish to consider in evaluating Section 737 compliance. Those factors include how the statute affects different types of fee agreements, whether it requires changes to existing fee agreements that became operative before January 1, 2026, whether a “total price” can be identified at the outset, and how costs or fees incurred in addition to the “total price” should be addressed.

Generally Recommended Language

Herrick K. Lidstone Jr., a business attorney with Jennings Haug Keleher McLeod Waterfall LLP in Denver, has written extensively on Section 737. In a recent article, Lidstone included sample disclosure language for Section 737 compliance, including the provision he has used:

As required to be set forth by C.R.S. § 6-1-737(3)(b)(II), we hereby advise you the total price of the services under this

agreement may vary based on the hourly rates and the amount of time required by the persons performing the services as set forth above, and any costs or other expenses that may be incurred.¹⁰

Lidstone noted, however, that the Attorney General's Office has not issued guidance on Section 737 disclosure, and that no court has determined whether this or similar suggested disclosure language is adequate under the statute.¹¹

To track the statutory language more closely, an engagement letter might alternatively provide:

Factors that determine the total price are outlined above. Because some of these factors are beyond the control of the law firm, the total price of the services to be performed cannot reasonably be known at the time the firm begins the representation. The total price of the services may vary and may be influenced by decisions you as the client make during the representation.¹²

Update to Orange Book Estate Planning Engagement Letter

The CBA Trust and Estate Section Orange Book Committee has updated "Form 120 Engagement Letter—Joint Representation" for 2026 to incorporate its recommended language regarding Section 737 in the third paragraph of the letter.¹³ The new language, reproduced below, may also be helpful to other transactional attorneys:

Fees for Legal Services and Costs

[Pick OPTION 1 or OPTION 2]

[OPTION 1A - HOURLY: FEE AGREEMENT INCORPORATED BELOW]:

The fee for these services will be [insert a description of the manner in which the fees will be charged, the amount of the fees to be charged, and, if a flat fee, when the fee is earned.]

We are offering services for which the total price of the service cannot reasonably be known at this time due to factors that determine the total price for the scope of work that may be beyond our control. Factors that determine the total price include the accuracy and thoroughness of the information you provide us, changes in

circumstances during the scope of work, and the time it takes for consulting and preparing, reviewing, and executing the documents drafted in the scope of work. There are no mandatory fees associated with the scope of work. The total price of the scope of work may vary.

[OPTION 1B - FLAT FEE: FEE AGREEMENT INCORPORATED BELOW]:

The fee for these services will be [insert a description of the manner in which the fees will be charged; when the fee is earned; the total price for service to be charged as a single number without separating the total price into separate fees, charges, or amounts; disclose the total price more prominently than any other pricing information for the service.]

[OPTION 2: THE FIRM'S FEE AGREEMENT IS ATTACHED TO AND MADE A PART OF THIS LETTER.]

Flat Fee as the Total Price

As noted in the example above, if a flat fee agreement states the total price for legal services as a single number and does not allow for any additional fees to be added during the term of the service, then there is no need to include a notice of a potential price increase in the letter. However, a flat fee agreement that does not allow for a price increase due to factors beyond the attorney's control may prevent the attorney from receiving fair compensation for services actually rendered. Flexible flat fee agreements that provide a framework for increasing the flat fee after the representation begins will be discussed in part 2 of this article.

Clearly and Conspicuously Displayed

Although "clearly and conspicuously displayed" is not defined in the statute, attorneys should consider both the placement of the text in the engagement letter and the typeface to be used, including whether the text should be in bold, italics, capital letters, or some combination of those. As noted above, firms will need to notify current clients who entered into engagements before January 1, 2026. This may be accomplished by providing an invoice that displays the notice, having the client sign a new fee agreement, pro-

viding a notice regarding updated fees, sending an email notification, or providing some other written communication to the existing clients.

Enforcement

Under subsection (5)(a), a person who violates any of the law's requirements or prohibitions is deemed to have engaged in a deceptive, unfair, and unconscionable act or practice.¹⁴ A person aggrieved by a violation may send a written demand to the alleged violator seeking reimbursement of any fees, charges, or other amounts owed, as well as actual damages suffered.¹⁵ If the alleged violator does not remedy the situation within 14 days after the receipt of a written demand, that party will be liable for actual damages plus interest at 18% per annum, compounded annually.¹⁶ In addition, a violator may be subject to civil penalties under the CCPA of up to \$20,000 per violation, or up to \$50,000 per violation if the violation is committed against an elderly person.¹⁷

Informing Clients of and Applying Colorado's Credit Card Surcharge Fee

Colorado adopted CRS § 5-2-212, "Surcharges on credit transactions—enforcement—definitions" on July 1, 2022, as part of the Colorado Consumer Credit Code. This law allows sellers to pass along a portion of the processing fees paid by a seller when a consumer uses their credit card, provided the seller adheres to specific restrictions and rules on notice.

The Credit Card Surcharge Law

Under § 5-2-212, a seller in Colorado may impose a surcharge on a buyer who elects to use a credit or charge card to pay for goods or services.¹⁸ A surcharge is an additional amount imposed at the time of the sales transaction "that increases the charge to the buyer or lessee for the privilege of using a credit or charge card."¹⁹ A surcharge is not permitted if the customer pays by cash or a check, uses a debit card or debit payment, or redeems a gift card.²⁰

A Colorado seller may employ one of two methods for calculating the surcharge: (1) an amount not to exceed 2% of the total cost to the buyer for the sale, or (2) an amount not to exceed the merchant discount fee that the seller

incurs in processing the transaction. If using the 2% method, for example, a \$3,000 charge would result in a \$60 surcharge. Under the second method, the surcharge may not exceed the actual amount paid to the service provider to process the transaction.²¹ For example, if the merchant discount fee incurred by the seller is 3%, or \$90 on a \$3,000 charge, the seller may impose a surcharge of up to the \$90 fee actually incurred. The statute provides specific language for the required notice depending on whether the seller uses the 2% method or the merchant discount fee method.²²

A seller who imposes a surcharge for credit or charge card payments must provide the required notice in a manner visible to customers at the seller's premises or, for an online transaction, before the customer completes the transaction.²³ The surcharge must appear as a separate line item on the customer's receipt.²⁴ As a best practice, legal professionals should notify the client of any

credit card surcharge fee both in the engagement letter and on any invoice or other request for payment.

Letter From the Attorney General's Office

In the OARC's July 2022 newsletter, lawyers were advised to closely review the amended statute as well as the Colorado Attorney General Office's "Administrator's Interpretive Opinion Letter" addressing CRS § 5-2-212.²⁵ The letter states that the scope of § 5-2-212 is unambiguous, that the statute applies to "any sales and lease transaction," and that the statute's scope is broad in nature. The letter also states that the "Administrator believes it is reasonable to interpret the UCCC's amended surcharge provisions as inapplicable to business-to-business transactions that have no consumer purpose." Conversely, the Administrator interprets the surcharge provisions as applying to any sales with a consumer purpose. The letter does not discuss whether or how the

surcharge provisions apply to a COLTAF account or other Colorado lawyer trust account.

How Payment Service Providers Apply the Fee

Companies that process client payments, such as 8am LawPay and Clio Payments, offer billing software that allows merchants to pass the merchant discount fee or surcharge on to clients. For attorneys in Colorado electing to use this service, 8am LawPay automatically applies a flat 2% surcharge to credit card transactions, as permitted by the statute. The 8am LawPay platform does not permit a surcharge exceeding 2% to be added automatically. According to 8am LawPay representatives, if the merchant discount fee actually incurred by the seller exceeds 2%, the additional amount must be added manually in order to recover the actual merchant discount fee incurred in processing the transaction, as permitted by CRS § 5-2-212(1)(c)(2)(II)(A).

In many states, credit card surcharges cannot exceed 3%.²⁶ 8am LawPay notes there are further restrictions in certain states, such as Colorado, where the company adheres to a flat surcharge maximum of 2%, despite the statute allowing a seller to "charge the actual cost the company pays for credit processing."²⁷ Clio Payments also notes that Colorado is limited to a 2% surcharge under their billing policies.²⁸

The policy communicated by both 8am LawPay and Clio Payment representatives over several calls is that they impose a cap of 2.95% to the merchant surcharge fee in most states, unless there are further restrictions as there are in Colorado. While merchants in Colorado are allowed to "impose a processing surcharge in an amount not to exceed the merchant discount fee" that the seller incurs in processing the transaction, it can be difficult to determine the "merchant discount fee" that will be applied to each transaction prior to the fee being applied.²⁹ From a practical sense, this makes it difficult to apply a fee in excess of the 2% fee in Colorado.

As noted above, many states limit credit card surcharges to 3%. Colorado attorneys who wish to impose a surcharge exceeding the 2% flat rate should first confirm the specific merchant discount fee charged by their payment processor for credit card transactions. For example, a longtime 8am LawPay customer may qualify for a

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lower processing rate, such as 2.75% rather than 2.95%. Once the attorney confirms the merchant discount fee actually charged by the payment processor, the attorney may pass that fee on to the client, provided that the surcharge does not exceed the merchant discount fee actually incurred, as permitted by CRS § 5-2-212(1)(c)(II)(A).

8am LawPay provides a separate link for payment to a trust account versus an operating account. If an attorney elects to apply the 2% surcharge, 8am LawPay automatically includes a note about this policy to the client for any payments made to an operating account, but not for any trust account payments. 8am LawPay also allows the attorney to add any customized notice language on the transaction page where a client can complete the online payment. This way, the attorney can comply with giving notice to clients in accordance with the required seller notification of surcharge fees. As noted above, any surcharge billed to the client must also be included as a separate line item on the client's invoice.³⁰

As a best practice, attorneys should provide notice of any credit card surcharge in the engagement letter, on each invoice, and in emails or other communications regarding the firm's fees. This gives the client ample opportunity to see the surcharge before making payment. Sufficient notice is especially important when an attorney manually adds a surcharge.

Credit Card Surcharge Fees for Deposits to Trust Accounts

Attorneys have questioned whether they can apply the surcharge fee to retainer payments deposited into the law firm's trust account. While there is no clear guidance, it is not expressly allowed in the statute or by any written communications from the OARC. Additionally, neither 8am LawPay nor Clio Payments allow surcharge fees to be added to payments passing to a trust account. Based on this information, it is advisable to refrain from applying a surcharge fee on any payments made to a trust account.

As a practical alternative, firms may encourage clients to use lower-cost payment methods, such as eCheck, when making payments. The engagement letter and other fee communications

can explain the available payment methods and any applicable credit card surcharge. For example:

The Firm will send you a **link for an online payment** by debit card or eCheck through LawPay. *Please pay by eCheck if possible, as this results in the lowest fees to our firm. Please be advised if you wish to pay by credit card, a fee of 2% will be added to your total bill for credit processing transactions on any payment for services rendered.* This credit card processing fee is **not currently** included in the bill, which is based on a zero processing fee for a debit transaction.



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NOTES

1. HB 25-1090, § 1(1)(b).
2. CRS § 6-1-737(2)(a).
3. CRS § 6-1-737(2)(b)(II).
4. *Id.*
5. CRS 6-1-737(1)(e), (g), (j), and (l).
6. HB 25-1090, § 1(2).
7. Lidstone Jr., "Attorney Engagement Letters and the Colorado Consumer Protection Act," Jennings Haug Keleher McLeod Waterfall LLP at 1 (Apr. 8, 2026), <https://ssrn.com/abstract=6111726> (updated periodically).
8. See the history of Colo. RPC 1.5 at <https://www.coloradojudicial.gov/sites/default/files/2025-12/Rule%20Change%202025%2829%29.pdf>.
9. OARC, *OARC Update* (Jan. 2026), <https://www.coloradolegalregulation.com/newsletters/oarc-update-january-2026>.
10. Lidstone Jr., *supra* note 7 at 5.
11. *Id.*
12. Proposed by the author.
13. Form 120, Engagement Letter (Joint Representation) and Notes on Use, *Orange Book Forms: Colorado Estate Planning Forms* (8th ed. CBA-CLE Supp. 2021) (revisions forthcoming in the next published supplement).
14. CRS § 6-1-737(5)(a).
15. CRS § 6-1-737(5)(b)(I).
16. CRS § 6-1-737(5)(b)(II).
17. CRS § 6-1-112(1)(a), (c).
18. CR § 5-2-212(1)(a).
19. CRS § 5-2-212(1)(b).
20. CRS § 5-2-212(1)(f).
21. CRS § 5-2-212(1)(c).
22. CRS § 5-2-212(1)(c)(I) and (II)(B).
23. CRS § 5-2-212(1)(c)(I).
24. CRS § 5-2-212(1)(d).
25. OARC, *OARC Update* (July 2022), <https://www.coloradolegalregulation.com/wp-content/uploads/Newsletters/July2022/Index.htm>. The Administrator's Interpretive Opinion Letter is available at <https://coag.gov/app/uploads/2025/05/Administrators-Interpretive-Opinion-Letter-Amendment-of-Surcharge-Statute.pdf>.
26. "Credit Card Surcharge Laws State By State," Corepay (Updated May 20, 2026), <https://corepay.net/articles/credit-card-surcharge-laws-state-by-state>; 8am LawPay, "Billing With Surcharge," <https://help.lawpay.com/en/articles/9343168-billing-with-surcharge>.
27. See Jhean, "Credit Card Surcharge Laws by State Explained for 2025," 8am LawPay blog (Oct. 24, 2025), <https://www.lawpay.com/about/blog/credit-card-surcharge-rules>. Such information is also provided by 8am LawPay representatives when contacting their company for support.
28. Smith, "Credit Card Surcharge: What it Means for Law Firms," Clio blog, <https://www.clio.com/blog/credit-card-surcharge-what-it-means-for-law-firms>.
29. CRS § 5-2-212(c)(II)(b).
30. CRS § 5-2-212(1)(d).

Conclusion

Attorneys should review their engagement letters and billing practices to be in compliance with these new Colorado laws. Clear communication regarding the law firm's fees and any credit card surcharges will ensure attorneys comply with these new requirements while setting appropriate client expectations. A few thoughtful updates to engagement letters, invoices, and payment communications can help prevent surprises and fee disputes. Ultimately, transparency about pricing benefits both the attorney and the client—letting the two stay "happily engaged." 