



**Policies and Guidelines  
Manual**

---

# Welcome to Texas United Realty

---

We are proud you have joined our firm and we are excited to be your partner in building your career. Texas United Realty is a company led by successful people, for successful people, which offers many opportunities for career growth and development.

Quite simply, the Texas United Realty goal is to help you build the strongest real estate business in your market. We want to associate interdependently with the exceptional real estate sales people in our industry.

What makes Texas United Realty unique is our focus on who is our customer and partner – you. This focal point sets the tone for everything we do, from how decisions are made, to our compensation opportunities. Everything about Texas United Realty is unique because the company is built around what our associates believe is best for their careers. We believe results come through people and that opportunities abound when careers are built on this philosophical foundation. We believe that if the company develops the individual, then the individual develops the company.

We are more than a real estate company. We are a culture and a belief system in action. We are Realtors who through the daily operation of our own successful company discovered a better way of running a real estate company. We are dedicated, just as you are, to providing the best service to all buyers and sellers.

I encourage you to “talk the talk, walk the walk, and live the life” of Texas United Realty’s way of doing business. We are committed to support, and help to assure, the professional and personal success of each our associates. Being a member of Texas United Realty’s family is exciting and if we all work together, you can gain the competitive advantages you’ve been looking for. We are delighted you have joined us in our cause.

**YOUR SUCCESS IS OUR SUCCESS,**

Rick Rogers – Broker / Owner

Jeannie Rogers – Realtor / Owner

Texas United Realty

# Table of Contents

## Chapter

### 1

Page

<b>Broker and Associate.....</b>	<b>3.7</b>
Mutual Benefit	3.7
<b>Broker and Associate Agreement of Mutual Benefit</b>	
<b>Adhere to the Code of Ethics and Bylaws of Local Board and MLS</b>	
Associate Affiliation Requirements	3.8
<b>Real Estate License and Mandatory Continuing Education,</b>	
<b>Mandatory Errors &amp; Omissions Insurance Coverage,</b>	
<b>Automobile Insurance Coverage</b>	
<b>Membership in the Board of REALTORS®</b>	
<b>Miscellaneous Associate Expenses</b>	
<b>Automobile</b>	
Professional / Business Expenses	3.9
Resolution of Disputes	3.10
<b>What Constitutes a Dispute</b>	
<b>Intra-Office Disputes Between Associates</b>	
<b>Disagreement Between Broker and Associate</b>	
Independent Contractor	3.11
<b>Definition</b>	
<b>Independent Contractor's Agreement</b>	
<b>Tax Filing Requirements</b>	
<b>Workers' Compensation Requirement</b>	
<b>Broker Authorization to Contract</b>	

## Chapter

### 2

<b>Office Policies</b>	<b>3.13</b>
Discrimination Issue	3.13
<b>Federal Fair Housing Laws</b>	
<b>Texas Association of Realtors® Code for Equal Housing Opportunity</b>	
<b>Discrimination Accusations</b>	
<b>Fair Employment Practices</b>	
Harassment	3.14
Office Security	3.15
Office Appearance	3.15
Dress Code	3.15
Eating in the Work Area	3.15
Parking	3.15
Changes in Name, Address and Telephone Number	3.15
Telephone Use	3.15
<b>General</b>	
<b>Long Distance Calls</b>	
<b>Messages for Other Associates</b>	

Computer Use	3.16
<b>Information Systems Policy</b>	
<b>Proprietary Equipment and Information</b>	
<b>Information Systems Usage</b>	
<b>Information Systems Conduct</b>	
<b>Computer Safety and Security Measures</b>	
<b>Viruses</b>	
<b>Copyright Infringement</b>	
<b>The World Wide Web</b>	
<b>Summary</b>	
Maintaining Contact with the Office	3.19
Drug and Alcohol Use	3.19
<b>Substance Use</b>	
<b>Client or Customer Substance Use</b>	
<b>Smoking</b>	
Legal and Tax Advice Prohibited	3.20
<b>Legal Advice</b>	
<b>Tax Advice</b>	
Problem Reporting Procedures	3.20
Contacting the Broker	3.21
<b>Emergency Contacts</b>	
<b>Branch Offices</b>	
Confidentiality	3.21
Office Duty Time	3.22
<b>Purpose</b>	
<b>Rotation</b>	
Sales Meetings	3.22
<b>Purpose</b>	
<b>Attendance Requirements</b>	
Observance of Safety Practices	3.22
Vacation / Leave Time for Associates	3.23
Sign Policy	3.23
<b>Sign Riders</b>	
<b>Direction Signs</b>	
<b>Sold and Offer Pending Signs</b>	
<b>Expired Listings</b>	
Employee Office Hours	3.24
<b>Observed Holidays</b>	
Legal Assistance for Associates	3.24
<b>Legal Counsel Involvement</b>	
<b>TAR Legal &amp; Ethics Hot Line</b>	
<b>Lawsuits and Threats of Action</b>	
<b>Arbitration</b>	
<b>Code of Ethics &amp; License Law Violations</b>	
Inspection Services, Surveys, Etc	3.25

Document Control	3.25
<b>Document File</b>	
Personal Assistants	3.25
<b>Unlicensed Assistants</b>	
<b>Licensed Assistants</b>	
Agency	3.27
<b>Company Agency Policies 1 - 5</b>	
<b>Chapter</b>	
<b>3</b>	
<b>Advertising</b>	<b>3.30</b>
Real Estate Advertising	3.30
<b>Advertising Media</b>	
Open House Ads	3.30
Allocation and Costs of Advertising	3.30
TREC Advertising Rules	3.30
<b>General Principles</b>	
<b>Advertising for Franchise or Cooperative Advertising Groups</b>	
Fair Housing Advertising	3.31
<b>Equal Opportunity Slogans and Logos</b>	
<b>Prohibited Advertising Language</b>	
<b>Chapter</b>	
<b>4</b>	
<b>Compensation</b>	<b>3.33</b>
Commission and Fee Rates	3.33
Associate Commission and Fee Compensation	3.33
<b>Definition</b>	
<b>Schedule of Compensation</b>	
Partial Receipt of Commissions	3.33
Reduction of Commissions and Fees	3.34
Referrals and Bonuses	3.34
Commission Agreements and Disputes	3.34
<b>Entitlement to Commission</b>	
<b>Inter-Office Disputes of Compensation</b>	
<b>Intra-Office Disputes of Compensation</b>	
<b>Chapter</b>	
<b>5</b>	
<b>RESPA Policy</b>	<b>3.35</b>
<b>Prohibition against Kickbacks and Unearned Fees</b>	
<b>What is Permitted</b>	
<b>Key Referral Fee Reminders</b>	
<b>Chapter</b>	
<b>6</b>	
<b>Listing Policy</b>	<b>3.37</b>
Agency Disclosure	3.37

Residential Property Condition Disclosure	3.37
<b>Disclosure of Adverse Facts</b>	
Lead Based Paint (LBP) Disclosure Requirements	3.38
<b>Disclosure Requirements</b>	
<b>Target Housing</b>	
<b>Transactions Subject to LBP Rules</b>	
<b>Exempted Transactions</b>	
<b>Agents Covered</b>	
<b>Buyer Opportunity to Inspect for LBP</b>	
<b>Timing of LBP Disclosures</b>	
<b>Agent Responsibilities</b>	
<b>Listing the Residential Property</b>	
Listing Contracts	3.41
Filing Listing Documentation	3.41
New Listing Tours	3.41
Security of Listed Property	3.42
Cancellation of Listing Contract	3.42
Listing Protection	3.42
Cooperating Compensation	3.42
<b>Chapter</b>	
<b>7</b>	
<b>Buyer's Brokerage</b>	<b>3.43</b>
Associates Capacity as Buyer's Agent	3.43
<b>Buyer Representation Agreement</b>	
<b>Agency Disclosure</b>	
<b>Negotiations</b>	
<b>Compensation</b>	
Cooperation as Listing Agents with Buyer's Brokers	3.43
Dual Agency	3.44
<b>Chapter</b>	
<b>8</b>	
<b>Selling Policies and Procedures</b>	<b>3.45</b>
Information Provisions	3.45
Lead Generation	3.45
Agency Disclosure	3.45
Servicing the Prospects	3.45
Drafting Offers	3.46
Confidentiality of Offers	3.46
<b>Intra-Office</b>	
<b>To Cooperating Brokers</b>	
Timeliness in Offers	3.46
Delivery of Accepted Offers	3.47
Referral Fees	3.47

**Chapter  
9**

**Closing Procedures** 3.48  
Listing Associate Responsibilities 3.48  
Failed Transactions 3.48  
Attorneys at Closing 3.48  
Deposits and Earnest Money 3.48  
    **Handling**  
    **Disbursement**

**Chapter  
10**

**Antitrust** 3.49  
Summary of Principal Federal Antitrust Laws 3.49  
    **The Sherman Act**  
    **The Clayton Act**  
    **The Robinson-Patman Act**  
    **The Federal Trade Commission Act**  
Antitrust Compliance 3.50  
    **Document Retention Policy**  
    **Consequences and Costs of Failure to Comply**

**Chapter  
11**

**Termination of Affiliation** 3.55

**Addenda**

A. National Code of Ethics / Standard of Practice.

**Revisions - NA**  
**Edition One: 10/5/2009**

# Introduction

The Office policies and procedures are provided in this manual for the standard operating procedures of this firm. The Office Policy Manual is to be used as a guide in your day to day operations as a member of this firm. It will help promote cooperation among Associates and between Associates and Management. The manual provides clear understanding of standard practices and procedures to help avoid disputes and also to help settle disputes. And lastly, the manual will help you by guiding you in your activities and hopefully enhance your productivity.

The right to amend and change content of the Office Policy Manual is reserved for the Broker on an as needed basis. It is the responsibility of each Associate to keep abreast of all policy changes and to understand the policy set forth.

## *Chapter 1*

# Affiliation: Broker and Associate

## **Mutual Benefit**

For the working relationship of the Broker and Associate, the following policies will be used to establish mutual benefit to both parties:

### Broker and Associate Agreement of Mutual Benefit

- The Associate and Broker each agree to engage in business that promotes the utmost manner of professionalism by promoting positive relations, enhancing the business' reputation and its profits, and increasing community goodwill.
- The Associate agrees to put forth the best effort in selling, exchanging, and leasing all real estate and business opportunities listed with the Broker and to include the solicitation of new clients and customers for future business. Furthermore, the Associate agrees to act in lawful and ethical manners promoting the professionalism of himself as well as the firm to the greatest mutual benefit of both parties.
- The Associate, as agent for the Broker, agrees to act on the behalf of the Broker. If a conflict of interest occurs, the Associate will promptly notify the Broker in writing so that the Broker can take appropriate steps in rectifying the conflict for the mutual protection of both parties involved in the transaction.

Adhere to the Code of Ethics and Bylaws of Local Board and MLS

- The parties agree to conform to and abide by all laws, rules and regulations, and codes of ethics that are binding on or applicable to, Texas real estate brokers and affiliate brokers.
- Strict adherence to the governing rules and regulations of the Texas Real Estate Commission, the Real Estate Broker License Act, The Code of Ethics of the National Association of Realtors<sup>®</sup>, Local Board/Association governing documents (Bylaws, MLS Rules and Regulations, etc.) will be followed by the Broker and Sales Associates.
- Each party acknowledges receipt of a copy of the Code of Ethics, the local Board/Association Constitution and/or Bylaws, and the Rules and Regulations of the Multiple Listing Service.

## **Associate Affiliation Requirements\***

The following provisions will be complied with at the Associate's personal cost:

Real Estate License, Mandatory Continuing Education,  
Automobile Insurance Coverage

- The Associate shall maintain his or her own current real estate license
- The Associate shall meet all Continuing Education (CE) requirements as established by the Texas Real Estate Commission (TREC)
- Proof of CE compliance and license renewal shall be provided to Broker no later than fifteen (15) days prior to the applicable renewal date
- The Associate is responsible for all CE, licensing and license renewal fees or fees relating to name changes.

Membership in the Board of REALTORS<sup>®</sup>

- The Associate agrees to become a member of the local Board/Association, Texas Association of REALTORS<sup>®</sup>, National Association of REALTORS<sup>®</sup> and to be responsible for all applicable dues and fees.
- The Associate expressly understands that they may choose to join any Board/Association in which the Broker holds membership.
- The Associate also understands the Broker is a member of the local Board/Association, the Texas Association of REALTORS<sup>®</sup>, the National Association of REALTORS<sup>®</sup> and may belong to any of the Institutes and Societies of the National Association of REALTORS<sup>®</sup>.
- The Associate agrees to abide by the rules and regulations of these organizations to which Broker must adhere as a member thereof.

## Miscellaneous Associate Expenses

- Any expenses relating to customer/client entertainment and agent's personal promotion will be paid for by the associate. Business cards - each business card will display the name and logo of the Broker.
- All education required to maintain licensing and improve brokerage skills, Realtor<sup>®</sup> designation courses, unless otherwise approved in writing in advance by the Broker.
- Personal file supplies.

## Automobile

- In the course of real estate transactions, the associate must use his personal automobile. All operating, maintenance, repair and other related automobile expenses will be paid for by the associate.
- The automobile will be in such condition as to promote the professionalism of the agent as well as the firm. It will be maintained in good operating condition and in a cleanly manner.
- Transportation will not be provided by the Broker.

The Associate shall at all times carry liability insurance on the automobile with coverage for personal injury and coverage for property damage. Changes in coverage will not become effective until fifteen (15) days after the Broker has received and approved the coverage changes. The Broker will be named as an additional insured in the policy. At the signing of this agreement and at the time of each policy renewal or change of carrier, the Associate shall provide evidence to the Broker through the certificate of insurance policy of the carrier. Business pursuit liability coverage shall also be maintained. This may be as part of Associate's personal liability or homeowner's coverage.

In accordance with Texas law, the Associate must require that all passengers wear a seat belt and any infant under the age of four years shall be secured in a restraining seat during transportation. Such a restraining seat is to be provided by the Broker, and needs to be checked out and checked in during usage.

## **Professional / Business Expenses\***

The Broker shall determine which expenses shall be paid by the firm and which expenses shall be paid by the Associate. The following are examples of business expenses between the Broker and Associate:

1. Access to Office, office telephone, and desk - Broker
2. Office supplies, equipment - Associate
  - a. Signs
  - b. Forms
  - c. Lock Boxes
  - d. Business mail, shipping, handling, and postage
  - e. Brochures, farming materials, etc.
  - f. Newsletters

3. Membership in the Multiple Listing Service - Associate
4. Office equipment/office machinery access - Broker  
The following office equipment and supplies are for business use only:
  - a. Scanner
  - b. Copy machine - The copy machine is to be used for business document duplication only and use of the copy machine requires permission.
  - c. Facsimile machine - The facsimile machine is to be used for business related transmittal of real estate documentation.
  - d. Computers/word processors

All machinery and office lights should be turned off at the close of business. Each Associate is responsible for their workspace areas including powering off of unused machinery and the cleanliness of the area.

## **Resolution of Disputes**

Misunderstandings about brokerage prospects or sales are to be handled through the following processes to negotiate in an equitable manner these types of situations that may arise.

What Constitutes a Dispute?

Disputes are disagreements between Associates in regards to:

- The equitable right to work with a certain prospect
- The right to a split of commission or fee when more than one Associate knowingly or unknowingly works with the same customer/client
- The percentage split of commission or fee earned when two Associates have worked with the same customer/client

Intra-office Disputes Between Associates

First and foremost, the Associates in conflict must try to come to an agreeable mutual settlement.

In the event the Associates cannot meet a satisfactory agreement, the Broker shall hear both sides of the argument in a meeting with the involved parties. If a legitimate dispute exists, the Broker will make a determination of action to follow. In the event the Broker's action is not satisfactory, three neutral Associates of the firm shall be appointed by the Broker to act as jury and render a final decision (based on the majority vote of the committee). All intraoffice disputes must be reported promptly to the Broker. Personal disagreements not involving business related matters are not the responsibility of the Broker. However, in an effort to promote goodwill, the Broker can counsel the aggrieved parties.

## Disagreement between Broker and Associate

Disagreements or disputes between Associate and Broker pertaining to:

- A conflict arising out of, or in connection with, their business relationship and dealings
- The company policy
- Transactions or real estate laws
- Any real estate business related practice unresolved between the Associate and Broker will be submitted to arbitration by an agreed upon chosen arbitrator. The arbitrator's decision shall be final and the Broker and Associate must abide by the decision of the arbitrator.

## Independent Contractor

### Definition

The relationship of the Associate to the Broker is that of an Independent Contractor. This relationship affords the Associate maximum freedom and flexibility. It is established and described in a contract and includes how listings and compensation will be handled in the event that the Associate leaves the company. It must be signed by the Associate and is included upon affiliation with the Broker.

To meet state and federal requirements, an Associate is an Independent Contractor if

- The Associate holds a valid real estate license.
- Substantially all of the sales associate's income performed as a real estate agent (90% or more) must be directly related to sales or other output rather than to the number of hours worked.
- A written agreement which specifically states that the Associate will not be treated as an employee for federal and state tax purposes with respect to services performed as a real estate agent.

### Independent Contractor's Agreement

Upon affiliation with this Broker, the Associate shall enter into a written Independent Contractor's agreement with the Broker setting forth the duties and responsibilities of both parties. This agreement shall include, but shall not be limited to, the following:

- The terms of compensation for work performed during the time of affiliation with the Broker.
- The terms of compensation for work in progress but not completed prior to termination of affiliation with the Broker.
- The disposition after termination of affiliation of all active listings, buyer agency contracts, and pending sales the Associate obtained during affiliation with the Broker.
- A written accounting to the Broker, at the time of termination of affiliation, of the names of all prospective purchasers, sellers, lessees and lessors which the Associate encountered during affiliation with the Broker.
- A provision for the return to the Broker, at the time of termination of affiliation, all property of the Broker in Associate possession or control, including but not limited to: all property files, computerized files, keys, for sale signs, notebooks, lock boxes and records of any kind used in connection with the listing and sale or leasing of property.

### Tax Filing Requirements

Each Associate is responsible for maintaining the necessary personal financial records for purposes of reporting income for state and federal tax requirements. The Broker's obligation is limited to providing a 1099 form which summarizes any annual commission paid directly from the Broker to the Associate. Commissions paid directly from title companies will be the responsibility of the Associate to record and report for tax reasons. The Broker is not liable for deduction of Social Security, or income or unemployment taxes for any *production based* income.

### Workers' Compensation Requirement

According to Texas state law, as long as the Broker has a valid independent contractor agreement with an Associate and adheres to the requirements of the Tax Equity and Fiscal Responsibility Act of 1982, the Broker is not responsible for paying Workers' Compensation Insurance. The Broker/employer must maintain workers' compensation insurance for all workers/staff classified as employees under worker's compensation program guidelines.

### Broker Authorization to Contract

The obligation, commitment, or binding of a promise or representation by the Broker is valid only when the Associate is authorized to execute listing contracts, buyer/seller agency contracts, and other approved forms in behalf of the Broker by an executed independent contact.

Authority to terminate a listing contract, buyer/seller agency contract, or other agency agreement, or make amendments to the contract that alter the term and/or change the amount of compensation established in the contract is authorized with a signed promulgated form and a copy must sent to the Broker.

# Office Policies

## Discrimination Issues

### Federal Fair Housing Laws

It is illegal to discriminate against any person because of age, race, creed, color, religion, sex, handicap, familial status or national origin:

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services
- In the appraisal of housing
- Blockbusting is also illegal

Texas Association of REALTORS<sup>®</sup> Code for Equal Housing Opportunity This office subscribes to the Texas Association of REALTORS<sup>®</sup> Code for Equal Housing Opportunity in which equal opportunity in the acquisition of housing can best be accomplished through leadership, example, education, and the mutual cooperation of the real estate industry and the public. In the spirit of this endeavor, this firm proclaims the following provisions of its Code for Equal Opportunity to which each member is obligated to adhere:

1. In the sale, purchase, exchange, rental or lease of real property, REALTORS<sup>®</sup> and/or REALTOR-ASSOCIATE<sup>®</sup>s have the responsibility to offer equal service to all clients and prospects without regard to race, color, religion, sex, handicap, familial status or national origin. This encompasses:
  - A. Standing ready to enter broker-client relationships or to show property equally to members of all racial, religious, or ethnic groups.
  - B. Receiving all formal written offers and communicating them to the owner.
  - C. Exerting their best efforts to conclude all transactions.
  - D. Maintaining equal opportunity employment practices.
2. Members, individually and collectively, in performing their agency functions have no right or responsibility to volunteer information regarding the racial, religious, or ethnic composition of any neighborhood or any part thereof.
3. Members shall not engage in any activity which has the purpose of inducing panic selling.
4. Members shall not print, display or circulate any statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitations, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.
5. Members who violate the spirit or any provision of this Code for Equal Opportunity shall be subject to disciplinary action.

### Discrimination Accusations

An investigation by the Broker will follow for any accusation of discrimination. If the investigation confirms a violation of discrimination, the Associate's actions will be reported to the TREC for further investigation and necessary disciplinary action. Affiliation with the Broker will be terminated

### Fair Employment Practices

It is the Broker's policy that no person shall be discriminated against in either hiring or firing of personnel. It is discriminatory practice for an employer to:

1. Fail or refuse to hire or discharge any person or otherwise to discriminate against an individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, creed, color, religion, sex, age or national origin; or
2. Limit, segregate or classify an employee or applicants for employment in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, creed, color, religion, sex, handicap, familial status, age or national origin.

The Broker shall provide reasonable accommodations to qualified individuals with disabilities, unless such accommodation would impose an undue hardship on business operations. Qualified individuals with disabilities are those who, with or without reasonable accommodation, can perform the essential functions of the job.

## Harassment

Professional behavior is a requirement around your fellow associates, brokers, managers, company employees, staff and customers. Harassment, including verbal, physical, visual, religious, and sexual is strictly prohibited in this office. A list of things that can be considered harassment:

- Any racial, ethnic, sexual, religious, jokes / slurs / or insults
- Any physical contact such as unwelcome touching, groping, grabbing, or pinching
- Any visual renderings of sexually suggestive materials or materials negatively reflecting an individual's ethnicity, race, ancestry, or sexual preference
- Any unwelcome sexual advances, physically, verbally, and visually of a sexual nature that has a purpose or effect of work performance interference, intimidation, or hostile/offensive working atmosphere

In the event an employee, Associate, or any other staff person feels that he or she has been harassed, the incident must be reported immediately to the office manager or Broker. The anonymity of the accuser, as well as the accused, shall be held in confidentiality by the manager and/or Broker. An investigation will commence and a written report will be filed. If the allegation involves the manager or Broker as the accused of such action, an outside investigator may be retained. Retaliation against complainants is strictly prohibited. Any employee, Associate or staff found guilty of engaging in harassment may be subject to disciplinary action up to and including reprimand, counseling, suspension, and termination.

## **Office Security**

Anyone issued an office key is responsible for the safeguarding of this office. In the event that an office key is lost or stolen, you must immediately inform the Broker. There will be a charge for replacement of lost or stolen keys. The Broker is not responsible for any theft or loss of personal items left in the office. The last person leaving the office must make sure that all accesses into the building are firmly secured, all lighting and business equipment and appliances are turned off, and that the security alarm is activated before leaving the building.

## **Office Appearance**

A cleaning service is contracted by the Broker to do general cleaning of the building on weekly basis. However, it is your responsibility to keep the work area in a clean, tidy, professional manner. Your office appearance is a reflection on yourself as well as the firm when clients and customers are visiting. Any conference or meeting areas used must be reorganized and cleaned after usage including turning off lights and appliances.

## **Dress Code**

Professional manner of dress is a requirement when serving the public in real estate transactions and when representing the Broker.

## **Eating in the Work Area**

Food and meals should be eaten in the designated area. Eating in your office in plain view of the customer or client is considered unprofessional.

## **Parking**

The closest parking spaces are reserved for customer or clients. Please park in all other available spaces.

## **Changes in Name, Address and Telephone Number**

All changes in name, address, and telephone numbers of any Associate must be reported immediately by the Associate to the Office Manager or secretary who will make a record of the changes and report these changes to the TREC and the local Board/Association of REALTORS®. The Associate is responsible for any fees associated with name, address and telephone number changes from TREC or the Board/Association of REALTORS®.

## **Telephone Use**

### **General**

Telephones are necessary in the day to day operations as a real estate agent. Lines must be kept open at all times for the convenience of customers and clients. Personal use of the phone is limited and shall be held to a minimum.

### **Long Distance Calls**

Associate must use a personal calling card if long distance service is necessary while using office phones.

## Messages for Other Associates

Accuracy and detail of message taking is important and essential to the business at hand. When taking a message for other Associates, employees, or staff, please include the following:

- The date and time of the call
- The name of the caller
- The telephone number where the caller can be reached
- The message left by the caller
- The name or initials of the person taking the message

## Computer

### Use Information Systems Policy

The Information Systems which includes all hardware, software, e-mail, voice mail, Internet access and data entered, transmitted, downloaded, uploaded, imported, exported and used in the daily operations of business are proprietary to the Broker. This includes but not limited to the following:

- All business, products and services of Broker
- All market data, financial data, personnel data and computer programs
- All client, customer, account and supplier lists, files and data
- All files, letters, memoranda, reports, records, data and other written materials that you prepared as an Associate for the Broker or that others prepared in the employment of the Broker

With respect to the Information Systems, these items shall not be removed, destroyed or modified except within the scope of business. Any Associate, employee, or staff using any form of the Information Systems is responsible for adhering to the Information Systems policy. Violations of this policy may warrant termination of certain information systems access, disciplinary action, up to and including discharge from employment and possible civil liability.

### Proprietary Equipment and Information

All data, programs and work product related to these activities are the property of the Broker and shall not be stored in the Associate's home without written authorization.

- Any portable computer equipment authorized for use by the Broker places full responsibility for the security and adherence to the Information Systems Policy when in possession of the employee, Associate, or any other staff personnel.
- Upon termination of employment, or demand from Broker, the Associate, employee, or staff shall immediately surrender and return all Information Systems related material in their possession or control.

Routine maintenance and routine operations of information systems regarding security, legal or business requirements through authorized contractors, employees, staff, and Associates will occur. With this in mind, employees, staff and Associate are given fair warning that the Information Systems are subject to inspection. Therefore, it would be prudent that the Information Systems are to be used for business purposes only, as is noted below.

### Information Systems Usage

The Information Systems are business assets and are to be used only for business purposes. Keep in mind:

- Personal use of the Information Systems are strictly prohibited if unauthorized
- Personal use of the Information Systems requires written permission from the manager or Broker and each request shall be considered on a case by case basis for limited personal use.

### Information Systems Conduct

Use of the information systems requires certain conduct be maintained to enhance professionalism among your working peers, customers, and clients. The following are strictly prohibited:

- Harassment, in any form, will not be tolerated
- Forwarding of messages or information that will disparage individuals or groups based on their gender, race, national origin or other protected characteristic
- Forwarding of messages which might disrupt the work place or damage morale
- Offensive comments, jokes/riddles, cartoons, pornography, profanity and offensive messages or information in any form
- Threatening messages or forms of other threatening communications
- Forgery or attempted forgery of e-mail or voice mail
- Accessing, deleting, copying or modifying of e-mail and/or voice mail. This includes the attempt to do so.

Any Associate who receives threatening, harassing or improper communications shall immediately report the situation to their immediate supervisor, consistent with our prohibition of harassment.

### Computer Safety and Security Measures

All employees who utilize the Information Systems must properly maintain all hardware, software and information. Safety and security measures include:

- Backing up of all files and documents on a regular basis to a separate storage unit such as a disk, recordable CD, tape, Zip or Jazz and kept in a secured location from the extremes of fire, sunlight and temperature
- Regular file maintenance of documents and files in an easily accessible organized manner
- Avoiding any unauthorized downloading of software, games, or Internet material that may carry viruses
- Avoid eating and drinking the placement of any hazardous substance around hardware or software
- Activation of screen savers to avoid screen imprinting
- The practice of correctly turning on and off of equipment.

## Viruses

Computer viruses are programs intentionally designed to crash, destroy, delete or make inoperable system programs, applications, or data. Copying or importing of unauthorized nonproprietary software can expose the Broker to copyright infringement, computer viruses and system overloads and is strictly prohibited. The effect of such hazards can expose the Broker to costly remedies. The introduction of a computer virus can be obtained by means of and not limited to:

- Importation through the Internet
- Copying software which contains a computer virus of any sort, including software licensed by an individual, shareware, or freeware
- Unauthorized loading of non-proprietary software
- Unauthorized downloading of an attached program through e-mail or FTP (file transfer protocol).

All outside source software, disks, or data input sources must be checked for viruses and pre-approved for downloading, loading, and importation.

## Copy-right Infringement

Broker licenses the use of computer software from a variety of outside sources. Broker does not own this software or its related documentation, and unless authorized by the software developer, does not have the right to reproduce it. Associates shall use the software only in accordance with the relevant license agreement.

Any duplication of copyrighted software, except for backup purposes, is a violation of the Federal Copyright Law. All software installed in the information systems must be pre-approved by the network administrator and be non-proprietary or properly licensed. Broker will not tolerate any Associate making or importing unauthorized copies of software or data. Likewise, Broker will not tolerate any Associate conveying software or data to an outside third party, including clients, members, customers, or associates in other companies, without proper written authorization.

According to the United States copyright law, illegal reproduction of software can be subject to civil damages of as much as \$100,000 per copyright violated and criminal penalties, including fines and imprisonment. Associates learning of any misuse of software on the information systems or in related documentation shall immediately notify the network administrator.

## The World Wide Web

The World Wide Web or Internet can be a very powerful and beneficial tool for our Associates, clients and customers. In addition to MLS-like marketing opportunities, the Internet provides an unlimited resource tool for access to and delivery of information and interpersonal contacts. When properly utilized, it can increase our capabilities and efficiency. However, access to the Internet also carries with it significant risks and potential problems including non-secure transfer of data and non-reliability and accuracy of information found on the Internet. Associates must have written approval from their immediate supervisor to access the Internet via brokerage facilities. All of the previous provisions of this policy apply to access to and use of the Internet.

Most Internet communications are not secure. The Internet should not be used for communications that require confidentiality or involve financial transactions without both ensuring the security of the communication via an accepted mechanism and receiving written approval from the associate's or employee's immediate supervisor for such communications.

Use of the Internet also requires conformance to certain etiquette as recognized by other users of the Internet. When using the Internet, Associates are to conduct themselves as "ambassadors" of the Broker and must show consideration and respect to others. Do not swear, use vulgarities or any other inappropriate language in your messages. Transmission or importing of any material or data in violation of any federal or state law or regulation is prohibited, including, but not limited to, copyrighted material, threatening, pornographic, or obscene material, or information constituting trade secrets. It is the responsibility of each Associate to ensure that use of the Internet is done responsibly and economically, and that access to the Internet services does not adversely affect his/her productivity.

#### Summary

The information systems provided to you as Associates of Broker are powerful business tools, intended to enhance and not detract from your productivity, and to be used solely for business purposes. We live in the "Age of Technology" in which the dynamics of Information Systems will change drastically and quickly. The Information Systems policy is an attempt to identify some major issues that we see today. However, the evolution of this policy will be constant due to technology changes that occur every day. Any suggestions for the enhancement of the information system are gladly received.

## **Maintaining Contact with the Office**

In the course of business, it is necessary for Associates to be away from the office. However, the Associate must provide a means of communication for the receptionist to contact the Associate via telephone.

When Associates take time off, they should:

- Contact the Office Receptionist or leave a message with their personal assistant
- Have another Associate who is knowledgeable regarding your transactions be available to handle your business

## **Drug and Alcohol Use**

### Substance Use

Drug and alcohol use are strictly prohibited while engaged in real estate brokerage transactions and shall not be present or used during work hours unless medically prescribed and under the supervision of the Associate's health care provider. Any situations in which duties cannot be properly performed without the assistance of prescribed medication must be reported to the Broker. Drug and alcohol use in the workplace may be grounds for termination.

### Client or Customer Substance Use

An Associate should also discourage the use of drugs or alcohol by any party during a transaction. Upon discovering that a party is under the influence of either drugs or alcohol, the Associate should take appropriate action to terminate that day's activity and suggest that they discuss or complete the transaction another time.

## Smoking

Designated smoking areas are to be used for smoking. All other areas are considered nonsmoking areas. In the presence of parties to transactions, while taking property tours, while meeting in the Broker's facility, smoking is not permitted.

## Legal and Tax Advice Prohibited

### Legal Advice

No Associate shall give legal advice to a party, offer opinion, or give advice regarding legal rights or obligations of a party. Parties may be referred to the Default section in the Offer to Purchase form and advised to consult with their own attorneys. The Associate also may explain the preprinted provisions of the standard listing and offer to purchase and any other approved forms the parties may be asked to complete and/or sign.

### Tax Advice

No Associate shall give tax advice to a party, including advice pertaining to deductions, exemptions, and/or tax liabilities resulting from the purchase or sale of real estate. If a tax question, beyond the scope of real estate practice, and an explanation is asked for, the Associate should suggest that the party consult an attorney, tax accountant or other appropriate expert having expertise in the area addressed by the client's or customer's question.

## Problem Reporting Procedures

Immediately report problems to the Broker that pertain to:

- A party having complaints involving real estate transactions
- Automobile accidents occurring while the Associate is participating in real estate brokerage transactions
- Criminal charges against the Associate, with the exception of traffic offenses
- Civil lawsuits or administrative actions involving real estate brokerage transactions
- TREC contacts concerning disciplinary actions or other purposes
- Party default under an accepted contract
- Threatened legal or administrative actions involving the parties and/or a real estate transaction
- Acts of discrimination committed by Associates or parties to transactions
- Unresolved disputes between Associates, within or outside the office
- Physical injuries within the office or while in performance of services or duties in the name of the Broker
- Local Board/Association contacts concerning disciplinary action or other purposes.

## **Contacting the Broker**

### Emergency Contacts

The Broker generally will be available during work hours to discuss real estate matters. In the case of an emergency, the Broker may be contacted at his home after business hours.

If the Broker cannot be reached, the Associate should not act until he or she is able to contact the Broker; however, if the emergency pertains to the wording of a contract, a protective clause to the effect that "this contract is subject to the review and approval of legal counsel within (an agreed upon time frame) acceptance of this offer" should be inserted in the contract.

### Branch Offices

This company has one branch office at follows:

Office: 10605 Grant Rd. Ste. 106 Houston, Texas 77070

Managing Broker: Rick Rogers

Office Phone: 832-237-9200

Home Phone: 713-551-1556

## **Confidentiality**

All records of this office, as well as conversations between Associates, Broker and Associates, and Associates and parties to the transaction, are considered confidential. No files shall be removed from this office without the permission of the Broker and no other information obtained while working for this company shall be used to the detriment of the Broker.

All Associates shall also be obligated to honor the confidential information of any client or non-client party to any transaction, as designated in writing on an Agency Disclosure form or other document. All documents stating a party's confidential information shall be kept by the Office Manager in a special locked file to guard against any unauthorized sharing of this information. Access to this information shall be limited to the Associate working with the party.

## **Office Duty Time**

### **Purpose**

The primary purpose of Office Duty Time is to provide back-up for the receptionist in answering questions regarding real estate practices and being available to discuss current listings and to handle real estate related inquiries and walk-ins. It is the policy of the Broker that real estate inquiries from prospective purchasers and sellers be answered by an Associate, whenever possible.

### **Rotation\***

The basis for selection of Associates for Office Duty Time is by a list of volunteers, from which a roster is prepared and published monthly. These Associates perform Office Duty Time according to their turn on the roster. Those who have volunteered and are scheduled are expected to take their turn or provide a replacement.

## **Sales Meetings**

### **Purpose**

Sales meetings are conducted periodically throughout the year. Any company policy, company happenings, changes in the market, new financing procedures, law changes, etc. will be discussed during these meetings. The purpose of the sales meetings is to keep the Associates abreast of all facets of real estate happenings. They are training periods, round table for discussion periods, Q&A sessions concerning policies, new listings and requirements for property made by prospective purchaser requests.

### **Attendance Requirements**

Sales meeting attendance is expected of all Associates. Mandatory attendance of sales meetings covering real estate law and license law matters is required unless excused by the Broker. These meetings will be announced in advance to permit Associates to make necessary adjustments in their appointment scheduling.

## **Observance of Safety Practices**

All associates are encouraged to be aware of unsafe situations and prepare themselves to avoid unsafe practices. Some suggestions are:

- Get a prospect's full name, address and telephone number at the first meeting. Ask to see their driver's license and jot down the driver's license number and the date of birth.
- If you are meeting for the first time, or are otherwise concerned about a buyer or seller, ask the Broker, another Associate or a personal assistant to accompany you.
- Always have your buyers and sellers meet you at the real estate office, never at a vacant property, and use your car or take separate cars.
- While showing a property, unlock the door and allow the prospects to enter first and keep them in front of you at all times.
- Don't carry a lot of cash or wear expensive jewelry during showings and open houses
- When leaving the office, always let someone know where you will be and how you can be reached.
- Use caution and judgment. DO NOT put yourself in an unsafe or compromising position.

## **Vacation / Leave Time for Associates**

The Broker does not control Associate's time off except that Associates must make themselves available for mandatory meetings, tours, etc., discussed in previous policy statements. However, if an Associate plans to be absent from the office (i.e., out of town) for any period of time, he or she must inform the Broker. Additionally, another Associate must be scheduled to cover for the Associate during this absence. Failure to arrange coverage by another Associate will require Broker to make necessary assignments and determine the appropriate commission split, if applicable.

## **Sign Policy**

### **Sign Riders**

The Broker requires that all Associates use uniform name signs or sign riders. Upon request, the Broker can supply a list of approved vendors..

### **Direction Signs**

Directional signs will be purchased by the Associate and will be used to direct prospective buyers to the property.

### **Sold and Offer Pending Signs**

Only after all contingencies of the offer have been waived or satisfied and after obtaining the permission of the seller, "Sold" signs shall be posted. "Offer pending" or similar signs may be posted, with the seller's permission, after acceptance of an offer but not prior to waiver or satisfaction of contingencies.

### **Expired Listings**

Without a current listing contract, signs are not to be left on the property. Signs from expired listings must be removed within two days after expiration or closing. Sold signs may remain on a property for up to 5 days after closings provided the written consent of the new owner (buyer) has been obtained.

# Employee Office Hours

Office hours are:

Mondays-Fridays: 9-5   Saturdays & Sundays: *NA*  
Administrative Staff: 9-5   Administrative Staff: *NA*

Observed Holidays

The following holidays will be observed: *TBD*

All Associates are provided access to office keys and may use the office at their own discretion.

## Legal Assistance for Associates

Legal Counsel Involvement

If a question arises in which the Associate feels that legal advice must be obtained, the Associate will inform the Broker at which time the Broker shall make the decision as to whether legal consultation is necessary. If legal consultation is required, the Broker will consult with the attorney. Failure to follow these procedures, will exempt the Broker from responsibility of any legal expenses incurred.

TAR Legal & Ethics Hot Line

The Texas Association of Realtors® provides a Legal & Ethics Hot Line to field questions. If you have a legal question, inform your Broker of the question. If he cannot answer the question, he may use the Legal & Ethics Hot Line provided free by TAR. Realtor® members can access the Legal & Ethics Hot Line through Designated Brokers only. The Legal & Ethics Hot Line can be reached toll free by dialing 1-800-875-9155

Lawsuits and Threats of Action

If you have any legal encounters with the public, or any lawsuits are filed against Texas United Realty due to your actions, you will be expected to partake in them as a participant, not just as an associate of this firm. We will also enter into, upon the discretion of the management and leaving final judgment to the Broker, any lawsuit when we have legal remedy and right. If the event any transaction in which the Associate is involved results in a dispute, litigation or legal expense, the Associate shall cooperate fully with management. Management and the Associate shall share all expenses connected therewith, in the same proportion as they would normally share the commission resulting from such transaction if there were no dispute or litigation. This **does not** include the situation where the associate is a named defendant personally.

It is the policy of our company to **avoid** litigation wherever possible and the management reserves the right to determine whether or not any litigation or dispute shall be prosecuted, defended, compromised or settled and the terms and conditions of any compromise or settlement or whether or not legal expenses shall be incurred. Should any legal expenses be incurred and become due them both the firm and the associate shall be responsible for paying the bill at that time.

**NOTE: Should an associate leave the firm (regardless of reason) and legal encounter occur because of their actions while with the firm, or while they are representing the firm in any agreed capacity, these policies still apply**

Arbitration

In matters of arbitration, an attorney may be employed at the discretion of the Broker. The responsibility as to payment of fees for said attorney will be determined on a case-by-case basis between Broker and Associate.

## Code of Ethics & License Law Violations

In matters of alleged violation of the Code of Ethics and/or License Law, an attorney may be employed at the discretion of the Broker. Legal Fees will be split between the company and the associate according to the way the commission split was or would have been on the transaction.

## Inspection Services, Surveys, Etc.

Broker shall not be liable to the Associate for any expense incurred by the Associate unless approved in writing in advance. All inspections and related services, such as well and septic inspections, surveys, etc., are to be ordered in the name of, billed to, and paid by the seller or buyer; billings shall never be made to Broker.

## Document Control

### Document File

The following documents must be placed and maintained in the Associate's file and made available upon Broker request:

1. Listing contract or buyer's agency contract
2. Deed
3. Loan information obtained from any Lender currently holding a loan on the property
4. Sales contract or lease
5. Appraisal request
6. Loan pay-off letter
7. Closing statement
8. IABS
9. Any other documents, including correspondence, that pertain to the transaction

The Associate is responsible for placing documents in the Associate's file until the file is closed due to a closing, the expiration of the listing, or the expiration of the agency contract. Closed and expired files are maintained by the Associate for at a minimum of three years according to TREC regulations and made available upon Broker request.

For the protection of all parties, **all agreements shall be in writing** and shall be in clear and understandable language expressing the specific terms, conditions, obligations, and commitments of the parties. A copy of each agreement shall be furnished to each party upon their signing or initialing.

## Personal Assistants

All personal assistants, whether licensed or unlicensed, shall be employed and supervised according to the terms and conditions set forth in the agreement between the Broker and the personal assistant.

### Unlicensed Assistants

Employment of a personal assistant who will be providing services which do not require a license (unlicensed assistant) is at the Broker's discretion.

**Unlicensed assistants MAY:**

- Answer the phone, forward calls and give information contained only on the listing agreement as limited by the Broker
- Fill out and submit listings and changes to any multiple listing service
- Follow-up on loan commitments after a contract has been negotiated and generally secure status reports on the loan progress
- Assemble documents for closing
- Secure public information from courthouses, utility districts, etc.
- Have keys made for company listings
- Write ads for approval of licensee and Broker, and place classified advertising
- Receive, record and deposit earnest money, security deposits and advance rents under the direct supervision of Broker
- Type contract forms for approval by licensee and Broker
- Monitor licenses and personnel files
- Compute commission checks
- Place signs on property
- Order repairs as directed by the licensee
- Prepare flyers and promotional information for approval by licensee and Broker
- Deliver documents and pick-up keys
- Place routine telephone calls on late rent payments
- Schedule appointments for licensee to show listed property
- Gather information for a comparative market analysis (CMA)
- Hand out objective, written information on a listing or rental
- Give a key to a prospect, or unlock property
- Disclose the current sales status of a listed property

**Unlicensed assistants MAY NOT:**

- Make cold calls by telephone or in person to potential listers or purchasers
- Show properties for sale and/or lease to prospective purchasers
- Host public open houses, host licensee open houses, home show booths or fairs
- Answer any questions concerning properties listed with the firm except only that information contained on the listing agreement as limited by the Broker
- Prepare promotional material or advertising or properties for sale or lease without the approval of the Broker
- Discuss or explain listings, offers, contracts, or other similar matters with persons outside of the firm
- Be paid on the basis of real estate activity; such as percentage of commission, or any amount based on listings, sales, etc.
- Act as a "go-between" with a seller and buyer such as when an offer is being negotiated
- Negotiate or agree to any commission split or referral fee on behalf of a licensee

**Licensed Assistants**

Licensed assistants may engage in activities which constitute negotiation provided that they are properly supervised and monitored by the Broker and only by the Broker and therefore, are considered and recognized only as Affiliate Broker status by TREC. TREC specifically holds any licensed agent to the rules and regulations that govern an Affiliate Broker regardless of the specific duties placed upon the licensed assistant by the Managing Broker. Licensed assistants shall join the local Board/Association of REALTORS<sup>®</sup>, Texas Association of REALTORS<sup>®</sup> and the National Association of REALTORS<sup>®</sup>. Membership dues shall be the responsibility of the licensed assistant.

## **Company Agency Policy: Single Agency for Sellers and Buyers, Default to Designated Agency for In-House Transactions**

Texas United Realty has adopted the following agency policy, to be implemented in all transactions involving this company's sales associates and prospective Buyers or Tenants (collectively "Buyers") and/or Sellers or Landlords (collectively "Sellers"). Any exceptions to the policy below must be approved by the Managing Broker of the company prior to implementation:

- A. Sales Associates will verbally disclose their agency status to every prospective Buyer or Seller with whom they work, PRIOR to providing any real estate services to a Buyer or Seller. With Sellers, as well as with any Buyers who approach them to specifically see (or negotiate the purchase of) a company listing, Sales Associates will indicate their status as a **Seller's Agent or Subagent**. With Buyers for whom they are searching for acceptable properties, Sales Associates will indicate their status as **Buyer's Agent**.
- B. After the initial disclosure, Sales Associates will immediately negotiate and complete a written Buyer Representation Agreement with any Buyer (other than Buyers of company listings), and a Listing Agreement (inclusive of agency representation) with any Seller. With Sellers, Sales Associates will also explain various options for cooperation in a sale and will secure the Seller's instructions and/or authorization for extending cooperative compensation to subagents, buyer's agents, and facilitators. If a Buyer - who would otherwise - become a Buyer client - is not comfortable or agreeable with a Buyer Representation Agreement, the Associate must indicate company status as **Facilitator**, and postpone negotiation of a Buyer Representation Agreement until a later date; such a Buyer should, nevertheless, be encouraged to enter into such an agreement as soon as possible.
- C. Upon initial contact with any other licensee, Sales Associates will immediately disclose the Company's agency or facilitator status in the transaction. If this role changes at any time, Sales Associates will immediately notify any other licensees and parties (involved in the transaction) of this change.
- D. Sales Associates will default - with accommodating language in agency agreements - to **Designated Agent for Seller and Designated Agent for Buyer** for in-house showings or transactions involving both a Seller client and a Buyer client, when same agent is not involved on both sides.

- E. The Company and its Sales Associates will default - with accommodating language in agency agreements - to **Facilitator** for in-house showings or transactions involving both a Seller client and a Buyer client, when same agent is involved on both sides, immediately notifying (verbally) the Buyer and the Seller of the need to default to this **Facilitator** status. Upon any default to **Facilitator** status, Sales Associates must assume a neutral position and will not be representatives of either Sellers or Buyers in this transaction.
- F. Prior to preparation or presentation of a contract, Sales Associates will confirm their agency status in the transaction with both Buyer and Seller - by use of the "**Confirmation of Agency Status**" form, providing signed copies to both signatories and retaining a signed copy to be filed with the Associate's files for the transaction.
- G. **PERSONAL INTEREST PROVISIONS** If a Sales Associate with this Company is representing himself/herself (or a family member or relative) in a transaction, the associate will complete the "**Personal Interest Disclosure & Consent**" form, securing the signatures and consent of all parties to the transaction, giving a signed copy of the form to other parties, and keeping a signed copy for the Associate's files on this transaction.

If a Sales Associate with this Company is representing himself/herself (or a family member or relative) as either Seller or Buyer in an in-house transaction, the Managing Broker may exercise any of the following options:

- Appointing the Sales Associates involved as **Designated Agents** of Seller and Buyer
- (If the same Sales Associate is involved on both sides of the transaction) Appointing the Sales Associate as a **Designated Agent** for himself/herself, and reassigning the Sales Associate's former client - with the client's consent - to a different Sales Associate in the Company as their **Designated Agent**
- Changing the Company's status in the transaction to **Disclosed Dual Agent** with the consent and notification of all parties involved
- Referring the other party (not the Sales Associate involved) to another company for representation in completion of the transaction

## *Chapter 3*

# **Advertising**

## **Real Estate Advertising Policy**

All advertising and marketing material must be approved by broker.

## **Allocation and Costs of Advertising**

Allocation of advertising to listings will be the sole responsibility of the Associate.

## **TREC Advertising Rules**

General Principles:

- No Associate shall advertise to sell, purchase, exchange, rent or lease a property in a manner indicating that the advertiser is not engaged in the real estate business.
- No advertisement by a licensee shall direct responses to only post office box number, telephone number, and/or street address.
- Every Associate shall affirmatively and unmistakably indicate in any advertising that he is a licensed real estate agent.
- All Associates shall advertise under the firm name offers to purchase, sell, rent, or lease any property. All advertising must be under the direct supervision of the Broker.
- No Associate shall post a sign on any property for which he does not have an active written authorization from the owner.
- Associates may not advertise in any medium by utilizing letters in their name larger than those of the firm.

Licensees are exempt from this list if the licensee's advertising shall include the designation "owner/agent" and the property is not listed.

# Fair Housing Advertising

## Equal Opportunity Slogans and Logos

Associates shall use the Equal Opportunity slogan or logo in all advertising. Associates shall use publications which reach large audiences and does not limit to a small select audience.

## Prohibited Advertising Language

Advertising copy used by Associates must describe the property, NOT THE DESIRED BUYER OR TENANT. Examples of prohibited advertising language are:

1. Race, color, national origin: Real estate advertisements may not state a discriminatory preference or limitation on account of race, color, national origin or any other protected class, and shall not describe the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms. However, Associates may use phrases such as "master bedroom", "rare find" or "desirable neighborhood."
2. Religion: Associates shall not use advertisements which contain an explicit preference, limitation or discrimination on account of religion. Advertisements which use the legal name of an entity which contains a religious reference (i.e., Sisters of God Catholic Home) or a religious symbol (such as a cross) must contain an appropriate disclaimer against any religious preference or limitation. Associates may use descriptions of the property (apartment complex with chapel) or the services (kosher meals available), and terms (Merry Christmas or Happy Easter) or symbols (Santa Claus or Easter Bunny) relating to certain religious holidays.
3. Sex: Associates shall not advertise single family dwellings or separate dwelling units in multifamily housing in a manner which explicitly indicates a preference, limitation or discrimination on the basis of sex. Associates may, however, use terms such as "master bedroom," "mother-in-law suite" and "bachelor apartment" which describe a property type.
4. Handicap: Associates' real estate advertisements shall not contain exclusions, limitations or other indications of discrimination based on handicap. Associates may describe the property (great view, fourth floor walk-up, walk-in closets), the services or facilities (jogging trails), the neighborhood (walk to the bus stop), the conduct required of residents (nonsmoking), and accessibility features, such as a wheelchair ramp.
5. Familial Status: Associates shall not place advertisements which contain limitations on the number or ages of children or state a preference for adults (unless the property meets the housing for older persons exemption), couples or singles. Associates may use descriptions of the property (two bedroom, cozy, family room), services and facilities (no bicycles allowed) or neighborhoods (quiet streets).

## Chapter 4

# Compensation

## Commission and Fee Rates

Rates of commission have been established by the Broker in the commission schedule attached to the Independent Contractor Agreement. The schedule sets forth the Broker's commission policies for buyer agency and for the following property types:

1. Residential single family
2. Residential income
3. Vacant land
4. Business/Commercial/Industrial
5. New construction
6. Buyer brokerage
7. Referral fees
8. Bonuses

The schedule also details the Broker's policies for allocating compensation between the Broker and the Associate.

## Associate Commission and Fee Compensation

### Definition

Compensation shall be defined to include commissions, buyer agency fees, referral fees, fees for negotiating construction contracts or referring customers to builders, appraisal fees, and any other thing of value received in connection with the Associate's real estate brokerage services. Incentives received when buying property for personal use or investments are not considered compensation and are paid directly to the Associate.

### Schedule of Compensation

Associate compensation checks are approved for disbursement with the use of a disbursement authorization form and commissions are issued directly from the title company for all residential sales upon transaction funding confirmation. All lease commissions will be issued by the Broker within *3 days* following the Broker's receipt of payment. Special situations or special requirements for the compensation checks will be handled through the Broker on a case-by-case basis.

## Partial Receipt of Commissions

If a commission is paid by a party to the Broker partially in cash, and a promissory note or other arrangement is given for the remainder, then the cash portion will be split proportionately between the Broker and the Associate, and the remainder, including interest, if any, will be split proportionately as it is received. Associates must obtain the advance written consent of the Broker before acceptance of a promissory note in lieu of a cash commission, or any other agreement to defer receipt of commission.

## **Reduction of Commissions and Fees**

Associates shall not have the authority to reduce the commission to be paid by the seller pursuant to a listing contract, the fee to be paid by a buyer pursuant to a buyer agency agreement, nor any other fee payable to the Broker without the written consent of the Broker or the Associate's manager. Any unauthorized reduction of commissions or fees by an Associate, either directly or indirectly, through negotiations or the assumption of various charges, expenses, fees or otherwise, shall be reimbursed to the Broker by the Associate. This paragraph only applies to agents who currently work on a Broker Split.

## **Referrals and Bonuses**

When a referral is sent to an Associate by a cooperating Broker, the Associate must immediately clarify the referral agreement in writing. All payments for referrals and/or bonuses shall be made payable to the Broker and the Associate shall be compensated on the basis of the commission schedule in the Independent Contractor Agreement.

## **Commission Agreements and Disputes**

### **Entitlement to Commission**

Entitlement to compensation shall be documented in writing in all transactions where anything other than the compensation offered through the MLS will be paid. Associates shall obtain a written compensation agreement specifying the commission or fee to be paid to Broker for all non-MLS transactions before beginning any cooperative efforts, and absolutely before the submission of any offer to purchase. If Broker has a policy letter agreement with the listing broker setting commissions in non-MLS transactions, a specific compensation agreement will not be needed.

Compensation agreements shall identify the property, name the parties and the brokers, state the amount of the commission or fee (or the way the same shall be calculated, e.g., 2.4% of purchase price\*), when the commission or fee shall be paid, and what must be done to earn it (e.g., write offer that closes, procure the buyer, etc.).

### **Inter-Office Disputes of Compensation**

Any Associate becoming aware of any commission dispute with another company shall promptly inform the Broker or office manager. Management shall make all decisions regarding negotiation of settlements, retaining legal counsel and filing arbitration.

In the event that the Broker finds it necessary to sue for a commission or fee, all expenses, including court costs and attorney's fees, must be subtracted from the commission before the split between the Broker and the Associate. The decision to initiate legal action will rest solely with the Broker.

### **Intra-Office Disputes of Compensation**

Associates are expected to work out their own agreement on how the commission is to be split when a prospect is shared or turned over from one Associate to another. In the event any controversy between Associates concerning a commission, the dispute shall be resolved as stated in Chapter 1 of this Policy Manual.

## Chapter 5

# RESPA Policy

Associates are required to comply with RESPA law requirements at all times. The area of referral fees is specifically addressed in this policy manual in order to explain the sometimes-confusing requirements of the federal law and to emphasize the importance of compliance. Additional information on RESPA law can be obtained from TAR's Legal Hot Line.

## Prohibition Against Kickbacks and Unearned Fees

Regulation X details the elements of a RESPA Section 8 violation:

- Pursuant to Section 8, paying or receiving a fee or a "thing of value" for the referral of business related to a mortgage loan settlement without rendering a service is illegal under RESPA.
- Reg. X also prohibits the splitting of any settlement charge except for paying for actual services rendered. If no or nominal services are performed or if duplicative fees are charged, an unearned fee exists and payment of this fee violates Section 8.
- Reg. X makes clear that any agreement or understanding that a thing of value will be given in exchange for a settlement service referral need not be written or even verbalized. This agreement can be established by a practice, pattern or course of conduct.
- Reg. X gives a list of the real estate-related services which are defined to be 44settlement services."

These "settlement services" include, without limitation, any services related to:

1. The origination, processing or funding of a federally-related mortgage loan
2. Mortgage broker services such as counseling, taking applications, obtaining verifications and appraisals, lender-borrower communications, etc.
3. Title company services
4. An attorney's legal services
5. Closing document preparation
6. Credit reports and appraisals
7. Property inspections
8. Conducting the settlement
9. Mortgage insurance
10. Hazard, flood or casualty insurance, and home owner warranties
11. Mortgage life, disability or similar insurance
12. Real property taxes and assessments
13. Real estate brokers and agents

## What is Permitted

Regulation X specifically does permit:

- Payments for services actually rendered by attorneys, title companies, lenders, and real estate brokers and also for real estate agents "pursuant to cooperative broker age and referral arrangements or agreements."

## Key Referral Fee Reminders

- Don't pay referral fees to providers of settlement services other than pursuant to a referral agreement with another real estate broker. RESPA generally forbids paying someone for the mere referral of business.
- No "gifts" or fees may be given to individuals who refer business to settlement service providers.
- When someone performs a service, that party should be paid a fee that is reasonably related to the benefit received. He or she should not be given an excessive payment that blatantly announces itself as a reward for steering business in the direction of a certain company.
- Don't ask for or receive fees for referring business. There is a statutory exemption for broker-to-broker referrals and agreements between brokers and agents. Therefore a real estate licensee should never ask to receive or accept fees for referring business unless he or she has an established written broker-to-broker or broker-to-sales agent fee arrangement.

## Chapter 6

# Listing Policy

## Agency Disclosure

Prior to the seller's signing of the listing contract, the Associate shall discuss the different types of agency relationships with the seller, explaining the responsibilities of seller's agents, buyer's agents, subagents, dual agency, and facilitators. Upon execution of the listing contract, Associate will obtain a completed "**Residential Property Disclosure form**" from the seller. The Associate shall tender every written offer to purchase or sell until a contract is signed by all parties.

## Residential Property Condition Disclosure

The Owner of the residential property shall furnish to a purchaser one of the following:

- A residential property disclosure statement
  - Provides the condition of property including any material defects known to the owner. The disclosure form must contain:
    1. Include all items listed on the disclosure form required.
    2. Notice to prospective purchasers and owners that the prospective purchaser and the owner may wish to obtain professional advice or inspections of the property.
    3. Notice to purchasers that the information contained are representations of the owner solely.

Note: The owner is not required to undertake or provide any independent investigations or inspections of the property in order to make the disclosure.

- A residential property disclaimer
  - States the owner makes no representations or warranties as to the condition of the property and that the purchaser will be receiving the property "as is" unless provided in the real estate purchase contract. *A disclaimer statement may only be permitted where the purchaser waives the required disclosure.*

## Disclosure of Adverse Facts

An "adverse fact" means a condition or occurrence that is generally recognized by a competent licensee as:

- Significantly and adversely affecting the value of the property
- Significantly reducing the structural integrity of improvements to real estate
- Presenting a significant health risk to occupants of the property

"Material" means any statement, representation or fact relative to a transaction that would affect a reasonable person's decision to enter into an agreement and which has been identified by such person as being of significance to a particular party. Written disclosures must be given as soon as is reasonably possible and always before the writing of any offers to purchase.

## **Lead Based Paint (LBP) Disclosure Requirements**

It will be imperative for all Associates to fully comply with the requirements of the federal lead paint disclosure laws in all transactions where the law requires compliance. Penalties available under the law include triple damages plus attorney fees.

### **Disclosure Requirements**

The federal disclosure rules specifically require that sellers and landlords of most residential housing built before 1978 must:

1. Disclose the presence of known LBP and LBP hazards
2. Provide buyers and tenants with any available records or reports about any LBP present in the housing
3. Provide buyers and tenants with a federally- approved lead hazard information pamphlet

Offers to purchase and leases must contain certain disclosures and acknowledgments. Sellers must also provide buyers with an opportunity to inspect for LBP. Finally, real estate agents must ensure compliance with these requirements.

The new rules do not require that any testing be conducted for LBP, nor do they require the removal of such paint or hazards.

### **Properties and Transactions Subject to LBP Rules**

#### **Target Housing**

"Target housing" means any housing constructed prior to 1978.

### Transactions Subject to LBP Rules

Both sales and leases (Includes Subleases & Oral Leases). Subleases are included so that the subtenant or sublessee (i.e., the new tenant) receives the LBP disclosures and information. Informal rental agreements not involving a written lease, for example, oral leases, are included despite the difficulties in complying with the rules requirements during a process handled verbally without written documentation.

### Exempted Transactions

1. Foreclosure (sheriff) sales.
2. Lease Renewals if Disclosures Done and No New Information. LBP disclosures need not be repeated for the renewal or extension of existing leases where the landlord previously disclosed all information required by the rules and no new information concerning LBP on the premises has come to the attention of the landlord. In situations with no formal renewal process involved, i.e., a month-to-month holdover after the expiration of a one-year lease term, "renewal" shall be interpreted to occur at the point where the parties agree to a significant written change in the terms of the lease such as a rent rate adjustment. Then disclosure would be required as to any new LBP information not previously disclosed to the tenant.

### Agents Covered

"Agent" means agents of sellers, landlords, tenants and buyers except for buyer's agents who receive all of their compensation from the buyer.

### Buyer Opportunity to Inspect for LBP

The LBP disclosure rules require that sellers provide buyers with a 10-day opportunity to conduct an LBP risk assessment or inspection of the target housing before becoming obligated under the offer to purchase. The length of time may be shortened or lengthened by mutual agreement of the parties. This requirement does not mean that the buyer must be permitted to conduct an LBP inspection before signing an offer to purchase.

This requirement may be met by having an LBP inspection contingency in the offer, similar to the home inspection contingencies typically used in residential offers. There is no mandatory language or provision for this purpose, so the contingency may be negotiated by the parties. Thus, the terms and conditions for the conduct and completion of the LBP inspection or evaluation will be reached by mutual agreement and not by federal mandate. Buyers may choose to waive their opportunity to inspect for LBP.

### Timing of LBP Disclosures

The rules only identify the latest point at which full disclosure must occur, that is, before the buyer or the tenant becomes obligated under the offer to purchase or the lease.

### Agent Responsibilities

Each agent involved in a sale or lease transaction shall be responsible for ensuring compliance with all the requirements imposed by the rules.

To ensure compliance, the agent must:

- Inform the seller or landlord of his or her duties to disclose known LBP on the target housing
- Furnish LBP records and reports and the EPA-approved lead hazard information pamphlet to buyers and tenants
- Advise the seller that he or she must permit the buyer to have a 10-day opportunity or inspection contingency to conduct an inspection or evaluation of the premises with respect to LBP
- The seller and landlord must also be told about his or her duty to certify compliance with these obligations on and retain a copy of a signed LBP disclosure and acknowledgment addendum
- Certain specifically-prescribed LBP "Warning Language" must be included in sales contracts and leases
- Ensure compliance with all of these requirements

Ensuring compliance can be done by making sure that the seller or the landlord has performed all of these required activities, or by personally performing these activities on behalf of that party. If the agent has informed the client about all of his or her obligations under the federal LBP disclosure rule, the agent shall not be liable for the failure to disclose LBP to a buyer or tenant if the LBP is known by the seller or landlord but not disclosed to the agent. The new LBP disclosure rules require that sellers and landlords disclose to agents the presence of any known LBP as well as any additional information about the basis for the determination that LBP exists on the property, the location of any LBP on the premises, and the condition of painted surfaces. Sellers and landlords must also disclose to agents the existence of any available records or reports pertaining to LBP on the premises. The federal LBP rules provide that each agent shall ensure compliance with all the requirements of the rules. "Agent" is defined as any party who enters into a contract with a seller or landlord for the purpose of selling or leasing target housing. For real estate agents in sales transactions, this means all listing, selling, cooperative, and buyer's agents (except those paid only by the buyer). In rental transactions, this means property managers, and leasing and rental listing agents.

### Listing the Residential Property

The listing agent will complete the property condition disclosure, and complete a listing contract which contains a termination of contract date. The following guidelines detail the steps which must be taken by the listing agent to comply with the federal LBP rules.

1. Determine if the property is target housing.
2. Advise the seller of his or her obligations under the LBP rules.
3. Ask the seller if he or she has any knowledge of LBP or LBP hazards on the property.
4. Obtain copies of any available LBP records pertaining to the property.

By the time the offer is accepted, the seller should have made any LBP disclosures; signed by the seller, buyer, listing agent and cooperating agent, and incorporated into the offer. In addition, the buyer should have received the LBP information pamphlet.

## **Listing Contracts**

The Associate shall complete the listing contract and shall require that all owners and spouses sign the listing. The Associate, however, may sign a listing contract provided by the seller, (e.g., a relocation company) or may accept a listing with the signatures of less than all of the owners and spouses, with the prior approval of the Broker. The Associate shall review the contract in detail with the owners and leave a copy of the signed agreement with them.

If owners refuse submission of the listing to the MLS or to the Internet, the listing contract must so state. The listing must specify other brokers who the seller wishes to have excluded from cooperation in the "Other Brokers" provision in the approved listing contract forms. The listing shall always obtain specific written instructions from the seller as to any buyers or licensees whom are to be excluded from access to showings, or from whom no offers to purchase are to be submitted. This will be written on the additional provisions blank lines in the listing contract form, on an addendum to the listing contract, or as a separate memorandum or letter from the seller.

## **Filing Listing Documentation**

Listing contracts and the appropriate supporting forms (agency confirmation form, MLS profile sheets, seller property condition report, etc.) shall be kept within Associate's file and made available upon Broker request.

## **New Listing Tours**

Following the sales meetings, a tour of new listings is made by the Associates. The purpose of this tour is to familiarize the Associates with the new listings and to assist them in describing these listings to prospective purchasers. It is equally important for all Associates to show a genuine interest and enthusiasm to the owner of the listed property.

Routing of the tour is accomplished by the Broker or his or her designated representative. The tour is published the day before it takes place to permit notification to the homeowner and review by Associates for any errors of address, price, or location. All Associates, except the Associate on Office Duty Time and those who have previously cleared it with the Broker, are expected to participate in the weekly tour of homes. Drivers for the tour of homes are scheduled through the use of a roster to assure equity.

Associates shall not smoke in the homes being toured. Any comments made by Associates while in the home should be of a complimentary nature only.

## **Security of Listed Property**

It is the Associate's responsibility to exert as much effort and influence to assure that listed properties are secure.

## **Cancellation of Listing Contract**

In the event a seller desires to cancel a listing contract, the Associate must notify the Broker. This shall apply regardless of whether the seller's request is verbal or in writing or whether the seller uses the words "cancel," "terminate," "revoke," etc. If the seller's intent is evident, the Associate shall report the request to the office manager or Broker. Such requests from sellers shall, in all cases, be honored.

## **Listing Protection**

Whenever a listing contract expires per its terms, or is terminated early by the seller, the listing Associate shall prepare and deliver to the seller a list of buyers who have attended individual showings or who have seriously discussed purchase terms with the Associate or some other licensee involved with a prospective buyer. This list must be personally delivered or mailed to the seller no later than three days after the expiration date or date of early termination. If the Associate later becomes aware that the property is listed with another broker, the Associate shall deliver to the other broker a complete list of names of all buyers who attended individual showings, seriously discussed purchase terms with licensees or the seller, or who submitted offers during the term of Associate's listing.

## **Cooperating Compensation**

It is the policy of the Broker to offer maximum exposure to its selling clients. Therefore, all listed properties shall be offered to all other selling and buyer's brokers on a cooperative basis, unless otherwise specifically directed by the owner. The Broker shall establish compensation fees that are appropriate to the marketplace and will lead to a good working relationship with other brokers.

## Chapter 7

# Buyer Brokerage

## Associate's Capacity as Buyer's Agent

### Buyer Representation Agreement

An Associate may, at the request of a buyer, act as a buyer's agent. If the Associate is so employed, a "**Buyer Representation Agreement**" (exclusive or nonexclusive) shall be completed. The provisions of the Buyer Representation Agreement, including the terms of the contract and the Broker's compensation, shall be clearly established. The amount and manner of compensation shall be as outlined in the Broker's policy concerning commissions and fees.

### Agency Disclosure

Prior to the buyer's signing of the buyer agency agreement, the Associate shall discuss the different types of agency relationships with the buyer, explaining the responsibilities of seller's agents, buyer's agents, subagents, facilitator/transaction broker, and dual agency. If a Buyer Representation Agreement has been entered into, the Associate must comply with the following when showing property or requesting information from listing agents:

1. Notify the listing agent upon first contact that the Associate is a buyer's agent.
2. The Offer to Purchase must indicate that the Associate represents the buyer as the buyer's agent.

### Negotiations

The Associate, when acting as the buyer's agent, can expect that the listing agent will often be present on showings of listed properties. All information and negotiations concerning the transaction must be communicated to seller through the listing agent.

### Compensation

Associates working as buyer's agents shall be expected to pursue the compensation offered to buyer's agents through the MLS, any applicable office policy letter agreements or any specific compensation agreement. An Associate may consider having the buyer write the offer conditioned upon the seller paying the buyer's broker's fee at closing on behalf of the buyer. The Associate must also pursue this option if there is no compensation agreement in place, unless the buyer is willing to directly pay the buyer's broker's fee in addition to the purchase price.

## Cooperation as Listing Agents with Buyer's Brokers

As listing agent, the Associate will cooperate with and compensate buyer's brokers who procure a buyer or a contract of sale acceptable to the seller, in accordance with the Broker's commission policy. The Associate shall advise seller that certain agents may elect to reject the Broker's offer of subagency and represent a buyer. The Associate shall explain the Broker's policy of sharing the commission with buyer's brokers in exchange for procuring a buyer and producing an offer to purchase acceptable to seller.

If the Associate, as listing agent, is advised that a cooperating Broker, employed under a Buyer Agency Agreement, requests to show the listed property, the Associate must advise the seller of the cooperating Broker's representation.

## **Dual Agency**

In the event a buyer/client of the Broker wishes to purchase property listed by the Broker, the Broker may act as a disclosed dual agent with one of the Broker's Associates as a designated agent representing the buyer as a client and one of Broker's Associates as designated agent representing the seller as a client. Such a multiple representation (dual agency) requires the informed consent of each party. The Associates working with these parties must explain the limitations of a multiple representation to the parties.

Associates shall stress to the parties the importance of committing to writing any information they wish to be held as confidential. All listings of confidential information from the parties in a multiple representation situation shall be held by the office manager in his or her office. Every effort shall be made to keep confidential information about the seller away from the buyer's agent and to keep confidential information about the buyer away from the listing agent.

## *Chapter 8*

# **Selling Policies and Procedures**

## **Information Provisions**

Secretaries, receptionists and other unlicensed employees may be permitted to provide factual information on listings which is normally found in newspaper ads and property data sheets. These staff members shall indicate that they are not licensed agents, can give out only limited factual data and that further requests for information must be relayed to an Associate.

## **Lead Generation**

Associates shall screen the prospect on the first call if possible. The prospect's name shall be obtained, and the Associate shall try to determine their motive, needs, desires and ability to buy, as well as their down payment capability, and record this information on a Buyer Worksheet. As the Associate continues to work with the prospect, the prospect cards shall be used to log information on properties shown, the dates and their comments.

A prospect that calls in because of a personal reference, or through work an Associate has previously done, will be the Associate's prospect if the prospect asks for the Associate in the call. Accordingly, Associates may wish to impress upon their prospects the importance of asking for an Associate by name. Prospective buyers are not aware of company rules and ethics and are usually concerned only with seeing the property in which they have an interest. It is up to the Associate to establish and maintain a strong prospect/Associate relationship with them.

## **Agency Disclosure**

When initial contacts are by telephone, the best time to give the disclosure form may be hard to pinpoint. Where the telephone conversations are preliminary and only lead to a mailing on different properties, the agency disclosure form may be useful, but it is not necessarily required. Once a particular property becomes the subject of further conversations, the Associate shall verbally discuss agency relationships and mail the Agency Confirmation Status form to the buyer, with a return envelope, if no face-to-face meetings are planned within the next few days. One copy of the form, acknowledged by the buyers, shall be given to the buyer, and one copy retained for the Broker's file. In addition, a copy of the form shall be submitted to the listing agent along with the Offer to Purchase.

## **Servicing the Prospects**

When Associates have inspected a listed property, they shall review their prospect sheets and call any prospects that may have ANY interest. In this manner, Associates can keep in contact with their prospects and provide them with more incentive to work with the Associate. There is a psychological advantage when an Associate calls a prospective buyer and says, "We just listed a beautiful property that I think will meet your needs and requirements. Would you be interested in seeing this property?"

## **Drafting Offers**

All offers, counter offers and any other forms used shall be completed and handled as per this manual, using standard forms obtained from the Texas Association of Realtors<sup>®</sup>. The Associate shall familiarize himself/herself with the standard forms as well as the rules of TREC for the use of approved forms. Only Broker approved forms may be used in any transaction. All offers, counter offers and any other forms shall utilize office-approved provisions for contingencies, inspections, warranties, representations, disclosures, etc.

There is no designated amount of earnest money that is required with an offer. It is desirable, however, to obtain a minimum of approximately 1% of the sales price. This is good faith money; consequently, deposits should be larger on loan assumptions, owner financing and all cash offers.

## **Confidentiality of Offers**

Intra-office

**AVOID PROBLEMS:**

- Do not discuss the possibility of getting an offer with any Associate prior to obtaining a signed Offer to Purchase
- Do not discuss the details of an offer you have drafted or presented with anyone other than the listing agent or the Broker
- Do not ask any Associate about his or her offer unless you are the listing agent

To Cooperating Brokers

Each Associate who is a listing agent may decide whether he or she shall disclose to cooperating agents whether other offers have been submitted, and whether accepted offers have contingencies and bump clauses. Associates shall disclose the existence of accepted offers to cooperating brokers upon first contact, unless the seller has given the Associate written direction to keep the existence of any accepted offers confidential.

Timeliness in Offers

All offers and counter offers must be presented in a timely manner. Although an offer may allow 2, 3, or 4 days for acceptance, the Associate must make every effort to present the offer or counter offer as soon as possible. If timing, distances or other circumstances make personal presentation impractical, presentation by fax, express mail, e-mail or verbal presentation over the telephone may need to be done. Any verbal presentation should be followed as soon as possible with a hard copy forwarded by fax, express mail or whatever means of communication is most expedient in the circumstances.

The time and date of presentation shall be noted on each offer or counter-offer, and the receiving party shall, as soon as possible, sign and date the form to indicate an acceptance, or initial and date the form to indicate a rejection or counter-offer.

Assure that the Buyer or Seller is aware that a counter offer is, in effect, a rejection of the previous offer or counter-offer, and the presentation of a new offer back to the other party. With the counter-offer, only the terms which vary from the original offer are written out and all terms remaining the same from the original offer are incorporated by reference. Any terms from previous counter-offers which are intended to be carried forward must also be written out.

## **Delivery of Accepted Offers**

When a party has accepted an offer or a counter-offer, the Associate shall discuss with that party the different methods of delivery available for returning the offer to the other party, and thus creating a binding contract. Associates shall explain that delivery by mail is considered delivered upon deposit in the mail. Whenever an offer is being handled by an Associate for the purpose of personally delivering it back to the cooperating office or to the other party, a copy of that accepted offer shall also be mailed as soon as possible following the Associate's receipt of the same.

## **Referral Fees**

The Associate will have many opportunities to send and receive prospective buyers and sellers via the referral process. All referral fees must go through the Broker. If a referral company requests that an Associate pay or accept an amount other than the amount set forth in the Broker's commission and compensation schedules, the Associate must first consult the Broker or office manager. Associates shall always confirm a referral fee agreement in writing prior to sending or accepting a referral. When dealing with brokers from other states, Associates shall request written evidence that the broker is licensed (copy of current license) and that the broker is actively practicing real estate in his or her state, before agreeing to pay that broker a fee.

## *Chapter 9*

# **Closing Procedures**

## **Listing Associate Responsibilities**

At the consummation of every real estate transaction, the Associate shall furnish to each buyer and seller a complete, detailed closing statement showing all of the receipts and disbursements involved in such transaction. The furnishing of a closing statement by an attorney or title company will relieve the Associate of this requirement.

An Associate shall not handle the closing of any real estate transaction except under the direct supervision of the Broker. The Broker will assume full responsibility for the execution of all closing statements prepared by the Associate acting under his direct supervision.

## **Failed Transactions**

The Associate shall notify the closing officer in writing immediately if an accepted offer has failed. Earnest money shall be disbursed in a proper manner without unreasonable delay.

## **Attorneys at Closing**

It is the policy of the Broker that Associates always recommend, to both buyers and sellers, that they seek legal advice from an attorney with respect to their legal questions throughout the negotiation process and transaction, and that an attorney attend the closing to represent their legal interests. Problems often occur that are not necessarily related to title and attorneys are best equipped to solve these problems. Furthermore, many legal burdens are lifted from the Associate when an attorney is in attendance at closing.

## **Deposits and Earnest Money**

### **Handling**

Unless otherwise agreed to in the contract by the buyer and seller, all earnest money checks should be turned into the title company within the first two business days.

### **Disbursement**

Disbursement of earnest money is carried out by the title company in accordance with provisions of the license law and any earnest money disbursement agreement signed by both parties. If there is a dispute in disbursements of such funds, the Associate is to notify Broker.

## Chapter 10

# Antitrust

## Summary of Principal Federal Antitrust Laws

The basic statutes making up the body of law known as the antitrust laws are the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act.

**THE SHERMAN ACT** - This statute enacted in 1890 was the first modern United States antitrust law and remains the cornerstone of all the federal antitrust statutes. It establishes two broadly stated principles of antitrust policy:

1. Section 1 of the Sherman Act prohibits agreements, combinations or conspiracies between two or more persons, firms, corporations, or associations which unreasonably restrain trade.
2. Section 2 of the Act prohibits the monopolization or any attempted monopolization of any market for a particular product or service.

These very general precepts of the Sherman Act have achieved specific meaning through a process of court interpretation, which has continued for more than 90 years. The selected cases most applicable to real estate brokers and the real estate industry have been compiled by the National Association of Realtors® as Volume 2 of its publication, *Antitrust and Real Estate*.

It is not necessary to show a written contract to prove a violation of the Act. "Understandings," formal or informal, written or oral, express or implied, are enough for a court or jury to infer that an agreement has been reached. As the Supreme Court said in a leading antitrust case, "A wink of the eye or a shrug of the shoulder is often more important than a formal handshake."

**THE CLAYTON ACT** - The Clayton Act was enacted by Congress in 1914, and was the next major antitrust statute. Its approach differs from the Sherman Act in two basic ways:

1. While the Sherman Act applies to restraints of trade which have a present anti-competitive effect, the Clayton Act represents an effort to stop anti-competitive practices in the beginning by outlawing future conduct resulting in an unreasonable restraint of trade.
2. While the Sherman Act deals in broad principles, the Clayton Act is concerned with a limited number of specific subjects such as exclusive bidding arrangements (Section 3); acquisitions or mergers (Section 7); interlocking boards of directors (Section 8).

**THE ROBINSON-PATMAN ACT** - The Robinson-Patman Act enacted in 1936, amended the Clayton Act and deals with discrimination in prices charged various customers. The basic purpose of the Robinson-Patman Act was to protect small businessmen by putting constraints on the ability of a large company to command price discounts by use of greater purchasing power. The Federal Trade Commission is the enforcing agency for this law.

**THE FEDERAL TRADE COMMISSION ACT** - The Federal Trade Commission Act authorizes the FTC to enforce these federal laws. Such authority is shared with the Department of Justice. The FTC also enforces Section 5 of the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "deceptive practices." Under this general provision, the FTC has enjoined potentially anti-competitive conduct before it could ripen into a violation of any of the antitrust laws.

In addition to having the authority to seek injunctions, the FTC is authorized to sue in federal court to recover refunds for consumers who have been injured by violation of an FTC rule or cease and desist order.

## **Antitrust Compliance**

In antitrust cases, whether criminal prosecutions or civil treble damage suits, proof against the defendant is most likely to come from the defendant's own files and records or from statements made by the defendant or his associates. Thus, an antitrust compliance program must not only avoid actual violations of antitrust laws, but must also avoid creating or permitting the creation of files, records, documents, statements or conversations which might create an appearance of violation.

It is impossible, of course, to formulate a set of guidelines to cover all situations at all times, but insofar as the principles of antitrust compliance can be stated in specific rules, it would be well advised to remember the following:

1. **DO NOT Discuss Your Business With Competitors** - At any time, in any place, or under any circumstances or have any personal or telephone conversations with competitors concerning commissions, fees, charges or any other business practices of your real estate business or those of the firm with which you are associated. This applies at social gatherings, on the golf course, while hunting, in the bar, cocktail parties, board functions and at all times and at all places. At Association or Board meetings, confine discussions to topics of Association or Board business directly involved in the purpose of the organization and the meeting.
2. **Written Communications Must Be Clear and Explicit** - When you discuss a real estate transaction or the superiority of your business practices over your business competitors, talk to your Broker or Associates in the firm with which you are associated. Regardless of how carefully you may phrase your letter or memorandum, things look much different in writing than they should sound when spoken between knowledgeable people. Of course, financial and economic data sometimes must be written but in many instances, any information relevant to business or legal relations can be communicated by talking, and talking only to those who have legitimate justification for receiving the information you are transmitting. More than one antitrust defendant has had his letter, correspondence, memoranda and written notes admitted in evidence against him for purposes for which the writer never intended. It is amazing how differently what you wrote sounds when it is read back to you in the grand jury room or during trial. All correspondence and memoranda must be clear and specific.

3. **DO NOT Talk Unless You Know Who You're Talking To And What You're Talking About** - In any business, complete candor among trusted business associates is necessary. It is not necessary, however, to tell everyone your business. Inform only those who need to know such matters as how and in what manner commission or fee contracts were negotiated, how much business you're doing, what business prospects are, how many and which properties you have sold, and anything else which might be of interest to someone investigating your business for a reason you know nothing about. If you receive a telephone call from anyone who refuses to identify himself or who begins what amounts to a probing cross examination about your business practices, terminate the conversation as quickly and courteously as possible. In this day of ever-improved recording devices for both telephonic use and miniature recording devices easily concealed in a room or on the person of an investigator, it is well to make it a rule in discussing business matters to speak as if you were being recorded. The chances are better than you think they are!
4. **DO NOT Deceive Yourself Or Let Anyone Else Deceive You Into Believing That Any Transgression Of The Antitrust Laws Has Little Risk Of Discovery** -The federal government possesses extensive investigatory powers, such as grand juries and civil investigative demands, as well as ingenious and dedicated investigators. Also, in private litigation, parties have litigation discovery tools to examine corporate or firm records and documents and to compel testimony. Even though an antitrust violator may not keep records, its competitors or the injured parties may. In this age of photocopying, it is difficult to restrict distribution. Unexpected records such as telephone bills, expense accounts, a secretary's notes, engagement calendars or a forgotten written rep may be uncovered. In a prosecution or suit for antitrust violations, a party may be faced with surprise witnesses such as former associates and employees and plea bargainers. Also, an alleged co-conspirator may take advantage of the antitrust division's leniency program and confess, thus perhaps avoiding indictment, a jail sentence and fines and keeping the tax-deductibility of civil damage payments.
5. **DO NOT Use Such Terms As "Please Destroy When Read", "For Your Eyes Only", "No Copies", Or Similar Terms and Phrases** - Experience has demonstrated that even if no copies are made, the original of such documents eventually end up in somebody's file. Even when marked "personal and confidential," the document is usually retained by the recipient and eventually filed. When an antitrust investigation is underway or documents are produced on a civil investigative demand or in private antitrust litigation, such terms and phrases are red flags for the investigator or opposing counsel. All written documents must comply with the antitrust laws whether inspected or discovered and should not indicate or infer an attempt to conceal any document.
6. **DO NOT-At Any Time-Use Any Of The Words And Phrases Which NAR's Program For Compliance Designated As "Dangerous"** - Since such statements are so improper, incorrect and dangerous, they need to be emphasized here along with some other words and phrases.

- "We would like to charge a lower commission, but the board has a rule..."
- "This is the rate that all Realtors<sup>®</sup> charge."
- "The MLS will not accept less than a 120 day listing."
- "Before you list with XYZ Realty, you should know that nobody is going to work on their listing."
- "If John Doe is really professional (or ethical) he would have joined the Board."
- "The Board requires that all Realtors<sup>®</sup> force their sales people to join."
- "The best way to deal with John Doe is to boycott him" or "we don't worry about John Doe; we just don't show his listings."
- "If you valued your services as a professional, you wouldn't cut your commission."
- "No board member will accept a listing for less than 90 days."
- "Let him stay in his own part of town, this is our territory."
- "If he was really a professional, he wouldn't use part timers."
- "X is the going rate in this area."
- "We have to charge that commission since our rates are set by the Texas Real Estate Commission."
- "The standard commission in this area is X."
- "When I see that guy's signs, I just drive the prospect down another street."
- "We've all agreed that any commission below X is unfair."
- "Something's got to be done about that company, nobody can charge such a low commission and make a living."
- "That price-cutter has no business being a member of the board."
- "You will not get a lower commission from a Realtor<sup>®</sup>."

8. **If In Doubt, Consult** - No compliance program or manual can spell out all the answers to questions which may arise. Situations are bound to arise which create doubt. If you do not have doubts about the legal of any business practice, procedure or activity, consult your board executive officer, the broker under whose license you work or legal counsel knowledgeable about antitrust matters.

9. **Without Clearance: Don't Do It** - If neither the board executive officer, an executive officer of your firm nor legal counsel will give clearance to a proposed business deal or activity with antitrust implications-don't do it.

## **DOCUMENT RETENTION POLICY**

Documents should not be kept any longer than reasonably necessary and should be destroyed when their useful life is over.

**CONSEQUENCES AND COSTS OF FAILURE TO COMPLY** if not persuaded by the positive approach to antitrust compliance alternative practical reasons must be considered. In other words, will an antitrust compliance program for TAR, its affiliated local boards of Realtors<sup>®</sup> and its membership be "cost effective"? It is going to take a considerable expenditure of money, staff-time, and membership-time to institute and maintain a continuous, on-going antitrust compliance program. To make that judgment, consideration must be given to the awesome consequences and costs of the failure to carry on a continuous antitrust compliance program. Those who choose to ignore the antitrust laws or fail to educate themselves about such laws and develop a sensitivity to antitrust risk very serious consequences and costs for themselves, those with whom they are associated and their fellow Realtors<sup>®</sup>.

1. **Criminal Prosecution** - The criminal penalties for violating antitrust laws are severe, and the present enforcement trend is to prosecute not only the association, corporation, or firm involved, but also the officers, directors, staff, and employees personally. A violation of the Sherman Act, for example, is a felony for which any corporation may be fined up to one million dollars for each offense and an individual can be fined up to \$100,000 and imprisoned for up to three years for each offense. The fines are not tax deductible. Also if a taxpayer is indicted and subsequently pleads guilty or *nolo contendere* or is convicted, payments or damages in civil treble-damage actions are only one-third deductible. Jail sentences and probation, which by now are by no means uncommon, can be great personal tragedies. It is not pleasant trip through the typical arrest, fingerprinting, photographing and bail processes! Furthermore, convicted felons incur many civil disadvantages with respect to voting, holding of public office and the like. The emphasis today in the Justice Department is on stronger and more frequent criminal enforcement. *Nolo contendere* pleas are usually opposed by the government, and larger fines and sentences are being sought.
2. **Private Treble Damage Suits** - Antitrust laws also provide for civil penalties. Persons or businesses injured by violations of the antitrust laws may recover three times the amount of their damages, plus attorney's fees and all costs of litigation. The potentially enormous size of these judgments, particularly in a class action suit, can spell disaster for all real estate brokerage firms and boards of Realtors<sup>®</sup>, which are involved.
3. **Injunctions** - The government and injured persons or businesses may also obtain injunctions against further antitrust violations. The severe requirements of these injunctions will handicap any brokerage business or board of Realtors@.
4. **Consent Decrees** - To avoid the shocking expense of defending antitrust suits, some defendants elect to "settle out of court" by agreeing to consent decrees. However, these consent decrees can severely restrict an association's operations or a company's business, and, in some instances, the result is that the officers, directors and staff of a defendant from day-to-day carry on the operations under peril of contempt of court citations or threats of civil penalties of up to \$10,000 per day. Conduct and practices which have not been adjudicated to be unlawful are often prohibited on consent decrees.
5. **Time** - Antitrust litigation usually requires years of preparation before trial and many months of appeals. From the filing of suit to settlement of judgment, on the average may take from 4 to 5 years. Not only may the defendant board or real estate firm in an antitrust case face years of uncertainty, but the valuable time of Realtors@ and other personnel almost certainly will be spent in long hours of preparing testimony, giving depositions, producing documents, tabulating statistics and performing other necessary preparations for trial. It is almost impossible for board executives and Realtors@ in antitrust cases to appreciate the time lost and the expense involved until they actually experience serious antitrust litigation.

6. **High Cost of Antitrust Litigation** - The cost of defending antitrust suits, civil or criminal, are astonishing. It is not at all unusual in criminal antitrust cases for the cost of litigation to exceed the fines imposed. Even defendants confident of acquittal are faced with the prospect of spending shocking amounts of money and countless days of employee time and effort in establishing their innocence. So called "simple" antitrust cases usually cost hundreds of thousands of dollars to defend. It is, therefore, imperative that Realtors<sup>®</sup> involved in the real estate brokerage business not only comply with the antitrust laws, but also avoid even the suspicion of any violations.
7. **Adverse Publicity** - Whether the antitrust case is civil or criminal, once the suit is filed, damages to the reputation and public image of both the local board as well as the individual defendants and especially the image of Realtor<sup>®</sup> as an ethical and responsible business person are incalculable. Even if the government's prosecution or private plaintiffs treble damage suit against a Realtor<sup>®</sup> is without merit and the cases are eventually won by the defendants, the bad publicity lingers on.
8. **Internal Strife and Tension** - No matter how well organized and managed a local board or Realtor<sup>®</sup> firm may be, once an antitrust investigation is launched or an antitrust suit is filed, internal strife and tension among the staff and employees is unavoidable. Personnel will be kept busy assisting in matters involving the investigation or in preparing for litigation, and some inevitably will seek to disassociate themselves from others whom they perceive to have contributed to the charge. The loss of work efficiency and production resulting from these conflicts is expensive and can be ruinous to any board or Realtor<sup>®</sup> business.

## *Chapter 11*

# **Termination of Affiliation**

Should the Broker and the Associate terminate this relationship, the Associate will immediately turn in all company property including all transactional files pertaining to listings, offers, or other contracts, any other office files, office policy books, office keys, lock box keys and lock boxes, signs, books, supplies and a copy of all prospect and referral lists generated while employed by the Broker. The Associate will contact the Broker for final out-processing. The Broker's supervisory responsibility shall terminate upon his signing of the release form.

Within ten (10) days after the date of release, the non-affiliated Associate shall complete the required administrative measures for change of affiliation, temporary retirement, or placement in "inactive" status accompanied by the proper fee to the TREC.

Note: The licensee shall not engage in any real estate transactions nor shall he act under contract with another firm until completion and transmittal to the Commission of the change of affiliation form and fee is remitted.

Listing contracts are the property of the Broker. The Broker reserves the right to reassign any listing or other contract upon termination by or of an Associate. Compensation for offers to purchase or for listings obtained by the Associate prior to termination of this relationship shall be payable on the basis of the commission schedule shown in the Independent Contractor Agreement.

# Addendum A

## Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2009

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

### Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. *(Amended 1/00)*

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. *(Amended 1/07)*

## Duties to Clients and Customers

### Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. *(Amended 1/01)*

#### • Standard of Practice 1-1

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. *(Amended 1/93)*

#### • Standard of Practice 1-2

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'s firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 1/95, Amended 1/07)*

• **Standard of Practice 1-3**

REALTORS<sup>®</sup>, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

• **Standard of Practice 1-4**

REALTORS<sup>®</sup>, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR<sup>®</sup>'s services. *(Amended 1/93)*

• **Standard of Practice 1-5**

REALTORS<sup>®</sup> may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

• **Standard of Practice 1-6**

REALTORS<sup>®</sup> shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)*

• **Standard of Practice 1-7**

When acting as listing brokers, REALTORS<sup>®</sup> shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS<sup>®</sup> shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS<sup>®</sup> shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/93)*

• **Standard of Practice 1-8**

REALTORS<sup>®</sup>, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS<sup>®</sup>, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93, Amended 1/99)*

• **Standard of Practice 1-9**

The obligation of REALTORS<sup>®</sup> to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS<sup>®</sup> shall not knowingly, during or following the termination of professional relationships with their clients:

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or

- 3) use confidential information of clients for the REALTOR<sup>®</sup>'s advantage or the advantage of third parties unless:
  - a) clients consent after full disclosure; or
  - b) REALTORS<sup>®</sup> are required by court order; or
  - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
  - d) it is necessary to defend a REALTOR<sup>®</sup> or the REALTOR<sup>®</sup>'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. *(Adopted 1/93, Amended 1/01)*

• **Standard of Practice 1-10**

REALTORS<sup>®</sup> shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95, Amended 1/00)*

• **Standard of Practice 1-11**

REALTORS<sup>®</sup> who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

• **Standard of Practice 1-12**

When entering into listing contracts, REALTORS<sup>®</sup> must advise sellers/landlords of:

- 1) the REALTOR<sup>®</sup>'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
- 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 3) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

• **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS<sup>®</sup> must advise potential clients of:

- 1) the REALTOR<sup>®</sup>'s company policies regarding cooperation;
- 2) the amount of compensation to be paid by the client;
- 3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
- 4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc., and
- 5) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*

• **Standard of Practice 1-14**

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. *(Adopted 1/02)*

• **Standard of Practice 1-15**

REALTORS<sup>®</sup>, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of

offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. *(Adopted 1/03, Amended 1/09)*

## Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

### • Standard of Practice 2-1

REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

### • Standard of Practice 2-2

*(Renumbered as Standard of Practice 1-12 1/98)*

### • Standard of Practice 2-3

*(Renumbered as Standard of Practice 1-13 1/98)*

### • Standard of Practice 2-4

REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

### • Standard of Practice 2-5

Factors defined as “non-material” by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not “pertinent” for purposes of Article 2. *(Adopted 1/93)*

## Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client’s best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

### • Standard of Practice 3-1

REALTORS®, acting as exclusive agents or brokers of sellers/landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

### • Standard of Practice 3-2

REALTORS® shall, with respect to offers of compensation to another REALTOR®, timely communicate any change of compensation for cooperative services to the other REALTOR® prior to the time such REALTOR® produces an offer to purchase/lease the property. *(Amended 1/94)*

### • Standard of Practice 3-3

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

### • Standard of Practice 3-4

REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker’s firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 1/02)*

### • Standard of Practice 3-5

It is the obligation of subagents to promptly disclose all pertinent facts to the principal’s agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

### • Standard of Practice 3-6

REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

### • Standard of Practice 3-7

When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their representational status. *(Amended 1/95)*

### • Standard of Practice 3-8

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

## Article 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner’s agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser’s representative. *(Amended 1/00)*

• **Standard of Practice 4-1**

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. *(Adopted 2/86)*

Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. *(Amended 1/99)*

• **Standard of Practice 6-1**

REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients. *(Amended 1/93)*

Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

• **Standard of Practice 9-1**

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

• **Standard of Practice 9-2**

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. *(Adopted 1/07)*

## Duties to the Public

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin. *(Amended 1/90)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin. *(Amended 1/00)*

• **Standard of Practice 10-1**

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. *(Adopted 1/94, Amended 1/06)*

• **Standard of Practice 10-2**

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. *(Adopted 1/05, Renumbered 1/06)*

• **Standard of Practice 10-3**

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, or national origin. *(Adopted 1/94, Renumbered 1/05 and 1/06)*

• **Standard of Practice 10-4**

As used in Article 10 “real estate employment practices” relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. *(Adopted 1/00, Renumbered 1/05 and 1/06)*

**Article 11**

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/95)*

• **Standard of Practice 11-1**

When REALTORS® prepare opinions of real property value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such opinions shall include the following:

- 1) identification of the subject property
  - 2) date prepared
  - 3) defined value or price
  - 4) limiting conditions, including statements of purpose(s) and intended user(s)
  - 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
  - 6) basis for the opinion, including applicable market data
  - 7) if the opinion is not an appraisal, a statement to that effect
- (Amended 1/01)*

• **Standard of Practice 11-2**

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. *(Adopted 1/95)*

• **Standard of Practice 11-3**

When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. *(Adopted 1/96)*

• **Standard of Practice 11-4**

The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. *(Adopted 1/02)*

**Article 12**

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. *(Amended 1/08)*

• **Standard of Practice 12-1**

REALTORS® may use the term “free” and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time. *(Amended 1/97)*

• **Standard of Practice 12-2**

REALTORS® may represent their services as “free” or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the REALTOR® to obtain a benefit from a third party is clearly disclosed at the same time. *(Amended 1/97)*

• **Standard of Practice 12-3**

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®’s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. *(Amended 1/95)*

• **Standard of Practice 12-4**

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. *(Amended 1/93)*

• **Standard of Practice 12-5**

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®’s firm in a reasonable and readily apparent manner. *(Adopted 11/86, Amended 1/07)*

• **Standard of Practice 12-6**

REALTORS<sup>®</sup>, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS<sup>®</sup> or real estate licensees. *(Amended 1/93)*

• **Standard of Practice 12-7**

Only REALTORS<sup>®</sup> who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign only with the consent of the listing broker. *(Amended 1/96)*

• **Standard of Practice 12-8**

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS<sup>®</sup>, websites. REALTORS<sup>®</sup> shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR<sup>®</sup>'s website is no longer current or accurate, REALTORS<sup>®</sup> shall promptly take corrective action. *(Adopted 1/07)*

• **Standard of Practice 12-9**

REALTOR<sup>®</sup> firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS<sup>®</sup> and non-member licensees affiliated with a REALTOR<sup>®</sup> firm shall disclose the firm's name and that REALTOR<sup>®</sup>'s or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner. *(Adopted 1/07)*

• **Standard of Practice 12-10**

REALTORS<sup>®</sup> obligation to present a true picture in their advertising and representations to the public includes the URLs and domain names they use, and prohibits REALTORS<sup>®</sup> from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
- 2) manipulating (e.g., presenting content developed by others) listing content in any way that produces a deceptive or misleading result; or
- 3) deceptively using metatags, keywords or other devices/ methods to direct, drive, or divert Internet traffic, or to otherwise mislead consumers. *(Adopted 1/07)*

• **Standard of Practice 12-11**

REALTORS<sup>®</sup> intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. *(Adopted 1/07)*

• **Standard of Practice 12-12**

REALTORS<sup>®</sup> shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture. *(Adopted 1/08)*

• **Standard of Practice 12-13**

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS<sup>®</sup> to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. *(Adopted 1/08)*

Article 13

REALTORS<sup>®</sup> shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS<sup>®</sup> shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/99)*

• **Standard of Practice 14-1**

REALTORS<sup>®</sup> shall not be subject to disciplinary proceedings in more than one Board of REALTORS<sup>®</sup> or affiliated institute, society, or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. *(Amended 1/95)*

• **Standard of Practice 14-2**

REALTORS<sup>®</sup> shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. *(Amended 1/92)*

• **Standard of Practice 14-3**

REALTORS<sup>®</sup> shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. *(Adopted 11/87, Amended 1/99)*

• **Standard of Practice 14-4**

REALTORS<sup>®</sup> shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

**Duties to REALTORS<sup>®</sup>**

Article 15

REALTORS<sup>®</sup> shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices. *(Amended 1/92)*

• **Standard of Practice 15-1**

REALTORS<sup>®</sup> shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

• **Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about competitors' businesses and competitors' business practices includes the duty to not knowingly or recklessly repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. *(Adopted 1/07)*

## Article 16

REALTORS<sup>®</sup> shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS<sup>®</sup> have with clients. *(Amended 1/04)*

### • Standard of Practice 16-1

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS<sup>®</sup> involving commission, fees, compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

### • Standard of Practice 16-2

Article 16 does not preclude REALTORS<sup>®</sup> from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR<sup>®</sup>. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. *(Amended 1/04)*

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR<sup>®</sup>; and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR<sup>®</sup> when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS<sup>®</sup> under offers of subagency or cooperation. *(Amended 1/04)*

### • Standard of Practice 16-3

Article 16 does not preclude REALTORS<sup>®</sup> from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS<sup>®</sup> to whom such offers to provide services may be made. *(Amended 1/04)*

### • Standard of Practice 16-4

REALTORS<sup>®</sup> shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR<sup>®</sup>, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR<sup>®</sup> may contact the owner to secure such information and may discuss the terms upon which the REALTOR<sup>®</sup> might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

### • Standard of Practice 16-5

REALTORS<sup>®</sup> shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR<sup>®</sup>, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR<sup>®</sup> may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR<sup>®</sup> might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

### • Standard of Practice 16-6

When REALTORS<sup>®</sup> are contacted by the client of another REALTOR<sup>®</sup> regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS<sup>®</sup> have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

### • Standard of Practice 16-7

The fact that a prospect has retained a REALTOR<sup>®</sup> as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS<sup>®</sup> from seeking such prospect's future business. *(Amended 1/04)*

### • Standard of Practice 16-8

The fact that an exclusive agreement has been entered into with a REALTOR<sup>®</sup> shall not preclude or inhibit any other REALTOR<sup>®</sup> from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

### • Standard of Practice 16-9

REALTORS<sup>®</sup>, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

### • Standard of Practice 16-10

REALTORS<sup>®</sup>, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

• **Standard of Practice 16-11**

On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

• **Standard of Practice 16-12**

REALTORS®, acting as representatives or brokers of sellers/ landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

• **Standard of Practice 16-13**

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)*

• **Standard of Practice 16-14**

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

• **Standard of Practice 16-15**

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

• **Standard of Practice 16-16**

REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

• **Standard of Practice 16-17**

REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

• **Standard of Practice 16-18**

REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

• **Standard of Practice 16-19**

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

• **Standard of Practice 16-20**

REALTORS®, prior to or after terminating their relationship with their current firm, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98)*

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of REALTORS® wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision.

The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to arbitrate and be bound by any award. *(Amended 1/01)*

• **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

• **Standard of Practice 17-2**

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/93)*

• **Standard of Practice 17-3**

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. *(Adopted 1/96)*

• **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*

2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*

3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97)*

4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. *(Adopted 1/97)*

5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. *(Adopted 1/05)*

• **Standard of Practice 17-5**

The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. *(Adopted 1/07)*

*The Code of Ethics was adopted in 1913. Amended at the Annual Convention in 1924, 1928, 1950, 1951, 1952, 1955, 1956, 1961, 1962, 1974, 1982, 1986, 1987, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008.*

**Explanatory Notes**

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in Interpretations of the Code of Ethics.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.