



AARE
RESIDENTIAL & COMMERCIAL



BEST PRACTICES MANUAL
Including Policies & Procedures

Territory: United States
Edition: Nationwide

*“Before you make any ethical or moral decision and take action.... think about your client – their family, kids, spouse, and livelihood. Then think about your colleagues - their family, kids, spouse, and livelihood. Then think about yourself – your family, kids, spouse, and livelihood. Remember that your license can be suspended or revoked based on any action you take. The Company’s reputation, your credibility and your livelihood are on the line at all times. **Do the right thing.**” - Andrew Arroyo, Founder, AARE*

January, 2021

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Definitions Used in the Manual:

- “**Agents**” shall refer to any licensee who has obtained a salesperson's license and is affiliated with Company, sometimes referred to as a licensed associate, broker-salesperson, salesperson, or any other licensing term determined by each State, representing a non-managerial level license.
- “**Assistant**” shall refer to anyone engaged in assisting an Associate of the Company.
- “**Associate**” shall refer to any licensee, salesperson or associate broker affiliated with the Company.
- “**Associate Broker**” shall refer to any licensee who has obtained a managerial level broker’s license and is affiliated with the Company. An associate broker is sometimes called a broker-associate, independent broker or affiliate broker—they have a managing level broker's license but are working under another managing broker.
- “**Auditor**” shall refer to the licensed Associate who has been delegated the duty of reviewing the contracts and the completed files and stamping the files “reviewed.”
- “**Company**” shall refer to Andrew Arroyo Real Estate Incorporated doing business as AARE.
- “**Broker**” shall refer to the designated broker of record for the Company in each State, unless otherwise specified. A broker is a real estate managing broker, sometimes called a broker in charge or employing broker. See **Exhibit B** for a complete list of all designated brokers of record for all state and local offices and branches nationwide.
- “**Licensee**” shall refer to any licensed salesperson or associate broker affiliated with the Company.
- “**Manager**” shall refer to the manager of a branch office in each State, unless otherwise specified. A manager is a broker associate licensee who holds a real estate managing broker license, sometimes called a broker in charge or employing broker license. They have a managing level broker's license but are working under another managing broker. See **Exhibit B** for a complete list of all managing brokers local offices and branches nationwide.
- “**Manual**” shall refer to the entire text contained within this manual.
- “**Mentor Agent**” shall refer to any agent or associate broker who is training other agents and is responsible for oversight of those agents.
- “**Policy**” shall refer to a principal or course of action adopted by the Company.
- “**Policy Manual**” shall refer to the entire text contained with this manual.
- “**Representative**” shall refer to any agent, licensee, staff employee or associate broker who has signed a contract to represent the Company.
- “**You**” shall refer to any individual or entity reading the manual.

SECTION 1: INTRODUCTION

General – About the Company

The Company is duly licensed as a real brokerage by the following States: Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Missouri, Nevada, New York, New Jersey, North Carolina, South Carolina, Tennessee, Virginia, and Washington. The Company is licensed as a California corporation in the state of California and licensed as a Delaware corporation in all other states, under the following name: ANDREW ARROYO REAL ESTATE INC. and doing business as **AARE** (herein referred to as “AARE” or the “Company”). Additionally, the brokerage is a member of the National Association of REALTORS® and several state and local Associations of REALTORS®, as well as several other societies and organizations. See **Exhibit A** for a complete list of all state and local REALTORS® associations and Multiple Listing Service affiliations nationwide.

Best Practices Manual’s Mission - To Document Solid Policies and Procedures

The Company has cultivated a talented, hardworking group that is focused on delivering results for its clients. A unique aspect of the Company’s approach to real estate success is centered on policies and procedures aimed at eliminating the liability of selling real estate and training its associates how to provide the most ethical conduct possible at all times. For associates that work with the Company, these procedures are designed to ensure that the transfer, sale, or acquisition of a home is done properly, legally, and as painless and hassle-free as possible for the clients. The Company trains its agents to provide exceptional customer service and to adhere to an intensive and ongoing ethics training program. With clear and constant broker-agent contact forming the basis for this approach, this best practices manual, including policies and procedures, is the foundation for how the Company’s Associates conduct its real estate practice.

Failure to follow the policies and procedures in this manual will result in termination.

Importance of Reading the Manual Completely and Updates

You are encouraged to read this entire manual before you conduct any real estate transactions with the company. Updates will be published from time to time and provided for your review. You may be asked to sign an affidavit at any time if a significant update is published. Copies of the significant changes will be provided to you so that you may review the changes only instead of re-reading the entire manual. Any agent mentoring other agents must ensure that the mentored agents are following the policies and procedures of this manual at all times and will be held responsible for their actions. All conduct by agents must comply with the manual.

For your convenience, certain text has been made bold to help you remember items that occur frequently. This **does not mean that you** should skim the manual and **only read the bold text**.

Statement of Business Principles

The following principles form the basis for executing the mission statement of the Company. Associates, management, and staff of the Company work as a team to accomplish the mission statement and will abide by these principles.

1. **Professionalism:** Professionalism at the Company means approaching the business with ethical conduct toward our customers and clients. Abiding by the REALTOR® CODE OF ETHICS forms the basis of that standard. Constant training and education keep us informed and at the peak of awareness for our customers and clients. Each Associate, staff member and independent contractor of the Company is pledged to these ideals.

2. **Integrity:** Simply put, honesty in all business dealings is the best way to get and keep business over the long term. Simple honesty also forms the basis for the best business protection we can get. It is a simple, effective, efficient, and cost effective risk reduction method.
3. **Profitability:** The Company is in business to make profits in the course of its ordinary activity. Each Associate and staff member has a responsibility to the Company to contribute to its profitability whether it is in terms of direct production of revenue or careful expenditure of Company funds.

This Best Practices Manual including policies and procedures for the Company is designed to guide each Associate and staff member in the most important areas of Company activity. If a matter is not covered, bring it to the attention of the owner for possible inclusion in future revisions. If a matter is covered, the Associate or staff member is expected to act in accordance with this Manual. Failure to act in accordance with the Company's policy will be taken into account in future evaluations of the Associate or staff member.

AARE welcomes each new Associate and employee into a professional, ethical and profitable real estate sales office.

SECTION 2: POLICY MANUAL OVERVIEW

General Purpose

The purpose of this policy and procedure manual is to:

- Establish a uniform system of daily conduct by and between Associates when dealing with each other, other members of the Company, our clients, and members of the public. You and the Company each agree to engage in business in an honest and professional manner in order to create positive client relations, goodwill, and profits.
- Provide you with policies and guidelines to help provide quality service to our clients and avoid disputes with and liability to others.
- Provide an orderly system of conflict resolution.

As a representative of the Company, you agree that in the event of any possible conflict of interest, you will immediately notify the Company in writing so that the Company can take appropriate steps in rectifying the conflict for the mutual protection of all parties. You agree to apply best effort in all real estate opportunities listed with the Company and the solicitation of new clients and customers for future business. Furthermore, you agree to act at all times in a lawful and ethical manner for the greatest mutual benefit of both parties.

Incorporated Items

The following items are incorporated into this manual by reference whether or not the items are attached:

- Local, State and Federal Real Estate Law.
You agree to observe all applicable local, state, and federal laws, rules, and regulations, the NAR Code of Ethics and Bylaws of the Local, State, and National Associations of REALTORS®, and the applicable Multiple Listing Service(s) (MLSs).
- The parties agree to conform to and abide by all laws, rules, and regulations of any State regulator or Real Estate Commission or State Department overseeing real estate business activity, that are binding on, or applicable to, real estate licensees.
- Strict adherence to the governing rules and regulations of the Code of Ethics of the National Association of REALTORS®, Local Association governing documents (Bylaws, MLS Rules and Regulations, etc.) will be followed by the Company and its Associates.
- Each party acknowledges receipt of a copy of this policy manual, the NAR Code of Ethics, the Local

Associate Licensing, Legal, and Affiliation Requirements

The following provisions will be complied with at the Associate's sole expense:

Real Estate License, Mandatory Continuing Education, Automobile Insurance Coverage

- You shall maintain your own current real estate license in good standing
- You shall meet all Continuing Education (CE) requirements as established by each State. Proof of CE compliance and license renewal shall be provided to Company no later than fifteen (15) days prior to the applicable renewal date. A list of CE credits necessary to renew your license in each state is listed on **Exhibit C**.
- You are responsible to maintain automobile insurance coverage at all times and name the Company on your policy as an additional insured, or you can sign an **addendum stating you will not be transporting clients in your car**.

Membership in the Association of REALTORS®

- You agree to become and remain a member of the Local Association of REALTORS®, State Association of REALTORS®, and National Association of REALTORS® and to be responsible for paying all applicable dues and fees in a timely manner.
- You expressly understand that you may choose to join any local Association in which the Company holds membership. You can also join other Associations as a secondary membership even if the Company holds no membership in the particular Association.
- You also understand the Company is a member of the State Association of REALTORS®, the National Association of REALTORS® (NAR), and may belong to any of the Institutes and Societies of the National Association of REALTORS®.
- You agree to abide by the rules and regulations of these organizations to which the Company must adhere as a member thereof.

Responsibilities

You are responsible to work in accordance with Company policies and procedures. Your failure to comply with the policies and procedures within this manual may result in your termination from this Company.

Exceptions to Policies and Procedures

When exceptions appear to be needed, they shall be discussed in advance with the Manager. Any exceptions shall be in writing and apply only to the particular situation for which the exception is granted.

Changes in the Manual

This Policy Manual may be changed from time to time by the Company. Changes can be made at any time and will be distributed periodically. The policies posted on-line, at any given time, represent the Company's current Policy Manual. Proposals for policy or procedural changes should be sent to the Manager for study and recommendation. Any questions as to the existence of policy at any time in the past should be directed to your Manager.

Conflict with the Manual and Independent Contractor Agreement

In the event of a conflict between this Policy Manual and your Salesperson/Broker Independent Contractor Agreement, the terms of this Policy Manual shall prevail.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP

Independent Contractor

You have signed an Independent Contractor Agreement with the Company and are associated with this Company as an independent contractor. You do not have an employee-employer relationship with this Company. The Company, however, has the responsibility under state real estate law to supervise the conduct of salespersons operating under the Company license. You are considered to be an independent contractor for tax purposes. You are also considered an independent contractor for purposes of Unemployment Insurance. You are not subject to the minimum wage laws. The Company will provide Workers' Compensation insurance for you.

The Independent Contractor Agreement with the Company sets forth the duties and responsibilities of both parties. This agreement includes the following:

- The terms of compensation for work performed during the time of affiliation with the Company or for work in progress but not completed prior to termination of affiliation with the Company.
- After termination of your association with AARE, all active listings, pending sales, and buyer agency agreements the Associate obtained during affiliation with AARE may be completed by another Company Associate. Compensation to Associates on those transactions will be at the sole discretion of the Company.
- Delivery by the Associate of all files and documents pertaining to listings, company leads, and pending transactions shall be provided to the Company upon request or termination of the Independent Contractor Agreement.

Tax Filing Requirements

The Company is not responsible or liable for deduction of social security, income, or unemployment taxes for any brokerage sales and related income. Each Associate is responsible for maintaining all business and financial records necessary for purposes of reporting income as required by state and federal agencies and for reporting income as required by law. The Company's obligation is limited to providing a 1099 Miscellaneous Income form to you and to government agencies as required. If you have a S-Corp or LLC, only a breakdown of your income through AARE will be provided, not a 1099.

Unemployment Taxes: As an independent contractor, the Associate is not covered under state or federal unemployment laws. Accordingly, the Company does not pay unemployment taxes on the earnings of its Associates.

Broker-Associates

If you are a Broker-Associate, you **may not associate with another broker or company** nor engage in real estate brokerage transactions in your own name instead of the Company's name, **without the prior written consent** of your Manager or Broker.

Company Authorization to Terminate Agreements

Authority to terminate a listing agreement, buyer/seller representation agreement, other legal or agency agreements, or make amendments to the agreement that alter the terms and/or change the amount of compensation established in the agreement is prohibited unless such request is first presented to the Broker or Manager of the Company who is authorized to execute such terminations and amendments and grants authorization in writing. **Associates with considerable experience may request an ongoing authority, in writing, to terminate contracts and make such changes.**

At-Will Status

You are associated with the Company for an unspecified term on an at-will basis. Except where it is otherwise expressly agreed in writing with the Company, either party may terminate your association at any time with or without cause or reason.

SECTION 4: GENERAL OFFICE PROCEDURES

Real Estate Office Business Hours

Business hours are:

Mondays–Fridays:	8:30 AM to 5:00 PM
Saturdays:	Closed
Sundays:	Closed - Sabbath

Agent & Broker Support Hotline Hours

Hotline Support hours are:

Mondays–Fridays:	8:00 AM to 5:00 PM
Saturdays:	9:00 AM to 5:00 PM
Sundays:	Based on Availability

Observed Holidays

The following holidays will be observed, and the office will be closed:

<i>New Year's Day</i>	<i>4th of July</i>	<i>Thanksgiving Day</i>
<i>Martin Luther King Jr. Day</i>	<i>Labor Day</i>	<i>Christmas Day</i>
<i>Memorial Day</i>	<i>Veterans Day</i>	

Most offices do not allow access on holidays. Please check with the on site supervisor.

Contacting the Company

Emergency Contacts

If you are involved in an incident resulting in serious injury to people or property, immediately dial 911.

Non-emergency Contacts

A representative of the Company will generally be available during work hours to discuss real estate matters. In a business emergency, the representative may be contacted after business hours.

If the representative cannot be reached, you should not act until he or she is able to contact the Company; however, if the emergency pertains to the wording of a sales agreement, a protective clause to the effect that “this agreement subject to the review and approval of Broker or (client’s) legal counsel within (a time frame) after acceptance of this offer” should be inserted in the contract. Contact the Broker support hotline for immediate assistance during business hours.

Professional Conduct

As a member of the National Association of REALTORS®, you are expected to be familiar and comply with the Code of Ethics.

We place a high value on cooperation in the Company between our salespersons, both in the sharing of market and inventory information, as well as working together to provide a high level of service to our clients. Cooperation between salespersons fosters a congenial workplace, ultimately benefits everyone, and fosters a high level of service to our clients.

Teamwork Encouraged

AARE's vision is to create a sharing environment where each member can learn from each other. We should share in each other's successes as well as learn from others' mistakes.

Examples of teamwork would be:

- Help others to learn the Company systems.
- Train Company agents on strengths that you have.
- Sharing leads with your teammates.
- Participating in team building events or volunteering.
- Introducing other experienced agents or partners to be a part of the team.
- Treating team members with respect and encouraging their efforts.

Selfish Behavior Discouraged

Company policy is NOT to tolerate continued selfish behavior.

Examples of selfishness include:

- Taking leads from other agents without asking first.
- Not sharing with other team members.
- Lying to other agents, staff, clients, or customers.
- Losing your cool and telling off a client or agent.
- Missing team meetings frequently.
- Not attending Company events.
- Not responding to Company emails.
- Not adhering to Company policies.

The Company has a three strike rule for Associates who continue to show selfish behavior. Strike one is a warning. Strike two is a second warning. Strike three is termination. All warnings will be written warnings in email format.

Substance Use

Drugs and alcohol, with the exception of prescription drugs necessary for you to perform your duties, are prohibited on the premises, in the workplace, or in the field. Their use may be grounds for suspension or termination.

Under no circumstances is an Associate able to perform his or her services under the influence of drugs or alcohol or any other substance that would leave them otherwise impaired.

Under no circumstances is an Associate to perform his or her services **with a client** who is substance impaired. In the event that an Associate suspects that a client is under the influence of drugs or alcohol, or is otherwise impaired, you are to cease transacting business and resume only when the client is no longer under the influence.

Smoking

Smoking is not permitted on the Company premises, except in specifically designated areas outside the building, if any.

Company Meetings

Sales and training meetings are held regularly throughout the week via online video communication software (i.e Zoom or Webex). The purpose of these meetings is to provide a format for the exchange of market opinions and ideas, helpful anecdotes, market statistics, recent sales, new listings, mortgage news, training, and any other information deemed valuable to you. These meetings are voluntary in nature, but all Associates are encouraged to attend.

Red Flag meetings (mandatory) will be held, as needed, to inform the Associates of changes to the Independent Contractor Agreement, laws affecting the practice of real estate, and amendments to this Policy Manual. **As a condition of affiliation, all Associates are required to attend Red Flag meetings if they are actively selling real estate unless specifically excused, by the Manager, from participation.** Ample notice will be given to ensure attendance.

Training Program and Schedule

Training meetings are held regularly throughout the week via online video communication software (i.e Zoom or Webex)., please check the schedule on the digital calendar which is posted in our internal announcements and communications application called “Speakap”. If you have not downloaded the communication application “Speakap”, please do immediately. Contact the Manager for details on how to download it. The purpose of these training sessions is to increase Associates' understanding of the ever changing real estate market, real estate law and technology. Training of agents and staff is a critical risk reduction technique, therefore attendance is highly encouraged.

Office and Conference Room Appearance

The Company, or the executive suites it works in, employs a cleaning service to do general interior cleaning of the offices on a regular basis. However, it is your responsibility to keep all conference rooms and your work area clean, tidy, and professional in appearance. The conference room and office appearance is a reflection on yourself, as well as the firm, when clients and customers are visiting. Any public areas, including conference or meeting rooms, must be reorganized and cleaned after usage.

Conference Rooms

Conference rooms are available for your use. They are available on a first come, first served basis. Some offices have an online reservation system that has been set up by your Manager. Other offices require that you call the secretary to book conference room time. Please check the Company Master document for instructions and office contact numbers to book conference room space. Be considerate of others. When you finish using the room, leave promptly and be sure to clean up when you leave.

Optional Desks and Private Offices

The Company provides conference rooms and day offices to all of its Associates on a “by appointment only” basis. You will not be provided permanent desk space or a private office unless otherwise agreed between you and your Manager. The executive suites where the Company conducts its business offers private offices. If you wish to have a private office you will need to notify the supervisor of the executive suites to negotiate the lease of that private office or a permanent/shared desk space with the executive suites directly. You are responsible for keeping the day office, conference rooms, permanent or shared desk, or private office and the area immediately around it in a neat and professional appearance.

Office Equipment

There are copiers, scanners, printers, fax machines, and other necessary office equipment for your use in each executive suite office. **There is a charge to use the copier, scanner, fax machine, or printer at the office. Each executive suite office has a**

separate fee schedule. Contact the supervisor at each executive suite office for a copy of the fee schedule. The Company does its best not to waste paper and encourages all Associates to be “paperless”. This saves money and allows for digital files to be emailed. Scan and send emails as much as possible rather than copying and printing. Use a professional printer anytime you need color copies or large quantities of black and white. Approval from a Manager is required anytime you need to make a large number of copies or prints. Please be considerate of others and limit your time when using shared equipment. You are expected to provide your own computer for your use.

Dress Code

Business or business-casual attire is a requirement when you are serving the public in real estate transactions and when representing the Company. Casual attire should be avoided in the workplace. Dress professionally.

Eating in the Work Area

All food and meals should be eaten only in the designated area at each office.

Parking

The closest parking spaces to the office are reserved for customers or clients. Please park in any other available spaces.

Keys and Access Cards

You will not receive a door key or access card for the executive suite offices unless you lease a private office. If you do lease a private office from the executive suites, do not allow anyone else use these items unless you have the executive suites supervisor’s prior written consent. All of these items must be surrendered immediately upon your termination of your lease directly to the executive suite.

Office Security

By accepting a key or other means of accessing the executive suite offices or the Company’s administrative office, you are also accepting responsibility for safeguarding the office. Immediately inform the Company of any lost key or lost mail key. There will be a charge for replacement of lost or stolen keys. The Company 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.

Working at Home

It is permissible and encouraged for you to work from your home, but **not to conduct personal consultations with clients at home**. Remember that the Broker is required to supervise your activity as a salesperson. **Be sure that all listings, transactions, files and documents that you work on in your home are promptly uploaded to **Brokermint** and submitted to the auditor for review or sent to your Manager for review** in the same manner as if you were working from the office.

Changes in Contact Information

All changes in name, address, telephone numbers, email address, or other pertinent information of any Associate must be reported immediately by you to the office Manager or secretary who will make a record of the changes and report these changes to any State regulator or Real Estate Commission or State Department overseeing real estate business activity and the local Association of REALTORS® if appropriate. You are responsible for any fees associated with name, address and telephone

number changes charged by any State regulator or Real Estate Commission or State Department overseeing real estate business activity or the Association of REALTORS®. You will pay for any costs of printing new materials to reflect these changes.

Company Supplied Items

The Company publishes a list of items supplied at no cost to you and items provided at a cost to you when you join. This list and the costs may be modified from time to time. Currently, **you can find a list of these items in the “Benefits Magazine” and the “New Agent Guide” booklet provided to you when you joined the Company.** Although the magazine is named “Benefits”, the Associate understands and agrees by signing the Independent Contractor Agreement, in which this Policy Manual is incorporated, that the Associate will not expect or receive any “employment benefits” in the traditional sense of the phrase, since the Associate is an independent contractor. Any other supplies not so identified are to be provided by you at your own expense. Your Manager will establish a procedure for the handling of your expenses and reimbursements with the Company. You are expected to comply with this procedure for the billing and collection of expenses incurred by you. Any equipment and supplies provided by the Company are for your business-related use and may not be used for your personal use without the Company’s prior written consent.

Business Cards

You will be responsible for the cost of your company business cards.

Sign Policy

Each Associate is responsible for the purchase of their A-frames, yard signs, riders, and other on-site marketing items. Signage must be purchased from a vendor approved by the Company. It is your responsibility to assure that the signs meet our format requirements.

The Company has standard yard signs with office phone numbers that can be used in the event you do not wish to purchase your own custom yard signs. You will need to pay for the installation of these yard signs if you wish to use them by creating your own account with the sign company.

Associates must acquire signage consistent with the Company’s sign formats/design. The Company uses yard signs of 18" x 24" that hang from a wooden arm. Riders may be attached above and below.

All signage must comply with advertising laws and the regulations in effect in each particular community. Regulations may be obtained from the Company. Any fines incurred due to their improper use will be paid by you.

“Pending Sale” or “Sold” or similar signs may be posted, **with the seller’s permission**, after acceptance of an offer as long as the posting conforms to the State laws and local Association of REALTORS® and MLS rules and regulations..

If a listing agreement expires or is cancelled, a “For Sale” sign should not be left on the property. Such signs must be removed within two days after expiration, cancellation or close of escrow.

Examples of sign templates are available on the AARE Membership software (www.aaremembership.com), the New Agent Welcome Packet when you join and the “Library” of Brokermint for your review. You are encouraged to obtain a supply of custom signs or sign riders with your name and/or contact number to place on a sign. Sign riders must be purchased through a vendor selected by the Company to maintain graphic consistency and must conform to any size rules as noted above.

Telephone Policy

General

The company utilizes a phone service to answer inbound calls during normal business hours Monday through Friday. If a caller requests a specific agent, the caller is given the agents cell phone number and email so they may contact them directly. All other calls are sent to the Manager for distribution. The Company has a nationwide toll free number for customers and clients

to call 888-32-AGENT (888-322-4368). Agents are advised to use their personal cell phones to conduct their business and are responsible for the cost of their personal cell phones.

Caravans

Associates are encouraged to participate in broker caravans in your area to familiarize yourself with the current listings on the market.

Fees and Commissions

All fees and commissions must be made payable to the Company. You will be paid out of the fees and commissions earned by you, and for which you are the procuring cause, based on the Commission Schedule published separately by the Company. Payment to you, less expenses and offsets, is conditioned upon actual receipt of the compensation by the Company. Payment is further conditioned upon review of your file by the auditor and your Manager and the file being deemed by him/her to be complete.

Deductions

All expenses of any kind incurred by you with the Company; or incurred by the Company on your behalf, including unpaid marketing programs, draws and advances, expenses for advertising, supplies, signs, etc., and/or any such expenses that you have agreed to pay the Company but have not paid in accordance with Company policy, will be deducted from the next commission payment that is due you.

Monthly Advances/Draws

It is the Company's policy to not pay monthly advances or draws to our salespersons.

Trust Funds

Company policy is to handle all trust funds with care and comply with all laws. The Company primarily maintains trust fund bank accounts for its property management services, not earnest money deposits of residential or commercial sales or leasing. Earnest money deposits of residential or commercial sales or leasing are traditionally made by the client directly to the settlement service. The Company maintains a trust fund bank account in certain States and does not maintain a trust fund bank account in other States, depending on each State's regulations and requirements and whether or not the Company is conducting property management services in that State. A list of States in which the Company maintains a trust fund account (and conducts property management services) can be found in **Exhibit D.**

Introduction

Since trust fund handling violations are a major reason for disciplinary action, a thorough understanding of and complying with the laws and regulations regarding trust funds are most important. This section will focus on the laws and regulations governing the handling of trust funds and the maintenance of a trust fund bank account.

Definition of Trust Funds

- Deposit checks made payable to the broker, the seller, a title (escrow) company or an attorney.
- Rent money received from a tenant.

Amount of Days to Deposit Trust Funds

Within a certain amount of days (per each State's licensing laws), when a licensee accepts trust funds on behalf of the licensee's broker, **the licensee must take one of the following actions:**

- The funds can be given to their owner. (Note: written instructions are required from all principals to do so);
- The funds can be deposited into a neutral escrow depository; or
- The funds can be deposited into the broker's trust fund account.

See **Exhibit D** for each State's "Amount of Days to Deposit Trust Funds" rules and the exceptions to those rules.

Ownership of Trust Funds

An initial good faith deposit given by a buyer will be considered the buyer's funds. However, if the buyer defaults, ownership of the funds, depending on the agreement between the buyer and the seller, may transfer to the seller.

The buyer's deposit cannot be refunded to the buyer without the express written consent of the seller. The reason for this rule relates to ownership of the money. Depending on the terms of the underlying offer to purchase, the ownership of the funds can move from the buyer to the seller upon the occurrence or non-occurrence of specified events.

Advance Fees

All advance fees received by a broker must be deposited into the broker's trust fund account. They are not the funds of the broker. They are the funds of the client. If the funds are deposited directly into the account of the broker, such a deposit is deemed embezzlement, and the principal can recover damages, in certain States treble damages (triple the normal amount), and attorney's fees. Once the fees have been deposited into the trust fund account, they cannot be withdrawn except for the benefit of the principal whose funds they are. They may be withdrawn for the benefit of the broker when the agent's services are completed, and then only upon following required procedures.

See **Exhibit D** for each State's "Advance Fees" rules and the exceptions to those rules.

Trust Fund Records To Be Maintained

If the Company maintains a trust fund bank account in a particular State, the funds in the account must be kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust. Additionally, the following must occur:

- Broker must maintain detailed trust fund records.
- Trust fund records need to be maintained in columnar form and all required columns of information per State regulations and must be filled out completely.
- Trust fund records reflected cannot contain any inaccurate postings of dates or amounts.

Whether the Company maintains a trust fund account or elects **not** to maintain a trust fund account in that particular State, **an Agent in either case, is required to maintain trust fund records as soon as the Agent has any contact with trust funds.**

Agents and Associates are strictly prohibited from opening their own trust fund account for any reason.

See **Exhibit D** for each State's "Trust Fund Maintenance" rules and the exceptions to those rules.

Commingling & Conversion

Depositing any trust funds into the Company's operating account is prohibited and considered commingling. In the event that trust funds are mistakenly deposited into the operating account in error, the funds must be immediately returned to the proper trust fund account. Details of the error should be recorded in the bookkeeping software. Any funds made out directly to an Associate of the Company is prohibited. **An Agent cannot receive funds in their personal name or their entity name from clients for commissions, management fees, credit reports, appraisals, marketing, or inspection fees or any other type of fee. Agents cannot deposit any type of fee into his or her operations account. This is conversion and/or commingling**

because these funds are trust funds that should be held by the Company. If a client mistakenly sends or gives funds to an Agent in error, the Agent must return the funds immediately and instruct the client to make out the funds payable to the Company to be held in a trust account..

Operations Account Reconciliation

The Company shall reconcile the operations account at the end of every month. The Company will also reconcile its trust fund account(s) for property management monthly. Associates are required to reconcile and maintain their own operations accounts.

Safe Work Environment

The Company is committed to providing a safe work environment for its staff and salespersons. If you observe any situation or condition which could pose a health or safety risk to employees, agents, clients, or the public on any of the Company's premises, promptly notify your Manager. The Company has implemented laboratory safety policies and procedures that comply with local and state laws. See **Exhibit E** for each State's "Local and State Labor Laws and Codes".

Safe Driving

You are expected to keep your automobile in a properly maintained and safe operating condition at all times. You are responsible for damage or injury caused while driving. **It is your obligation to drive in a safe, responsible, and alert manner. This is especially true if you have clients in your car. Under State and Federal law, drivers are generally prohibited from using a wireless telephone (must be a hands-free cell phone), and from reading, writing, or sending a text message while driving.** Cell phones can be a distraction; do not become distracted while driving.

As real estate professionals, we all work out of our cars a great deal of the time. Since instant communication with our clients, other licensees, and various vendors is so critical to making sales happen, we also use phones, especially cell phones, a great deal of the time. The combination of cars and cell phones, however, can be deadly – for you, for your clients and for others. Our brokerage has, therefore, established the following policy for all salespersons and employees, which we hope will minimize the dangers that can result when cell phones are used while driving:

1. When initiating calls, pull over and stop your car before dialing.
2. When receiving calls, pull over and stop your car before answering. Most cell phones have a means of accessing the phone number of the last caller, so you won't have to write down the caller's phone number or worry about missing a call.
3. If you absolutely must converse on your cell phone while driving, follow these tips to increase safety:
 - a. Use a hands-free device. Currently, this means either an earphone or speaker device. Place the phone where you can see it without diverting your eyes from the road for any longer than necessary.
 - b. Program emergency and frequently-called numbers into your phone.
 - c. Practice using your cell phone so you know how to use the hands-free devices, memorized numbers, and other features without taking your eyes from the road.
 - d. If your phone has voice activation, which allows you to initiate calls to pre-programmed numbers by saying a word or two, use it.
 - e. Keep conversations as brief as possible. There is nothing wrong with telling a caller that it is not safe to talk and drive right now and that you will call him/her back as soon as you can do so safely.

- f. Drive in slower lanes and increase the distance between your car and the one ahead so you'll have more time to react to problems that may occur.
- g. Don't try to take notes regarding the conversation.
- h. Don't engage in complex discussions that divert your attention from road and traffic conditions.
- i. Don't answer the phone if it rings when you are in a traffic situation where your safety could be compromised. Most phones have voicemail and you can return calls once you are stopped and in a safe place.
- j. Never forget that safe driving is your first priority!

Personal Transactions

You may buy or sell real property for your personal use subject to the following guidelines.

A. Listings

See the Agent-Owned Property section of this Policy Manual for information regarding the handling of listings of property in which you have an ownership interest.

B. Commissions

Upon the sale or purchase of real property in which you have, or will have, an ownership interest, you agree to pay to the Company a commission based on 2.5 % of the sales price in the amount that the Company would have received, net of any commission paid to you, based on your commission split on that transaction.

Upon the lease of real property in which you have, or will have, an ownership or possessory interest, you agree to pay to the Company a commission based on 5% of the annual rental payments in the amount that the Company would have received, net of any commission paid to you based on your commission split for that transaction.

An exception exists for **one purchase of a primary residence within a 12-month period**, in which case you will be allowed to keep **100% of the entire commission** paid for that transaction minus the 5% overhead fee per your commission schedule and based on a full 2.5% commission.

Agents acting as an investor on a regular basis (more than one investment per year) may request in writing from the Manager an exception to receive 100% of the entire commission when purchasing more than one investment property within a 12-month period minus the 5% overhead fee. This exception will not apply on listings. All Agent-Owned listings must be listed and sold through the Company and the Agent must follow the E&O policies pertaining to Agent-Owned Property to protect the Agent and Company from liability. Agents may be able to represent themselves, on purchases only, outside the Company with written approval from the Manager and a signed liability waiver, but cannot receive a commission from the seller. No Company resources, documents, forms, staff or E&O can be used for these purchases. Documents may never contain the name of the Company or any language that would suggest the Company is representing the buyer. **See Section 15: Litigation & Claims Handling under Agent-Owned Property for more information.**

An exception exists for **one sale of a primary residence within a 12 month period**, in which case you will be allowed to keep **90% of the entire commission** paid for that transaction minus the 5% overhead fee per your Commission Schedule and based on a full 2.5% commission.

The purchase or sale by you of a primary residence, for which no commission is paid to the Company, will not count towards any monthly or annual awards.

C. Indemnity

Except as may be covered by the Company's Errors & Omissions policy of insurance, you agree to indemnify and hold harmless the Company from any and all claims against you and/or the Company arising out of the purchase, sale, or lease of any real property in which you have, or will acquire, an ownership or possessory interest.

D. Disclose Interest in Property

In selling property, you own or in which you have an interest, you must disclose your ownership or interest in writing to the buyer or buyer's representative. If you act as the buyer's agent, you must also disclose the nature and extent of your direct or indirect ownership interest in the property by a person related to you by blood or marriage, by an entity in which you have any ownership interest, or by any other person with whom you have a special relationship.

You must disclose to the owner or owner's agent in writing that you are a real estate licensee whenever you acquire an interest in or buy or present offers for yourself, any member of your immediate family, your firm, any member of your firm, or any entity in which you have an ownership interest.

Vacation/Leave Time for Associates

The Company encourages a balanced lifestyle and vacation. The Company does not control Associate's time off except as noted herein. If an Associate plans to be absent from the Company for any significant period of time, he or she must inform the Company in writing. A substitute agent approved by the Manager or Broker must be assigned to cover for you during any absence. Failure to do this will require the Company to make necessary assignments and determine the appropriate compensation, if any. **You must always notify the Manager in writing of your absence prior to leaving on vacation.**

Extended Leaves of Absence

The Company will grant extended leaves of absence for only extenuating personal reasons. Discuss any request for a leave of absence with your Manager, as well as how any pending business will be handled and how your compensation may be affected. **If your absence will exceed 30 days, the Manager will reassign all of your Company leads to another Agent unless otherwise agreed before you leave with the Manager in writing.**

Jury Duty

Jury service is a civic duty. If you are called to serve on a jury, advise your Manager and arrange with your Manager to have a fellow salesperson handle your business while on jury duty.

Injury at Work

If you are injured at work or in a work-related activity, you must report the injury to your Manager at the earliest practicable time.

Antitrust Policy

The Company maintains a strong policy against any antitrust involvement by the Company, its agents, or employees. Few obligations can be taken more seriously than this area. The Company requires each person associated with the Company to participate in antitrust education and acknowledge his/her understanding of these principles. Two areas of the primary antitrust focus are:

1. **Price Fixing:** Price fixing means any agreement, setting, consent to, suggestion, or implication with a competitor regarding a fee to charge. This includes fees charged to the public, fees split among brokers, and fees paid to agents. "Agreement" can be overt, covert, express or implied. It is very broad based and can even be suggested or implied by casual conversation with any competitor.

Accordingly, The Company, its agents, and staff are prohibited from discussing with any competitor, including an individual agent, any aspect of the fees the company charges or how total fees are split. **The Company determines its charges based on the Company's own independent internal analysis of its expenses, its revenue, its desired profit level, and its choice of the type and level of service it desires to provide.**

In any discussion with a member of the public regarding our charges, such as a listing appointment, **the only acceptable answer about company fees is the foregoing explanation.** Do not be drawn into a discussion about company fees as "the standard rate," "the Board rate," "the typical rate" or the like. If questions arise about other company's fees, suggest that the potential client call several competitors and ask about their rates.

2. **Boycotting Competition:** It is also a violation of federal law to make any agreement, express or implied, with a competitor to boycott or otherwise **not deal with a third competitor.** For example, assume Discount Realty opens an office. Then assume Bob Broker, an agent with Big Bucks Broker, and Alice Agent, an agent with Just As Big Broker, are having lunch one day and discuss the competitive impact of Discount Realty. Bob and Alice agree that Discount Realty is a danger to their large listing portfolios and further agree that individually they will not show Discount Realty's listings because "Something has got to be done about that price-cutting monger." This simple agreement with two agents is an illegal boycott. Even if it were implicit and not overt, it could be construed as an illegal boycott.

The Company prohibits any agent or staff member from making any agreement, or suggestion with a competitor, including an individual agent, that he/she or the Company will not deal with a third broker or agent whether it is a listing company, buyer's brokerage, discount broker, or any other broker or agent.

Antitrust Guidelines Recap

Do not engage in any verbal or written conversations with agents or brokers with other companies that could be construed as an antitrust violation. This includes, but is not limited to, the following:

- The setting of commissions, charges, or other fees to the public;
- Boycotting or not doing business with a particular person or entity;
- The setting of rates or percentages of compensation to be paid to cooperating brokers;
- Refraining from conducting business in specified territories, refraining from providing certain services, or refraining from servicing certain customers.

Company Associates are required to view the NAR DVD on antitrust, read the NAR guide book "Antitrust Compliance Program," execute the acknowledgment in the guide book and participate in training on antitrust.

Transaction Coordinators & Auditors

The Company has approved one or more transaction coordinators (TC). A transaction coordinator can assume many roles. In this Company, the approved TC's:

- Review all agreements and documents to determine if all signatures have been obtained.
- Calendar all dates in an escrow period.
- Monitor compliance with contractual requirements.
- Order inspections (depending on which TC is used).
- Originate Broker escrow files.
- Arrange for delivery of documents by mail or electronically.
- Interface with outside affiliates such as lenders, mortgage brokers, inspection companies, professional reporting companies, escrow companies and title companies.
- Reports deficiencies, delinquencies, or problems to the licensee, Manager and Broker.

A TC is required to be used in your transactions unless prior consent is given by the Manager or Broker for an Associate to originate and organize their own paperwork file. **You will be assessed a TC fee per transaction (by your TC of choice) generally in the amount of \$295-\$595, depending on which approved TC you choose to work with. Each TC sets their rates.** In addition to the TC fee, a \$25-\$75 auditor fee, generally \$50 (depending on the completeness of the file), is

assessed on any closed escrow for the auditor to review the file and ensure all documents are in order.

Risk Management and Errors & Omissions (E&O) Fee

Each year, the Company shall separately establish and publish the amount to be paid by all salespersons, and the method of that payment, as a Risk Management Fee. This Fee will be used by the Company to offset the costs of the Errors & Omissions policy of insurance; legal advice related to transactions and escrows as needed; settlements, judgments, and legal fees and costs of claims and litigation; and other risk management costs, such as education and training.

Currently, the Company does not assess a risk management fee. In the future, if needed, the Company reserves the right to implement a Risk Management Fee. The Company does assess an E&O insurance fee per transaction, unless the Associate carries their own E&O policy. The E&O fee varies from year to year, generally it is \$25-75 per transaction depending on the risk profile in each State and the amount of outstanding claims. The E&O fee is only charged on closed transactions. See Exhibit F for current E&O fees per state.

Associate Business Expenses

You are prohibited from obligating the Company to pay for any expenses absent the prior written consent of your Manager or Broker. Any expenses relating to customers or clients, transactions, entertainment, or Associate's personal promotion will be paid for by the Associate and not the Company, unless otherwise agreed in writing by your Manager or Broker. As an independent contractor, each Associate is expected to be in business for herself/himself. Generally, all business expenses will be the responsibility of the Associate.

The Company provides certain items at little or no cost to the agents. **The following items noted with an asterisk* may come at an additional cost to the associate.** Inquire with the Manager. The Company has done its best to provide these items for little or no cost or an option to a basic/free version of the product or service.

- Select Company software programs, websites listed below:
- Online software programs – Docusign*, Brokermint, Google*, and Real Geeks, Basic/Essential AARE Membership
- Development of Company marketing material.
- All marketing and advertising costs for Company leads and costs on listings from Company lead sources.
- Workman's Comp (in States that require it). *See Appendix G for States that are covered.
- Company parties and events.
- Company staff and agent support (excludes individual Agent's using staff as a personal assistant).
- Office expenses for executive suite access to conference rooms, day offices, and the use of any Company offices (private office expenses are the responsibility of the Associate, if desired).
- Office yard signs, riders, or office open house signs.* Personal signs are at the associates expense.

The Associate will be expected to pay for all other expenses including, but not limited to, these particular items:

- Cell phones and any data plans for mobile devices.
- All marketing and advertising on listings from personal lead sources.
- Personal advertising, business cards, custom yard signs, lockboxes, and personal websites.
- All automobile expenses, gasoline, and insurance.
- Personal telemarketers and personal assistants.
- Copying, printing, scanning, faxing, and mailing expenses.

This list of expenses paid by the Company or Associate may be amended by the Company from time to time. Any changes will be posted by appropriate publication to all Associates.

Performance Evaluations, Status Reports & Termination of Inactive Associates

From time to time the Company produces performance reports to evaluate if all Associates are performing and producing income for the Company. This report serves as a record of accountability for the Associate and allows the Manager or Broker to be able to review their performance. From time to time the Company will contact the Associate to discuss the performance evaluation by reviewing the Associate's Status Report and make suggestions to improve the Associate's performance. If an extended period of time (12 months or longer) goes by and an agent is not producing any income for the Company, and has not previously produced any income for the Company, the Broker may request the agent to unaffiliate with the Company and terminate the relationship. Alternatively, the Associate may be able to remain affiliated with AARE and become a part time agent by working on a referral-only basis with the approval of the Broker or Manager.

Associate Vehicle

Transportation will not be provided by the Company. In the course of real estate transactions, you must use your personal vehicle. All operating, maintenance, repair and other related expenses will be paid for solely by you.

It is the Company's policy that your automobile will be clean and have a professional appearance in order to reflect well on you and the Company. It will be maintained in a safe operating condition at all times. **You shall at all times carry liability insurance on the automobile with coverage for personal injury and property damage. Liability coverage of \$100,000 per person/\$300,000 per accident** is the minimum that should be obtained. Consult carefully with your insurance agent. **You must have the Company named as an additional insured in your insurance policy and pay the cost, if any, of that additional coverage.** Changes in coverage will not become effective against the Company until fifteen (15) days after the Company has received and approved the coverage changes. At the signing of this agreement and at the time of each policy renewal or change of carrier, you shall provide evidence of insurance to the Company.

Any Associate carrying **liability coverage less than \$100,000 per person/\$300,000 per accident** on their automobile **may not allow customers or clients in their automobile at any time.** Any claim against the Company due to an Associate not carrying liability insurance or not carrying enough liability insurance will be the sole responsibility of the Associate.

Business liability coverage shall also be maintained, possibly as part of Associate's personal liability or homeowner's coverage.

In accordance with local, State and Federal law, you must require that all passengers wear a seatbelt and any young child be secured in a car seat or booster. In addition, all young children must be properly secured in the backseat per the local and state guidelines. For more information, see the local and state department or authority of motor vehicles websites.

You should also note that any infant's car seat (children approximately one year or younger) should not face forward, but should face the rear of the vehicle. In addition, children and small adults should not sit in the front passenger seat. Airbags are known to release with such force that injury or death is possible for children and small adults. Local and State laws require that in vehicles equipped with an active passenger-side front air bag, a child less than five years old and less than 40 pounds in weight shall be properly secured in a rear seat (if the vehicle has a rear seat), unless the child restraint system is designed for use with air bags.

SECTION 5: OBSERVANCE OF PERSONAL SAFETY PROCEDURES

Client & Customer Appointments

Ask buyers to meet you at the office or a public place for first time appointments, preferably not at the property. **If the buyer**

only wishes to meet you at the property, make sure you get to know the customer or client before being alone with them.

Whether you meet at the office or in front of the property, **verify buyers' identity (name, phone number, and car license plate number)** the first time you meet the buyer. Make a photocopy or take a picture of the buyers' driver's license. Ensure buyers see the copy or photo emailed or handed to another person from our office rather than just placed in a folder or left on your cell phone/camera. **If buyers refuse to identify themselves, associates are to explain that their office policy requires it. If the refusal persists, associates must refuse to work with that person.**

If customers or clients arrive at the office or an open house, introduce them to others there, so if necessary, colleagues can tell the Broker, the police, or others what the people look like.

Always carry your cell phone with you and make sure it is fully charged and has reception. Program 911 into the speed dial and don't hesitate to call for help.

Enter your itinerary into an online calendar and share it with your Manager. Associates can also enter their appointments into their communication log and email it to a trusted person before going on any showing or listing appointments. The communication log should include: where you're going, with whom you're going, the times of your showings or listing appointments, and when you're expected back. Don't carry a lot of cash or wear expensive watches or jewelry when showing property or going to a listing appointment.

Exceptions to the rule: **In some cases it's not practical for buyers to meet first at the office. If buyers call and say they're at the property or want you to meet them there, have a buddy go along with you.**

Associate ID Forms

The Company will keep on file in the office vital information on all Associates for emergency and other situations. This form includes Associate name, address, emergency contact, information on the car you drive, and a list of primary physicians and special medications (when applicable).

SECTION 6: MAINTAINING FILES

General

Your files are **a record of every event** relative to your dealings with your client on a listing or sale transaction. **You must retain and upload to Brokermint copies of all listings, deposit receipts, cancelled checks, trust records, and other documents executed by you, or obtained by you, in connection with a real estate transaction, whether the sale is consummated or not.** You must maintain a neat and orderly file on every listing, sale, or lease on which you work. **All files are the property of the Company and are to remain either in your possession or the Company's possession until the file is closed. All closed files will be promptly returned to and remain with the Company for online storage. All files will be held in storage for a minimum of three to six (3-6) years depending on each State's laws,** from the date of closing or the date of listing if the transaction is not completed in accordance with real estate law. After this time they may be destroyed in accordance with the Company's document storage policy. **See Exhibit G for a list of State time frames to maintain files.** You are responsible to review Exhibit G so you know how long to keep your files in each State you are licensed to conduct business.

In addition, you are responsible for alerting the Company of any mortgage loan disclosure statement in your files; all such statements will be held in storage a minimum of three to six (3-6) years from the date of closing or the date of listing if the transaction is not completed in accordance with real estate law. After this time they may be destroyed in accordance with the Company's document storage policy.

Broker, Manager or Designee Review

You must promptly submit all signed documents to the Broker, Manager or his/her designee (the "Reviewer") after receipt by you. Your Manager or the Reviewer will review the document for completeness and accuracy. Any incomplete or

incorrect items or documents must be promptly corrected and returned to the Reviewer or your Manager.

Prior to the close of every escrow, you are required to turn in your files for review by your Manager or the Reviewer for a pre-closing review. Any missing or incomplete items will be noted and you will be given a time period within which to comply. **Remember, your file must be complete to receive compensation.**

File Requirements Including Communication and Activity Log

A. Your file must contain an accurate, comprehensive communication log and journal of your activities relative to that file.

B. Always record the following:

- The name of any person you spoke with.
- The date and time of the conversation or activity.
- The subject matter of the conversation or activity and the result of the conversation or activity.
- Any significant decision or discussion not documented elsewhere in writing.

C. Also include in your file:

- A checklist and calendar of important information and deadlines.
- Copies of all correspondence, text messages, and emails to and from your client.
- Copies of all offers and counter-offers and contract addenda.
- Copies of all disclosures and reports or any other writing delivered to you or your client.

D. Be sure that all documents contain signatures of all parties required to sign. Whenever your client receives a written document regarding the transaction, you must leave a copy with the client and retain a copy of the same document for your file.

E. A sample communication and activity log has been uploaded to the Google drive for your use as a guide for proper record keeping. If you are not sure how to maintain a proper file, get help from your Manager.

Get It in Writing

As a general rule, all agreements must be in writing. In fact, if you DO NOT have a written agreement with the principal, you may not receive your commission. **If you discuss anything with any party or another broker/agent, always confirm your discussions and understanding with a written follow-up to that party or broker/agent. Never sign anything on behalf of your client, another agent, or anyone else.**

Online Document Storage (Google Drive) & Custom @AARE.ORG Email Address

Every Associate has the opportunity to have a Company email address and access to the online Company hard drive (through Google) for an annual fee of \$72, subject to change by Google at any time. It is prorated when assigned at \$6 per month then billed annually in December. Several company documents are stored on the Drive in the AARE folder, which has been shared with each name@aare.org email. For those who do not wish to have a company email, a generic login will be provided to you to access the company documents. Agents are allowed to use their online hard drive through Google for personal storage if desired. Company documents are also stored online through Brokermint in the “Library” for access.

Paperwork Procedures Nationwide & State Specific

Below are the methods and procedures to conduct real estate transactions in regards to paperwork in real estate transactions. You need to read through this section in its entirety as well as the State specific section in Exhibit H for any State(s) in which you will be conducting business. Each State requires specific forms that must be completed in order to protect the customers, clients, agents and brokers. A detailed list of those forms (and unique procedures) per State is included in Exhibit H. The information in the sections below is general to all transactions nationwide. If there are specific modifications to the methods or procedures in a particular State, it is notated on Exhibit H.

Paperwork Procedures for Purchase Transactions

Associates must provide and perform the following actions to complete a purchase file:

1. Once any agency relationship is established, casual or formal, a communication and activity log needs to be completed and any pdfs of any showings you conduct with that buyer need to be saved with the log. Any other relevant information pertaining to the buyers needs to be saved with that file. A log of activity can be kept using Brokermint by adding your client in your contacts and making “comment” under their name. Once your client goes to escrow, you may upload all the documents pertaining to the client into the file under the Documents Section.
2. Within 24 hours of writing any purchase contract, the Agent will send a copy including all signed CAR documents to offers@aare.org and a copy of the offer will be stored on the Google drive. . ALL purchase contracts (accepted or not) must be sent to the Reviewer to be reviewed and stored on Google Drive within 24 hours of being drafted. If the offer is not accepted, please email the Reviewer so they can move the file to the Rejected subfolder. If the offer is accepted, the file must immediately be uploaded into Brokermint.

Handling Offers Recap:

If the offer is NOT accepted: Initial the proper boxes on the purchase agreements and email the Reviewer.

If the offer IS accepted: The Agent notifies his/her T.C. and the Reviewer of the acceptance. The T.C. will then set up a file in Brokermint and send out a completed contact sheet and a timeline to all third parties.

General types of documents required for a preliminary purchase package so the T.C. can start to build a complete file include: * **See Exhibit H for the specific documents needed for each State.**

- a. Agency Disclosures
- b. Statewide and Other Disclosures
- c. Purchase and Sale Agreement
- d. Buyer’s Inspection Reports
- e. Any Other Reports or Disclosures
- f. Seller’s Disclosures (if received)
- g. Counter Offers/Addendums/Trust Advisory/REO Advisory/Short Sale Addendum – if applicable to contract
- h. MLS Printout (signed by your client) & Tax Record
- i. Pre-approval Letter & Proof of Funds

The Agent will be responsible for scheduling inspections and must confirm with the T.C. and cooperating agent the date and time of any inspections. The T.C. will provide an inspection document to fill out for the Agent to complete during the inspection, if requested and mandated by that State. The T.C. will additionally create any additional forms needed for file through the Agent’s transaction software (i.e. Zip Forms, Transaction Desk, Lone Wolf or similar type of software) if requested.

Agents must fill in and complete all the broker #'s, license #'s, office addresses, phone numbers, fax numbers, and email addresses on all documents. All documents must be fully executed and the confirmation of receipts must be properly filled out.

The Company highly recommends that a home warranty be purchased on **ALL** transactions. Even if the seller or bank refuses to pay, the Company highly recommends that the buyer obtain one or the Agent should consider offering to pay for the home warranty from the Agent’s commission. The Company recommends that the Agent requests the maximum coverage. If a client

refuses to purchase a home warranty protection plan, a waiver must be signed by the client.

Always verify the correct amount of coverage is obtained for the home warranty order and you may add a specific brand of warranty to help reduce the Company's E&O insurance deductible, in the event of a claim. Check with the E&O company to see if this is an option.

Always request that a "claims loss history report" is provided as well as the natural hazard disclosure report.

The T.C. is responsible to send the Reviewer and the Agent a "file review" email a week prior to the close of escrow alerting them for any assistance necessary to obtain paperwork or disclosures to complete the file. Once the file is complete, the T.C. will request a final review from the Auditor. The Auditor will conduct a final review, approve the document in Brokermint, and change the status from "Pending" to "Closed". The T.C. will then mail a compact disc (CD) or flash drive of the completed file to the client.

A complete checklist of all the documents required to be signed in order to complete a purchase file can be found in the Escrows folders under the AARE main folder on Google drive. The checklist may also be found in the "Library" section of Brokermint. Agents will not be paid until the file is complete and reviewed.

Paperwork Procedure for Listing Transactions

Associates must provide and perform the following actions to complete a listing file:

1. Upon scheduling a listing appointment, email your TC the following so they can prepare your listing packet:
 - a. Tax record
 - b. Listing period & price (if known prior to appt.)
 - c. Seller(s) name, address, email, and phone
 - d. TC fee – if being paid by seller or agent or split
2. TC will then prepare a complete paperwork and disclosure packet and email it to the Agent before the appointment.
3. Agent must prepare and complete the following tasks on their own to present to the seller(s) at the appointment:
 - a. CMA (Competitive Market Analysis) showing **ALL** comps.
 - b. Seller's estimated net sheet (this can be obtained from an escrow company of your choice or done in most MLS programs)
 - c. Create a new contact in Brokermint and log your communication and activity in the Comments section under that contact. Forward the CMA and Net Sheet to your TC for upload into Brokermint.
 - d. Complete an Agent visual inspection during the listing appointment, and fill out any agent inspection documents if required by that State.
 - e. If you will not put the home directly in the MLS within 24-48 hours, most MLS and local Boards require that the Agent must complete a MLS exclusion form and fax/email it to their MLS within 24 hours of execution. The form must be signed by your broker as well as your client. Send this form to your broker via Docusign immediately after your listing appointment.
4. Within 24 hours of completion of any listing paperwork, the Agent or TC will create the Listing in Brokermint. Any signed documents need to be uploaded to the transaction for review from your T.C. and Reviewer. The Agent must notify the T.C. and Reviewer that the transaction has been created. The Reviewer will then review the files and the T.C. will start to build the file.
5. General types of documents required for a preliminary listing package so the TC can start to build a complete file include: * **See Exhibit H for the specific documents needed for each State.**
 - a. Agency Disclosures
 - b. Statewide and Other Disclosures
 - c. Listing Agreement

- d. Seller's Advisory
- e. Seller's Listing Information
- f. Well or Septic Disclosures (if applicable)
- g. Mineral or subsurface rights (if applicable)
- h. Electronic Signature Verification/Authorizations
- i. Real Estate Transfer Disclosures
- j. Seller Disclosures or Property Questionnaire
- k. Agent's Visual Inspection
- l. FIRPTA (Foreign Investment Real Property Tax Act)
- m. Environmental Booklet Hazards Receipt
- n. Local Area Disclosures or Booklet Receipts
- o. Water Heater Bracing, Smoke or Carbon Monoxide Detector Disclosures
- p. Water Conservation Certificate or Disclosures (if applicable)
- q. Lead Based Paint Disclosures– year built 1978 or prior
- r. Natural Disaster Hazards Reports
- s. Advisory Disclosures
- t. Statewide Disclosures
- u. Keysafe/Lockbox (if applicable)
- v. CMA
- w. Seller's Net Sheet
- x. MLS Printout
- y. Tax Record
- z. Trust, REO, Probate, or Short Sale Advisory (if applicable)

Any modification of terms (MT) is required for any listing change. Each State has a unique form for this document. Any MT signed must be turned in within 24 hours for review and must be completed and signed prior to making the change in the MLS. The form must be uploaded into Brokermint within 24 hours of being signed.

If a listing is cancelled, you will change the status from Listing to Cancelled in Brokermint within 24 hours on your Google Drive and notify your TC and Reviewer of the cancellation. Any cancelled listing must have the Cancellation of Listing signed by client and Broker and must be uploaded into Brokermint prior to cancelling the file.

Agents must fill in and complete all the broker #'s, license #'s, office addresses, phone numbers, fax numbers, and email addresses on all documents. All documents must be fully executed and the confirmation of receipts must be properly filled out.

The Company highly recommends that a home warranty be purchased on **ALL** transactions. Even if the seller or bank refuses to pay, the Company highly recommends that the buyer obtain one or the Agent should consider offering to pay for the home warranty from the Agent's commission. The Company recommends that the Agent requests the maximum coverage. If a client refuses to purchase a home warranty protection plan, a waiver must be signed by the client.

Always verify the correct amount of coverage is obtained for the home warranty order and you may add a specific brand of warranty to help reduce the Company's E&O insurance deductible, in the event of a claim. Check with the E&O company to see if this is an option.

A complete checklist of all the documents required to be signed in order to complete a listing file can be found in the Escrows folders under the AARE main folder on Google drive. A copy of the transaction checklist may also be found in the "Library" section of Brokermint. Agents will not be paid until the file is complete and reviewed.

Paperwork Procedure for Lease & Property Management Transactions

Associates must provide and perform the following actions to complete a lease file:

1. Once any agency relationship is established, casual or formal, a communication and activity log needs to be completed and any pdfs of any showings you conduct with that buyer need to be saved with the log. Any other relevant information

pertaining to the landlord/tenant needs to be saved with that file. A log of activity can be kept using Brokermint by adding your client in your contacts and making “comment” under their name. Once your client goes to escrow, you may upload all the documents pertaining the client into the file under the Documents Section

2. Within 24 hours of writing any lease, the Agent will create a new transaction in Brokermint. Upload any signed CAR documents to the transaction for the Reviewer to review. ALL applications (accepted or not) must be uploaded to the transaction. If the application is accepted and a lease is executed, upload all executed documents to Brokermint and submit the file for review.

Application Recap:

If the application is **NOT** accepted: Document why the application was rejected and then upload the file into Brokermint.

If the application **IS** accepted: The Agent drafts up a lease, executes the lease and all documents below, then uploads all executed documents to the transaction in Brokermint and submits a file for review.

3. General types of documents required for a preliminary lease or property management package so you can start to build a complete file include: * **See Exhibit H for the specific documents needed for each State.**

- a. Property Comps
- b. Agency Disclosures
- c. Lease Listing Agreement– if applicable
- d. Property Management Agreement– if applicable
- e. MLS Printout
- f. Keysafe Lockbox Addendum– if applicable
- g. Authorization to Receive and Convey
- h. Electronic Signature Verification/Authorization
- i. W-9 (for co-op agent/broker or property owner)
- j. Copy of Deposit Check & First Months Rent
- k. Lease Agreement
- l. Application to Rent
- m. Environmental Booklet Hazards Receipt
- n. Local Area Disclosures or Booklet Receipts
- o. Water Heater Bracing, Smoke or Carbon Monoxide Detector Disclosures
- p. Water Conservation Certificate or Disclosures (if applicable)
- q. Lead Based Paint Disclosures– year built 1978 or prior
- r. Natural Disaster Hazards Reports
- s. Advisory Disclosures
- t. Statewide Disclosures
- u. Tenant Flood Disclosures
- v. Megan’s Law Database Disclosure
- w. Move-in/Move-out
- x. Any other Tenant/Landlord Disclosures
- y. Credit Report (tri-merged preferably)

Agents will not be paid until the file is complete and reviewed. The Reviewer will notify the Broker or Manager when all documents have been submitted for review and approved.

The Agent is responsible for sending copies of all signed documents to the landlord, tenant, and property manager (if any).

Do Not Use Outdated Forms

Always use current forms. Keep your on-line forms database (such as Zip Forms, Transaction Desk, Lone Wolf or similar type of software) up to date with the most current forms. Always check with your Manager or other Company Associates to ensure that you are not using out-of-date forms. Meetings will be held from time to time to review any changes and/or updates that

have been published.

Document Destruction & Shredding – Pricing & Locations

It is Company policy for Associates and employees to shred documents with confidential client's information after scanning the hardcopy into a digital file for record keeping. Associates must either:

1. Purchase a shredder at their home office to use.
2. Use office shredders at locations that have an office shredder.
3. Drop off sensitive documents to be shredded at places such as Goodwill.

Goodwill charges \$6.00 per box (10" H x 12" W x 15" D) for documents brought to our secure drop-off locations. For more information, document destruction hours, for pricing on large loads, purge services, or ongoing business services please contact Goodwill at 1-800-926-3488.

The Listing/Management Commission Agreement

State real estate laws require that a compensation agreement be in writing and signed by the party to be charged in order to be enforceable. If you represent a buyer in a for-sale-by-owner (FSBO) transaction and the buyer is to pay a commission, you must have a written agreement with the buyer to pay that commission, such as a buyer-broker agreement.

If the seller has not signed or will not sign a listing agreement and if the seller is to pay the commission, you must have a written agreement with the seller such as a single party compensation agreement.

Unless approved in advance by your Manager, **all residential, commercial, property management and lease listings will be "Exclusive Authorization Right to Sell" listings.** All listing and management agreements will be taken on the most current STATE ASSOCIATION OF REALTORS® Standard Forms, AIR CRE forms (commercial only) or another form approved by the Broker such as custom drafted Letters of Intent (LOI).

Regulators, Government Officials – Inquires/Visits/Subpoenas

Any inquiry by a government official, whether by telephone, letter, or in person, should immediately be forwarded to the Broker or Manager. In the absence of the Broker or Manager, the name of the official and agency or department he/she represents should be obtained. Then, the owner or other officer of the Company should be contacted. If none of these persons are available, the person receiving the inquiry should immediately contact the Company's attorney by phone and request guidance. In situations where **neither the Broker or Manager nor an officer of the Company are available** and the inquiry is of an in-person nature, **the person receiving the inquiry should not allow any representative from a local, state or federal office to see any files or any information maintained in the office unless presented with a valid search warrant signed by a federal judge or a judge of the county in which the office is located, or unless the government official is a representative of the State regulator or Real Estate Commission or State Department. The person should refuse to answer any questions of such a representative official unless the company's attorney has authorized the person to answer.**

If a process server appears in the office with a subpoena for the Company, any employee or agent should accept it. Once accepted, it should immediately be turned over to the Broker or Manager. The Broker or Manager should immediately contact the owner or other officer of the Company. In the absence of any of these persons, the Broker or Manager should contact the Company's attorney. If the process server asks for a specific person, only that specific person may accept the subpoena. **If that person is not in the office, the person receiving the inquiry should not volunteer any information about the person requested and should not give out home phone numbers or home addresses, even if asked.** Refer the inquiry to the Broker or Manager immediately.

State Real Estate Regulator, Commission or Department Audits

Company policy is to cooperate fully with any audit from any State regulator or real estate commission and provide records in a timely fashion.

Below are the methods and procedures typically that take place in the event of an audit. You need to read through this section in its entirety as well as the State specific section in Exhibit I for any State(s) in which you will be conducting business. Each State may have unique methods of auditing. The information in the sections below is general to all audits nationwide. If there are unique procedures in a particular State, **it is notated on Exhibit I.**

Real Estate Audits

The Company must make all books, records, and accounts available for examination during regular business hours. An audit may be triggered by a complaint initiated by a member of the public or as a result of the real estate regulatory agency's ongoing audit program. The result of the audit is typically one of four outcomes:

- **No Action Necessary.** Most audits conducted result in no action necessary. Suggestions may be made by the regulator as to how to better maintain records and documents, but nothing serious enough regarding compliance with the law warrants further action.
- **Citation - Warning Letter.** A citation - warning letter may be given to a broker or licensee for minor or "technical" violations, such as clerical errors or a slight unintentional error in a record form. The purpose of the letter is to formally prompt more meticulous efforts in the future and to prevent letting small errors, if continued to go unchecked, to rise to the level of more serious law or regulation violation.
- **Informal Conference.** Certain audits may result in an informal conference. The conference follows the audit and involves the broker sitting down with the auditor to review corrections that should take place in the licensee's brokerage to avoid minor errors in record keeping and in procedural matters.
- **Accusation - Administrative Hearing Procedures - Penalties.** Violations that are more serious will result in an accusation being filed by the regulator against the broker or licensee. An accusation is the first step in the administrative disciplinary procedure adopted by licensing agencies. An accusation is a written statement of charges, setting forth the acts that constitute violation of the law. The accusation must be served upon the licensee by registered mail or by other means provided for under the administrative rules. No adverse action may be taken against a licensee without proper service.

No action may be taken if compliance with the cited regulation would have resulted in the violation of another regulation.

If a licensee files a Notice of Defense within a specified time period (varies by State) after service of the accusation, the licensee is entitled to a hearing on the matter. Typically, within a specified time period such as 30 days (varies by State) after being served with the accusation, the licensee is entitled to request and obtain names and address of all witnesses and is entitled to inspect and make copies of any of the following:

- Statement of complaining parties.
- Statements of parties to the proceeding or witnesses.
- Writings which are relevant and admissible as evidence.
- Investigative reports.

If the above information cannot be obtained voluntarily, the licensee may subpoena the information. It should be noted that the administrative hearing rules of evidence are much less formal than traditional court rules and procedures. A hearing before an Administrative Law Judge will usually occur in the county in which the transaction giving rise to the alleged violation of law occurred. Within a specified time period such as 30 days (varies by State) after the case has been submitted to the Administrative Law Judge, a proposed decision will be released to the regulator. The regulator must serve a copy of the

proposed decision on the licensee within a specified time period such as 30 days (varies by State) after received by the regulator. The proposed decision becomes within a specified time period such as 30 days (varies by State) after delivered or mailed to the licensee. In serious cases, the regulator has the authority to make the effective date of the proposed decision earlier.

Depending on the nature and severity of the violation, the proposed decision and final order will usually involve one of the following:

- License suspension for a stated period.
- A fine imposed instead of suspension.
- License revocation and issuance of a "restricted" license for the remaining term of the original license. The terms of the restricted license will be that which the regulator deems necessary, taking into consideration the violations of the particular case that gave rise to the accusation.
- Revocation.

If the licensee disagrees with the proposed decision, the licensee has the option of filing a petition for reconsideration, which takes the case back through the administrative hearing process. The licensee also has the option of filing a petition for judicial review that will move the case to the state's court system. In this event, Company Associates will be required to obtain and pay for their own legal counsel if they wish to appeal the decision and file a petition for reconsideration.

Within a specified time period such as one-five years (varies by State) after the effective date of the decision, the licensee may apply to the regulator for reinstatement or reduction in penalty. Any decision regarding reinstatement or reduction of penalty is up to the regulator. The regulator may, as a condition of reinstatement, require the applicant (licensee) to fulfill certain education requirements such as retaking the broker's or salesperson's examination, or completing continuing education requirements, and passing the professional responsibility examination.

The regulator's disciplinary authority is based upon violations of the State Real Estate Law and the Department or Commissioner's Regulations. These violations statutorily have their basis in each States licensing and administrative laws, business and professions code, statute or chapters. **The real estate regulators have no authority to bring criminal charges.** It does have the authority to make a referral of a potential criminal matter to the appropriate district attorney.

SECTION 7: HANDLING CLIENTS

Proprietary Information

Treat all client information as confidential and proprietary. You have a fiduciary duty to your clients and should never use any information learned during the course of your representation of your clients in any manner adverse to their interests.

Sharing Information

It is the Company's policy to make a full, open, and sincere effort to cooperate with other Company salespersons, including sharing information, unless the principal has given instructions to the contrary. This does not mean, however, that you should disclose confidential information about your client or the Company.

Online Privacy Policy

Company policy is that all Associates must have a privacy policy on any website advertised that collects personal information. An example of a privacy policy that may be used is the following:

“We respect your right to online privacy. When you register as a member of this site or otherwise provide any personal information to us online, that information will only be used in conjunction with providing you with enhanced services related to the site. It will never be sold to any third party.”

“We may, for instance, contact you to offer assistance, provide information, or otherwise help with your real estate search or sale. In the event our associates are occupied with current clients when you register, we may share your information with partner real estate agents at other local companies whom we have established a trustworthy relationship so they may service your needs immediately. We may also provide you with enhanced services such as an e-newsletter or instant alerts when homes that match your search criteria come on the market. You can opt out of communications at any time via a simple link in our emails.”

Anonymous Information

Like most sites on the Internet, we also collect anonymous data on how our visitors *use our site*. This data reflects site usage patterns gathered during thousands of customer visits each month and does not contain any personally identifying information whatsoever. We reserve the right to share this anonymous data, provide log files and other databases of user information to third parties for analysis, and to use this information to better understand client traffic and improve our online services.

Terms of Use

This website is not intended to replace professional financial, investment, or legal advice. Though we have endeavored to provide the most accurate and timely information available, some of this information is complex and subject to rapid change. As a visitor to our website, you acknowledge and agree that any reliance on, or use of any information available on this website, shall be entirely at your own risk. For accurate and up-to-date information on the local real estate market, please contact a licensed real estate agent.

Fair Housing

We live and work in a diverse, multi-cultural society. The Company is committed to equal opportunity, fair housing, and complying with all applicable local, state, and federal fair housing laws, Article 10 of the NAR Code of Ethics, and the NAR Code of Fair Housing Practices.

Agency Relationships and Duties

A. Recognized Forms of Agency

The Company generally recognizes five forms of agency:

- Single Agency (Seller’s Agent exclusively or Buyer’s Agent exclusively).
- Sub-Agency (Sub Agent of listing brokerage in States that use Sub-agency).
- Dual Agency (if permitted by State). See Exhibit J for list of States and legal types of agency in each State.
- Designated Agency (if permitted by State). See Exhibit J for list of States and legal types of agency in each State.
- Transaction Agency (“aka” a facilitator, when dual or designated agency is not permitted or a client rejects representation).

If the Company has the listing, we represent the seller only, unless you or another licensee working for the Company also brings in the buyer, in which case the office represents both the buyer and the seller and is a dual agent. If the Company is working with the buyer and does not have a listing agreement with the seller, we represent the buyer exclusively. Remember, the agency relationship is created through the Broker. If you have listed the property and another salesperson from this Company brings an offer from a buyer, a dual agency will be created.

B. Duties and Standards of Conduct

When you represent a principal in a transaction you have a fiduciary duty to that person. This means you have a duty of utmost care, integrity, honesty, and loyalty in dealings with that principal. In addition, a listing agent owes the buyer, and a buyer's agent owes the seller, the following duties:

- Honesty.
- Good faith and fair dealing.
- Disclosure of known facts materially affecting the value or desirability of the property that is not within the diligent attention or observation of the parties.
- The exercise of reasonable skill and care in performance of your duties.

In situations involving dual agency, it is particularly important for each agent to realize that she/he must hold confidential the information of both buyer and seller, regardless of which party the particular agent is working with, in accordance with the agency agreements, State regulators, and the NAR Code of Ethics.

C. Agency Disclosure Requirements

The agency disclosure law applies to sales, exchanges, and leases for more than one year, involving real property improved with one-to-four dwelling units, stock cooperatives, and mobile homes. The law applies whether or not the property is owner-occupied. You must provide a statutory disclosure form (exact form varies by State) titled similar to "Disclosure Regarding Real Estate Agency Relationships" (produced by the State Associations of REALTORS® or similar library) in every applicable transaction.

If you represent the seller, you must provide the disclosure form to the seller **BEFORE** entering into the listing agreement. Inform the seller of our policy regarding agency as set forth above. Get a signed "Acknowledgment of Receipt."

If you represent the buyer, the law requires that you must provide the buyer with an agency disclosure as soon as practicable **BEFORE** executing an offer to purchase. Don't forget to get a signed acknowledgment of receipt.

When you present an offer and this office is not the listing agent, you must also provide an agency disclosure to the seller as soon as practicable **BEFORE** presenting an offer. Delivery of the disclosure to the listing agent is generally sufficient. Delivery may be made in person, by mail, or by facsimile.

D. Agency Relationships

The Company adopts this written policy identifying and describing the relationships in which the licensees of the Company may engage with sellers, landlords, buyers, or tenants. As used in this policy, the word "Company" means the Company and its affiliated licensees.

The Company acts as a seller's agents (and/or landlord's agents) through written listing agreements with sellers (and/or landlords). The Company encourages its agents to establish agency relationships with buyers (and tenants) through written buyer (and/or tenant) agency agreements or other written agreements for brokerage services at first substantial contact with buyers (and/or tenants). However, if a buyer (or tenant) is initially unwilling to enter into a written buyer (or tenant) agency agreement, it is permissible for agents of the Company to represent the buyer (or tenant) without a written buyer (or tenant) agency agreement. **The Company's agents should encourage the buyer (or tenant) to put the agency agreement in writing as soon as possible.** As required by the California real estate law, a buyer (or tenant) agency agreement must be in writing no later than the time an offer to purchase (or lease) is presented to a seller (or lessor) or the seller's (or lessor's) agent.

Dual Agency (if permitted by State). See Exhibit J for list of States and legal types of agency in each State.

If a represented buyer desires to purchase a Company listing (in-house sale), the Company will act as a disclosed dual agent in the transaction with the consent of all parties involved in the transaction. Written consent of all parties to the transaction is required before the Company will act as a disclosed dual agent except in cases where the Company is representing the buyer pursuant to an oral buyer agency agreement. **Consent to act as a dual agent shall be obtained from the seller and the buyer at the time of entering into a listing, purchase or lease agreement or written buyer agency agreement** through the proper

completion of the statutory disclosure form (exact form varies by State) titled similar to “Disclosure Regarding Real Estate Agency Relationships” (produced by the State Associations of REALTORS® or similar libraries). A buyer agency agreement must be in writing no later than the time an offer to purchase is presented to a seller or the seller’s agent *and* written authority to act as a dual agent must be obtained no later than the time one of the parties represented by the Company makes an offer to purchase, sell, rent, lease, or exchange real estate to the other party.

Designated Agency (if permitted by State). See Exhibit J for list of States and legal types of agency in each State.

When the Company represents both the buyer and seller in the same transaction, the firm may, with the prior written consent of the buyer and seller, designate one or more individual brokers associated with the firm to represent only the interests of the seller and one or more other individual agents associated with the firm to represent only the interests of the buyer in the transaction. **Sellers and buyers must indicate their consent for the Company to engage in “designated agency.” This can be done with an addendum or revision** to the statutory disclosure form (exact form varies by State) titled similar to “Disclosure Regarding Real Estate Agency Relationships” (produced by the State Associations of REALTORS® or similar libraries).

It is the Company’s policy that the listing agent automatically be appointed as the designated agent for the seller and the buyer agent automatically will be appointed as the designated agent for the buyer. Exceptions to this policy are as follows:

- A licensee shall not be designated to represent the interests of only one party if the licensee has actually received confidential information concerning the other party in connection with the transaction.
- A Broker or Manager shall not act as a designated agent for a party when a provisional agent, associate broker, or manager under her/his supervision will act as a designated agent for the other party.

If one of the above exceptions applies, the Broker or Manager is authorized by this policy to make the appointment of designated agents on behalf of the Company, or, in the alternative, to make a decision that the Company will not engage in designated agency with respect to the transaction.

Mandatory Buyer Agency Events

It is the policy of the Company that any agent working in the following circumstances **MUST** act as an agent of the buyer:

- The agent is buying property for her or himself.
- The agent is working with the agent's immediate family, that is, mother, father, brother, sister, children, any of their spouses or any business owned fully or partially by any of these persons.

Strongly Recommended Buyer Agency Events

It is the policy of the Company that any agent working under any of the following circumstances is strongly urged to work as a buyer's agent:

- The agent is working with any relative by blood or marriage not in the agent's immediate family as defined above.
- The agent is working with a close friend, business associate, or long term past customer or client.
- The agent is working with a seller of a currently or previously listed property to find property to buy. The agent may be concurrently working with the seller to sell the property and also working to buy a new property. This event also applies to a seller whose property is under contract or closed and is working to buy a new property.

Buyer Agency Oral Agreement

If a buyer (or tenant) is initially unwilling to enter into a written buyer (or tenant) agency agreement, it is permissible for agents of the Company to undertake to represent the buyer (or tenant) without a written buyer (or tenant) agency agreement. The

Company's agents should encourage the buyer (or tenant) to put the agency agreement in writing as soon as possible. **Once an oral agreement is made the agent must submit a letter similar to the one below as soon as possible to the client by postal mail or email.** Make sure to receive confirmation to confirm the existence and specific terms of any oral relationships. Associates must document that the Associate attempted to review the firm's buyer exclusive agency agreement with a buyer prior to representing the buyer on an oral basis.

Example Letter to Client - Oral Agreement of Buyer Agency

Firm Name/Address/Date

Client Name

Address

Dear _____:

SAMPLE

I am looking forward to working with you in your search for real estate. As we discussed, a buyer has several choices as to how a real estate firm and its agents will work with the buyer. You have indicated your preference that I begin working with you as a buyer's agent under an unwritten agreement, which is permitted up to a certain point in the relationship. The purpose of this letter is to confirm the most important terms of our agreement.

The terms of our agreement with you are as follows:

- *I will act as a buyer's agent for you on behalf of our real estate firm.*
- *I will assist you in locating and buying residential real estate in the following geographical areas_____.*
- *Our agreement will continue until (1) either of us notifies the other that the agreement is terminated or (2) another agreement is created in writing between us.*
- *The agreement is non-exclusive.*
- *I will show you any properties where the listing firm or seller will offer compensation to our firm.*
- *Our firm will seek compensation from the listing firm or seller and not from you, and you agree that our firm may receive any compensation offered, including bonuses.*
- *If you become interested in property where no compensation is offered, we would need to enter into a further agreement addressing how I would be paid for assisting you in buying the property.*
- *If you become interested in property listed with our firm, the firm may represent both the seller and you as a dual agent. If our firm acts as a dual agent, the firm may designate an agent to represent you.*
- *You understand that other buyers represented by our firm may seek property, submit offers, and contract to purchase property through our firm, including the same or similar property in which you may be interested.*

You will recall from our discussion of the "Working with Real Estate Agents" brochure that our buyer agency agreement would need to be put in writing no later than the time we might present an offer to purchase on your behalf, or we would be prohibited from continuing to represent you. Sample copies of the buyer agency agreement used by our firm and referred to above are available upon your request.

If you feel that this letter does not reflect the terms of our agreement, or if you have any questions regarding anything in this letter, please contact me at your earliest convenience.

Agent Name

Buyer Qualification Policy

Whether acting as an agent of the seller or buyer, qualifying the buyer is a critical step in completing a property transaction. The Company strongly recommends that each agent become knowledgeable, through company training and offered continuing education programs, about properly qualifying a buyer as to her/his financial ability to purchase a property. Financial qualification has two major parts, they are as follows:

1. Loan Qualification

If working as an agent of the seller and are dealing with a buyer, the agent has a duty to act diligently for her/his client the seller. Determining whether a buyer is financially able to purchase any property, ultimately your seller's property, is part of that diligent duty. While there may be times when financial qualification information is difficult to obtain (such as in the case of a buyer of a luxury home) the agent must take diligent steps to determine financial qualification. Some of these steps may include:

- a. Securing a lender's financial qualification form for the buyer to complete.
- b. Setting up a meeting between a lender and buyer to discuss financial ability to qualify for a loan.
- c. Providing necessary information to a buyer about property so that she/he can respond as to whether she/he can get a loan.

In order to help avoid a later claim that the agent was acting as an undisclosed dual agent, an agent working with a buyer as a listing agent should take great care not to give the buyer the impression that the agent is representing the buyer. If, in assisting the buyer with the loan qualification process, the buyer or any third party (such as a potential lender) attempts to disclose to the agent information of a confidential nature about the buyer's financial condition, the agent should remind the buyer (or the third party) that the agent represents the seller and would be required to disclose any such information to the seller.

If working as an agent of the buyer, the agent has the same duty to act diligently for her/his client. In this case, however, the client is the buyer, not the seller. This approach changes the perspective of the seller's agent in that the buyer client has a right to expect that the agent will diligently determine whether a buyer can qualify to purchase a certain type of property. Some of these steps may include:

- a. Completion of a financial qualification form. This form should be sufficient in detail and accuracy so that the buyer is reasonably sure of qualification. If an agent is not sure of her/his level of skill to complete such a form, the agent should get further education and training and immediately call the Manager or lender to assist.
- b. Consultation with the buyer and a lender to determine financial ability to qualify for a loan.

The difference in the approaches between a seller's agent and buyer's agent is the degree of analysis. As the buyer's agent, you are required by fiduciary obligations to conduct a more "in-depth" analysis of the buyer and the buyer's circumstances.

2. Estimated Closing Costs

The second type of financial qualification which accompanies loan qualification (and in many cases is a part of loan qualification) is estimating closing costs. As in loan qualification, duties exist to the buyer and/or seller to diligently and accurately estimate closing costs. The Company has a policy of strongly encouraging its agents to become educated through company and/or board/association training and education about estimating closing costs.

Do not use rules of thumb such as 2-5% of the purchase price. The spread of costs is too great in such estimates to be sufficiently accurate. For a first time buyer with little cash, a one-half percent difference in closing costs can mean the difference between purchasing and not purchasing.

Do not use computerized closing cost estimating programs unless previously approved and authorized by the Company. The programs may or may not take local costs and variations into account. In addition, the programs which allow for local costs may require that the agent input the costs. If the agent desires to use such a program, management of the Company will approve its use and review the local costs being input.

Lender closing costs are generally reviewed in loan qualification procedures. One note of caution is in order: Some lenders unbundle services and charge for each service. These so-called "extra" costs are in addition to origination fees and points. Other charges may include "processing fee", "underwriting fee", "document preparation fee", "courier fee", etc., which can total \$500.00 or more on a single closing.

Whether representing a buyer or a seller, a lender should be asked what her/his "extra" fees are at the time closing costs are estimated and not at time of commitment or closing.

Farming

Farming is a regular activity of Associates at the Company. Farming in real estate activity is defined as target marketing a neighborhood or geographic area to prospect for business. Geographic farming and advertising by individual agents is encouraged. Any personal advertising or farming materials must be approved by the Broker or Manager. State license law and rules require that the salesperson include the Company name if the salesperson's name is used. This policy covers all types of salesperson farming and advertising, including personal sign riders, business cards, car signs, homes magazine ads, classified ads, direct mail solicitations, specialty items (key chains, pens, pads, etc.), newsletters, farming materials, neighborhood newsletters, billboards, Internet advertising, etc.

Safety is an important consideration when conducting farming activities in the field. **Do not "door-knock" alone, always bring a buddy.** If dropping off marketing materials or door knocking, always respect all "Do Not Disturb" and "No Solicitation" signs. Do not knock on these doors or leave marketing materials at these properties.

Listing Presentations

All of your marketing efforts will be a waste if you don't have an effective listing presentation. If you are a newer licensee, don't be afraid to ask for help. Your Manager or an experienced Associate will be more than happy to help you develop an effective listing presentation. If you are an experienced Associate, it never hurts to review your presentation with other Associates. Remember: practice makes perfect.

For an effective presentation, here are a few guidelines to follow:

- Arrive on time.
- Prepare a "Market Analysis" for the Seller.
- Always leave a copy of any signed contract with the seller.
- Be confident, positive and truthful. Don't exaggerate or mislead.

Taking Listings

In accord with the REALTOR® Code of Ethics, the Company urges the use of an exclusive right to sell listing agreement unless it is contrary to the best interests of the owner. The Company recommends use of the "Exclusive Right to Sell Listing Agreement" form provided by the State Association of Realtors, AIR CRE library or a similar library. The Company also accepts exclusive agency listings of property in situations where the seller desires to reserve the right to sell the property on an unlimited or restrictive basis. Open listings may be accepted only with consent of a Manager or Broker of the Company. Net listings are not accepted. A net listing is one in which the owner agrees to let the agent keep any sale proceeds over a "net" price the owner wants for the property. Listings will be submitted to the multiple listing service in accordance with the rules and regulations of the MLS service unless an exclusion form has been completed.

State law requires that a compensation agreement be in writing and signed by the party to be charged in order to be enforceable. Again, unless approved in advance by the Broker, all listings will be "Exclusive Right and Authorization to Sell" listings. Any exclusive listing agreement (including an exclusive agency or an exclusive buyer-broker agreement) must include a definite, specified date of final and complete termination. The claiming of compensation under an exclusive agreement which does not contain a definite, specified termination date can lead to revocation or suspension of a real estate license.

All owners of a property must sign the listing agreement before you begin marketing the property, unless you have prior written consent from your manager. If someone signs on behalf of another, you must have written evidence of the authority to act, such

as a power of attorney or letter of administration. **If a party refuses to sign the listing agreement, notify the signing parties in writing that it is the Company's policy not to market the property until all parties have signed the agreement.**

Before taking the listing, search the MLS to determine whether or not the property is currently listed with another broker. It is Company policy to not take a new listing until the existing listing has expired. NOTE: With the approval of your Manager, and subject to Article 16 of NAR's Code of Ethics, you may enter into a listing agreement prior to the listing expiring as long as it will not become effective until after the expiration of the prior agreement.

If the property is in escrow, continue marketing the property unless the seller agrees otherwise in writing. Make sure the listing does not expire before close of escrow. Get all modifications or extensions in writing.

All listings are taken in the name of the Company, which reserves the right to reassign the listing upon request of the seller, or if the listing has not been handled properly, or the Company deems it in the best interest of the client to do so. Any decision by the Company to reassign a listing is conclusive and you will have no right to a commission upon the sale unless agreed to by your Manager.

If you represent a buyer in a for-sale-by-owner (FSBO) and the buyer is to pay a commission, you must have a written agreement with the buyer to pay that commission, such as a buyer-broker agreement. If the FSBO seller is to pay the commission, you must have a written agreement with the seller, such as a single-party compensation agreement or a separate commission agreement.

Listing Procedures

The Company accepts listings and seeks to build an inventory of available merchandise for sale to buyers of homes and investment real estate. It offers the merchandise directly to the public and by cooperating with other licensed agents.

Listings not only represent "the merchandise on the shelf" but also present a significant area of risk. **Statistically, at least two-thirds of all claims filed against real estate agents involve claims of misrepresentation, fraud, and/or breach of fiduciary duty. It is at the listing level that many of these claims originate.** As a listing company, it is imperative that Associates of the Company adhere to all listing policies to reduce the risk of later claims from oversight and exposure at the time of listing. The following policies apply to all listings taken by the Company.

Negotiating Commissions

While commissions are negotiable, the Company reserves the right to set minimum acceptable commissions on listing agreements. Your Manager will advise you of the Company's policy in this regard. You must get your Manager's permission to accept a listing at a commission lower than the Company's acceptable minimum commission.

Commission Charges

The Company's commission charges are as follows:

- A. Rates and prices of commission charged for services to the public.
 - Charges to sellers for residential listings of 1-4 units. (4-6% of the purchase price)
 - Charges to buyers for representation of 1-4 units. (2-3% of the purchase price)
 - Charges to buyers or sellers for land representation. (4-10% of the purchase price)
 - Charges to sellers for commercial listings. (2-6% of the purchase price)
 - Charges to buyers for commercial representation. (1-3% of the purchase price)
 - Charges to owners for leasing residential or commercial. (4-10% of the total lease)
 - Charges to owners for property management. (4-10% of the monthly revenue)
 - Charges to sellers of business opportunities. (4-10% of the purchase price)
 - Charges to buyers of business opportunities. (2-5% of the purchase price)
 - Charges to borrowers to originate or refinance mortgage loans. (.125%-2.00% of mortgage amount)

- Charges to investors to set up and manage syndication (4-6% of the value of the asset)
- Charges to clients for consulting. (Check with the Manager or Broker)
- Charges for any other services it renders. (Check with the Manager or Broker)
- Charges for any referral or relocation offered to other agents. (20-50% of commission earned)
- Compensation offered to buyer's agents. (2-3% of the purchase price)
- Compensation offered to the Company's licensees. (Per individual split with each Associate)

There are special circumstances under which the Company will agree to reduce charges or increase compensation offered to others. Any reductions/increases to the above charges need Manager or Broker approval in writing. Associates must receive the change in writing from their Manager or Broker before agreeing to any special charge, credit, or compensation offered to others.

Advance Fees

The payment by a principal to the Company prior to the performance of services is known as an Advance Fee. All Advance Fee arrangements must be pre-approved by Manager or Broker and in some cases by the State regulator. You may not propose or accept an Advance Fee without the express approval of your Manager or Broker and the prior written approval of the Advance Fee arrangement and materials approval by the State regulator, if required.

Other Listing Terms

Associates should request listings from sellers for the term of one year. When completing a listing agreement, Associates should fill in "180 days" as the time after the end of listing term in which a commission is owed if a buyer procured by the Company purchases the property. Any listing with a length more than one year needs a Manager or Broker's approval. Associates may write a provision allowing the seller to cancel the agreement at any time if the seller is dissatisfied with the Associates performance.

Sellers Refusing to Sign Exclusive Right to Sell Listing Agreement

In special circumstances when sellers refuse to sign an exclusive listing agreement, Associates may request the seller sign the Company document named Authorization to Advertise and Access Owner's Property Agreement only with Manager or Broker approval. This agreement allows Associates to advertise, market, and access the owner's property in an attempt to procure and represent a buyer. These agreements are commonly made on expired listings when owners had a poor experience with a previous listing agent, or on luxury properties that owners do not wish to expose to the general public, or homeowners who would be interested in selling if an offer was presented but do not wish to actively pursue selling the property through traditional means of listing the home for sale.

Under no circumstances should Associates claim to represent the seller or claim they have a "pocket listing". Associates must disclose they do not represent the seller in all conversations regarding the property. Anytime an Associate uses the word "listing" that implies you already have a signed contract. Use "unlisted" property in your scripts rather than "pocket listing" or "private listing."

Before advertising, showings, or any buyer is procured, the owner must sign the Addendum to the Authorization to Advertise and Access Owner's Property Agreement which outlines the possibility for dual agency and the owner's election of representation options in the event an offer is submitted. The property cannot be offered through the multiple listing service (MLS) and the seller must sign an exclusion form. If they do not wish for any advertising over the internet they must also sign an exclusion form. A Single Party Compensation Agreements (or similar agreement, as it varies per State) should be completed by Associates and signed by the seller before showing any buyer the property.

Disclosure of Material Facts

The Company policy is to disclose all materials facts at all times. Associates must instruct their principals to do the same.

State real estate licensing law provides that a real estate agent may be disciplined for making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

Examples of material facts include, but are not limited to, facts about the property itself (such as a structural defect or defective mechanical systems); facts relating directly to the property (such as a pending zoning change or planned highway construction in the immediate vicinity); and facts relating directly to the ability of the agent's principal to complete the transaction (such as a pending foreclosure sale).

No matter whom the agent represents, these facts must be disclosed to both the agent's principal and to third parties the agent deals with on the principal's behalf. In addition, an agent has a duty to disclose to his principal **any information that may affect the principal's rights and interests or influence the principal's decision in the transaction.**

Under State Laws, the seller of real property, or the agent for the seller, must disclose accurate information of material fact telling whether historical evidence indicates that an event of natural origin is likely to affect the desirability and value of the property, even if the property is listed "as is."

Property Disclosure Statements

State laws require that a seller of real property consisting of one-to-four residential dwelling units deliver to prospective buyers a specified written disclosure statement concerning the condition of the property. The disclosure covers matters within the personal knowledge of the seller and the agent, and matters based on a reasonably diligent inspection of the property. This requirement extends to any transfer by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements. These requirements also pertain to the resale of a manufactured home or a mobile home, even if classified as personal property, provided that the manufactured or mobile home is located on real property and is intended for use as a residence.

The following transfers, in general, are exempt (**exact exemptions vary per State, see Exhibit K for unique exemptions**):

- Transfers required to be preceded by delivery to the prospective transferee of a subdivision public report or where a public report is not required because the offering of subdivided land satisfies all the criteria in State licensing law.
- Transfer pursuant to a court order.
- Transfer to a mortgagee by a mortgagor who is in default; transfer by a foreclosure sale, or pursuant to a power of sale, after such default.
- Transfer by a fiduciary in the administration of a decedent's estate, guardianship, conservatorship, or certain transfers from a trust.
- Transfer from one co-owner to another.
- Transfer to a spouse or to a person or persons in the lineal line of consanguinity.
- Transfer between spouses resulting from a judgment of dissolution of marriage, or legal separation, or from a property settlement agreement incidental to such a judgment.
- Transfer by the State Controller of unclaimed property.
- Transfer resulting from failure to pay taxes.
- Transfer to or from any governmental entity.

Duties of Listing Agents

- Provide the seller with a copy of the required disclosures to fill out.
- Explain to the seller at the time of listing that under California law, an agent must disclose to prospective buyers any material fact regarding a listed property which the agent knows or reasonably should know, even if the seller chooses not to disclose the fact or to make no representation about it.
- Assist the seller in assessing the property.
- Assist the seller with proper completion of the forms.
- Assist in delivering the completed disclosures to prospective buyers.
- Monitor the property and circumstances to help the seller ensure the continuing accuracy of the disclosures.
- Be sure the buyer signs the disclosures and return copies to the seller.

Duties of Buyer Agents

- Take affirmative steps, if necessary, to obtain completed disclosures and deliver it to the buyer prior to the preparation of any offer or within specified number of days from acceptance (varies per State), unless otherwise agreed in the initial purchase agreement.
- Be sure the buyer signs the disclosures and return copies to the seller or listing agent.
- Assist the buyer in assessing the disclosures regarding the property and advising the buyer to have inspections by experts where appropriate.

In completing the disclosures, the seller **MUST** fill in the form. The Company's agent **MAY NOT** complete the form on behalf of a seller.

A seller may, according to law, elect not to make any representations as to the characteristics and condition of the property by checking the appropriate boxes on the disclosures. If a seller has questions about whether the seller should check one or more boxes on the disclosures, the listing agent should inform the seller that it is not appropriate for a real estate agent to give legal advice and direct the seller to contact an attorney.

Some sellers may refuse to sign disclosures. The Company **WILL NOT** accept a listing for which a seller refuses to complete disclosures unless the State does not require a disclosure for that property type, the listing is an estate sale, bank owned foreclosure, or any other entity which is exempt from a transfer statement. If a seller refuses to sign disclosures, the listing agent should advise the seller that if a prospective buyer does not receive disclosures prior to making an offer on the seller's property, the buyer may cancel any resulting contract prior to whichever of the following events occurs first: (1) the end of the third calendar day following receipt of the disclosures; (2) the end of the seventh calendar day following the date the contract was made; or (3) the end of the buyer's contingency period.

If a material inaccuracy in the disclosures is discovered, or the disclosures are rendered inaccurate in a material way by the occurrence of some event or circumstance, State law requires the owner to correct the inaccuracy and deliver a corrected disclosure to the buyer. Therefore, a listing agent should be careful to keep the disclosures current. If the information becomes inaccurate because the property's condition has changed, a seller (and agent) could have liability for allowing known inaccurate information to be given to the buyer.

An agent may not rely on a statement of the seller if the agent knows or reasonably should know that the statement is inaccurate. An agent, therefore, may not ignore the representations on the disclosures just because the seller completed it. If an agent, in his/her reasonable judgment and expertise, suspects that a disclosure statement is not accurate, the agent should seek further information from the seller. An example might be a seller who states that there has been no water in a basement in which there are obvious water stains and cracks. An agent's best course is to seek further information from the seller as to the exact nature of their statements and then accurately convey this information to any prospective buyer, in accordance with the obligation to disclose material facts.

Accuracy of Listing Information

Several "traps" of liability exist in taking a listing, which are covered below. Company agents should take careful note of these hazard areas and be particularly diligent in handling these issues.

- Room Counts:** The Company agents must be careful to accurately represent the number of rooms, bedrooms and bathrooms in a property. Generally, questions of whether an area constitutes a room, bedroom or bathroom are resolved by determining whether an appraiser would count the area as such. For example, basement rooms that are below grade are not generally considered rooms, bedrooms, or bathrooms for appraisal purposes. Another example is that a room normally must have a closet to be considered a bedroom. Also, "walk-through" rooms are not usually considered separate bedrooms. These ambiguous areas can be denoted by a symbol such as a "+" sign after the room count (e.g. 8+ rooms, 4+ bedrooms), or highlighted in remarks for the property, or other descriptive information.
- Square Footage:** Real estate agents are generally expected to be able to accurately calculate the square footage of most dwellings. When reporting square footage, whether to a party to a real estate transaction, another real estate

agent, or others, a real estate agent is expected to provide accurate square footage information that was compiled using the Company's measurement standards. While an agent is expected to use reasonable skill, care, and diligence when calculating square footage, it should be noted that the Company does not expect absolute perfection. Because all properties are unique and no guidelines can anticipate every possibility, minor discrepancies in deriving square footage are not considered to constitute negligence on the part of the agent. Minor variations in tape readings and small differences in rounding off or conversion from inches to decimals, when multiplied over distances, will cause reasonable discrepancies between two competent measurements of the same dwelling. In addition to differences due to minor variations in measurement and calculation, discrepancies between measurements may also be attributed to reasonable differences in interpretation. For instance, two agents might reasonably differ about whether an addition to a dwelling is sufficiently finished to be included within the measured living area. Differences which are based upon an agent's thoughtful judgment, reasonably founded on these or other similar guidelines, will not be considered by the Company to constitute error on the agent's part. Deviations in calculated square footage of less than five percent will seldom be cause for concern.

As a general rule, the most reliable way for an agent to obtain accurate square footage data is by personally measuring the dwelling unit and calculating the square footage. It is especially recommended that *listing agents* use this approach for dwellings that are not particularly unusual or complex in their design.

As an alternative to personally measuring a dwelling and calculating its square footage, an agent may rely on the square footage reported by other persons when it is reasonable under the circumstances to do so. Generally speaking, an agent working with a buyer (either as a buyer's agent or as a seller's agent) may rely on the listing agent's square footage representations except in those unusual instances when there is an error in the reported square footage that should be obvious to a reasonably prudent agent. For example, a buyer's agent would not be expected to notice that a house advertised as containing 2200 square feet of living area in fact contained only 2000 square feet. On the other hand, that same agent under most circumstances would be expected to realize that a house described as containing 3200 square feet really contained only 2300 square feet of living area. If there is such a "red flag" regarding the reported square footage, the agent working with the buyer should promptly point out the suspected error to the buyer and the listing agent. The listing agent should then verify the square footage and correct any error in the information reported.

It is also appropriate for an agent to rely upon measurements and calculations performed by other professionals with greater expertise in determining square footage. A new agent who may be unsure of his or her own calculations should seek guidance from a more experienced agent. As the new agent gains experience and confidence, he or she will become less reliant on the assistance of others. In order to ensure accuracy of the square footage they report, even experienced agents may wish to rely upon a competent state-licensed or state-certified appraiser or another agent with greater expertise in determining square footage. For example, an agent might be confronted with an unusual measurement problem or a dwelling of complex design. When an agent relies upon measurements and calculations personally performed by a competent appraiser or a more expert agent, the appraiser or agent must use comparable standards and the square footage reported must be specifically determined in connection with the current transaction. An agent who relies on another's measurement would still be expected to recognize an obvious error in the reported square footage and to alert any interested parties. The agent must always disclose the source of the square footage and incorporate the following into the MLS and the seller's disclosures: "Buyer to verify square footage before the close of escrow."

Some sources of square footage information are by their very nature unreliable. For example, an agent should not solely rely on square footage information determined by the property owner or included in property tax records. An agent should also not rely on square footage information included in a listing, appraisal report, or survey prepared in connection with an earlier transaction.

When calculating square footage, agents of the Company should carefully follow these guidelines. When inputting the property in the MLS Associates should use the following text in the description "Buyer to verify sq.ft prior to the close of escrow". This should also be in the transfer disclosure agreement.

- c. **Lot Size:** Lot size and acreage should only be determined from an accurate survey. The agent should NOT attempt to measure lot size on her/his own.

- d. **Taxes:** Taxes should be determined from county tax records or the owner's tax bill. The agent should not rely on the statements of the owner as to tax amounts.
- e. **Modernization Information:** Good selling features about a property are often the updates or upgrades made by the owner. In order to accurately advertise these items, the Company requires that the owner verify any information given to us before it can be used in any promotional material on the listing.

Items such as "new" roof, "new" air conditioner, "new" furnace, "new" bathroom, "new" kitchen, etc. are misnomers because of the difficulty in defining what "new" means. Substantiation of the information means the owner must supply the Company with receipts, canceled checks, or other proof of payment of upgraded or rehabbed items. Once provided, the Company will accurately advertise and promote these good selling features with language like "New roof, 1990", "New furnace, 1989", "Kitchen remodeled, 1991."

If it is not possible to substantiate modernized features, they can be advertised or promoted as "Newer" or "Recently", as in "Newer furnace" or "Recently remodeled bathroom".

Signatures

The Company desires that listing agreements be enforceable in every possible situation to ensure that the Company and agent will be paid under the terms of the listing agreement. Because of these factors, agents must secure listing agreements with the proper signatures before the listing will be promoted or advertised in any way. Agents should be especially aware of the several situations listed below.

- a. **Spousal Signatures:** A spouse must ALWAYS sign a listing agreement unless a waiver of marital rights given by the non-signing spouse exists (e.g., separation agreement, prenuptial agreement), a copy of the waiver has been given to the Company and legal counsel or Broker for the Company has confirmed that the agreement constitutes a valid waiver of the non-signing spouse's rights.

Most often this situation arises when the property is titled only in the "selling" spouse's name and the "non-selling" spouse claims that he or she has no interest in the property. Typical situations are a widowed person who has remarried or a divorced person who has remarried. The spouse not on the title ALWAYS has a marital interest under California law and MUST sign the listing agreement unless one of the exceptions noted above exists.

- b. **Property in Estate:** When property is in an estate, ALL heirs AND spouses must sign. If a Personal Representative (Executor) has been named, it is possible that the Personal Representative has authority to sell the property. The agent must secure a copy of the court decree or specific section of the will which empowers the Personal Representative to sell property. The power of sale granted the Personal Representative by a will may not be acceptable until after a certain period of time has passed following the date that the Personal Representative has been appointed. In this situation, management for the Company will consult with legal counsel to determine if the power to sell in the will is acceptable.
- c. **Trustees:** If a property is held by a trust, the trustee will normally be empowered to sell. However, the agent must secure a copy of the part of the trust which empowers the trustee to sell. Some trusts require the signatures of more than one trustee to sell as in the case of an individual and corporate trustee (bank). In this circumstance, the trustee's spouse does not sign the listing agreement because the trustee is acting in a representative capacity.
- d. **Seller Incapacitated:** If a seller is not mentally competent to sell, a guardian must be appointed by the court and the guardian must obtain a court order to sell the property. Until such time, the property cannot be sold even if a child, sister, niece, nephew, etc. is also on the title. If the subject property is also jointly owned in this fashion, the spouse of the "second signer" (child, sister, niece, nephew, etc.) must also sign the listing contract. It is possible that a properly drawn Durable Power of Attorney may provide a means to sell this type of property. However, before relying on the Durable Power of Attorney, Company management will consult with legal counsel to determine whether the existing Durable Power of Attorney is acceptable. See also the paragraph on Powers of Attorney, below.

- e. **Divorces:** A person is NOT legally divorced until a court so orders. A person "in the process of divorce" cannot sign the listing agreement alone. The spouse must also sign, regardless of whether the spouse is living on the premises or the couple has a "legal separation," unless a valid waiver of marital rights exists (see section on Spousal Signatures above). Once divorced, the person may sign alone, however, if the county records continue to show the property in both names, the agent must secure a copy of that part of the divorce decree which awards the property to the signing spouse for the Company files.
- f. **Power-of-Attorney:** A Power-of-Attorney authorizing the sale of real estate is acceptable for signature on a listing contract. However, not all powers-of-attorney authorize the sale of real estate. A copy of the recorded Power-of-Attorney authorizing the sale of real estate must be secured for the files of the Company.

Seller Net Proceeds Calculations

It is the policy of the Company to calculate estimated net proceeds for sellers as often as appropriate. The first estimate should be given on the listing call or as soon as possible after listing the property. Even though some information may not be available, such as exact loan balances or prepayment penalties, the agent should use all existing information to prepare as accurate an estimate as possible and note any missing information.

When information becomes available, estimated net proceeds should be recalculated. This is particularly appropriate when an offer is presented and when each new offer or counteroffer is received.

There are many reasons for using seller net calculations. First, it is an important service to a client. Secondly, it is important for the Company to know whether it is likely that there are sufficient proceeds to pay off the indebtedness on the property and the real estate commission. Finally, the Company must know whether the seller of the property can deliver marketable title. If the indebtedness exceeds the listed price, immediate discussions must occur with the seller and the lenders to determine whether the property can be sold with clear title given the level of indebtedness.

It is also important to note that as a possible material limitation on the client's ability to complete the transaction; this condition may be considered a material fact to be disclosed to the buyer.

Estimated Seller Net Proceeds Calculation forms are available on the Company online Google drive and through SDMLS.

Lock Box Procedures

The Company, as part of the local Board of REALTORS® common lock box system, encourages the use of lock boxes on all listings as a safe, secure, and efficient tool in marketing property. Specific permission from the owner must be obtained on each listing before installing a lock box.

Open House Procedures

The "how-to" of holding open houses is covered below under the Conducting Open Houses section. The Company must also maintain a policy that adequately informs owners of their responsibilities in consenting to open houses. Agents must strongly recommend to owners that they take common sense precautions with any valuables in the house during the time of the open house. This includes removal of all jewelry boxes, collectibles of value, (sentimental or dollar value), small audio or video equipment, or other items which may be of value. Owners should also be informed that their homeowner's insurance company is the responsible party for any losses on an open house.

As in all other areas, an agent may not act carelessly or recklessly. If for no other reason, an agent must be diligent in conducting an open house to maintain good business relations and rapport with the owner. Agents of the Company are specifically prohibited from using listed properties for personal use, including but not limited to meetings of any sort that are not related directly to the sale of the client's property.

Reviewing Documents - Internal Verification Procedures

The Company maintains a system of checking and verifying both listing contracts and documents and sale contracts and documents for accuracy, enforceability, and compliance with the California Department of Real Estate Rules. Within 24 hours of completing any new listing or purchase contracts, agent will upload the documents into Brokermint so that the Reviewer can review the executed contract. Each agent is expected to cooperate fully and promptly with any requests for verification, further information, or correction of any oversights in the documents.

For other related policies, see the section on Risk Reduction Policies.

Conducting Open Houses

Open houses are a great way to expose your listing for sale and to meet prospective buyers. Plan your open houses in advance and be sure they are advertised. In order to assure a successful open house, follow these guidelines:

- The Company strongly suggests that you conduct your open house with another Company Associate. Holding an open house with two representatives provides several benefits including: being able to knock on more neighbors' doors, opportunities to speak with prospective buyers longer, reducing security risks and being able to split up and show comparable properties right away if a ready and willing buyer arrives while keeping the house open.
- Prepare and take sufficient property flyers and information about you and the Company.
- Prepare and take a list of comparable sales and properties for sale in the immediate area of the open house.
- Suggest that the sellers not be present and that they lock away all valuables that could be targets of theft.
- Place your A-Frame open house signs in strategic, but permissible, locations.
- Open the house, turn on the lights, and make the house look fresh and inviting.
- Have a sign-in sheet.
- Greet visitors in a friendly manner.
- Be aware of your personal safety. Let someone know where you are and have a plan if a visitor starts to make you feel uncomfortable or threatened.
- Accompany the visitors through the property, especially in furnished properties.
- When the open house is over, close up the home, making sure that all doors and windows are locked.

Showing Properties

Whenever possible, preview a property before showing it to prospective buyers. If you are familiar with the property you will be more effective when showing it to your client. Also, you may find that despite contrary representations, the property really is not suitable after all. Your time and your client's and seller's time are valuable, don't waste it.

- Whenever possible, call the listing agent to alert the seller before showing.
- Give the seller reasonable time to make the property ready for you and your client.
- Listing agents should give the seller an estimated time frame within which you expect to arrive. Be prompt. If you will be considerably late, call the seller.
- If you have not heard from the seller before arriving, or if you are using the lockbox, go to the door first without your client.
- If the seller is home, explain the situation and ask for access. Remember, be respectful.
- When using a lockbox, always ring the doorbell and/or knock loudly several times and allow time to respond.
- Enter the property first and verify no one is there.
- Open curtains and turn on lights as necessary.
- Allow sufficient time for your clients to view each room and the property. Be mindful to look for any potential "red flags" about the property. (Disclosure)
- Do not leave your clients unattended in or on the property. You don't want to be blamed if any items are missing from the property later.

- When you are finished, leave your card inside the property in a conspicuous place, and return the property to its original state (turn off appropriate lights, reset any alarms, and lock the doors).
- If for some reason you don't show the property, call the listing agent as soon as possible to cancel.

Property Insurance Issues

Real estate transactions can be affected by the lack of availability and/or unaffordability of insurance to cover the property that is being bought or sold. In the past, securing property insurance was considered routine. It was not unusual to call the insurance agent a few days or a week before closing and have the insurance issued with little more than that phone call.

Today, the property insurance environment has dramatically changed and continues to do so. Buyers should address the property insurance issues seriously and early in the transaction process. Here are some important tips for buyers to consider about this new insurance environment:

1. Don't wait to secure insurance. As soon as the offer is accepted, have the buyer call their insurance agent and arrange for coverage. If the buyer is shopping around, the buyer should try to pick an insurance company/agent before writing an offer. Then, when the offer is accepted, they will know who to call. If the buyer has not picked an insurance company or agent by the time the offer is accepted, have them do it immediately after the offer is accepted.
2. Consider using an "insurability" contingency in the offer.
3. Consider buying an "Insurance Score" report. Similar to a "Credit Score," the buyer's "Insurance Score" is used by many insurance companies in deciding whether to extend insurance coverage. The components of the insurance score may vary from company to company, but usually include a composite of the buyer's credit score and their past record of filing insurance claims on other properties they have owned or rented. One company offering Insurance Score Reports is Choice Trust. Their web address is www.choicetrust.com. A Choice Trust Insurance Score Report costs about \$15.
4. Consider obtaining a "CLUE" Report for the property the buyer currently owns. "CLUE" means "Comprehensive Loss Underwriting Exchange." CLUE is a database of insurance claims on properties throughout the United States. Insurance companies contribute claims information about properties they have insured and thus a record of claims as to each property that has been insured by a contributing company has been built over the past 10 to 15 years. Generally, claims over the past 5 years are available through the CLUE database. Similar to insurance scores and buyers, CLUE Reports are used by insurance companies to decide whether to insure a property. If a CLUE Report reveals that a property has had "too many" past claims or certain types of claims (such as water damage), many insurance companies will not insure the property. Unfortunately, there is no standard among insurance companies about what are "too many" claims to result in a denial of coverage. CLUE Reports can be obtained at the Choice Trust website, www.choicetrust.com. A CLUE Report costs about \$15. The best time to get a CLUE Report for the buyer's own property is before they put it on the market and before they write an offer to buy a new property. If the buyer's current property's CLUE Report reveals significant insurability issues, this may affect their buying decision.
5. Consider asking the seller of the property that the buyer is interested in to buy a CLUE Report for their property before writing an offer to purchase. Only the owner of the property can order a CLUE Report.
6. When buying insurance, ask the insurance agent if the binder or policy can be cancelled by the insurance company after it has been issued. Some binders and policies give the insurance company up to 60 days to cancel the policy for any reason, including information revealed in a CLUE Report. This 60 day period may extend after the closing date. Cancellation of insurance after closing could cause serious problems with the lender.
7. Even if property insurance is available, it may be significantly more expensive than in the past. Property insurance premiums have risen substantially overall in the recent years. Also, a property that has an unfavorable CLUE Report may be insurable, but only at a significantly higher premium. Buyers with low insurance scores may also be required to pay higher premiums to secure property insurance.

Drafting and Negotiating Contracts

- A. When preparing an offer to purchase on a purchase agreement form, or completing an addendum or counter-offer form, make sure that the:
 - All blank lines are filled or have a line placed through them.
 - Any inserted written language can be clearly understood by someone who is not familiar with the discussions you may have had with your client. Do not draft contractual language on your client's behalf.
 - Review this document in light of all prior offer terms, addenda and/or counteroffers to make sure that there are no ambiguities or conflicts between the various terms.
 - Review the document to be sure it reflects your client's wishes prior to asking them to sign.
- B. Remember, as a listing agent, you must present all offers to the seller even if the property is in escrow, unless the seller has given you written instructions to the contrary. Upon receiving the offer, review it thoroughly for completeness, accuracy, and clarity. Pay close attention to time limits set out in the offer, ESPECIALLY the time within which the seller must respond. Make an appointment as soon as possible to present the offer.
- C. As with all contracts, you must obtain all parties' signatures. If a party signs on behalf of another, you must have evidence of that person's authority to do so in writing. If you must present an offer missing a signature, you must disclose this fact to the seller or listing agent. Be sure to condition the offer on obtaining any missing signature(s).
- D. If your clients receive a counter-offer, be sure the terms are clear and complete. Be sure to review it against the original offer to purchase and all previous counter-offers. Act expeditiously to present the counter-offer for consideration, signature, and timely delivery to the cooperating agent.
- E. You may never represent two or more competing buyers offering to purchase the same property at the same time absent your Manager's prior written consent.
- F. It is Company policy that, if you have a listing and there are multiple offers, you may represent both buyer and seller in the contract negotiations (if permitted in that State and buyers and seller consent in writing). If not, you may be required to utilize a Designated Agency (if allowed in that State) and you and the Manager must choose to represent only the seller or the buyer during the pre-contract negotiations. A Manager or another salesperson will represent either the buyer or seller who is not represented by you during contract negotiations. See Exhibit J for the different types of agency allowed in each State.
- G. Even if an Associate may be a qualified professional in the financial or legal fields, all Associates are strictly prohibited from giving any tax or legal advice or legal opinions. If questions of a legal or tax nature arise, the Associate should advise the client to consult with his or her own tax advisors or legal consultants.

Purchase Sale Contract Policy

1. Sale Contract Completion

As a member of the State and Local Association of REALTORS®, the Company uses the standard contract forms available through State and Local Associations (including Standard Forms such as "Purchase and Sale Agreements", or an "Offer to Purchase and Receipt for Deposit," or other similar forms that vary per State and all addenda thereto). Article 13 of the REALTOR® Code of Ethics govern an agent's conduct in this respect.

The Company adheres strictly to these provisions. Accordingly, sample contracts and forms are available to all agents of the Company on the Google drive. Agents must use the approved language and fill-ins included in the sample contract. If a situation is not covered, an agent is not authorized to alter a form or add language without prior approval from Company management. Company management maintains a file of pre-approved clauses for situations not covered by the forms.

Likewise, any amendments or supplements to sale contracts must be written on the standard addenda available from the Local and State Association library forms. These forms provide for the most typical amendments and changes to sale contracts. If an agent requires unusual language, he or she must consult Company management who will consult with legal counsel to determine the appropriate language to be used.

Licensees may not draft offers, sales contracts, options, leases, promissory notes, deeds, deeds of trust or other legal instruments by which the rights of others are secured. However, licensees may complete preprinted offers, option contracts, sales contracts, and lease forms. If a customer or client asks us to prepare any other type of document, the agent should ask the customer or client to seek the advice of her/his own legal counsel.

2. Sale Contract Terms

Several areas of contract terms are traps of risk for the unsuspecting agent. The Company maintains policies regarding these areas to reduce risk and heighten awareness. These are covered below.

- a. **Earnest Money:** Several concerns regarding earnest money are involved. First is the "how much" issue. The Company cannot maintain a policy that requires any specific amount of earnest money as the Company and agent are not parties to the contract. However, if the Company represents the seller, the advice to the seller will be that sufficient earnest money is very important in that it shows how "earnest" a buyer is. The Company has seen many cases where low earnest money has resulted in a buyer simply defaulting on the contract and forfeiting the low amount of earnest money, banking on the fact that it is unlikely that a seller would sue. It has also seen many cases where sufficient earnest money has kept an anxious buyer in a contract to closing because of the prospect of losing a substantial amount of the earnest money. The timing that the earnest money needs to be deposited is also of concern.

If the Company represents the buyer, the classic approach to buyer representation might suggest recommending the lowest possible earnest money in every case. However, the agent is cautioned that this may not serve the best interests of the buyer in all cases. For example, because earnest money indicates how "earnest" a buyer is, or how "strong" an offer is, a buyer may be put at a competitive disadvantage if low earnest money is offered in a situation where the buyer's offer is competing with one or more other offers. As in all other situations, if the Company represents the buyer, its job is to give the buyer the best of the Agent's and Company's expertise, advice, and talent which may include advice which on first impression does not follow the "typical" rules.

The policy of the Company is that only wires, checks, or money orders are accepted as earnest money without further permission from the seller. The Company's policy regarding this rule is that items such as postdated checks are not acceptable. Although the Company may have a trust fund bank account in certain States, **the Company does not accept earnest deposit funds unless it is mandated by the State. All funds should be deposited directly to escrow. See Exhibit D for States in which the Company maintains a trust fund bank account.**

A corollary issue occasionally arises regarding acceptance of a credit card or line of credit check (Visa, MasterCard, American Express, home equity loan). The Company takes a conservative position regarding these instruments and strongly discourages their use. The primary reason for this policy regards the difficulty in determining whether this instrument has "cleared". There is no easy way to determine whether the line of credit has been exhausted or overdrawn and upon presentation, will be rejected. In addition, a lender may require that such balances be paid off before loan approval or closing. A credit card or line of credit check should be accepted only with the written permission of the seller.

- b. **Inspection Contingencies:** The intended purpose of these contingencies is to give the buyer the right to terminate the contract in the event inspections reveal extensive, unforeseen damage to the property, even though the seller may be willing to repair the damage. The contingency is not intended to give the buyer an "out" in cases where damage to the property falls within the range of what might be considered normal for a property of the type under contract.

If the company represents the buyer, the classic approach to buyer representation might suggest recommending the highest possible amount of days in the contingency period in every case. However, the agent is cautioned that this may not serve the best interests of the buyer in all cases. For example, a buyer may be put at a competitive disadvantage if a high amount of days is offered in a situation when the buyer's offer is competing with one or more other offers. As in all other situations, if the Company represents the buyer, its job is to give the buyer the best of the Agent's and Company's expertise, advice, and talent which may include advice which on first impression does not follow the "typical" rules.

- c. **Inclusions and Exclusions:** The contract is the primary method to determine what is being sold with the property. Do not rely on the disclosures or listing data to establish what is included in or excluded from a contract.

This area is of great importance for risk reduction purposes. Personal property inclusions and exclusions cause a great number of the disputes in a sale contract and can be expensive for an unwary agent. **As a general rule, try to keep the contract free from personal property matters. Not only do these matters "clutter" the real estate aspects of the transaction, but they may affect the maximum loan amount depending on the loan-to-value ratio.** Be aware of the potential hazards in this area and act with caution, making sure inclusions and exclusions are clear in the contract. Agents are cautioned not to use simple statements in the address section of the contracts stating "per MLS sheet" or "per MLS #XXXX." These create confusion as to what MLS sheet and when the MLS sheet was run.

- d. **"As-Is" Contracts:** Most properties nationwide are now sold "as-is." These listings often include text such as "offered in as-is condition". This term is unclear, at best, and therefore should be clarified so that the parties have a clearer understanding of the intentions of the other. Generally speaking, there are three approaches for parties who wish to include an "as is" term in a MLS posting or contract. Those three approaches are as follows:

- The property is sold exactly as seen. Any building, mechanical, or structural inspection is waived by the buyer. No repairs or corrections will be made by the seller.
- While the property is being sold "as-is", the buyer is entitled to a building, mechanical, or structural inspection to determine the condition of the property and will have the right to cancel the contract if the seller refuses to make any necessary repairs.
- While the contract states the property is being sold "as-is", the buyer is entitled to all rights allowed in the building, mechanical, or structural inspection clauses of the contract, including the right to ask for repairs. Typically, this approach may be selected if the seller's statement of "as-is" is simply intended to convey the seller's position that it is unlikely the seller will repair any requested items.

If a customer or client asks us to include an "as is" term in a contract, the agent should ask the customer or client to seek the advice of his/her own legal counsel. In addition, an "as-is" sale does not relieve the licensee of the obligation to disclose all material facts of which he/she has knowledge or which are readily available to him/her relating to the condition of the property.

3. Sale Contract Negotiation

The techniques and principles of sale contract negotiation (the "how-to") are covered in the Company's and Board's training programs. Each agent is encouraged to take full advantage of these resources to improve her/his skill in this area which are vital to success in this business.

Aside from sale contract negotiation techniques, the Company maintains policies that are directed to the legal and ethical aspects of contract negotiation. These are listed below.

a. Presentation of Offers

In accord with the Code of Ethics and State Real Estate Commission Rules, the Company requires its agents to present all offers to the seller until closing and all counter offers to the buyer, regardless of how many offers received or the order in which the offers were received. The Company urges any agent involved in a multiple offer situation to contact management to review the proper procedures.

The Company will always be guided by lawful instructions of the client in any multiple offer situations. While the Company believes that these procedures protect the client, the client may choose to give the Company other lawful instructions. The agent should discuss with the client, whether seller or buyer, the customary procedures for handling multiple offers so that the client may determine whether the client wishes to give the agent or Company different instructions.

Standard of Practice 1-15 of the Code of Ethics requires that the listing agent, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, divulge the existence of offers on the property. In addition, Standard of Practice 1-15 requires that, when disclosure is authorized, the listing agent has an affirmative obligation, if asked, to disclose the "source" of the offer, i.e. whether the other offer(s) are from a prospect of the listing licensee, another licensee in the listing licensee's firm or a cooperating broker.

In the event of multiple offers on one property, the Company follows a policy, with the seller's approval, of notifying all offerors that his/her offer is in competition with other offers as well as giving the opportunity to change the offer. The notification shall take place only after multiple offers actually exist and not when the listing agent may have knowledge of other offers being written or possibly being written.

An exception to this policy exists if the seller has a currently effective counter offer in possession of a buyer. In that event, the agent will not disclose the competition to the second or later offeror until the seller has had the opportunity to examine the second offer. This gives the seller the ability to determine whether he/she desires to revoke her/his counter offer to the first offeror to negotiate with the second offeror.

California real estate law no longer prohibits disclosure of the price or other material terms contained in a party's offer to purchase to a competing party unless all parties and their agent have signed a written confidentiality agreement. Therefore, the agent is able to reveal any terms of the offer to any other party including expiration time of the offer, price, closing dates, earnest money amounts, financing types, amounts, dates, or other terms unless prohibited in writing by all parties.

If another agent, whether from the Company, or another company, asks the listing agent to "let me know if another offer comes in", the Company has a general policy of not acknowledging such requests. If other offers come in, the agent should advise the client that inquiries of this nature have been made and ask the client whether those requests should be followed up.

The Company policy is to give sellers the option to accept dual agency (if permitted in that particular State), single agency, or designated agency before any listing is taken or offers are received. If the seller has no objections to *dual agency*, and if multiple offers exist and the listing agent has written one of those offers, the policy of the Company in such a circumstance is that the listing agent may present all the offers.

If the seller has opted for *designated agency* and a customer of the listing agent asks to write an offer before or after other offers have been submitted, the policy of the Company is that the listing agent must ask the sales Manager, Broker, or other Company agent to write the offer for the listing agent's customer.

If the seller has opted for *single agency* and a customer of the listing agent asks to write an offer, the policy of the Company is that the listing agent refuses to write an offer and let the customer know they will need to obtain their own representation. If the seller has opted for *single agency* (or that particular State does not accept dual agency) the listing agent may only represent the seller.

In general, whenever the listing agent has knowledge of an offer presented, or could use information he or she has to the detriment of one of the competing parties, the Company strongly recommends that a third party agent, such as a Manager, Broker, or other agent, become involved to assist in the negotiations.

A final issue regarding presentation of offers regards whether an oral offer must be presented. Common law agency principles dictate that all material and relevant information of which the agent has knowledge should be given to the client. In addition, Standard of Practice 1-7 of the REALTOR® Code of Ethics speaks of submitting all offers to the seller.

In accord with agency obligations of disclosure and loyalty and in the spirit of the Code of Ethics, the Company has a policy of giving the seller client all material and relevant information of which the agent has knowledge. In accord with this policy, if a customer insists on an oral offer, the Company believes that the seller is entitled to that information.

The Company recognizes that such an oral offer alone is almost certainly unenforceable under most State laws. However, it is prudent to tell the seller what the agent knows, that is, an oral offer was made by this party and it is unknown whether the party will ultimately be willing to commit the offer to writing. At this point, a seller may choose to make a written offer to sell and thereby initiate the contract process him/herself.

Additional resources on this topic are available on www.realtor.org, Law and Policy. The NAR Professional Standards Committee has published a guide for agents and brochure for buyers and sellers on "Presenting and Negotiating Multiple Offers."

b. Timing of Presentation

The Company strongly supports and maintains a policy to present all offers and counter offers as quickly as possible. Standard of Practice 1-6 of the REALTOR® Code of Ethics provides the standards in this area.

The policy of the Company is that these terms are to be interpreted to mean "immediately" or "as soon as humanly possible". As an example, a listing agent's receipt of an offer should immediately generate a telephone call to the owner to determine when the seller is available for presentation of the offer. Once contacted, the seller can then instruct the listing agent as to when to present the offer. The critical point is that the Company believes that the listing agent MUST make a diligent effort to contact the seller immediately upon receipt of the offer - not an hour later, not when the agent finishes lunch, not after the agent shows property, etc.

In the case of a buyer agency, the same principles apply with equal weight. The buyer is the client and must be treated with the same high levels of fiduciary duty as a seller who is a client. These same principles should be adhered to, even in the case of a buyer who is a customer and not a client. State Real Estate Commission Rules speaks to the delivery of offers with no reference to client-agent relationship.

This is an extremely simple yet very important risk reduction technique. Every agent of this Company should consider this of prime importance. The obvious danger in not taking this issue seriously. The offeror can revoke or withdraw his or her offer at any time prior to a valid acceptance. The Company does not want to be in a position of defending an action where an offer was withdrawn before a seller was contacted or diligent efforts to contact the seller were not made.

These issues are common, daily events that the agent should learn to handle with skill and ease. The agent's ability to understand and deal with these issues will act as a significant risk reduction method and contribute to an agent's successful practice of the real estate business.

Loan Modification

The Company does not provide loan modification services to our clients. **You may not engage in loan modification for others without the express written consent of the Company.**

Property Management

The Company does provide property management services to our clients in specific States throughout the nation. **You may not engage in the management of property for others without the express written consent of the Company.** Training on Property Management must be completed with the Broker or Manager prior to managing your first property.

Loan Origination

The Company does provide loan origination services to our clients. **You may not engage in loan origination for others without the express written consent of the Company.**

Gifts

It is the policy of this Company that you may give gifts to your clients at closing and other times as an appreciation of their business, subject to the State laws against referral arrangements and fees.

Out-Of-State or Out-Of-Country Business

If you are requested by a client to handle the listing or sale of property in a State that the Company is not currently licensed or in a geographic market worldwide not served by the Company (outside United States), it is the policy of this Company that you refer that business to a broker in that area, or if permissible by State/Country law, to arrange a reciprocal agreement to cooperate in the sale or cooperate with that broker. See Exhibit A for the list of States that the Company is currently active and licensed and [Exhibit L for reciprocal agreement opportunities nationwide](#).

Referral Fees

The Real Estate Settlement Procedures Act (RESPA) generally prohibits a settlement provider (real estate agent, lender, title company, etc.) from giving or receiving cash or anything else of value for the referral of business or in expectation of the receipt of future business, pursuant to a pre-existing agreement. One exception is between real estate brokers (but not mortgage brokers) for the referral of clients, in which case referral fees may be paid or received. RESPA generally applies to transactions involving properties with one-to-four residential units with a federally-related mortgage loan (this includes most institutional loans). **You may not, personally or on behalf of the Company, offer to give to, or accept from, a non-real estate broker or agent a fee or anything of value for the referral of a client to you pursuant to a pre-existing agreement to do so.** If you have any questions as to whether to accept such a fee or anything of value, contact your Manager.

Power Of Attorney

It is Company policy that you never act as an attorney-in-fact under a power of attorney for your clients. If your clients will not be available to sign documents related to a transaction, they should secure someone, other than you or someone connected with the Company, to act on their behalf. You should have the escrow company review any power of attorney to determine its sufficiency for its purposes for the attorney-in-fact to execute necessary documents.

Cooperation and Compensation Policy

Cooperation and Compensation of Buyer's Agents: The Company believes it is in the best interests of the Company's seller-clients to give property the widest possible exposure of possible showings. Since buyer's agents conduct showings in the market, the Company cooperates and compensates buyer's agents typically at the same level of cooperative compensation. Special circumstances exist where compensation to buyer's agents may be higher or lower than Company compensation.

In all cases, before entering into a listing agreement, the listing agent is ethically obligated to disclose to the seller:

- The company's policy regarding cooperation and the amounts of any compensation that will be offered to buyer's agents;
- If the company cooperates with buyer's agents, the disclosure must also state that buyer's agents, even if compensated by the Company, will represent the buyer, not the seller; and
- Any potential for the Company to be a dual agent, if Company policy allows dual agency.

The Company maintains a strong policy that no unlicensed person will be paid for any real estate activity requiring a license. The real estate licensing law makes it clear that an unlicensed person may not be paid for acts which require a

real estate license. An exception to this policy is for referral or finder's fees paid to buyers and sellers in their own transactions, which is permissible under the real estate licensing law.

Telephone Solicitation Policy

It is the policy of the Company to comply with federal and state telemarketing rules regulating the telephone solicitation activities of its agents and employees. A "telephone solicitation" is a telephone call or message to any residential telephone subscriber "...for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services..." Calls attempting to obtain a listing from a FSBO seller or a seller whose listing with another company has expired are covered under this definition. All agents and employees of the Company are required to comply with this policy.

1. Before Soliciting Business by Telephone

The Company has registered for the Federal "Do Not Call" Registry and has two basic options for accessing numbers listed in the Registry: one, the Company downloads the list of registered numbers for the area codes selected from the Registry and uploads this list to dialing software the Associates use; or two, checking the numbers manually via an online phone number search of the Registry. The second option is probably the most useful for Company Associates that engages in limited cold calling.

a. Federal "Do Not Call" Registry

You must first obtain access to the current Federal "Do Not Call" Registry. The Registry is available online at <https://telemarketing.donotcall.gov>. The office manager or broker-in-charge will supply you with the necessary ID and password. You may look up telephone numbers via an interactive phone number search. You will be able to check up to ten numbers at a time within the area code(s) that have been selected by the Company. The search will come back "Registered" or "Not Registered".

If a number comes back "Registered," you may NOT call the number UNLESS:

- One of the exceptions set forth in Section 2 below applies AND
- The number does not appear on the Company "Do Not Call" list (see 1.B. below).
- If a number comes back "Not Registered", you may call the number UNLESS it appears on the Company "Do Not Call" list (see 1.b. below).

b. Company "Do Not Call" List

The Company is required to maintain its own list of persons who have specifically requested that the Company or its sales associates not call them. Ask the office manager or broker-in-charge for a current copy of the list. You may NOT under any circumstances call any number appearing on the Company list, even if one of the exceptions set forth in Section 2 below applies.

- c. Document the date and time that you checked the Lists to help prove your attempt to comply with telemarketing laws.
- d. You may only use the Lists for the purposes set forth in this policy, and you may not provide access to or copies of any of the Lists to anybody outside the Company.

Agents and employees of the Company should always be working from an up-to-date version of the Company list, which may not be more than 30 days old. The names of persons who have requested that the Company or its sales associates not call them must be added to the Company DNC List as soon as possible and in no event more than 30 days from the date of the request. A do-not-call request must be honored for five years from the date the request is made.

2. Exceptions

You may place a telephone solicitation to a number listed on the Federal "Do Not Call" Registry in certain instances UNLESS the number also appears on the Company "Do Not Call" list. The exceptions are as follows:

- You may call a FSBO seller on behalf of a buyer, customer, or client who has interest in the property.

- You may NOT call a FSBO seller in an attempt to obtain a listing or to otherwise attempt to “sell” your services as a real estate professional.
- You may call persons with whom you have a “personal relationship”, defined as a family member, friend, or acquaintance.
- You may call a former client of the Company for up to eighteen months after the end of the agency relationship.
- You may NOT call a seller whose listing with another company has expired in an attempt to obtain the listing. You may call the seller on behalf of a buyer, customer, or client who has interest in the property.
- You may call a person who has made an inquiry to the Company about property or real estate services.
- For calls to referrals, see section 5 below
- You may call a person who has given express written permission for you and/or the Company agents to solicit them by telephone. The written permission must include the telephone number to which a call may be placed.
- This includes someone who has given permission at a Company open house using the Company’s approved registration form.

(NOTE: To ensure that an open house visitor has given express written permission to receive a follow-up telephone solicitation, it is recommended that the sign-up sheet contain some kind of notice, such as a box next to each line allowing the visitor to check “yes” if they consent to receive of a follow-up call.)

3. Conducting Telephone Solicitations

- No telephone solicitations may be made before 8:00 a.m. or after 9:00 p.m.
- If, during a telephone solicitation to a consumer whose name does not appear on any of the Lists, the consumer states that he/she does not want to continue the call, advise the consumer that you will respect his/her wishes, thank him/her and hang up. Please immediately report the name and telephone number of the consumer to the office manager or broker-in-charge for placement of that person’s name and telephone number on the Company’s “Do Not Call” list.
- During the call, you must provide the consumer with your name, the Company name, and the telephone number or address where you and the Company may be contacted.
- The telephone used to make a telephone solicitation must transmit your caller ID information in areas where this is technologically possible. Check with the office manager or broker-in-charge regarding Company telephones or with your telephone company regarding any other telephone you may use.
- You may not block the transmission of your caller ID information.
- Do not use a pre-recorded message or auto dialer.
- Do not disconnect an unanswered call prior to at least 15 seconds or four rings.
- The rules cover all types of telephones (cell, etc.) and apply whether you are calling from inside or outside the Company office.

4. Returning a Call to a Consumer Whose Name Appear on the Lists

- You may return a call to a consumer whose name appears on any of the Lists when the return call is made in response to an express request from the consumer.
- A telephone message instructing you to call a consumer is such a request and may be answered.
- When a consumer calls and asks to speak with someone who is not available, the person taking the message should specifically ask the caller if they would like a return call. This should be conspicuously noted on the message.
- A request for a return call left on a voicemail message or answering machine should be documented by the recipient as evidence of the message.

5. Referrals

- If you receive a referral of possible business from a third party, such as a relocation company or another real estate agent, you must check the Lists before you call the prospect.
- If the prospect’s phone number is not on any of the Lists, you may call the prospect.
- If the prospect’s name is on the Company Do Not Call list, you may not call the prospect under any circumstances.
- If the prospect’s phone number is on the Federal Do Not Call List, you may not call the prospect UNLESS the referring party has provided a signed statement from the prospect agreeing that you may contact the prospect, including the telephone number to which the call may be placed.

6. Scripts

Any telemarketing script needs to be reviewed by the Manager and Broker prior to using the script.

SECTION 8: PERSONAL ASSISTANTS

Personal Assistants

You may find hiring a personal assistant to be helpful to your business. In hiring a personal assistant, you become an employer and have employer responsibility in that relationship. Interviewing, hiring, and contracting with the assistant will be solely up to you. You agree that any assistant you hire will be required to abide by this Policy Manual. If your assistant engages in any conduct that would violate this Policy Manual, or in any way acts in a manner to bring disrepute or potential liability to the Company, the Company reserves the right to demand that you terminate the assistant or otherwise prohibit him/her from entering the office for any reason, at any time.

Any compensation due the assistant shall be arranged between you and your assistant and will be your sole responsibility.

A growing trend in the real estate business is for high producing agents to use specific persons as their assistants and/or to associate with other licensees as a “team.” The Company encourages the appropriate use of personal assistants and teams as a tool for high earning agents to be even more productive. Several caveats are in order from the perspective of the company. Many of the distinctions are based on whether a licensed or unlicensed assistant and/or team members are used. The Company, policies on the use of personal assistants and/or teams is as follows:

1. **Employee V. Independent Contractor:** Whether licensed or unlicensed, the agent must decide whether to associate with the personal assistant or team member (hereafter "PA/TM") as an employee or independent contractor.

Serious considerations exist including the right of control, method of payment, and direction of the work if the agent chooses to have an independent contractor PA/TM. The Company strongly urges the agent to consult with her/his tax consultant to determine the proper procedures in making this choice. If independent contractor status is chosen, all of the issues mentioned above regarding withholdings, unemployment taxes, worker's compensation, and automobile insurance should be clear in the arrangement between the agent and the PA/TM.

If employee status is chosen, the agent should be aware that all employment taxes, withholding reports, unemployment tax reports, workers' compensation insurance, reports, and W2 forms are the responsibility of the agent. The Company is not a party to the arrangement between the agent and PA/TM and will not be responsible for any employment activities of the agent.

2. **Unlicensed Personal Assistants/Team Members:** The policy of the Company is that personal assistants or team members who do not have active licenses WILL NOT UNDER ANY CIRCUMSTANCES engage in the practice of real estate brokerage as defined in the real estate licensing law. The agent associating with the PA/TM is strictly responsible for maintaining this policy. If an unlicensed PA/TM performs any acts which constitute the practice of real estate brokerage, the agent puts her/himself in jeopardy of disassociation. The California Department of Real Estate has taken a position as to the types of things unlicensed office personnel may and may not do. Please review the published document "Guidelines For Unlicensed Assistants" to determine these items. The policy of the Company is that unlicensed personal assistants fall into the same category as unlicensed office personnel.

The agent is further advised that unlicensed persons may not be paid any fees or commissions for any work done. The company will not split commissions with an unlicensed person.

3. **Licensed Personal Assistants/Team Members:** A PA/TM with an active license can engage in the practice of real estate brokerage. It is the policy of the Company that unless written permission to the contrary is given by the Company, the license of the PA/TM must be held by the Company and any payments due a PA/TM for engaging in real estate brokerage must come from the company. Please review the section of "Functions of Unlicensed Office Personnel" to determine the difference between "clerical" functions and "real estate" functions. The easiest and cleanest way to accomplish this end is for the agent to split commissions as they are earned with the licensed PA/TM in whatever proportion the two parties negotiate. The amount of the split between the PA/TM and the agent should be specific and regular and should not vary per transaction. The company requires written agreements between the company and both agents to delineate the relationship and also requires the PA/TM and agent to enter into a written agreement defining the relationship and specifying the compensation arrangement.

Unlicensed and Licensed Assistants

The general policy is that unlicensed office personnel (secretaries, assistants, personal assistants, receptionists, accounting personnel, etc.) are to be used in a support role to the main real estate business function of the Company. **UNDER NO CIRCUMSTANCES will you authorize or allow unlicensed office personnel to engage in acts for which a real estate broker or salesperson's license is required.**

You must immediately disclose to the Company if your personal assistant has a real estate license. The personal assistant may not engage in any activity which requires a real estate license without: (1) the prior written consent of the Company; (2) entering into a written Broker/Associate-Licensee/Assistant agreement or Independent Contractor Agreement detailing the personal assistant's relationship with the Company; and (3) submission of the personal assistant's real estate license to the Company.

Licensed personal assistants are not subject to, nor paid in accordance with, the Company's Compensation schedule. Licensed personal assistants are compensated solely through your contractual arrangement with them. The Company shall never be obligated to pay your licensed personal assistant except as may be paid to such assistant out of funds in escrow, or from escrow funds actually received by the Company, and for which you have given specific instructions to the Company to pay such assistant.

Unlicensed Office Personnel

The policy of the Company, regarding the functions and use of unlicensed office personnel, follows the State Real Estate Commission Rules. The general policy is that unlicensed office personnel (secretaries, assistants, personal assistants, receptionists, accounting personnel, etc.) are to be used in a support role to the main real estate business function of the company. **UNDER NO CIRCUMSTANCES will unlicensed office personnel be allowed to engage in acts for which a real estate broker or salesman's license is required.**

While not comprehensive, the following list does provide guidance in interpreting the real estate licensing law and Commission rules. **Please reference "Guidelines For Unlicensed Assistants" or a similar named document produced by several of the State Real Estate Commissions and local or State Board of REALTORS.**

A broker's unlicensed, salaried employee **MAY**:

- Receive and forward phone calls to his or her employing broker or another licensee in the firm.
- Submit listings and changes to a multiple listing service, but only if the listings or changes are based upon data compiled and provided by a licensed broker or salesman.
- Assist a broker or salesman in assembling documents for closing.
- Secure copies of public records from the register of deeds, clerk of court, or tax office.
- Have keys made for the firm's listings.

- Record and deposit earnest money, security deposits, and other trust monies under the close supervision of the office broker-in-charge.
- Type offers, contracts, and leases from drafts prepared by a broker or salesman with the firm.
- Check license renewal and personnel files for the brokers and salesmen with the firm.
- Compute commission checks and act as bookkeeper for the firm's operating bank accounts.
- Place "for sale" or "for rent" signs on property at the direction of a broker or salesman with the firm.
- Order and supervise routine and minor repairs at the direction of a broker or salesman with the firm.
- Act as a courier to deliver or pick up documents, keys, etc.
- Make routine phone calls to coordinate or confirm appointments between brokers, salesmen, and other persons.
- Schedule appointments for showing property for sale or lease.
- Show rental properties managed by the broker to prospective tenants.
- Complete and execute preprinted form leases for rental property managed by the broker.

An unlicensed employee **MAY NOT:**

- Show properties for sale to prospective purchasers.
- Solicit listings from prospective clients.
- Answer questions concerning properties listed with the firm, except to confirm that the property is listed, to identify the listing broker or salesman, and to provide such information as would normally appear in a simple, classified newspaper advertisement (e.g., location, price, number of rooms).
- Prepare promotional material or advertising of properties for sale or lease without the office broker-in-charge review and approval.
- Discuss or explain listings, management agreements, offers, contracts, or other similar matters with persons outside the firm.
- Negotiate the amount of rent, security deposit, or other lease provisions in connection with rental properties managed by the firm.

Payment/Tax Reporting

You are responsible for determining whether your relationship with the personal assistant is that of employee/employer or independent contractor, and for proper withholding and reporting of taxes. The Company strongly recommends that these matters shall be discussed with an attorney and/or accountant before any decisions are made.

Salesperson – Personal Assistant Contract

You are required to have a written agreement with your personal assistant that expresses the nature of the relationship and each party's duties and responsibilities. The Company shall be given a copy of the agreement for its approval and records prior to its effective date.

Supervisions

You are responsible for supervising all activities of your personal assistant, whether or not such activity requires a real estate license. When requested by your Manager, you shall report on the performance of the personal assistant.

Indemnity

Except as may be covered by the Company's Errors & Omissions policy of insurance, you agree to indemnify, defend, and hold the Company harmless from all claims, demands, liabilities, judgments, arbitration awards, and attorney fees for which the Company is subjected to by reason of any action taken or omitted by your personal assistant.

Workers Compensation

No Workers Compensation insurance is provided by the Company for unlicensed assistants hired by agents. Agents who hire unlicensed assistants shall be responsible for providing Workers Compensation insurance for those assistants where required. Agents should discuss this situation with a Workers Compensation insurance representative and/or check the State.

SECTION 9: ENVIRONMENTAL HAZARDS

Agents Visual Inspection and Material Facts

Company policy is for Associates to educate themselves and learn about all of the material facts and potential environmental hazards that could possibly affect a client or transaction and conduct a thorough Agent Visual Inspection and disclose the finding to all parties involved.

The role of the real estate agent has changed. In the past it was truly a "buyers beware" marketplace. If a buyer had environmental concerns, the real estate industry did not address them. If the buyer wanted to inspect the property, the buyer was responsible if they failed to discover a material defect. The old "buyer beware" doctrine shielded sellers and licensees from liability for any defective property condition. Today, agents are responsible to visually inspect the property and assist buyers and sellers in discovering and disclosing **ALL material facts that the investigation reveals.**

When an agent does not follow this policy cases may be brought against the licensee under the theory of fraud or negligence.

Fraud: Lawsuits against sellers and real estate agents because of fraud are based either upon the premise that liability should result from an **affirmative or intentional misrepresentation** or from an **omission or nondisclosure of a fact.**

Therefore, any lawsuit based upon a fraud theory must contain all of the following elements:

- Nondisclosure, by a broker, of facts involving environmental hazards that materially affect the value or desirability of the property.
- The broker had knowledge of the facts involving environmental hazards and the facts were beyond the reach of the buyer.
- The broker's intent was to induce action by the buyer.
- Inducement of the buyer to act by reason of the nondisclosure.

Negligence

To not conduct a reasonably competent and diligent visual inspection of the property being offered for sale would be negligence. A licensee can be held liable for not exercising ordinary care and skill in the conduct of their real estate practice.

Therefore, it is Company policy that every agent:

1. **Must NEVER intentionally misrepresent or omit (not disclose) any material fact.**

2. Must ALWAYS conduct a reasonably competent and diligent visual inspection of any property being offered for sale.

California Civil Code Section 2079.7 was added to the general Code Section 2079 in 1989. As Of January 1, 1991, this section provides that **if a consumer information booklet is delivered to a buyer, a seller or broker is not required to provide additional information concerning environmental hazards.** The statute deems the pamphlet to provide adequate information concerning the most common environmental hazards that may affect residential property.

However, **this code section does not add or take away from the duty of the licensee** to conduct the required visual inspections and to disclose to the buyer the results of that inspection. This section is an attempt to limit the licensee's obligation to a reasonably conducted visual inspection and subsequent disclosure. It is recommended that the environmental hazards pamphlet also be given to inform the buyer about common hazards. Presumably, once the licensee has taken these actions, the burden is on the buyer to act upon the information provided by the licensee.

Environmental Issues

In recent years, many individuals nationwide have spent the majority of their 24-hour day indoors. The U.S. Environmental Protection Agency (EPA) ranked indoor air pollution fourth in cancer risk among the 13 top environmental problems analyzed. Radon ranked number one.

Environmental hazards common to residential properties include: asbestos, lead, radon, molds and fungi, volatile organic compounds (VOCs), potable water supply contaminants, drug houses/ clandestine drug labs and underground storage tanks. Each of these is discussed below with the Company policies.

Asbestos

The best approach is not to disturb asbestos containing material unless it is necessary to do so. Removal of the material should be considered as the last alternative. Trained, insured, and certified asbestos abatement professional contractors should only perform asbestos removal.

The three main diseases associated with exposure to inhaled asbestos fibers are:

- **Lung Cancer:** Humans exposed to asbestos are calculated to be at five times greater risk of contracting lung cancer than the general population. If a person smokes, the risk increases by 50 times over that of the general population.
- **Asbestosis:** Asbestosis is the scarring of the lung tissue that leads to shortness of breath. In some cases, the tissue is so severely scarred that the person cannot get enough oxygen to walk and perform normal daily activities. This condition usually occurs in those who were exposed to prolonged high levels of asbestos.
- **Mesothelioma:** Mesothelioma is the cancer of the lining of the abdominal cavity or chest. Minimal amounts of exposure to asbestos can lead to this condition. Smoking can exacerbate this condition and increase the risk dramatically.

Any products or materials in the following list which are found in a house built prior to 1978 should be viewed as suspect:

- Appliances (used as insulation blankets in stoves and oven doors and walls and in cover gaskets.)
- Asbestos containing parts have been found in toasters, popcorn makers, broilers, slow cookers, dishwashers, refrigerators, ranges, ovens, clothes dryers, electric blankets and hair dryers.
- Ceiling material (textured acoustical "popcorn" ceilings and some ceiling tiles and lay-in panels).
- Acoustical and decorative plasters
- Textured paint coatings
- Wallboard patching, taping, and spackling compounds.
- Caulking/putties
- Vinyl floor tiles, vinyl sheet flooring, and under sheeting/tile mastics.
- Asphalt floor tile

- Flooring backing
- Construction mastic (used for carpet and ceiling tile, etc.)
- Furnace/HVAC systems (used as an insulator and as duct insulation and tape at duct connections.)
- Ductwork flexible fabric connections
- Pipes (used as an insulator blankets on hot water and steam pipes).
- Roofing felt
- Roofing shingles
- Cement siding
- Insulation in houses built between 1930 and 1950
- Oil and coal furnaces and door gaskets
- Electrical wiring insulation (on very early electrical wires used in knob and tube applications)
- Cement sheets on walls and floors around wood burning stoves and fireplaces
- Cement pipe

Company Policy for Licensees regarding Asbestos:

The following policies should be followed by licensed Associates dealing in residential properties of one to four units with respect to the environmental hazard of asbestos:

All houses built prior to 1978 will probably contain a number of asbestos containing materials. The licensee should conduct a reasonable visual inspection of the property and identify any component that may be a potential source of asbestos. The licensee should, as a guide to identifying potential asbestos containing materials or components, refer to this list of products or house components listed in this section.

- The licensee should disclose to the buyer the results of the visual inspection and inform the buyer that tests may be performed to determine the actual presence or absence of asbestos in the suspect materials or house components.
- Deliver to the buyer of” The California Environmental Hazards: Guide for Homeowners and Buyers” (Code Section 2079.7 pamphlet).
- Advise the home buyer to evaluate the amount of asbestos found, the physical condition of the asbestos containing materials, and the potential abatement costs. From the buyer’s standpoint, the mere presence of asbestos should not be the reason for not proceeding with the home purchase. Only when the total abatement program and the cost to abate are analyzed in terms of the overall transaction, should the decision to purchase or not to purchase be made. The licensee should not recommend to the buyer the actual course of actions that should be followed. However, the licensee may be able to help the buyer evaluate the asbestos issue by keeping in mind the following evaluation points:
 - a. Asbestos containing materials found on the outside of the house (such as siding and roofing) do not present a real health hazard.
 - b. Asbestos containing materials found in the inside of the house should be evaluated in terms of location, condition, quantity, and friability.
 - c. If the material containing asbestos is in good condition, there should be little concern.
 - d. If the material containing asbestos is in a deteriorated state and is obviously friable, then the cost to repair or remove the material should be considered.
 - e. If there are plans to remodel the house, an evaluation of the potential materials containing asbestos should be conducted along with a consideration of removal or removal alternatives.
 - f. Asbestos containing materials that becomes friable should be deemed a serious potential health hazard.
 - g. The costs of removal or alternative abatement methods should be considered. If the costs are found too high, refusal to purchase may be the only solution for some home buyers. The home buyer might also consider asking the seller to reduce the price of the property to compensate for the costs of asbestos abatement.
- If removal of asbestos containing materials or disturbing of asbestos containing materials is to occur, the homeowner is advised to:
 - a. Hire a licensed asbestos abatement contractor; or
 - b. Follow the EPA and DEQ guidelines for handling asbestos containing materials and the disposal of the materials if

an election is made to abate the problem without using licensed professionals. If this election is made, the homeowner should be reminded that any exposure to asbestos is considered a health risk. This risk then must be knowingly assumed.

Lead

Lead is found in the dirt around houses, especially property near major roads due to lead particles from auto emissions drifting onto the property. The lead is then tracked into the house. Industrial and manufacturing facilities such as radiator repair shops, brass or bronze foundries, battery manufacturers, steel mills, and bridge construction areas are examples of environments with a high potential for lead exposure.

Lead-Based Paint Problems:

Lead has been used in paint for centuries. It increases durability and has a color depth quality. In the United States it is estimated that:

- Almost all houses built before 1940 have lead in the paint
- Seventy percent (70%) of houses built between 1940 and 1959 have lead in the paint
- Twenty percent (20%) of houses built between 1960 and 1978 have lead in the paint After 1978 the amount of lead in paint was limited to 600 parts per million and therefore is not deemed significant

Company Policy for Licensees regarding Lead:

In 1994, the United States Environmental Protection Agency (EPA) and the United States Department of Housing and Urban Development (HUD) drafted new federal regulations on the disclosure of lead-based paint hazards in residential properties to comply with the Residential Lead-based Paint Hazard Reduction Act of 1992. These new rules were implemented in 1996 in cooperation with the National Association of REALTORS®.

The 1996 rules provide that sellers or their real estate broker/agent must do all of the following:

- Provide to buyers and tenants a federally approved lead based paint hazard information pamphlet entitled "Protect Your Family from Lead in Your Home."
- Disclose the presence of any lead-based paint or related hazard in any house built prior to 1978.
- Provide buyers and tenants copies of any available reports dealing with the presence of lead-based paint or lead-based hazards.
- Provide buyers (but not tenants) a 10 day or mutually agreeable period for a lead paint assessment or inspection before a purchaser becomes obligated under the contract to purchase. The buyer may waive this right to test for lead.
- The lead disclosure rules apply to both the purchase of residential property and to the renting of residential property built prior to 1978, with the following exceptions:
 - a. Property sold at foreclosure.
 - b. Rental property that is certified "lead-based paint free" by an inspector who is certified under a federal program or federally authorized state certification program.
 - c. Property leased for 100 days or less with no lease renewal or extension.
 - d. A renewal of existing leases, if disclosure was made at the time of the initial lease. However, disclosure must be made when renewing leases that were in effect on September 6, 1996.

- e. Units with no bedrooms or no separation between sleeping and living areas (e.g., studio apartments, dormitories, individual rental rooms in a residential dwelling).
- f. Housing for the elderly or disabled if children under the age of six are not expected to live there.

The signed documentation demonstrating that the purchaser or lessee received the required disclosure information must be retained by the seller, the landlord, or agent for a period of three years from the date of sale or lease. The burden of compliance with the lead disclosure law is on the seller and/or lessor. If a licensed real estate agent is involved in the transaction, it is the licensee's responsibility to advise the seller/lessor of the lead disclosure obligation. This responsibility extends to all agents involved in the transaction, except for a buyer's agent who is actually paid by the buyer. Records relating to the lead-based paint disclosure and executed disclosure documents must be kept for a minimum of three years for completed transactions.

Compliance with the Lead-Based Paint Disclosure Law is mandatory and civil penalties can range up to \$10,000 for each violation. In addition, those who intentionally either ignore or violate the law can face up to one year imprisonment and up to a \$10,000 fine, or both. The injured party (buyer or tenant) is also able to pursue relief under the federal statute for failure to disclose a hazardous condition, which by law is a material fact. The injured party may receive up to three times the damages sustained. The damages may include medical costs related to lead-based paint poisoning and costs associated with correcting the lead-based paint problem in the structure.

The buyer's agent should deliver to the buyer the "Protect Your Family from Lead in Your Home " pamphlet early on in the licensee/buyer relationship, and/or the local State pamphlet (varies per State) such as, "Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants," either or both of which fulfill federal requirements.

Radon

Radon is an odorless, colorless, tasteless gas that is naturally present in our atmosphere. This radioactive gas is a byproduct of disintegrating rock in the ground. As the rock splits and crumbles, it releases radon gas into the air. The half-life of radon is 3.8 days. The radon gas itself is not the health hazard. The hazard is a result of the radioactive gas charging the minute dust particles in the air with gamma radiation. These radioactive particles are then inhaled into the human lung. In the lungs, these particles may adhere to the lung tissue, emit energy that can kill or damage sensitive cells and damage DNA molecules. The damaged lung tissue then becomes a condition conducive to developing lung cancer. The actual potential for developing lung cancer is a function of how much radon a human is exposed to and for how long. If a person is a smoker and is exposed to elevated levels of radon, the risk of contracting lung cancer is even greater.

Any house can have a radon problem. New houses and older houses, well-sealed and drafty houses, and houses with or without basements may all be subject to elevated radon levels. The EPA estimates that nearly 1 out of 15 houses in the United States have elevated radon levels. These elevated radon levels have been found in all 50 states.

Company policy for Licensees regarding Radon

The following policies should be followed by real estate agents dealing in residential properties of one to- four units:

- **All houses have the potential to have elevated levels of radon.** The licensee should conduct a reasonable visual inspection of the property and identify any visible house radon mitigation devices or systems. The listing agent should also determine if the seller has any knowledge of prior radon test levels relating to the house. If no prior test had been conducted, it might be a good idea for the listing agent to encourage the seller to obtain one. A successful transaction may often involve timely and reliable testing in order for mitigating issues to be dealt with in a timely manner.
- **The seller and licensee must disclose to the potential buyer any knowledge regarding radon levels in the structure and if testing has been performed in the past.** If a prior test for radon has been conducted, the buyer should obtain the test results, determine who conducted the test, what areas of the house were tested, and what structural changes may have been made to the house after the test that might impact radon levels within the structure.

All of these issues should be evaluated to determine if a new test might be necessary. The licensee should also disclose the result of the visual inspection of the property with regard to visible in-place radon mitigation devices or systems.

- The buyer's agent should deliver to the buyer the California "Environmental Hazards: Guide for Homeowners and Buyers" (Code Section 2079.7 pamphlet).
- **The buyer's agent should advise clients regarding the health risks of elevated levels of radon, as well as explain the screening procedures available.** The client should determine if a radon screening should be conducted. The agent should also direct the client to where informational pamphlets can be obtained and to state agencies where additional information can be obtained for radon health risk evaluation.
- **If radon-screening levels exceed 4.0 pCi/L, the buyer's agent should advise the buyer to evaluate radon test reading levels and the potential abatement costs.** From the buyer's standpoint, the mere presence of radon should not be the reason for not proceeding with the home purchase. Only when the total abatement program and the cost to abate are analyzed in terms of the overall transaction should the decision to purchase or not to purchase be made. The licensee should not recommend to the buyer the actual course of action that should be followed. The licensee may, however, be able to help the buyer evaluate the radon hazard found to exist in a specific property and the steps that will be necessary to lower radon levels to an acceptable level.

Molds and Fungi

Molds that have a food source and adequate moisture will grow in an indoor environment, even in arid climates. Evidence of mold can be seen in the form of discoloration ranging from white-to-orange and from green-to-brown-to-black growing on various materials found inside and outside the house. Mold needs food and moisture sources to grow. The most common indoor food sources for molds are:

- Wood
- Paper
- Surface coatings, such as paint
- Soft furnishings, such as furniture, carpet, draperies
- Soil in potted plants
- Dust
- Shed skin scales
- Cooked and raw foods

In order to grow and survive, all molds require moisture. Hydrophilic types of fungi need conditions close to saturation, or at least very damp conditions. The Xerophilic types of fungi will grow in drier conditions, requiring only minimal moisture. The most common indoor sources of moisture for molds to grow are:

- Damp basements
- Damp crawl spaces (usually due to inadequate moisture barriers)
- Improperly installed or maintained rain drain systems
- Flooding
- Backed-up sewers
- Failed sump pumps
- Leaky roofs
- Humidifiers
- Mud or ice dams
- Constant plumbing leaks
- House plants (if watered too frequently)
- Cooking steam
- Shower/bath steam and leaks
- Indoor clothes drying lines
- Clothes dryers that are improperly vented

Types of Exposure

Molds and fungi are found everywhere, both outdoors and indoors. Much of the mold found indoors comes from outdoor sources. Therefore, everyone is exposed to some mold on a daily basis; usually without ill health effects. Ill health effects from fungi usually depend on the dose and duration of exposure to the mold source. The methods of exposure are inhalation, exposure to skin, and ingestion.

- **Inhalation:** Since mold spores can be airborne, exposure can occur through the lungs. Mold spores get into a house through windows, doors, cracks, and crevices. They also can be carried into a house from the outdoors on shoes and clothing, or on numerous other objects that may be brought home.
- **Skin:** Some humans experience skin irritation if their skin touches a moldy surface, noted by localized redness or swelling.
- **Ingestion:** A number of toxic fungal species can be found on spoiled food and agricultural products. These toxins can cause serious food poisoning. In some cases, severe liver damage or death can result.

Health Problems

- **Infections:** May be either localized internal or external infections. These infections are treated with drugs that target the specific area of the body where the infection resides. Often, external infections will lead to an inflammatory condition of the skin characterized by redness, itching, and oozing vesicular lesions that become scaly, crusted, or hardened.
- **Respiratory Problems:** Includes difficulties in breathing, a dry hacking cough, chest tightness, shortness of breath, and wheezing. Existing conditions, such as those relating to hay fever and asthma, can be severely aggravated by fungi exposure. Exposure can also lead to hypersensitivity pneumonitis, which is a form of lung disease characterized by inflammation of the lung tissue.
- **Nasal Passage Problems:** Includes nasal and sinus congestion and nose and throat irritation. In some cases, nosebleeds may occur.
- **Eye Problems:** Watery, burning, or reddened eyes. In some cases, vision may become blurred and the eyes become extremely light sensitive.
- **Central Nervous System Problems:** Memory and verbal problems, vertigo, dizziness, depression, malaise, mood changes, or constant headaches.
- **Fever**
- **Possible Death:** In some extreme cases of exposure to extremely toxic fungi and mycotoxins, death can result. Death, however, is usually due to the toxin attacking a vital organ such as the liver or heart.

Detecting Mold

The most obvious way to detect mold is to visually inspect the structure for visible mold growth. Special attention should be paid to basements and lower rooms, crawl space areas, and rooms where there has been water or flooding damage. Window frames should be checked and carpets in areas where dampness is suspected should be pulled back and examined. Since certain types of construction materials provide an excellent host for mold growth, ceiling tiles or any current or formerly damp material made of fibrous cellulose (such as wallpaper, books, papers, shredded newspaper, insulation, etc.) should be examined. Accessible areas of heating, cooling, and ventilation systems should also be checked for possible mold growth. As a rule, if you can see or smell mold, there is a problem.

Company Policy for Licensees regarding Mold and Fungi

The following policies should be followed by residential real estate agents in dealing with residential properties of one-to-four-units:

- **All houses have the potential for a mold and fungi problem;** climate is not a factor. The licensee should conduct a reasonable visual inspection of the property and identify any visible discoloration on surfaces that may be due to mold or fungi growth. **The agent should also be sensitive to musty or damp smells** within the structure. The listing agent should also determine if the seller has any knowledge of prior mold or fungi problems.
- **The seller and licensee must disclose to the potential buyer any knowledge regarding current or past mold and fungi problems.** The Seller must make the disclosures in the seller's disclosures statements. If the Seller fails to make such disclosures and the agent has knowledge because of his visual inspection of the property, the agent must disclose to the buyer the results of the inspection.
- **The buyer's agent should advise clients regarding the health risks of molds and fungi, if they are found present in the structure.** The agent should also direct the client to pamphlets and state agencies where additional information can be obtained for a mold and fungi health risk evaluation.
- **If mold or fungi is found to exist on the property, the agent should discuss potential mitigation procedures and options with the buyer.** The buyer's agent should advise the buyer to evaluate the mold and fungi problem identified in the house and the potential abatement costs. While the licensee should not recommend to the buyer the actual course of action that should be followed, the licensee may be able to help the buyer evaluate the mold and fungi hazard found to exist in a specific property and direct the buyer to information that would be helpful for abatement.

Volatile Organic Compounds

Volatile Organic Compounds (VOCs) are a diverse group of organic compounds that evaporate at room temperature. A typical indoor environment may contain as many as 100 different compounds, including formaldehyde. Other sources of VOCs may be found in household pesticides, cleaning agents, cosmetics, and dry-cleaned clothes. A common characteristic of all VOCs is that at room temperature, gases are emitted into the atmosphere from their solid or liquid state. These compounds can be emitted as a gas for long or short periods of time.

Indoor levels of VOCs have been determined by the Environmental Protection Agency to exceed outdoor levels by as much as 10 times. Exposure to VOCs may result in both acute and chronic health effects. Since the existing knowledge base of the toxicological effects of VOCs and their mixtures is still incomplete, exposure to them should be minimized. This section will focus on two of the more common VOCs - formaldehyde and pesticides.

Formaldehyde

Formaldehyde is a colorless organic gas compound that has a strongly pronounced pungent odor. It is also an inexpensive preservative and bonding agent commonly used in house products, such as pressed wood, house insulation, glues, and finish flooring material. Because of its bonding characteristics, house construction trades have used formaldehyde for years. Although the off-gases produced by the products were obnoxious, formaldehyde was thought to be harmless. However, in 1980, laboratory findings showed that exposure to formaldehyde could cause nasal cancer in rats. Since that study, the issue of whether formaldehyde increases the risk of cancer has been a subject of debate in scientific and health communities. By 1987, the Environmental Protection Agency classified formaldehyde as a "probable" human carcinogen, under conditions of unusually high or prolonged exposure.

Regardless of whether formaldehyde is a definite carcinogen, it certainly is known to cause allergic reactions in humans. Some studies have demonstrated that 10-20% of the population is either allergic or hypersensitive to the substance. In some cases, exposure to formaldehyde can increase a person's sensitivity to other irritants or chemicals that were never a problem in the past, thereby making the individual allergic to almost anything. Formaldehyde itself is known to cause the following conditions

in humans, even at low levels of exposure:

- Skin allergies and rashes
- Shortness of breath and wheezing
- Chest tightness
- Coughing
- Eye irritation
- Runny nose
- Nose bleeds
- Throat irritations
- Vomiting and nausea
- Sneezing
- Headaches
- Dizziness
- Sleeping difficulties
- Fatigue

The following are signs of acute exposure to formaldehyde:

- Abdominal pain
- Anxiety and depression
- Coma
- Convulsions
- Diarrhea
- Bronchitis
- Pneumonia
- Pulmonary edema

The seriousness of the above allergic reactions depends on individual sensitivity to formaldehyde, the duration of exposure, and the concentration levels at the time of exposure. The threshold level giving rise to minor symptoms for most people is at indoor air formaldehyde levels at or above 0.1 ppm. Sensitive people experience reactions to formaldehyde below the 0.1 ppm level. The World Health Organization recommends that indoor exposure should not exceed 0.05 ppm.

Formaldehyde in the House

Formaldehyde is an industrial chemical used to make many household products and building materials. Many people originally thought that formaldehyde was mainly a problem for owners of mobile homes, as the generally air-tight conditions along with extensive use of building materials that contained formaldehyde had a recognizable "mobile home" off-gas odor.

It is now known that in many houses formaldehyde can be a source of health problems, even in small amounts. It may take years for the formaldehyde to finally dissipate after being used in building materials and products. In older houses, studies show that the average concentration levels are well below 0.1 ppm. In houses with significant amounts of new pressed wood products, levels can be greater than 0.3 ppm. The following are some of its uses in building materials:

- Glues and adhesives
- Urea-formaldehyde foam insulation (UFFI)
- Pressed wood products (e.g., plywood, particle board, paneling, and wood finishes)
- Carpet
- Laminated flooring materials
- Cabinet fiberboards
- Drapery materials
- Used as a preservative in some paints and coating products

Of the products and materials listed above, those made with **urea-formaldehyde resins as adhesives** are the ones of most concern.

When products are new, emissions of formaldehyde are at the highest levels. As products age, emissions of formaldehyde decrease. Because of this, newer homes will usually have more of a formaldehyde issue than older homes.

Pesticides

It is likely that termites, cockroaches, fleas, fungi, weeds, insects, or rodents will eventually affect most houses. To address these pest issues, pesticides, insecticides, herbicides, fungicides, rodenticides, and disinfectants may be used inside the house or around the property. Many of these chemicals may only be used by trained and licensed applicators. For the do-it-yourselfer, others are available in hardware and grocery stores.

If a pesticide is classified as a restricted-use compound, both federal and state regulations usually apply. These regulations require applicator licensing and record keeping requirements relating to the name of the chemical applied, date of application, name of applicator, location of application, and weather conditions at the time of application.

While some indoor pesticide contamination can result from homeowner use of indoor pesticides, 90% of all pesticide exposure occurs indoors, although most of the restricted-use compounds are used outside of the structure. This occurs because the majority of the indoor pesticide contamination is tracked indoors from contaminated soils or dust, or is due to improper pesticide storage procedures. This is particularly a problem in rural areas where pesticides may be carried by air currents from applications on the field next door or perhaps even miles away!

Another source of pesticide contamination inside a house may be from the potable water supply. If the potable water supply is from a public municipal water system, there should be little concern. Federal laws require constant monitoring of municipal water supplies for numerous chemicals and VOCs. However, private wells may be a source of pesticide contamination. This may be from misapplication or over-application of pesticides or from improper chemical selection. Pesticides can leach through the soil, into the groundwater, and eventually into a well.

If improperly applied or released into a structure, pesticides can lead to serious health problems. Even limited exposure can cause symptoms such as dizziness, difficulty sleeping, muscular weakness, nausea, breathing difficulties, headaches, flu like symptoms, and watery eyes. Long term exposure or exposure to higher doses of pesticides can lead to allergies, cancer, or damage to the kidneys, liver, respiratory and nervous systems.

Whether the homeowner or a licensed professional applicator is doing the application of a pesticide, the manufacturer's application, storage, and usage instructions should be followed to minimize exposure to pesticides.

Company Policy for Licensees regarding VOCs:

Real estate agents do not have the monitoring of sources of contamination from VOCs as a part of their job description. However, since indoor VOCs can have a major impact on the health of a house's occupants, licensees should keep the following points in mind:

- If the buyer is purchasing a new or recently remodeled house, higher than acceptable levels of formaldehyde will probably be present. The agent should discuss the health concerns that formaldehyde may present, direct the buyer to sources of further information relating to formaldehyde, and should discuss various methods to reduce formaldehyde levels.
- In rural areas or houses that may have well water as their water source, the real estate agent should be aware of potential contamination of the water supply by agricultural spraying and pest control applications. In these cases, the agent should recommend that the buyer obtain water quality testing. The real estate agent might also direct the buyer to information available through state or local agencies relating to the impact of agricultural spraying and pesticide applications on the inside of the house.

- Either prior to closing or after closing, many real estate transactions will require pest control applications. Often real estate agents are asked to recommend a pest control service. While the real estate agent might consult with the seller or buyer and caution them to carefully select a pest control applicator, the real estate agent is cautioned against recommending a specific pest control company. Some areas of inquiry the buyer may wish to pursue are the possible use of natural or petrochemical-free insecticides, discussion of possible allergies of house occupants, and documentation to verify proper insurance coverage of the company.

Potable Water Supply

It is estimated that 70% of the earth's surface is water, yet only 1% of that water is drinkable. While the United States may have one of the safest water supplies in the world, national or state statistics do not specifically indicate the quality and safety of the water coming out of the tap in a particular house. Water safety in a specific house depends on the condition of the water source from which it is drawn, the treatment it receives, and the condition of the potable water supply system in the house in which the water is consumed.

Domestic water is derived from public water supply systems or private wells. The U.S. Environmental Protection Agency and the State agencies regulate public water supply systems. Numerous other state and local agencies are also involved in the protection and delivery of safe drinking water throughout the nation.

No water is naturally pure. In nature, all water contains some impurities. As water flows in streams, sits in lakes, and filters through layers of soil and rock in the ground, it dissolves and absorbs the substances it touches. Some of these substances are harmless, but even naturally occurring minerals are considered contaminants at certain levels, as the water may be unpalatable or even unsafe. The majority of substances that are absorbed into water from natural rock or soil conditions are harmless. However, once humans have introduced contaminants into the soil or streams from factories, farmlands, or even by people in their homes or yards, the water supplies may be contaminated with any number of chemicals or toxic substances.

The federal Safe Drinking Water Act of 1974 is the primary federal law protecting drinking water supplied by public water systems (those servicing more than 25 people). Under the law, the U. S. Environmental Protection Agency (EPA) is the lead federal agency given responsibility for setting national standards for drinking water. The national standards established by the EPA are required to be enforced by the states. The drinking water standards are intended to address drinking water at two levels. The first level relates to public health. The regulations in this area relate to the maximum contaminant level for more than 80 contaminants that may occur in drinking water that pose a risk to human health. When it is economically or technologically not feasible to lower a maximum contaminant level relating to a specific contaminant, then prescribed treatment techniques are required to prevent adverse health effects of the contaminant on humans. The second level of regulations relates to taste, odor, and appearance of the drinking water.

In 1996, President Clinton signed the Safe Drinking Water Act Amendment of 1996 (SDWA). Among other things, SDWA requires that, beginning in 1999, all public water systems must prepare and distribute annual reports to its customers. These reports inform the customer as to the source of their system's drinking water, results of monitoring the water supply system during the prior year, and information on health concerns associated with violations that occurred during the year. In addition, a water supplier must promptly inform the consumer if the water supply has become contaminated by something that can cause immediate illness. In its notification process, it must provide information about:

- The potential adverse effects on human health.
- The steps that the system is taking to correct the violation.
- The need to use alternative water supplies until the problem is corrected.

SDWA also has many new provisions that will help states and water supply systems to improve the quality of drinking water by preventing problems before they occur. It has become clear that the best way to protect the nation's water supply is to protect the water at its source. For example, the act requires that each state develop a program to identify potential contamination threats and determine the resulting susceptibility of the drinking water sources such as watersheds, ground water, or reservoirs and restrict activities that may harm the source water. Once the potential contamination source is identified, the state must develop a program to address that contamination source and its prevention from entering the water supply.

In administering the provisions of the 1974 Safe Drinking Water Act and the subsequent Safe Drinking Water Amendments of 1996, the EPA has identified approximately 80 contaminants that must be monitored in the nation's domestic water supply systems. These contaminants fall into the following general categories:

- Bacteria.
- Protozoa and viruses - Common examples of protozoa contaminants are giardia and cryptosporidium.
- Nitrates - Agricultural activities which use fertilizers or generate manure contain high levels of nitrogen and phosphorus. These substances often leach into the water supply through water runoff. Stomach and liver cancer along with reproductive problems are often linked to nitrate contamination.
- Volatile Organic Compounds - Examples of these compounds are industrial solvents, dry-cleaning solvents, benzene, gasoline, paints, and etc.
- Synthetic organics.
- Inorganics/metals.
- Lead and copper - These metals usually are introduced into the potable water supply as a result of water being carried through pipes containing lead, or lead solder, and water coming in contact with brass faucets. Even in small amounts, lead in the water supply can be a problem, especially in small children. Lead may accumulate in the body over time and eventually reach unsafe health levels.
- Pesticides - This group of contaminants may be fungicides, insecticides, and herbicides. Land application of pesticides may subsequently leach into the water supply. This is particularly a problem in areas relying upon well water.
- Radon - Houses relying upon well water are more subject to exposure to radon from the water supply than houses relying upon public water supply systems. As water passes through the shower head or other water release points, the radon present in the water is released into the air. Fortunately, in most cases, radon released into the air from a house's water supply is usually minor. Long term exposure to radon can lead to lung cancer.

At a minimum, homeowners relying upon well water would be well advised to test the water in their system once a year for coliform bacteria, nitrates, pH, and total dissolved solids. Testing for sulfates, chloride, iron, manganese, hardness, and the system's corrosion index should be done every three years.

Company policy for Licensees regarding Potable Water Supply:

The following policies should be followed by Associates with respect to potable water supply issues:

- If the water supply is from a well, the real estate agent should ask the seller about past well water testing. The agent should also suggest that the seller obtain a current well water test and make it readily available to buyers as a part of the seller's disclosure obligation.
- Agents working with buyers should recommend a well water analysis report as a part of the buyer's due diligence obligations. This should especially be the case if the property is located in agricultural or industrial zones or has the potential for buried fuel tanks.
- If contaminants are found to exist in the tested water supply then the real estate agent will necessarily be involved with the buyer in dealing with issues relating to mitigation of the contaminants identified. This may include locating the source of the contamination, water treatment options, and possibly obtaining alternative potable water supplies. Since the issues dealing with water are often costly, the real estate agent may be involved in additional negotiations with the seller with respect to price adjustments and other options necessary to solve the water contamination problem.

- The real estate agent should recognize the majority of property conditions that should lead to water testing. When the agent identifies these conditions as present, the agent should recommend the necessary water tests to the seller or buyer as appropriate.

Drug Houses/Clandestine Drug Labs

Beginning in the 1980s until the present time, clandestine methamphetamine drug labs are a serious problem. Methamphetamine is referred to by many street names, including "meth," "speed," "crank," "chalk," "zip," and "cristy." The smokable form of the drug is called "L.A.," "ice," "crystal," "64glass," or "quartz." The drug has a powerful effect on the central nervous system, stimulating the brain and spinal cord by interfering with normal body chemical neurotransmission.

The production of methamphetamine can now be found in virtually all areas of the country. Labs are found in rural, city, and suburban residences, barns, garages, outbuildings, back rooms of businesses, apartments, hotel and motel rooms, storage facilities, vacant buildings, and even in motor homes. The problem with methamphetamine labs is simple; many of the ingredients used in the production of the final product are highly toxic. Each pound of meth produced leaves behind five or six pounds of toxic waste. Meth cooks often pour leftover chemicals and byproduct sludge down plumbing drains, storm drains, or directly onto the ground. Chlorinated solvents and other toxic byproducts used to make meth pose long term hazards because they can persist in the soil and groundwater for years. Once a property has been used to produce the drug, many of the ingredients used in the production of the drug, as well as the byproducts produced during the manufacturing process, leave a contaminated environment. Any house or property used to produce meth presents a serious health threat to those who occupy or even simply enter the premises.

If meth has been manufactured in a property, there may be serious health issues resulting from entering or occupying the property.

A person entering a structure that has been used to produce meth will detect an unpleasant chemical/ammonia smell.

Many people describe the smell as similar to that of cat urine or fingernail polish remover. Other signs of meth production are excessive amounts of chemical drums or other containers on the property which at one time contained solvents, drain cleaner, or antifreeze. Most people entering a meth lab will experience immediate **eye irritation, throat irritation**, and in many cases, **respiratory discomfort**. A common reaction is a tightening of the throat and an experience of lightheadedness or headache. Acute (short-term) exposures to high concentrations of some of the chemicals used in meth production, such as those law enforcement officers often face when they first enter a drug lab, can cause severe health problems including lung damage and burns to different parts of the body. **Unlike other drugs, meth production can destroy a property and make it unhealthy to inhabit and costly to clean up.**

Many state legislatures have recognized that houses used for the production of meth can lead to serious health problems in people either entering them or living in them and have taken steps to identify and monitor contaminated drug house cleanup. As an example, Washington requires owners to make sure that there are no more than 5.0 micrograms of meth residue per square foot in a house. For example in Oregon, the level is 0.5 micrograms. Oregon also takes steps to warn prospective buyers or tenants about contaminated residences. It places drug labs on a special list and information about the possible hazards are branded (added) to the property title. In California, they enacted the Methamphetamine Contaminated Property Cleanup Act of 2005. Until a property owner subject to Section 25400.25 receives a notice from a local health officer pursuant to Section 25400.27 that the property identified in an order requires no further action, all of the following shall apply to that property, except as otherwise required in Section 1102.3 or 1102.3a of the Civil Code: the property owner shall notify the prospective buyer in writing of the pending order and provide the prospective buyer with a copy of the pending order. The prospective buyer shall acknowledge, in writing, the receipt of a copy of the pending order. (California Health & Safety § 25400.28).

Check with the specific State laws regarding exact clean up methods and exposure levels. Below an example of how to

clean up a former meth lab (as an example only) in the State of California.

Cleaning Up Clandestine Meth Labs

The safest way to clean up a former meth lab is to hire an environmental company trained in hazardous substance removal and clean up. If the owner of the property desires to do the cleanup, extreme caution should be exercised as the contaminants give off fumes, penetrate the skin, and result in severe health problems. For most property owners, the cleanup costs are not covered by insurance.

The Methamphetamine Contaminated Property Cleanup Act of 2005

The Methamphetamine Contaminated Property Cleanup Act of 2005 is found in the California Health and Safety Code Section 25400.10 - 25400.47. The purpose of the Act is to identify properties contaminated by hazardous chemicals used in the manufacturing of methamphetamine, provide cleanup standards, and standards for determining when a site of a closed methamphetamine laboratory has been successfully remediated.

The statute specifies that **any structure containing methamphetamine on indoor surfaces exceeding 1.5 micrograms per 100 square centimeters is unfit for human occupancy**. In addition, if the methamphetamine manufacturing process included the use of lead or mercury compounds, the property is considered unsafe for human occupancy if the total level of lead is greater than 20 micrograms per square foot or the level of mercury is greater than 50 nanograms per cubic meter in the air. The following is a brief outline of the procedures that must be followed with respect to methamphetamine contaminated property:

- **Within 48 hours** after receiving notification from a law enforcement agency of potential property contamination by methamphetamine laboratory activity, the local health official is to post a written notice **WARNING** that the contaminated property has been seized and that it is unlawful for an unauthorized person to enter the contaminated premises.
- **Within five working days** after receiving a notification from a law enforcement agency of known or suspected property contamination due to methamphetamine laboratory activity, the local health officer shall inspect the property to determine if the property is contaminated. If the health officer determines that the property is **NOT** contaminated, the **WARNING** notice must be removed. If the health officer determines that the property is contaminated, **within 10 days** the following must be done:
 - a. File with the county recorder a lien on the real property in an amount equal to the costs incurred to inspect the property plus the county recorder's fee. If the contaminated property is a mobile home or recreational vehicle, a restraint on the mobile home or vehicle must be filed. **Any lien filed shall have the force, effect, and priority of a judgment lien**. The restraint filed on a mobile home or vehicle clouds the title and prevents its transfer until the restraint is released.
 - b. An order prohibiting the use or occupancy of the contaminated property must be given to the property owners, those occupying the property, or any person having an interest in the property.
 - c. Once the real property owner or mobile home or vehicle owner receives an order prohibiting the use or occupancy of the contaminated property, the property owner must, within 30 days, retain the services of a methamphetamine laboratory site remediation authorized contractor to remediate the contamination.

The remediation contractor is to submit a work plan to the health officer. Once the remediation work plan is approved by the health officer, the remediation work is to be completed within 90 days. If the local health officer determines that the property contamination has been satisfactorily remediated, within 10 days of making that determination and upon receipt of payment for the amount of the recorded lien, the real property lien or restraint on the title of the mobile home or property shall be released. If the property owner does not initiate or complete the remediation of the property in compliance with the health officer's order, the city or county in which the property is located may take action to remediate the contamination. The property owner then becomes liable for the costs of the remediation. If the real property owner does not pay the city or county for the remediation costs, the city or county may record a nuisance abatement lien against the real property. The abatement lien becomes a priority lien and an enforceable judgment lien.

A property owner of a methamphetamine contaminated property is liable for all of costs related to the contamination, including but not limited to testing, cost of maintaining records relating to the contamination, cost of remediation, disposal expenses, actual cost incurred by the local health officer in the testing and oversight of the remediation project, and all costs resulting in harm to public health or the environment relating to the contamination.

Only contractors that have undergone special training and meet other requirements relating to methamphetamine contamination remediation may perform the remediation work.

Company Policy for Licensees Regarding Potential Clandestine Drug Lab

The following policies should be followed by Associates:

Real estate agents should learn to recognize the signs of a potential clandestine drug lab.

The more common observations are:

- Strong cat-box/ammonia smell within the house.
- A maroon colored residue on aluminum.
- Bottles or jugs used extensively for secondary purposes.
- Odor of ether, chloroform, or other solvents.
- Garbage containing paraphernalia.

If a real estate agent finds a clandestine drug lab, the agent should:

- Immediately leave the property.
- Alert local law enforcement.
- Advise the seller that all of the procedures set forth in the Methamphetamine Contaminated Property Cleanup Act of 2005 (in CA only) must be followed. Check with you State for exact procedures outside of California.

If a real estate agent suspects a drug lab, the agent should discuss it with the seller. Many sellers may have rental property and not know that clandestine drug manufacturing had occurred on the property. If drug manufacturing is confirmed, it becomes a matter of seller/agent disclosure once the remediation has been completed and the property is again able to be occupied. Prior to any further occupancy of the property, contamination cleanup is required.

NEVER take a listing or write a purchase contract for a home that is suspected to have ever been a potential clandestine drug lab without the Brokers written approval.

SECTION 10: REGULATION, ETHICS, MISREPRESENTATION

State, Federal, & Regulatory Agencies

The basis for ethical conduct and practice in the real estate industry often has its roots in laws passed at the federal and state levels or rules created by regulatory agencies based on legislation. The Code of Ethics and the state laws governing the practice of real estate may often overlap. Most conduct that is prohibited by law is also unethical. Most conduct that is not prohibited by law is probably not unethical. However, there may be some "gray area" in which conduct may not be explicitly prohibited by law but may still be considered unethical. The Company is regulated by state, federal and self-governing regulatory agencies. Company policy is to cooperate and adhere to the rules, laws, and regulations of these agencies.

Department of Real Estate Commissions & State Regulators

The Company is regulated by various State Real Estate Commissions and State regulators. The primary mission of the Real Estate Commissions and State Regulators is the protection of the public in real estate transactions. Therefore, the DRE's major concerns relate to the following issues:

- Misrepresentation
- Failure to Disclose Material Facts
- Trust Funds
- Conflict of Interest

Company policy is to follow all of the real estate laws set forth by the Real Estate Commissions and State Regulators. Associates are responsible for staying up to date on the ever changing real estate laws. From time to time the Broker will hold red flag meetings to address changes in real estate law. The local board of REALTORS® holds classes regularly that Associates are advised to attend to stay up to date.

Professional Organizations – NAR, CAR, and Local Board

Company policy is that every active licensed associate becomes a member of the National Association of REALTORS® and several State and local Associations of REALTORS® throughout the nation. The Company is affiliated with many local boards of REALTORS® in each State it conducts business in and is consistently joining new boards that its Associates prefer. Referral agents do not need to join any local Association of REALTORS® or the National Association of REALTORS® if they **only** work on a referral basis and do not actively carry out sales.

Professional organizations such as the National Association of REALTORS® and its local affiliates are also concerned about many of the same issues as the State Regulators. **However, the focus of these organizations is often on the more practical issues of how its members present themselves to the public and how its members deal with each other.** Therefore, these professional organizations also focus on ethical issues relating to:

- Advertising.
- Multiple listing service internal rule violations.
- Conflicts of interest between its members.
- Ethical conduct with respect to clients and customers.
- Ethical conduct with respect to the general public.
- Ethical conduct with respect to other REALTORS®.

Code of Ethics

Ethics are governing moral values. Ethics comes down to what is considered as being fair and right. Most ethics systems are based upon the principle that one should treat others fairly and be treated fairly by others. Ethical considerations are of extreme importance in the real estate industry and to the Company. **The Company adheres to a strict code of ethics and behavior** outlined by the National Association of REALTORS®, State California Business and Professions Code, State Real Estate Commissioner's Regulations, and the Company's internal code of ethics.

The real estate industry is largely self-governed through the National Association of REALTORS® and its adopted Code of Ethics and Standards of Practice (the "Code"). The Code is a written system of standards for ethical conduct. It also contains statements designed to advise, guide, and regulate job behavior. The local affiliates of the National Association of REALTORS® have been given the authority to enforce the Code through education and training, and by addressing complaints arising from the public or its members regarding alleged violations of the Code by a member. **All Associates of the Company are required to read and adhere to the NAR Code of Ethics.**

Professional Conduct: All Company licensees when acting in their capacity as real estate licensees shall not engage in any conduct which would subject the licensee to disciplinary action under States licensing and administrative laws, business and professions code, statute or chapters.

State Real Estate Commissioner's Regulations: The Commissioner of each State's Real Estate **department** is empowered to adopt regulations for the administration and enforcement of the Real Estate Law. These regulations have the authority and force of the law itself. **All Associates of the Company are required to read and adhere to the State Real Estate Commissioner's Regulations and the Company's internal code of ethics.**

Standards of Ethical Conduct & Behavior

Ethical conduct is good business. Ethical conduct is also legal conduct. Conversely, unethical conduct is bad business and unethical conduct is usually illegal. State and federal laws, along with the National Association of REALTORS® and its local affiliates, have passed legislation, created rules and regulations, and established standards of conduct over the years which seek to protect the public from conduct by licensees which causes harm. Although certain conduct may not be illegal per se, it still may be unethical. Ethical behavior is about doing the right and fair thing at all times. If all licensees understand and practice this simple, basic principle, the individual agents, the brokerages, the public, and the industry as a whole would greatly benefit. **Company policy is that every Associate conducts themselves in an ethical manner at all times.**

Protecting the Interest of the Client

A licensee must protect and promote the interests of the client. The REALTOR® Code Standard of Practice 1-1 states that the duties imposed by the Code of Ethics are to encompass all real estate activities whether conducted in person, electronically, or through any other means. This obligation is based upon the law of agency and the fiduciary duties that arise out of the principal and agent relationship.

The common law fiduciary duties each agent owes his principal are care, loyalty, obedience, accounting, and disclosure. The ethical responsibilities of an agency relationship are the basis for the conduct of a licensee with respect to his/her dealings with clients and customers. The high standard of conduct required by agency fiduciary duties elevate the level of expected conduct beyond the basic requirements of Real Estate law. In addition to the fiduciary duties owed to a client, a licensee also has an obligation to treat all parties involved in the transaction honestly.

The acronym to remember for what you owe your clients is **C LOAD**. (Care, Loyalty, Obedience, Accounting and Disclosure)

Client vs. Customer

Client

The Code of Ethics Standard of Practice 1-2 defines a client as the person or entity with whom the licensee has a **legally recognized agency relationship**. The agency relationship may be created in any one of the following ways: **by express or implied agreement**. This means that written documents or implied agreements as evidenced by the parties' words and conduct.

Customer

A customer is someone **who receives information or services from a licensee but who has no contractual** relationship with the licensee. No fiduciary duties are owed to a customer. The only obligations owed to a customer by the licensee are that of fair and honest dealings and disclosure of material facts.

The fiduciary duties of the buyer's agent are owed exclusively to the buyer and not to the seller. The fiduciary duties of the listing agent are owed exclusively to the seller and not to the buyer. Fiduciary duties are not owed to a customer.

Company policy is to disclose to third parties (i.e. other agents, homeowners) if you have a client or customer relationship with any person you state you “are working with.” This is especially important when contacting sellers about selling their home to a potential buyer.

Duties Owed To A Third Party

Honest and fair dealing and good faith requires honesty and good faith to form the foundation for all dealings with the third party. No attempt should be made by the agent to conceal information, defraud, or in any way do something or refrain from doing something that has the effect of exhibiting conduct that is intended as bad faith. Good faith means that each party cannot withhold information from the other that might affect the agency relationship.

Financial accountability requires the agent to care for monies of others, as well as deliver all signed documents to the appropriate parties in the real estate transaction.

Compensation and the Creation of Agency Relationships

The sole act of compensating a real estate licensee does not create an agency relationship. For example, with the buyer’s consent, the selling agent can agree to act as an agent for only the buyer. In this situation, the agent is not the seller’s agent, even if by agreement the agent can receive compensation for services rendered either in full or in part from the seller.

Agency Disclosure Law

The listing and selling brokers must orally inform the buyer and seller whether they are acting exclusively as agents of the buyer, exclusively as agents of the seller, or representing both seller and buyer as a dual agent. The purpose of this oral disclosure is to inform either the buyer or seller who the agent intends to represent.

Refusal of Seller or Buyer to sign the Acknowledgement of Receipt

In the event of a refusal to sign the Agency Disclosure Form Acknowledgment, the Associate shall set forth, sign, and date a written declaration of the facts of the refusal. Some sellers or buyers may not even want to read the form, document this as well.

Undisclosed Dual Agency

Undisclosed dual agency is always illegal. The dual agent must always disclose and obtain the consent of both parties.

Dual Agency Considerations (if permitted in your State)

Company policy recommends that any Associates proceed very carefully in any dual agency situation.

If the Associate does not have significant experience representing clients in a dual agency, the Company recommends allowing the Broker or Manager to appoint a senior or more experienced affiliated licensee to help you with the transaction. The Broker or Manager may ask you to represent a buyer or seller without committing the other affiliated licensees in the Company to the same agency relationship. This method allows two licensees within the Company to fully represent all parties in a given transaction without being limited by dual agency.

In this event, here are additional practices that must take place:

- The Broker or Manager must inform both the seller and buyer of the appointment of the designated Associate for the

buyer and the seller. Both the seller and the buyer must consent to the appointment.

- No licensee may act as a designated Associate who has received any confidential information concerning the other party to the transaction.

The Broker or Manager must take certain measures to guarantee the protection of each client's confidential information. Such measures may include, but not be limited to the following:

- All discussions concerning confidential information between agents and clients must be in an environment that allows for privacy. Conversation over speaker telephones or with conference room or office doors open would not be permitted.
- All documents containing confidential information should be kept in a secure place and inaccessible to other licensees.
- A system must be in place to protect the confidentiality of fax transmissions and telephone messages.
- The same office personnel or assistants may not assist agents who represent different clients in the same transaction. Different personnel should be assigned to work with the different agents in the transaction.
- If the Broker or Manager becomes aware of any compromise in the designated agency relationship, then such intentional or inadvertent disclosure of confidential information should be immediately disclosed to the client.

For additional information reference the "Handling Clients" section of this manual for more policies and procedures regarding dual agency.

Terminating an Agency Relationship

Company policy is to discuss the termination of any agency relationships with the Broker or Manager before doing so orally or in writing.

Agency relationships are terminated in a variety of ways. Here are some examples:

- **Performance** - The agency relationship terminates when the purpose for which it was created is fulfilled.
- **Mutual Agreement** - The principal and agent can agree to terminate the agency relationship prior to the terms stipulated or implied in the agreement.
- **Death or Incapacity** - If either the principal or agent should die or become incapacitated, the agency relationship automatically terminates.
- **Expiration** - The agency agreement terminates on the expiration date, regardless of whether the purpose that the agency agreement was created has been fulfilled.
- **Resignation of Agent** - The agent can resign at any time. Since the services contracted for in the agreement are usually personal in nature, the principal cannot sue for specific performance. However, the agent can be liable for DREach of contract.
- **Unilateral Discharge** - The agency relationship terminates if the principal discharges (fires) the agent prior to the expiration of the agreement. The principal can sometimes be held liable for damages sustained by the agent for expenses incurred to date.
- **Change in the Law** - If the subject matter of the agency agreement becomes illegal after the agency agreement is created, the agency terminates when the subject matter becomes illegal.

- **Material Change in Circumstances** - If there is a material change in circumstances affecting the subject matter of the agency agreement that makes the agreement impossible or impractical to perform.
- **Bankruptcy** - In bankruptcy title to property passes by operation of law to a court appointed receiver.

When a principal files bankruptcy, the agency terminates. In some cases, the bankruptcy of the agent can also terminate the agency relationship.

Breach of Duties

The Common Law fiduciary duties and statutory duties become the affirmative obligations of the agent at the very moment the agency relationship is created. If the agent fails to perform these duties, a legal breach occurs. This is the case regardless of whether the breach arises out of innocent, negligent, or intentional conduct.

The principal can also be held responsible for a breach of the agency relationship. If this occurs, the principal can be liable for damages. **Most lawsuits against licensees arise out of conduct that either lead to a breach of a fiduciary duty owed to the principal or the expanding legal duties owed to a third party. Any breach of duties owed to a principal or third party can subject the licensee to civil damages or criminal prosecution. In addition, the State Real Estate Commission can impose a wide range of disciplinary actions on the licensee who breaches fiduciary duties.**

Misrepresentation

Company policy is to never misrepresent any facts to anyone at any time.

The courts have traditionally defined misrepresentation as knowingly making a false statement upon which another may rely to their detriment. However, the courts have expanded this basic standard to include what a licensee should know. Therefore, in addition to knowingly making a false representation to either a client or customer, a representation made with a reasonable basis for believing its truth may also be misrepresentation. The REALTOR® Code of Ethics, States licensing and administrative laws, business and professions code, statute or chapters, and the Real Estate's Commissioner's Regulations address many common areas of misrepresentation.

The basic Real Estate Law dealing with misrepresentation is found in the States licensing and administrative laws, business and professions code, statute or chapters. The rules prohibits the following:

- Making any substantial misrepresentation.
- Making any false promises of a character likely to influence, persuade, or induce.
- A continued and flagrant course of misrepresentation or making false promises through real estate agents or salesmen.
- Conduct which constitutes fraud or dishonest dealing, whether of the same or a different character than specified in this section.

Although most State code sections do not identify or list specific acts of conduct that are prohibited, the broad language of the law clearly is intent on prohibiting all attempts to misrepresent.

Misrepresentation can also rise to the level of fraud. Lawsuits against sellers and real estate agents based on fraud are based upon the premise that liability should result from either an affirmative or intentional misrepresentation or from a negative or nondisclosure of a fact.

State rules typically define actual fraud as:

Actual fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

State rules typically defines constructive fraud as:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

Unethical conduct may also arise out of the negligent acts of a licensee. Unethical conduct based upon a negligence theory is the concept that **a licensee can be held liable for not exercising ordinary care and skill in the conduct of their real estate practice**. This in turn leads to their client being damaged economically. The fiduciary duties required by an agency relationship demands the exercise of a high standard of care. Licensee conduct that falls below the high standard of care requirement is often based upon conduct that is considered negligence.

State rules typically defines negligence as:

Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. The extent of liability in these cases is defined by the Title on Compensatory Relief.

Non-Disclosure

Related to misrepresentation is the concept of disclosure or non-disclosure of a material fact. As a rule, **the real estate licensee has a duty to disclose facts that are material to the prospective purchaser**. Material facts are those that would be likely to affect the conduct of a reasonable person. While some material facts are a matter of law, others will vary with the facts of each transaction. **A fact is material if the offering party would not have entered the contract or would have contracted for less had the fact been known. Company policy is to disclose all material facts at all times to any type of client represented.**

Conflict of Interest

Company policy prohibits any conduct in which a conflict of interest exists or could arise. Examples of these situations are as follows:

- Information relating to confidential matters gained from the principal cannot be disclosed. Thus, a seller's agent cannot disclose the financial condition of the seller, the seller's willingness to take a lesser price, the seller's desperation to sell, etc., unless specifically authorized to do so by the seller.
- The duty of loyalty requires an agent to disclose his/her interest in a property that is for sale, or to disclose that he/she is making an offer on a property for his/her own account.
- The duty of loyalty prohibits a divided agency, also known as an undisclosed dual agency, where an agent acts on the account of an adverse party without the principal's knowledge or consent. The issues regarding undisclosed dual agency are discussed later in detail.
- The duty of loyalty prohibits competing with the principal on the agent's own account, or for another, in matters relating to the subject of the agency. A common example of this prohibited conduct would be a licensee taking an

underpriced listing and then personally purchasing that property with full knowledge that the property is underpriced.

Prohibited Conduct With Respect to Clients and Customers

The following policies are prohibited activities for any Company Associates at any time.

Misrepresenting Market Value

Company policy is to never misrepresent market value to anyone. (REALTOR® Code Standard of Practice 1-3)

A licensee is not permitted to knowingly make a false representation as to the value of a seller's property in an attempt to secure a listing. Unfortunately, licensees frequently violate this ethical standard. Agents face fierce competition to obtain listings. Consequently, many licensees knowingly represent to a seller that the listing price of their property should be higher than reasonable facts can justify. This practice is referred to as **"buying the listing"**. The seller, not understanding that a willing buyer will have to pay an inflated listing price, is led to believe that the listing agent suggesting the highest price can actually "get me more for my property" than those agents who may have been fair and honest about the price of the property. The licensee that listed the property at the inflated price knows that the property will not sell at that price. The licensee then beats the seller down in price during the term of the listing in order to bring the price in line with reality - the reality originally presented to the seller by competing listing agents. **This method of buying listings is a serious ethical violation and should not be practiced by any licensee.**

Another example of prohibited activity would be a licensee listing a property having the fair market value of \$150,000 for \$125,000. The licensee (either directly or indirectly through a friend, spouse or other person) makes an offer to purchase the property at the listed price and then immediately resells the property at full market value. Sometimes, this situation is accomplished using a "double escrow" in which the seller transfers the property to the "straw buyer" who then immediately transfers the property to the final buyer. Clearly, any licensee participating in this scheme is participating in unethical and illegal conduct.

Likewise, **a licensee representing a buyer cannot misrepresent the value of the property** as an attempt to induce that buyer to make an offer to purchase. **An example would be a licensee selecting only comparables for a property a buyer is interested in making an offer on to justify a higher price than could be justified by complete market statistics.** This attempt to misrepresent facts relating to value would result in a buyer paying more for a property than it is worth.

In short, undervaluing a property prevents the seller from realizing the full economic potential of that property. Overvaluing the property deprives the seller of the opportunity to have buyers consider the property for purchase. **Manipulating market data in any way, whether for seller or buyer, constitutes misrepresentation.**

A licensee is not permitted to knowingly make a false representation of the value of a property in an attempt to secure a listing or entice a buyer to pay more for a property than is justified by market data.

Misrepresentation of Savings or Benefits that might be realized through the use of a REALTOR®

Company policy is to never mislead clients as to the potential savings or benefits that might be realized when using a REALTOR® and never make the claim to buyers that our services are "free". In attempting to represent a buyer and/or tenant, a licensee must not mislead the buyer or tenant as to potential savings or benefits that might be realized through the use of a licensee. On its face, it would appear that a buyer or tenant who is represented by a licensee would benefit from the relationship. Often, the buyer or tenant is not capable, knowledgeable, or able to deal with all of the complex issues involved in a real estate transaction. If a licensee is involved, the buyer or tenant may actually pay more for the property, or the seller or landlord may want to include the costs of the licensee's services in the price the buyer or tenant ultimately pays for the property.

Misrepresentation vs. Puffing

Company policy promotes sales-speak (puffing). When using sales-speak (puffing), Associates should never misrepresent the facts. In many ways the distinction between a misrepresentation and puffing is a very fine one. Puffing should be considered "sales-speak" that is intended to induce interest, but is not necessarily a fact that a reasonable person would rely upon.

Examples of "puffing" would be as follows:

- Our real estate company is the best in town.
- This house is the best buy in the city.
- This house is simply beautiful.

However, there is a point at which the line is crossed from "puffing" to outright misrepresentation. An outright misrepresentation is a false representation by a licensee made with knowledge of its falsity or by making a representation without a reasonable basis for believing the truth of the statement. The usual standard a court applies to make the distinction is whether a reasonable person would have relied upon the statement to make a decision. The closer the statement made by the licensee moves from "opinion" to "statement of fact", the more likely a reasonable person will have relied upon the statement of the licensee to make a decision.

A classic example of puffing occurs in listing situations where a licensee tells a potential seller that he or she has a **"buyer for the property"**. When a licensee merely has a buyer whom he believes would be willing to look at the property, but leads the seller to believe that he has a buyer who is ready, willing, and able to buy the seller's property at the suggested listed price, **that licensee has engaged in misrepresentation.** The specific intent of inducing the seller into a listing contract by dangling an alleged quick sale is unethical. If the licensee would have said **"our company works with many buyers (or we have a few buyer customers/clients) who would appreciate this property and possibly purchase it"**, this would be puffing, as it does not misrepresent the actual status and interest of those potential buyers. Once a licensee moves beyond "puffing" to leading the seller to believe that an actual buyer exists who will make an offer on the property as soon as it is listed, that statement becomes a misrepresentation.

Always use the Company Seller Script when contacting any seller with potential buyers for their property. **A licensee must be careful to not cross the line from "puffing" to misrepresentation**

Misrepresenting Presentation of Offers

Company policy is to never represent the existence of offers when in fact there are none. It is an ethical violation to represent that there are offers to purchase a property when in fact the licensee does not have in his possession a bona fide written offer to purchase the property at the time the representation is made.

Disclosure of Terms or Price on Existing Offers

Company policy is to never discuss the exact price or terms of any existing offer with any third party without written consent of the parties involved. It is an ethical and confidentiality violation to disclose the exact terms or price of any existing offer to any third party on a listing or buyer that you are currently servicing.

Disclosure of Company Policies Relating to Commissions

Company policy is to always disclose the terms of how a commission will be offered to other agents and the possibility of dual agency (if dual agency is allowed in your State). Under State real estate law the listing broker has an affirmative obligation to disclose the existence of dual or variable rate commission arrangements to cooperating brokers. These dual or variable rate commission arrangements typically provide that one amount of commission is payable if the listing agent is the

procuring cause of the sale and a different amount of commission is payable if the sale results through the efforts of the seller or a cooperating agent. Once this information is disclosed to the cooperating agent, that agent has an obligation to disclose this information to their buyer before making an offer to purchase.

For example, the listing agent may take a listing at 6% and then offer to pay the selling broker a 2% commission without disclosing to the seller that the listing agent is keeping 4%. Standard of Practice 1-13 also requires that the listing agent advise the seller of the potential for the selling agent to act as a disclosed dual agent. This situation would arise in cases where under state law the selling agent would be a dual agent if the selling agent is licensed with the same company as the listing agent.

Misrepresenting that Commissions Are Not Negotiable

Company policy is to always disclose that commissions are negotiable. While the Company may have specific fee requirements, brokerages cannot agree among each other to a specific fee schedule. The area of fixed fees is of such great concern that most State laws **forbid the printing of the commission rate in the preprinted listing agreement form which a brokerage may use**, as that could lead a seller to believe that the fee is not negotiable. Most states require that the following language (varies by State) be included in all listing agreements in bold type: **"NOTICE: Law does not fix the amount or rate of real estate commissions. They are set by each broker individually and may be negotiable between the seller and broker."** Only use approved State documents for any listing which includes this text.

Misrepresenting Relationships with Individual Broker

Company policy is that Associates may not represent to a seller, a buyer, or to the public that he/she is associated with another broker when that association does not exist. While seemingly obvious, many licensees are caught in misrepresentations with respect to their broker or brokerage affiliation. Some examples include:

- A licensee currently licensed with Broker A is at a listing appointment. The licensee is planning to move his/her license to Broker B. During the listing presentation, the licensee makes the presentation and leads the seller to believe that the licensee has already transferred the license to Broker B. This is a misrepresentation.
- A licensee is affiliated with a broker who is a member of a national franchise. Many sellers and buyers associate "bigness" with performance and security. Because of the implied power of the national franchise, the licensee leads a seller or buyer to believe that they are protected by the franchisor organization. This representation is untrue and therefore unethical and a violation of law.

A licensee may not represent to a seller, buyer, or the public that he/she is associated with a broker when that association does not exist.

Misrepresentation of Closing Costs

Company policy is to never misrepresent or avoid the discussion of closing costs. A licensee cannot underestimate or understate the probable closing costs for either a buyer or seller with the intent to induce the buyer to make an offer or to induce the seller to accept an offer. This conduct is fraudulent. As obvious as this would seem, an agent may be tempted to intentionally ignore or minimize closing costs under the assumption that everyone knows there are closing costs involved. Avoiding a discussion with a client regarding closing costs or misrepresenting total costs by intentionally underestimating them constitute conduct that is designed to mislead and is prohibited. Careless guesses as to the amount of closing costs is regarded as negligent and designed to misrepresent.

Misrepresentation of Buyer Qualification

Company policy is to never misrepresent the qualification of a buyer. This situation would be where a licensee represents to a seller that the buyer is a pre-qualified buyer and is going to obtain new financing when the buyer is actually not pre-qualified

and the agent does not know if his buyer can or cannot obtain a loan. If the seller accepts an offer relying upon these false representations and takes the property off the market and then later is confronted with the buyer's lack of ability to obtain a loan, the seller would have a justifiable suit for damages based upon the misrepresentation of the licensee. Licensees should always confirm the pre-qualification by a lender prior to making any representations about the financial ability of the buyer to perform.

Altering a Document by Adding Unauthorized Changes

Company policy is to never alter a document by making additions or modifications to a previously signed or initialed document without the consent of the party that the licensee represents. Any alteration of a document is a form of misrepresentation. A licensee may be tempted to justify an unauthorized modification because it is minor or is in the best interest of the party he/she represents, such as a forgotten initial by a client. Alteration can occur in one of two ways: either addition or deletion of information or terminology, or changing existing information or terminology. It is important to understand that any modification of a document without the consent of the party to the document is unlawful and outside the scope of authority of a licensee.

Misrepresenting the Form, Amount, or Treatment of Deposits

Company policy is to never misrepresent the amount or form of any deposit. This situation would be where a licensee represents to a seller that the buyer has the ability to pay a 20% down payment when indeed the buyer only has a 5% down payment, or has the ability to put 20% as a down payment but intends to only put 5% as a down payment. This is a form of misrepresentation.

Misrepresenting the Size of the Property

Company policy is to never misrepresent the size of any property. A licensee should not make any representations about property size (parcel or structure) or a boundary without a reasonable basis for believing the truth of the representations. A proper response is that a survey is the only way to determine size and boundaries of a parcel and an interior measurement is the only way to determine the size of a structure.

A licensee may not knowingly make a false or misleading representation regarding the use of a property to a prospective buyer with the intent of inducing that buyer to purchase.

Failure to Disclosure Dual Agency

Company policy is to always disclose dual agency. Failure to disclose dual agency is unethical and illegal. The dual agent must always make disclosure and obtain the consent of both parties.

Failure to Submit Offers In A Timely Manner

Company policy is to always submit offers in a timely manner. A licensee must present all written offers to the owner of a property prior to the closing of a sale on the property. Two possible exceptions to this rule exist:

1. If the seller has an accepted offer on the property and specifically states that he does not want to see any future offers.
2. If the written offer is clearly frivolous, it does not have to be presented.

The best practice is to present all offers and let the seller decide what is to be considered or not. If the seller only wishes to see offers above a certain price, the Associate must obtain this in writing.

As a general rule, Associates must present all written offers to the owner of a property prior to the closing of a sale on the property.

Presentation of Competing Offers

Company policy is to always submit offers in the order they are received by the actual date and time. When practicing real estate, a licensee is often faced with how to handle multiple offers for the same property. A common example would be a listing licensee acting as a dual agent and writing an offer for a buyer on the property he has listed. The licensee makes an appointment with the seller to present the offer, then gets a message that another licensee has written an offer and would like to present it to the seller. The licensee knows that if the second offer is accepted he will only receive the listing side of the commission and decides to ignore the message and proceed. If the seller accepts his buyer's offer, he plans to phone the competing licensee and suggest that offer be presented as a backup offer because there is already an accepted offer on the property. This is an ethical violation as well as a violation of the fiduciary duty of loyalty whereby the listing licensee put his interest ahead of that of his seller.

If any method to present offers in a specific order is to be used, the actual date and time of the offer preparation should be used. Presenting competing offers in an order designed to induce the seller to accept one offer over the other is unethical. It also may be grounds for revocation of one's license and termination from the Company.

Failure to Submit Additional Offers after Seller Has Accepted an Offer

Company policy is to continue to submit ALL offers even after the seller has accepted an offer until the home is sold or the seller instructs the Associate in writing to stop submitting offers. Failure to submit all offers to the seller is considered to be a violation of the fiduciary duties of care and disclosure.

Disclosure of Existence of Other Offers

Company policy is to disclose the existence of offers on a property and any unresolved contingencies. Under this standard a licensee is required to disclose the existence of offers on a property in response to inquiries from a buyer or a cooperating licensee (with the seller's approval). Where such disclosure is authorized, **the licensee must also disclose whether the offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating licensee.** Standard of Practice 3-6 also requires that, upon inquiry, a licensee must disclose whether accepted offers have unresolved contingencies. A licensee is required to disclose the existence of offers on a property and any unresolved contingencies in response to inquiries from a potential buyer or cooperating licensee.

Preserving Confidential Information

Company policy is to preserve confidential information about our clients. As a part of the agency relationship, every licensee has an obligation to respect the confidential information entrusted to them during the course of the agency relationship. The obligation of confidentiality arises out of the agent's fiduciary duties of care and loyalty.

Material Facts Must Be Disclosed

Material facts or information about a property must be disclosed. If the seller knows the roof leaks, informs the agent of this fact, and asks the agent to keep the information confidential, then the agent must inform the seller that the information is material and must be disclosed to all prospective buyers.

Examples of confidential information that **cannot be revealed** are the following:

- Seller's reasons for selling the property.

- Seller's minimum acceptable sales price.
- Seller's current financial condition.
- Fact that seller is about to face foreclosure of the property offered for sale.

Non Disclosure of Material Facts

A major ethical obligation of the licensee is to **make full disclosure of any material facts regarding a property**. An agent must obey the instructions of his principal. However, the laws on disclosure override the orders of an agent's principal if the agent will be violating his/her disclosure obligations. The agent in this situation cannot obey his principal because in doing so he/she would violate the law.

Failure to Explain Offer Contingencies

Licensees are required to explain offer contingencies to clients. A licensee must explain to the client the meaning and probable significance or implications of contingencies that can affect the closing date or other terms of the real estate sale agreement.

Explaining Agreements Generated by Electronic Transmission

Today, many contractual agreements are created through the use of electronic transmissions (email, Internet, fax, etc.). These agreements include listing agreements, purchase and sale agreements, leases, buyer representation agreements, and other contracts. Due to the fact that in most electronic contractual situations personal contact between the parties is limited, the terms of the contracts are often not explained in the same way as they would be in a face-to-face situation. The point of this policy is simple:

A licensee has an obligation to explain and disclose the specific terms of the contract generated by electronic transmission prior to its execution just as would be done in a face-to-face situation.

REALTOR Code of Ethics: Standard of Practice 9-2 also covers this in detail.

Conflicts of Interest

Company policy is to avoid any situation where conflicts of interest could arise.

Examples of conflicts of interest:

- A licensee shows only those properties to buyer-clients that have a cooperating fee split that is acceptable to the licensee.
- A licensee fails to disclose to a buyer (in a transaction in which the licensee is an agent for that buyer) the nature and extent of the licensee's direct or indirect ownership interest in the property. Indirect interests in a property may include relationships to the seller by blood or marriage or any other relationship with another person with whom the licensee has a special relationship (such as interest in a corporation, partnership, trust, etc.).

NOTE: California law requires the licensee to disclose his/her license status when selling his/her own property, unless he/she has listed the property with another licensee. However, the REALTOR® Code of Ethics, Article 4, does consider this situation a conflict of interest that must be disclosed in writing.

Referral Fees or Kickbacks Are Prohibited

Company policy is to never accept or request any referral fee or kickback from lenders, escrow, title, or termite companies.

Referral fees or kickbacks from lenders, escrow companies, insurance companies, pest control companies, home inspection companies, etc., may give the appearance of a conflict of interest. The Real Estate Settlement Procedures Act prohibits the payment of referral fees or finder's fees by federally related lenders. California real estate law prohibits receiving a referral fee from an escrow, title, or termite company.

Duty to the Public

Company policy is to never deny equal professional services or discriminate against a person on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation.

An agent must obey the instructions of his or her principal. However, all of the federal and state antidiscrimination laws limit the obligation of the agent to obey his or her principal, if in doing so, the agent will be violating the Federal or State Fair Housing laws.

Amendments to the Standard of Practice in 2006 specifically addressed the following discrimination issues:

- **A licensee may not volunteer information regarding the racial, religious, or ethnic composition of any neighborhood.** However, this does not prevent a licensee from providing to a client other types of demographic information relating to a neighborhood. The types of demographic information that may be volunteered relates to such factors as age distribution, income distribution, school children profiles, and so forth.
- **A licensee may give to a client, at the request of the client, demographic information relating to racial, religious, or ethnic composition of a neighborhood,** but only if the licensee deems such demographic information necessary to assist with the completion of a transaction. The licensee may provide this information only if its presentation is consistent with a non-discriminatory presentation of the data and the information is obtained or derived from a recognized, reliable, independent, and impartial source. The licensee may also not alter, modify, add to, or delete from the independent information so as to color or change the interpretation of such demographic data.
- **A licensee may not engage in any activity that would result in panic selling.**
- **A licensee may not print, display, or circulate any statement or advertisement with respect to selling or renting of a property that indicates any discrimination, limitation, or preference based upon race, color, religion, sex, handicap, familial status, or national origin.**

Providing Competent Services

Company policy is to only claim to be competent in services the Associate has experience with (in almost all cases Associates should claim only Residential Brokerage). Unless otherwise authorized by the Broker in writing, Associates should never claim to be competent in all areas of real estate practice or areas in which they have no experience.

The Code of Ethics recognizes these separate areas of real estate practice:

- Residential Brokerage
- Commercial and Industrial Brokerage
- Real Property Management
- Real Estate Appraisal
- Real Estate Counseling
- Real Estate Syndication
- Real Estate Auction

- International Real Estate

For example, if a licensee who only deals in residential real estate has a client who wants to list a major apartment complex asks the licensee to list the property, the licensee should engage the services of a licensee who specializes in commercial real estate. The commercial licensee, along with the residential licensee and the seller, should enter an agreement as to how the property can be marketed in the best interest of the seller.

Ethical Advertising

Company policy is to only practice ethical advertising.

Any advertising that misleads is unethical. A few examples of practices that are considered unethical are:

- Any ad which relies upon a "bait and switch" scheme. Ads in this category include advertising property that has already been sold, property that is not for sale, or advertising something that sounds too good to be true.
- Use of misleading words, maps, or images that imply that the property is something other than it actually is. For example, showing a property located on a map near the ocean when, in fact, the property is located a number of blocks from the ocean.
- "Blind" ads where the ad appears to be that of a property owner when, in fact, the ad is that of a licensee.
- Making any statement in an ad that is clarified only in small print or with asterisks. For example, an ad states 5.5% interest but the small print states that this offer only applies to buyers with a credit score over 730.
- Only licensees who participated in a transaction as the listing or cooperating selling agent may claim to have "sold" a property. This rule prevents a licensee claiming that he/she "sold" a property when in fact another licensee in his/her office may have "sold" the property.
- A recent "white paper" that arose out of a National Association of REALTORS® conference addressed the issue of relisting for-sale homes by temporarily pulling them off the market and then reintroducing them to the market as a "new" listing. The white paper concluded that while to a broker a listing contract is technically "new" each time the property is relisted, to the consumer a "new" listing is a property that is offered for sale for the first time. As a result, this practice can result in confusion and misunderstanding and can mean trouble. Since the NAR Code of Ethics requires honest, truthful advertising, and requires that all communications present a true picture in their advertising and representations, the relisting a property as "new" practice should be viewed as deceptive. Licensees should refer to relisted properties as "back on market" or, "price reduced". The white paper also encourages MLS services to implement additional listing input categories such as "reintroduced" or "recently relisted".

Sharing Information and I-Framing on the Internet

Company policy is to only practice ethical advertising.

Licensees are prohibited from selling or sharing consumer information gathered over the Internet without first disclosing the possibility that such information may be sold or shared. Any disclosures relating to possible shared or sold information must be readily apparent.

A licensee is prohibited from engaging in deceptive or unauthorized framing of real estate brokerage websites. Framing means extracting the contents of someone else's web site and placing that information within a "frame" on the licensee's web site. The result makes it appear that the information originates on the licensee's web site when in fact they do not.

Offering Prizes, Inducements, and Free Services (if permitted by your State)

Company policy is to offer prizes, inducement, and services in an ethical and honest way. Each State has different laws and requirements for offering prizes, inducements and free services. Several States nationwide prohibit this practice. Check with the Broker or Manager to ensure compliance with your State laws.

The REALTOR® Code of Ethics permits offering premiums, prizes, merchandise discounts, or offering inducements to list, sell, purchase, or lease real property. This is the case even if the receipt of the benefit is contingent upon the listing, selling, purchasing, or leasing of the real property through the REALTOR® making the offer. The code of ethics does not consider these activities unethical. They are viewed as normal sales and marketing tools common in most areas of American commerce. Caution should be taken, however, to be accurate and thoroughly explain the terms of the offer to the public.

For example, a licensee, desiring to represent buyers exclusively, advertises in a real estate publication: "Why not use a buyer's agent? As a buyer, it costs you nothing." Obviously, the licensee does not intend to work for free. Rather, the seller will be paying the fee. The licensee must disclose to the buyer how the fee arrangement works.

Licensees may use the term "free" only if all of the terms and conditions relating to the availability of the "free" product or service offered are clearly disclosed. For example, a licensee places an ad that states "Call for a free market analysis on your home." **The ad must also state under what conditions the licensee will provide the "free" market analysis.**

The offering of prizes or inducements is not illegal as long as the licensee clearly discloses the terms and conditions of the offer. Offering prizes or inducements are always subject to the limitations or restriction of state law.

Offering Property for Sale without Authority

Company policy is that Associates may not offer for sale or lease or advertise a property without the authority of the property owner.

Also prohibited under this standard is the practice of leaving a "For Sale" sign on a property after a listing has expired or been withdrawn. In addition, the licensee cannot quote a price for a property different than the listed price.

Name of Firm Must Be Disclosed in Advertising

Company policy is that all property advertised for sale must disclose the name of the Company and its State license number. Certain States require the firm's location or phone number to also be advertised. Check with your Manager or Broker to ensure your advertising meets all requirements of your particular State.

This means that an agent cannot advertise a property and simply put his or her name on the advertisement. The name of the firm with which he/she is affiliated must be stated and be readily apparent in all advertising relating to a listed property as well as the Firm's license number, whether the advertising is in the form of print, radio, television, or electronic medium.

If you have a DBA, or "team" name, or anything else besides your legal name that you advertise, you must register the DBA name with the county and the State Real Estate Commission.

Disclosure of License Status

Company policy is to always disclose license status.

For example, a licensee owns rental property or is a partner in rental property. The property is offered "for sale" in the newspaper. This Standard of Practice requires that the licensee disclose his/her licensee status in all advertising, even if it is not

a listed property.

Unauthorized Practice of Law

Company policy is that Associates do not practice law. A common example is the drafting of non-standard or common conditions or contingencies. Here are some examples of conduct that should be viewed as the practice of law:

- Advising a seller on how to complete a seller's property disclosure statement where issues of disclosure or non-disclosure have legal liability or implications.
- Advising clients on real estate related tax issues connected to the purchase or sale of property, or the ownership of property.
- Advising clients on the terms and conditions of loan documents and their legal implications.
- Advising clients on how to take title to property.
- Advising clients on foreclosure issues and procedures.
- Giving a legal opinion on the validity and technical points of an IRC 1031 Tax Deferred Exchange.

Cooperation in REALTOR® Professional Standards Hearings

Company policy is to cooperate in any REALTOR® Professional Standards hearings. As a member of a REALTOR® organization (either national, state, or local) a REALTOR® is obligated to cooperate in any ethical or standards of practice proceeding or investigation if charged with unethical conduct. This obligation extends to providing evidence or cooperating in any way so that the alleged violation will be resolved. In addition, the Board's investigative process or proceedings cannot be obstructed by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding.

Duties to All REALTORS®

Company policy is to treat all REALTORS® fairly and ethically.

Making False or Misleading Statements about Competitors

Company policy is not to make false or misleading statements about competitors to anyone. Due to the highly competitive nature of the real estate business, a standard of practice was added prohibiting licensees from making or repeating false or misleading statements about their competitors in order to obtain an advantage. Standard of Practice 15-2 states:

- "The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses and their business practices includes the duty to not knowingly or recklessly publish, 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."

Interfering with Agency Relationships

Company policy is not to interfere with existing agency relationships. For example, a licensee cannot use the multiple listing service information of those sellers listed in a certain geographic area as the specific target of a solicitation or communication.

The general rule is that an agent may not solicit a listing that is currently listed exclusively with another agent. However, if the listing agent refuses to provide the expiration date of the listing when asked by a competing licensee, the licensee can contact the listing agent's client for the purpose of securing the listing expiration date. They can also discuss the terms under which a future listing might be taken or can even take a listing effective upon the expiration of the exclusive listing of the current listing

agent. This same principle applies to buyers or tenants that are currently under contract with a licensee.

If the client of a REALTOR® contacts a competing REALTOR® during the term of an existing exclusive agency relationship to discuss the same type of service currently being provided by a REALTOR®, the competing REALTOR® may discuss the terms under which they would enter into a future agreement or can enter into an agreement which becomes effective upon the expiration of the existing exclusive agreement. The competing REALTOR® can take these actions only if that REALTOR® did not directly or indirectly initiate the discussions. **Document this scenario well if it occurs.**

Clients who have worked with a REALTOR® on prior engagements can be contacted by a competing REALTOR® for future business.

Prior to entering into an agency relationship with a client, a REALTOR® must take affirmative steps to be assured that the client is not currently subject to a valid exclusive agreement to provide the same type of real estate services with another agent. This rule is often ignored. For example, a licensee holds an open house and an individual visits the open house. The licensee under this rule has an obligation to inquire if the individual is engaged in an agency relationship with another licensee prior to drawing the individual into a conversation relating to the property or other properties that might fit the desired parameters of that individual.

Similarly, on unlisted properties, an agent must disclose his/her status as a buyer's agent to the seller at first contact and again disclose that relationship in writing no later than the execution of any purchase and sale agreement. If the buyer's agent desires to be compensated by the seller for any potential sale, the agent must make the request for such compensation at the first contact.

An agent acting as the agent of a seller must disclose that relationship to the buyer as soon as practical and provide written confirmation of such disclosure to the buyer no later than the execution of any purchase agreement.

Once a client, whether a seller or a buyer, is in an agency relationship with a licensee, all dealings with that individual must be conducted through their agent. There are two exceptions to this rule;

1. The client's agent consents to direct contact with the client.
2. The client initiates direct dealings.

In cooperative transactions, REALTORS® shall compensate the cooperating managing broker. No compensation shall be offered, either directly or indirectly, to any affiliated licensee of the managing broker without the prior knowledge and consent of the managing broker.

A subagent of a seller, who is working with a buyer or a buyer's broker, cannot use the terms of the offer to purchase to attempt to modify the listing broker's offer of compensation to the subagent or buyer's broker or make an offer to purchase contingent on the listing broker's agreement to modify the offer of compensation.

Example: In order to secure the balance of the fee, Brian has his buyer make his offer subject to Brian receiving a 2.5% fee. This practice is prohibited by the Standards of Practice as it would in essence be an attempt to force a modification of the listing agent's offer of compensation to the cooperating agent.

An agent may not place any sign or notice on a property for sale or lease without the consent of the seller/landlord.

An agent contemplating terminating the relationship with his/her managing broker may not induce clients to cancel exclusive contractual agreements between the client and the firm and rewrite them after the move. However, the managing broker can establish agreements with affiliated licensees that address when the managing broker will consent to a departing affiliated licensee asking a client to follow that licensee in the event they terminate their relationship with the managing broker and either go out on their own or join another brokerage.

A licensee may not interfere with any existing agency relationship established between another licensee and their client.

Real Estate Commission Complaints

Associates agree to discuss with their Broker any previous or current complaints on record with any State, MLS, local Board, State regulation or any other governing authority before conducting real estate activities with the Company.

Restricted or Temporary Licenses (term varies by State)

Any Associate with a “restricted” or “temporary” license requires extra supervision per the State Real Estate Commission. Associates are required to disclose any restricted license status to the Broker and provide documentation and written explanation of the facts involved.

Pending, Closed or Potential Lawsuits

Any Associate that has been involved in any pending, closed or potential lawsuit must disclose the details of that lawsuit and provide a written explanation of the facts before conducting any services for the Company.

Signing Agreements with Third Parties

Associates will not sign any agreement with any third party that involves the practice of any real estate, or any duties or activities that may affect the Company, without the Broker reviewing the agreement and approving the agreement first.

Continuing Education

Associates agree to attend continuing education on a regular basis and share with the other Associates anything that may affect, benefit, or harm the Company.

Written and Oral Exams

From time to time the Company may publish a written and oral exam to help Associates stay in touch with changing laws or rules that affect the real estate business. Associate agrees to participate in those exams and complete any exam presented.

SECTION 11: ADVERTISING GUIDELINES

Advertising Policy

The following policies apply to all property listed with the Company.

1. **Advertising Defined:** It is the policy of the Company that the term “advertising” is to be broadly interpreted to include any communication, whether oral or written, between an agent and the public.
2. **Necessity of Signed Listing Agreement:** No property will be advertised in any way without a signed written listing agreement on file with the Broker or Manager. The listing agreement in the hands of the associate agent is not

sufficient. If a listing agent has a listing he/she wants to advertise, the original or a fax of the original must be in the hands of the Broker or Manager.

3. **Newspaper/Magazine Ads:** A listing which is due to expire by the publication date of a newspaper or magazine ad will not be inserted into the ad unless a written extension of the listing is received by the Broker or Manager before the deadline for placing the ad.
4. **Price Changes:** No price changes or other substantive changes to the listing will be advertised unless a written change of the price or other appropriate information is received by the Broker or Manager before the deadline for placing the ad.
5. **Advertising Features As "New":** Information on features of the property will not be advertised as "new" unless substantiated by written receipts or other evidence of payment from the owner showing the date the work was done. If the verification is received, it will be advertised with the appropriate date. If the verification is not received, the listing agent must use other words such as "newer" or "recent" to describe the feature.

Agents should take special care to follow these same rules in the use of "special feature" sheets. If an agent does not follow this policy regarding any information sheets or other documentation/advertising the agent prepares, the agent will be solely liable for any errors or omissions which later cause any losses.

6. **"For Sale" Signs:** "For Sale" signs and lock boxes will be removed immediately upon expiration or withdrawal of a listing.
7. **"Sold" Signs:** According to the REALTOR® Code of Ethics, prior to closing, only the sold sign of the listing broker is allowed on the listing, unless the listing agent consents otherwise. The Code of Ethics also allows the cooperating broker to post a "sold" sign with the written permission of the buyer after the closing. Per the Code of Ethics, either the listing broker or the cooperating broker may claim to have sold the property in advertising and representations to the public.
8. **"Personal Advertising":** Personal advertising by individual agents is encouraged. Any personal advertising must be approved by the Broker or Manager. Standard of Practice 12-5 of the Code of Ethics requires that the name of the firm be disclosed in any advertisement of listed property.

If you use a name in your real estate business which is different from the name on your real estate license certificate (which should be your legal name), you may be in violation of the Real Estate License Law.

For example, suppose your full legal name is Midlemas Phestus Furplesnurkle, IV, but you prefer to go by "Purple" in connection with your real estate business. Your advertisements in the local homes magazine, newspaper, and on the web, simply say, "For all your real estate needs, think "Purple!" Likewise, your (Purple) business cards and sign riders identify you only as "Purple." This method of identification is insufficient under the law even if your ads, cards, and stationery include your company name, address and phone number. The name under which you do business should be enough to identify you legally and to assure that you are not misleading the public as to your identity. By using only "Purple," you are engaging in business under a name not legally your own and thus effectively concealing your identity. While you may not intend to deceive, you do so by not using your legal name.

First Names

Nicknames have always been common, and you can certainly use one in place of your legal first name. The key is to remain readily identifiable to the public and to the Real Estate Commission. Some nicknames are short versions of a longer name and are commonly known. For example, William may go by "Will" or "Bill," Robert by "Rob" or "Bob," and Elizabeth by "Liz," "Beth," or even "Betsy." In these kinds of situations, you may use a nickname because your actual name can be easily determined. Similarly, a nickname involving the use of initials in place of your given name is acceptable, as when Thomas Joseph Jefferson goes by "T. Joseph Jefferson" or even "T.J. Jefferson."

Other nicknames are not logically associated with the user's first name. For example, if your name is Midlemas Phestus Furplesnurkle and you use a nickname like "Purple" or "Kid," a member of the public would have no way of knowing

that you are actually “Midlemas.” In order to assure that you can be easily identified, your business cards and correspondence should include your full name together with your nickname. This can be done in various ways. For example, your business card might read, “Midlemas ‘Purple’ Furplesnurkle, Broker,” and your newspaper ad could say, “For all your real estate needs, call Purple! (M.P. Furplesnurkle, IV, Broker).”

Last Names

Using a surname that is not your own is not allowed. If you have an awkward or lengthy surname, you may wish that you could shorten or simplify it only in connection with your real estate business. While the goal is understandable, the result is misleading if you haven’t legally changed your name. For instance, if your surname is Furplesnurkle, you can’t simply call yourself “Mr. Furp” or “Mr. Jones” in your brokerage activities, so long as your legal name remains Furplesnurkle. If you want to become “Furp” or “Jones,” you should legally change your name. The most straightforward way to do this is to go through a judicial name change proceeding before the clerk of court in the county where you reside.

If you don’t want to go to the trouble of changing your name legally, then you should use your legal name in all aspects of your business. You cannot avoid the problem by filing a BBA (doing business as) registration in the office of the register of DBAs. That procedure is only for business names--not for personal name changes. You must also file your DBA with the State.

9. Internet Advertising

- a. All agent-created or agent-utilized online advertisements, Web pages, domain names, sponsorships, links, frames, blogs, and other electronic media (referred to as “Internet advertising”) must conform to state and federal law and to Company identity standards.
- b. All Internet advertising must be approved by Company management before going online. This policy covers personal websites, blogs, and listings posted on any site other than the Company’s Web site.
- c. Any contract for Internet advertising must be reviewed and approved by Company management before the agent signs it.
- d. All Internet advertising must contain appropriate content and shall not contain links to any inappropriate content nor be sponsored by any person or entity that has not been specifically approved by Company management. Examples of inappropriate content include racial or ethnic “hate” content, content that is excessively violent, and sexually explicit content.
- e. The agent will be responsible for all costs of the Internet advertising that he or she has contracted for. The agent may not enter into any contracts for Internet advertising in the Company’s name; instead, the agent must enter into such contracts in his or her own name. If the Company becomes liable for an agent’s Internet advertising contract, the agent will promptly reimburse the Company the costs of the advertising and/or the Company will have the right to deduct such costs from any pending commissions due the agent.

General Advertising Policies

As used here, advertising includes, but is not limited to, the following:

- All display advertising.
- All classified advertising with any publication including newspapers and magazines.
- All mass mailing and faxes.
- Emails
- Internet postings
- Television programs or ads
- Flyers
- Postcards
- All newsletters
- “For Sale” signs and riders
- Billboards
- Business cards

All advertising must be approved by the Company before your placement or use.

You may only advertise property actually listed for sale or for rent by the Company. Anytime you advertise property you must include the term “broker,” “agent,” “licensee” or “REALTOR®.”

All advertising words and content are and shall remain the property of the Company whether created by you, the Company, or both.

Legal and Ethical Considerations

Advertising is one of the most important tools for success in real estate. However, it must be used carefully. As an associate and licensee, you have both a legal and ethical obligation to be truthful when advertising properties or services.

All advertising must comply with all state and federal advertising requirements as well as the NAR Code of Ethics. Any advertisement that the Company deems to be false or misleading may immediately be withdrawn by the Company and without notice to you. Legally, you may be held liable for fraud, intentional misrepresentation, or negligent misrepresentation if you make material false statements or material omissions in an advertisement. Additionally, you may face disciplinary action by the Department of Real Estate.

Finally, licensees who place listings in the Multiple Listing Service in expectation of compensation are responsible for the truth of all representations in such listings of which the licensee had knowledge, or reasonably should have had knowledge.

Advertising Expenses

The Company publishes its schedule of advertising media expenses in the AARE FAQ doc. The document itemizes those advertising expenses that will be borne by the Company, those that will be split between the Company and you, and those that will be solely your responsibility. This schedule may be changed by the Company from time to time.

Company Name and Logos

Your use of the Company’s name and logo must conform to the Company’s graphic standards regarding the style, color, and uses of the name and logo. These standards are available through your Manager. No other uses of the Company name or logo are permitted without prior consent of your Manager.

REALTOR® Trademark

The use of the name REALTOR® must be used in compliance with the National Association of REALTORS® guidelines governing the use of that name and mark. Those guidelines are available on-line at: www.realtor.org.

Telephone: Do Not Call Compliance

You are required to comply with the do-not-call laws which generally prohibit “telephone solicitations” to residential and cell phone numbers registered on the National Do-Not-Call Registry. A “telephone solicitation” is defined as the initiation of any telephone call or message, unless exempt, “for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.”

The Company may maintain a “do-not-call” list from, among other things, the federal Do Not Call Registry. You may not call anyone using their home or cell phone number if listed on that Registry unless an exemption applies. Exemptions include written permission, an established business relationship, or a personal relationship.

Written Permission means the person being called has given prior express permission to call as evidenced by a signed, written agreement to be contacted at a specific number (e.g., C.A.R. “Consent for Communications” form).

An **Established Business Relationship** means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber on the basis of either:

- The consumer's business transaction with the Company in the past 18 months; or
- The consumer's inquiry or application regarding the Company's services within the past three months.

Personal Relationship means any family member, friend, or acquaintance of the person making the call.

In addition, you must inform the Company if you speak on the telephone with any party who expresses a desire not to be called again. The person must be placed on the Company's own "Do Not Call" list. You must also refrain from soliciting anyone on the Company's "Do Not Call" list, unless an exemption applies.

It is your responsibility to adhere to this policy and you will be solely responsible for any violation, including any fines, penalties, damages recovered, settlements or attorney's fees and costs.

Fax and Email Advertising

There are state and federal laws prohibiting faxing or emailing unsolicited commercial advertisements or solicitations. Exemptions include prior permission or an established business relationship. It is the Company's policy to adhere to these legal guidelines. Contact your Manager if you have any questions.

It is your responsibility to adhere to this policy and will be solely responsible for any violation, including any fines, penalties, damages recovered, settlements, or attorney's fees and costs.

Websites: Privacy

The Company maintains a website which advertises Company listings. It is the Company's policy to respect the privacy of persons visiting our website. See the Company Website Privacy Policy statement on-line for more details.

If you maintain your own personal website, you must conform to the Privacy Policy statement on the Company website in all your interactions with visitors to your website. Your personal website must also conform to other online privacy and other laws, to this Policy Manual, to MLS rules, and to the NAR Code of Ethics.

Regulation Z

You are required to adhere to the requirements of federal Truth-in-Lending laws (also known as "Regulation Z") for advertising certain credit transactions or financial terms. Under Regulation Z, if an advertisement states a specific finance charge, the charge must be expressed as an annual percentage rate (APR).

If any of the following terms are used in the advertisement:

- The amount or percentage of the down payment.
- The amount of any installment payment.
- The dollar amount of any finance charge.
- The number of installments.
- The period of repayment.

Then the advertisement **MUST** include all of the following specific terms:

- Down payment.
- Terms of repayment.
- Rate of finance charge expressed as an annual percentage rate.
- If the annual percentage rate may be increased after the transaction is consummated, then that fact must also be disclosed.

Any advertisement of commission rates, discount points, reductions, or incentives must be approved by the Broker prior to your

placement or use.

9. Regulation Z requires that all of the terms of the financing be stated if any "triggering terms" are used. "Triggering terms" are terms such as the amount of down payment ("10% down"), the amount of any payment ("Only \$550 per month"), the period of repayment ("40 year loan available") or the number of payments ("Only 48 monthly payments").

Use of any interest rate in advertising is not allowed. Only the Annual Percentage Rate, stated and calculated as such is allowed. Therefore, a property cannot be advertised as having, for example, a "7% assumable VA loan."

Not all terms trigger Regulation Z disclosure. Some examples of terms which can be used without triggering Regulation Z disclosure are "No down payment", "Financing Available", "Special Financing", or "Assumable Loan."

Fair Housing in Advertising

The Company is committed to equal opportunity and fair housing in all of its advertising.

Federal law states that a broker may not print, publish, or make any discriminatory notice, statement, or advertisement which indicates a preference, limitation, or discrimination in the sale or rental of a dwelling. The prohibition against discriminatory advertisements applies to all oral and written statements, including flyers, brochures, signs, banners, posters and billboards used in the sale of a dwelling.

Be aware that the selective use of words, phrases, symbols, visual aids and media in the advertising of real estate may indicate preferences held by the advertiser and lead to allegations of discriminatory housing practices. Words in a real estate advertisement which indicate a particular race, color, sex, handicap, familial status, national origin, gender identity, gender expression, sexual orientation, marital status, ancestry, source of income, or genetic information may violate the Federal Fair Housing Act and/or the California Fair Employment and Housing Act and may not be used in Company advertisements at any time.

SECTION 12: INFORMATION SYSTEMS POLICY

Company Online Software Systems and Computers

The Company provides access to many online software systems for associates. The Company does not provide actual computers for individuals to use, you must provide your own computer. When using any of the Company's online software systems, the following rules apply:

- Systems are for Associates or employee use only.
- Only use systems during your allocated time slot.
- Do not leave personal files or information on these computer systems – they are not secure.
- For real estate related business use only: please don't waste materials, or waste time on the computer systems to the detriment of others.
- Don't send unsolicited junk or nuisance mail.
- Files and email may only be read by persons for whom they were not intended.
- Your use must be lawful, honest and decent, and must have regard to the rights and sensitivities of other people.
- Log off any online services when finished.
- All outside source software, disks, or data input sources must be checked for viruses and pre-approved by the Company before downloading, loading, or importation.
- Don't store any personal information in electronic form about yourself or other people on these computer systems.
- Don't delete, disable, or tamper with any software provided by the Company.
- Don't tamper with the hardware or any network or power connections.
- Don't connect your own equipment to the network except in approved locations provided for that purpose.
- It's your responsibility to keep your passwords and usernames secure: never allow anyone else access to them.

- Never use anyone else's account, with or without their permission.
- Make sure you log out when you finish using the computer systems.
- Transmission, deleting, exporting, 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.
- Any duplication of copyrighted software, except for backup purposes, is a violation of the Federal Copyright Law. Associates who are aware of any misuse of software on the information systems or in related documentation shall immediately notify the network administrator.

Computer Usage Policy

1. Computers, computer systems, and business email accounts provided by the Company in the offices or otherwise generally are for business use only.
2. Agents and employees may use a Company computer for personal word-processing and Internet browsing only if no one else in the office needs the computer for business purposes. If someone needs the computer for a business reason, the person using it for personal tasks must stop and give the business user immediate access.
3. Personal data and files (including those created pursuant to section 2) may not be stored on Company computers or Company software systems.
4. Internet usage:
 - a. Computers or software systems provided by the Company may be used for business-related Internet browsing (also called "surfing"). Generally, agents and employees should not use Company computers for recreational or personal Internet browsing.
 - b. The occasional use of Company computers for recreational or personal Internet browsing is permitted on the same conditions as the use of Company computers for personal purposes. (See sections 2 and 3 above.)
 - c. Under no circumstances may Company computers be used for browsing Web sites containing inappropriate content. Examples of inappropriate content include racial or ethnic "hate" content, content that is excessively violent, and sexually explicit content.
 - d. Under no circumstances may Company computers be used for communications with or communication methods provided by Web sites containing inappropriate content. For examples of what content would be considered inappropriate, see section 4c above. "Communications" and "communication methods" include any type of use of the computer to communicate; examples are "chat," "chat rooms," "instant messaging," discussion groups and e-mail.
5. E-mail usage:
 - a. If an agent or employee maintains e-mail files on Company computers, those files are not considered private or confidential and may be reviewed by Company management at the Company's discretion.
 - b. Agents and employees will provide, at the request of the Company, copies of any e-mail communications they possess regarding any client, customer, or transaction involving the Company or its sales associates on any computer including personal computers.
 - c. Agents and employees may not defame any person in any e-mail communication.
 - d. Agents and employees may not use inappropriate language in any e-mail communication. "Inappropriate language" includes profanity, "hate" speech, and sexually explicit speech.
 - e. Agents and employees will be solely responsible for any contracts obligating them that were entered into via an e-mail communication. If the Company becomes liable for a contract made by an agent or employee in an e-mail communication, the agent or employee will promptly reimburse the Company for the costs of the contract and/or the Company will have the right to deduct such costs from any pending commissions due the agent or salary due the employee.
 - f. All e-mail communications must conform to state and federal laws. (See the Company's Commercial E-Mail Policy for more on the federal CAN-SPAM law, which regulates commercial e-mail.)

6. Any communications transmitted or communication methods used via an agent's personal computer or a company computer must be appropriate and within all applicable local, state, and federal laws. Under no circumstances may Company computers be used to communicate any type of inappropriate content or language. (For examples of what would be considered inappropriate content and language, see sections 4c and 5d above. For the definition of "communications" and "communication methods," see section 4d above.)
7. Agents and employees must obey all applicable laws and regulations in their business and personal use of Company computers; this includes use for e-mail and Internet browsing. Applicable areas of the law include: copyright, trademark, defamation of character, libel, slander, fraud and misrepresentation.
8. Privacy:
 - a. Because the computer systems and communication systems (including all networking systems) are Company owned, all material, communications, information, and usage may be monitored and regulated by the Company in any way, method, or manner deemed necessary and appropriate.
 - b. No agent or employee shall retain, maintain, or own any rights to any information or communication stored on or routed through Company computers or their primary email address used for business.
 - c. No agent or employee shall have any privacy rights regarding any information accessed or created, communication transmitted, or activity conducted using Company computer systems or their business email accounts, regardless of the reason for the use.

Personal Computers

Associates must bring personal computers and software to the office as appropriate to conduct your business. The Company will provide wired and secure wireless Internet access at the office. The Company is not responsible for any damage or loss of your personal computer or data on your personal computer.

Social Media

Social media including, but not limited to, Facebook and Twitter can be instrumental to marketing and advertising property if used ethically and properly with the Company and client's permission. Social media can conversely be detrimental to the Associates or Company's reputation and a potential liability for slander and libel if used inappropriately.

Company Policy is to never:

1. Libel or slander any customer, client, REALTOR®, or any person related to any of your business dealings.
2. Share any confidential information about the Company.
3. Share any confidential information about any customer or client.
4. Write, discuss, or share material facts that may affect the sale of any property.
5. Write, discuss, or share any details of any transactions with the Company.

Websites

Associates are encouraged to have their own personal website if desired. All regulations of the DRE should be followed as to content and identification of the Company. A Company website utilizing the IDX system will be maintained in order to display the Company's listings and participating Brokers' listings to the public and to attract leads and new customers. The Company will create a website for each associate with an IDX on a sub domain of the Company's main webpage to attract leads and new customers for that Associate.

Email

An email address will be offered to you immediately upon your association with the Company. If you have a current Gmail

account you may use that email address instead of a Company Gmail address. Any Associate who receives threatening, harassing, or improper communications shall immediately report the situation to the Company.

Commercial Email Policy

It is the policy of the Company, to comply with the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, more commonly known as the “CAN-SPAM Act of 2003” (the “Act”). The Act does not ban commercial emails but rather outlines a series of practices that must be followed when sending them. All agents and employees of The Company are required to comply with this policy.

1. **Requirements for commercial email messages.** The Act defines “commercial electronic mail message” as “any electronic mail message for the primary purpose of which is the commercial advertisement or promotion of a commercial product or service.” Commercial email messages must include the following:
 - a. A clear and conspicuous notice that the message is an advertisement or solicitation (unless the recipient has given prior consent to the sender to receive commercial emails).
 - b. A functioning e-mail address or other mechanism that allows the recipient to send a message requesting that the sender stop sending commercial e-mails to the recipient.
 - c. A clear and conspicuous notice of the recipient’s opportunity to opt-out of future messages.
 - d. A valid physical postal address for the sender.

E-mails sent to individuals or firms with whom an agent or employee has an existing business relationship are not exempt under the Act and must contain the information listed above *unless* they are “transactional or relationship messages.” (See below for more on “transactional or relationship messages.”)

If a recipient makes a request to not receive commercial e-mail messages from the Company or its sales associates, the sender has 10 business days to stop sending commercial emails to them and may not sell or otherwise transfer the recipient’s email address to another party. A recipient who has opted out may thereafter be contacted *only* if he or she subsequently gives the Company and its sales associate’s permission to send commercial emails.

2. **Exemptions.** The Act exempts from its requirements “transactional or relationship messages.” For a real estate agent, a “transactional or relationship message” would be an email to a client addressing an ongoing transaction or related to the agent’s representation of the client. For example, e-mails sent by a listing agent to a seller who has listed her home for sale or by an agent to a buyer client probably would be considered “transactional or relationship messages.” On the other hand, emails that solicit sellers or buyers who are not presently Company clients probably would not be considered “transactional or relationship messages.”

Tech Equipment Insurance

Each Associate should purchase coverage on their personal computer, printer, and other equipment and gadgets as deemed appropriate. Check with your insurance agent for more information.

Each Associate is responsible for acquiring and maintaining all software and hardware needed to provide professional real estate services, to include but not limited to, a computer, printer, computer faxing software, and C.A.R. forms software.

The World Wide Web

Internet communications may not be 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 your Manager for such communications.

SECTION 13: DISCRIMINATION POLICY

Fair Housing Laws

The major federal fair housing law is the Fair Housing Act. Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), or handicap (disability, including persons with AIDS).

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 company services.
- In the appraisal of housing.
- Blockbusting, inducing, or attempting to induce for profit a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes, is also illegal.

In addition to the protected classes described above, several other state laws also prohibit discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on gender identity, gender expression (a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth), sexual orientation, marital status, ancestry, source of income, genetic information, religious grooming, breastfeeding, or any arbitrary classification. **Check your particular State laws to ensure you are in compliance.**

NAR and HUD developed a REALTOR® Fair Housing Declaration, a guideline of general fair housing principles, to which the Company firmly subscribes. Under the fair housing principles, you agree to the following:

- Provide equal professional service without regard to the race, color, religion, sex, handicap, familial status, or national origin of any prospective client, customer, or residents of any community.
- Keep informed about fair housing law and practices, improving your clients' and customers' opportunities and your business.
- Develop advertising that indicates that everyone is welcome and no one is excluded; expanding your clients' and customers' opportunities to see, buy, or lease property.
- Inform your clients and customers about their rights and responsibilities under the fair housing laws by providing brochures and other information.
- Document your efforts to provide professional service, which will assist you in becoming a more responsive and successful REALTOR®.
- Refuse to tolerate non-compliance.
- Learn about those who are different from you and celebrate those differences.
- Take a positive approach to fair housing practices and aspire to follow the spirit as well as the letter of the law.
- Develop and implement fair housing practices for your firm to carry out the spirit of this declaration.

Source: National Association of REALTORS® at <http://www.realtor.org/programs/fair-housing-program/fair-housing-declaration>

All Associates of the Company will adhere to the process as outlined in the National Association of REALTORS® *Fair Housing Handbook*, which is attached to and made a part of this Office Policy Manual.

Discrimination Charges

The Company will investigate any accusation of discrimination. If the investigation confirms a possible violation of discrimination laws, your actions may be reported to the DRE for further investigation and disciplinary action. Your affiliation with the Company may also be terminated.

Harassment

Professional behavior is a requirement around your fellow Associates, Managers, Company employees, staff and customers. Harassment is strictly prohibited in this Company. Some examples of harassment include, but are not limited to, the following:

- **Sex-related harassment:** Displaying power over a man or a woman because of gender through disparaging gender-related remarks and threatening behavior. Unnecessary touching, unwelcomed jokes of a sexual nature, inappropriate gestures or use of suggestive materials, intimidating or otherwise inappropriate behavior, such as asking for, or offering, sexual favors, homophobic remarks, threats to disclose sexuality, and intimate questions about sexual activity.
- **Racial harassment:** Inappropriate comments, questions, and/or jokes about racial or ethnic origin, offensive graffiti and intimidating behavior, including threatening gestures.
- **Personal harassment:** Making fun of personal circumstances or appearance.
- **Bullying:** This can be physical or psychological. Examples of psychological bullying include unmerited criticism, isolation, shunning, gossip, essential information withheld, or behavior that is intimidating or demeaning.
- **Harassment of disabled people:** Discussion of the effects of a disability on an individual's personal life, uninvited touching or staring, and inappropriate comments or questioning about the impact of someone's disability.
- **Age harassment:** Derogatory age-related remarks and unjustifiable dismissal of suggestions on the grounds of the age of the person.
- **Stalking:** This can be physical or psychological. Examples include leaving repeated or alarming messages on voice mail or email, following people home, or approaching others to ask for personal information.

In the event an Associate feels that he or she has been harassed, the Associate must immediately report the incident to the Company. The Manager shall take reasonable precautions to keep confidential the identity of the accuser, as well as the accused. The Company will commence an investigation and prepare a written report. Under certain circumstances, such as if the accused is the Manager; 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.

Sexual Harassment (Policy Against)

Any harassment of an associate, whether agent, employee or applicant, because of race, color, sex, religion, national origin, age, military status, or handicap is clearly prohibited and will not be condoned. Sexual harassment is one particular form of discrimination which is illegal and violates the company's longstanding equal employment opportunity policy. The Company maintains a strong policy prohibiting any form of sexual harassment.

Any agent or employee who has been found to have sexually harassed another agent or employee will be subject to appropriate discipline including discharge from association or employment.

This policy applies equally to any work-related sexual harassment by or to both men and women employed by or associated with the company or who deal with the company in our business, and it is not limited to supervisor/employee or manager/agent relations or to conduct occurring on premises or during working hours.

Any agent or employee who believes that he/she is being or has been sexually harassed by another agent or employee should promptly take one or more of the following steps:

1. If appropriate, discuss the situation directly with the person whom you feel is harassing you and politely request that the person cease harassing you because you do not like or welcome his/her conduct. You might also add that if such conduct does not cease altogether, you will take further steps under this procedure. (If the person involved is a customer or client, please refer the complaint to senior management instead.)
2. If you believe that some adverse employment consequence may result from your discussions with that person, or if the harassment continues, go to a higher level of supervision including any senior executive of the company. You may be required to state in writing the specific details of the harassing behavior including date, time, place and witnesses, if any.

An investigation of any complaint will be undertaken immediately. All complaints will be handled in a prompt, confidential manner insofar as the investigation permits. There will be no adverse action directed toward any complaining agent, employee, or witness as a result of making or supporting the complaint, unless there clearly was bad faith.

Equal Employment Opportunity Policy

It is the Company's policy to provide equal employment opportunities without regard to race, color, religion, sex, age, national origin, handicap, or status as a Vietnam era veteran, to all qualified employees and applicants for employment. This policy applies to all areas of employment, job assignment, training, promotion, transfer, compensation, discipline and discharge. The company abides by all federal and state laws regarding employment practices, including, but not limited to the Americans with Disabilities Act.

SECTION 14: RISK REDUCTION

Risk Reduction Policies

The Company advocates and encourages the concept of risk reduction. A majority of claims filed against real estate agents and brokers allege some form of misrepresentation or fraud. The trend of the law in the real estate industry is for more and more disclosure. Accordingly, the Company has the following policies regarding risk reduction and disclosure.

Compliance with All Laws, Rules, and Regulations

As an agent of the Company, each person assumes the obligation of strict compliance with all laws, rules, and regulations which govern real estate licensees in the State of California.

Compliance with This Policy Manual

As an Associate of the Company, each person agrees to comply with all policies as stated in this manual and its additions, changes, and amendments as published from time to time by management of the Company. Failure to comply with the policies herein subjects the agent or staff member to disciplinary action which may include termination of association with the Company.

Physical Condition of Property

In accord with the REALTOR® Code of Ethics, Real Estate Commission Rules, and the State real estate licensing law, the policy of the Company is to disclose to all appropriate parties any known material facts of a property. This applies whether the Company is the listing agent, subagent, or buyer's agent. (See section 8 of this Manual captioned "Disclosure of Material Facts")

for a discussion of what constitutes a “material fact.”)

“Stigmas” on Property

California law states that sellers must disclose the fact that a property was occupied by a person who died in the last three years.

If a prospective buyer asks an agent whether there are any sex offenders living near the property and the agent does not have any reason to believe that a sex offender lives nearby, the appropriate answer should be “I’m not aware of any” rather than a definitive “no,” since the agent can never be certain that a sex offender does not live nearby. In such cases, the agent should inform the buyer that detailed information about registered sex offenders is available from the local sheriff’s department. The agent should also make the buyer aware of the existence of the statewide registry of sex offenders maintained by the California Department of Justice (access to which is available via the Internet at <http://www.meganslaw.ca.gov/>). On the other hand, if the agent *does* have reason to believe that a sex offender might live nearby, the agent should avoid giving a definitive answer to the question without first checking the California Department of Justice sex offender registry or with the sheriff’s department to insure any information the agent has is accurate and up-to-date. The agent should understand that he/she is communicating information about a third person that could be detrimental to the reputation of the third person and that may stigmatize the property being sold. If the agent communicates inaccurate information, it opens up the possibility of liability to the third person or the owner of the stigmatized property. When asked the question, the agent should inform the prospective buyer of the existence of the sex offender registry and tell them the agent will check it for them and report back to them. The agent should then check the registry to determine whether or not any registered sex offenders are listed as living nearby. If there are, the agent must disclose that information to the buyer. The agent should get written evidence of his/her research (print the information from the California Department of Justice web site or get something in writing from the sheriff’s department), write the date and time the agent got the information on the written documentation itself, give the buyer a copy of the search results (whether or not those results indicate the presence of a sex offender in the neighborhood), and make a copy of whatever is given the buyer for the file.

Practical problems are inevitably “disclosed” by the neighbors; because of this, the policy of the Company is to discuss with the seller-client the inevitability of this disclosure and to recommend disclosure of such factors that may have an impact on a purchaser’s decision to buy. Recent violent crimes or suicides are specific examples of such events. If, after this discussion, the seller-client instructs the company not to disclose these factors voluntarily, the agent should consult company management to determine whether the listing will be accepted.

Documentation of Disclosure

As is apparent, the Company advocates full disclosure in appropriate circumstances. However, all the disclosure in the world does no good if it cannot be proven. While it would be ideal to have every single disclosure as to every material item disclosed to the parties in writing with their acknowledgment of the disclosure, such is not usually possible.

The Company preferred policy is to have a written disclosure and acknowledgment as in the case of the CAR form “Transfer Disclosure Statement” (TDS).

Recognizing that this ideal cannot be attained in every situation, the policy of the Company is that the agent should document in his/her own personal notes and files each item which is disclosed in a transaction.

This simple policy can reduce risk and potentially save many thousands of dollars. It assumes that the agent has a regular, systematized method of organizing and keeping files. This is vitally important to a good documentation procedure.

While the company does not require an agent to use any one method, it does provide standardized files/folders/envelopes for agents to use in each transaction. Agents are strongly encouraged to use this organization system as it has been developed to keep track of details, act as a transaction checklist and risk reduction method.

Disclosure is great, but documentation of the disclosure is the glue that seals the cracks.

Use of Experts and "Recommendations"

The Company maintains a strong policy that agents not go beyond her/his area of expertise regarding a transaction. The company strongly recommends that an agent advise the use of an expert in situations where appropriate. For example, if questions arise with a buyer about the adequacy of the electrical system, the agent should advise that a building inspector, engineer, or licensed electrician be consulted.

However, an equally strong policy exists in NOT recommending any particular inspector, engineer, electrician, or other expert. While advising that AN expert be used is a good risk reduction technique, the benefits of this technique are lost if a specific expert is recommended. Recommendation of a specific expert could lead to liability if the expert fails to do her/his job and the agent was negligent in recommending that person.

The policy of the Company is to give the names of three experts in each field whenever asked for a recommendation. Do not fall into the trap of responding to a customer/client who insists that you make a specific recommendation. The agent should be firm in having the customer/client make the choice.

Some agents have found a helpful tool in keeping several sample reports from various building/mechanical inspectors, engineers, roofers, etc. When the customer/client asks for a recommendation, the agent gives the customer/client the samples and suggests that they choose the style and cost of the expert which fits their style and needs the best.

A related issue is ordering the report. The policy of the Company is that the agent should not order the report if at all possible. The company recognizes that certain situations require the agent to place the order, but, in general, the agent should have the customer/client place the order. This removes the company and agent from any involvement in the selection process and reduces the liability of possible negligence in "recommendation" of an expert.

Managing Risk and Liability Training

As stated in other parts of this manual, training and education are integral parts of any risk reduction and professionalism program. All agents are expected to complete the Company's initial training program and are strongly encouraged to take advantage of company, board, and association education programs.

Use of Legal Counsel

Whenever an agent believes she/he requires legal assistance, the Broker or Manager should be contacted. The Company has legal counsel for appropriate legal questions and problems. In addition, the California Association of REALTORS® provides a free "Risk Watch" hotline for legal educational information for the Associates of the Company. The earlier a legal question or problem is brought to the attention of management, the earlier the problem can be solved. The Company's position is that wisely spent legal fees early in a problem can save many thousands of dollars if a formal complaint or lawsuit arises.

Errors and Omissions Insurance

The Company shall maintain Errors and Omissions Insurance coverage with an insurer designated by the Company. Currently, the Company does not charge a (annual/per-transaction) fee to you for this coverage.

The Company carries Errors and Omissions Insurance in the amount of \$1,000,000 with a deductible of \$10,000. All agents and staff of the company are covered by the policy. The policy is paid by the Company.

Errors and Omissions Insurance generally cover the negligent acts of the insured. It does not cover all possible damages for which the Company could be liable. For example, no errors and omissions insurance covers punitive damages. For other exceptions, contact the broker (sales manager) for a copy of the policy.

Errors and Omissions Insurance does cover defense costs, that is, the legal fees involved in defending a claim against the Company or Agent. This is very valuable coverage.

The policy of the Company is that each agent must notify the broker (sales manager) as soon as the agent is aware of a possible claim against the agent/broker. "Possible claim" means the potential of a disagreement which could lead to a lawsuit against the Company or Agent. Only in this way can the company properly invoke the errors and omissions coverage, if necessary.

Complaint Handling Procedures

One of the simplest and most cost effective risk reduction methods is a good complaint handling process. Accordingly, the Company establishes the following procedures for handling complaints:

- a. If the complaint comes to an agent involved in a transaction, the agent will be the primary contact person to handle the complaint with whatever management assistance the agent requires. At a minimum, the agent should notify the broker (sales manager) of the complaint and the agent's progress with the complaint.
- b. If the complaint comes in without specifying an agent, the Broker or Manager will handle the complaint. If a specific management person is requested (such as "I want to speak to the Owner or President!"), the person answering the call should courteously direct the call to the requested person, if available, or the Broker or Manager in the requested person's absence. The caller should ALWAYS be assisted in some way. The person taking the call should not say "Oh, she isn't here right now," or "You'll have to call him later," or "Please call her office." It is very important to handle an aggravated or upset caller with the utmost courtesy and care.
- c. Regardless of who takes the complaint, the key factor in handling the call is to LISTEN to what the caller's complaint is. The most appropriate and helpful thing the call handler can do is give the person filing the complaint a full and fair airing of her/his grievance. Many times, simple listening to the complaint does much to alleviate the caller's frustration. Sometimes, being listened to is all the person really wants. ACTIVE LISTENING is critical.
- d. Usually, the most successful way to handle the initial complaint call is to validate the caller's concerns. In general, it is best not to challenge the caller or become defensive. GET THE FACTS! Simply try to get all necessary information from the caller's perspective, even if the complaint handler knows it may not be 100% accurate. Remember to document the conversation in writing. Make notes or write a memo about the conversation as soon as possible and include the caller's name, number, date, and time the complaint is made.
- e. Usually the call can be ended by assuring the caller that the matter will be investigated. The complaint handler should tell the caller what he/she can expect. For example, "Mr. Smith, I would hope you understand that I need to do some research. I will look in to the matter, discuss it with Suzie and get back to you by Tuesday." The caller should always be told what the complaint handler will do and by when. THEN DO IT!

The basic risk reduction techniques in this manual can contribute significantly to the safe and successful practice of the real estate business for the Company and each agent. The company appreciates each agent's and staff member's enthusiastic endorsement of these concepts.

Adoption and Enforcement of Written Policies

The Company has adopted the following written policies and procedures that define the company's agency representation policies, competitive practices, fair housing guidelines, personnel policies, communications policies, documentation and record keeping policies, and a statement of the company's overall commitment to the ethical and legal practice of real estate. Once reviewed and adopted, these policies should become part of each Associates everyday practice and will be enforced on a consistent basis by the Company.

Sharing Current Legal Situations at Meetings

Company policy is to educate all Associates by sharing current legal situations so they can learn from other Associate's experience.

During meetings and normal business communication, the Manager or Broker may discuss current risk situations or legal situations so that other Associates may learn from the situation and mitigate future risk from similar situations. Client's names and other agent's names should always remain confidential. Agents have the option to discuss the situation themselves or have the Broker or Manager discuss the situation on their behalf. Associates agree to allow the Broker or Manager to share complaints, violations, transaction details, or any other relevant details of the Associates business dealings unless otherwise specified in writing and signed by the Broker.

Risk Anticipation

Company policy is to anticipate risk, then work to minimize that risk by all ethical means. Risk anticipation refers to identifying typical or potential problems that may arise in a real estate transaction. Once identified, the licensee should establish a strategy or implement a set of procedures to ensure that the anticipated problems are avoided.

Documentation and Recordkeeping

Company policy is to document and record all communications with clients, customers, other agents, or any third party that is part of any transaction (complete or incomplete) that you work on.

Written observations created at the time an event occurred are usually regarded as very reliable evidence of the events that transpired. Associates must keep a communication/activity log file for each client and/or transaction or potential client and/or transaction, including memoranda about activities with respect to the client or prospect.

Keep records of the following:

- Document all sources of information received.
- Keep a telephone (communications) log that summarizes all business calls.
- Keep an electronic file of all email communications. You can create a pdf file of this from Google mail.
- Keep a complete transaction file that includes documentation relating to disclosures, disclaimers, and notes relating to relevant activities. This file is what the TC will prepare for any escrow you open.
- Keep dated records of the types of housing each prospective buyer asked to view, the types of housing options offered (manufactured, single family, condominiums, etc.), and all other services provided. This should be kept in your Buyers, Sellers, or Landlords folders on Google drive.
- Send the seller written updates about showing activity, as well as feedback relating to any listing you have, and save the updates in your Seller subfolder.
- Indicate on all correspondence who is receiving copies of the correspondence. If you "cc" or "bcc" another individual, you need to specify that individual's name at the bottom of the written correspondence.
- Use confirmation letters to shift the burden of response to the other party. You can do so by requesting a receipt of an email read or certifying a written letter.

Continuous failure to keep proper records can result in fines or termination from the Company.

Risk Control

Company policy is to control risk by all ethical means.

Of primary importance is dealing with any complaint or potential for complaint before it turns into litigation.

Risk control means addressing an issue when it first arises by attempting to find a solution as soon as possible. The ultimate solution or settlement may seem expensive, but a settlement made where liability is likely to occur is much cheaper than risking litigation. Even if the licensee wins the litigation, the legal fees and costs to achieve the win usually exceed a settlement amount agreed to prior to litigation.

Risk Shifting

Company policy is to shift risk when possible and ethical.

Shifting risk from the licensee to another party is a desirable strategy to minimize risk. An example of shifting risk is in the event a licensee is involved in a car accident with a client and the licensee has the required auto liability coverage, the risk is shifted from the licensee to the insurance carrier. Associates must review all liability insurance policies to make sure that coverage is adequate per the Independent Contractor Agreement with the Company. For example, the minimum liability coverage requirements required by state law may be inadequate if a business passenger is seriously injured. Increased policy limits or umbrella liability policies should be explored.

Managing Internet Risks

Company policy is to provide a Privacy Policy on any website that the Company or Associate is advertising.

Privacy Issues

Company policy is to keep all information received by customers or clients completely confidential. Associates receiving and storing confidential personal information on a personal or office computer must make substantial efforts to protect it.

Common Areas of Risk

The Company policy is to be aware of the most common areas of risk and report any risk to the Broker or Manager as soon as one is identified.

The majority of risk management issues arise out of licensee conduct. Conduct that triggers a problem may be intentional, unintentional, or even negligent. The following list is given to point out the most common areas of risk relating to real estate brokerage. This list is not all-inclusive, but does reflect common problem areas.

- Contract preparation.
- Property condition.
- Property ownership.
- Failures to research, investigate, and disclose material facts.
- Conflicts of interest.
- Negligent advice.
- Trust fund handling.
- Kickbacks and RESPA violations.
- Referrals to vendors and third parties.
- Lack of appropriate supervision of affiliated licensees.

Associate Supervision

The Company policy is to monitor and supervise any Associate working with the Company at all times. Proper supervision requires cooperation from the Associate so the management of the Company can supervise the Associate properly. This protects the Associates license and the Company license as well the reputation of both parties. Continuous lack of cooperation from Associates in following Company policies, procedures, or supervision will result in termination from the Company.

Avoiding the Unauthorized Practice of Law

Company policy is that Associates are not to engage in the unauthorized practice of law. To do so is grounds for suspension or revocation of their real estate license. Real estate licensees are permitted to fill in the blanks in pre-printed, standardized forms with respect to transactions handled in the usual course of business. Accordingly, a real estate licensee may fill in the blanks of a purchase and sale agreement, a promissory note for earnest money, rental agreements, and most lease agreements. The licensee, however, is to fill in the blanks at the direction of a party to the transaction, such as the seller, buyer, landlord, or tenant. A licensee should not draft or assist in the preparation of a land sale contract, option contract, deed, mortgage, or complicated lease. All of these documents require the services of an attorney.

Contract Law Liability

If the licensee fails to perform the contract as agreed, the licensee is in default or in breach of contract. The breach of a contract, in its most basic form, is the failure to perform a required contract duty.

Attorney's fees

Attorney's fees, unless authorized in the contract or by statute, are usually not recoverable. The contract should state that attorney's fees would be due to the prevailing party for any action brought in a trial court, or any appeal resulting from the trial. Many plaintiffs, although they may be able to recover damages for a breach, cannot afford to bring the action to recover them because the cost to pursue, without an attorney's fee clause, may be more than the damages that may be recoverable.

Specific Performance

Real estate licensees should note that personal service contracts cannot be enforced by specific performance. Personal service contracts include listing agreements, property management agreements, and other employment agreements such as buyer's agent contracts. This means that if a seller wants to cancel a listing contract, the listing licensee cannot sue for specific performance. However, the licensee may be able to recover any loss due to the wrongful cancellation by using the actual damages theory if the listing contract so stipulates.

Intentional Concealment

- Non Disclosure of Material Fact (as opposed to False Representation)
- Intent to Deceive
- Misleading Statement was Relied Upon by Complainant
- Actual Damages Result

The most common intentional torts relating to the practice of real estate are intentional misrepresentation and intentional concealment.

Offering Opinions

A licensee may notice a red flag that demands further investigation and comment to the buyer that the problem can be "easily solved." **In giving opinions, licensees expose themselves to liability.**

Real Estate Settlement Procedures Act

All Associates should be familiar with the laws and regulation of the Real Estate Settlement Procedures Act (RESPA).

Prohibited Settlement Practices: Kickbacks, Fee-Splitting, Unearned Fees

RESPA prohibits anyone from giving or accepting a fee, kickback, or anything of value in exchange for referrals of settlement service business involving a federally related mortgage loan. Some examples of this are:

- Lenders giving a referral fee to a real estate agent referring a purchaser.
- Title companies giving kickbacks to lenders who refer loans to them in exchange for something of value.
- Appraisers sharing the appraisal fee with the lender who ordered the appraisal for a borrower.

Violations of RESPA's anti-kickback, referral fees, and unearned fees provisions are subject to criminal and civil penalties. If licensees are to receive fees from lenders, or other service providers involving the settlement process, legal counsel should be engaged to determine whether the fee arrangement meets the requirements of RESPA. For example, a lender may be able to provide a fee to a real estate agent if the agent prepares and collects the initial borrower information and provides this package of information to the lender. However, the rules and regulations regarding this type of activity are very specific and must be followed.

RESPA Section 9 - Seller Required Title Insurance

RESPA Section 9 prohibits a seller from requiring the homebuyer to use a particular title insurance company, either directly or indirectly, as a condition of sale. Buyers may sue a seller who violate this provision for an amount that is equal to three times all charges made for the title insurance.

It has long been the practice for certain listing agents to indirectly (through the seller) require that a particular title company be used as a condition of the sale. This practice is prohibited under RESPA, Section 9.

Real Estate Law

As a part of any risk management program, a licensee must be familiar with real estate law and regulations. A licensee must also comply with record keeping requirements in the event that a complaint is filed against the licensee or the licensee is the subject of a routine audit.

Common violations of real estate law and regulations relate to such things as trust account handling violations, paying referral fees to unlicensed individuals, conducting real estate activity with an expired real estate license, not presenting all offers to a seller, failing to make required disclosures, etc. A thorough understanding of the real estate statutes and regulations governing real estate activity is a necessity as ignorance of the law is never a defense.

Licensees can be held liable for the violation of various laws ranging from agency disclosure laws, fair housing laws, antitrust laws to lending, and settlement practices laws. Depending on the law violated and the nature of the violation, the penalties can range from disciplinary action, to civil penalties or, if applicable, criminal action.

Potential Liabilities

The following section should be read by all Associates to gather a general understanding of potential liabilities that exist to various policies and procedures covered throughout the manual.

Potential Liability Relating to Agency Relationships

The Company permits disclosed dual agency. Therefore, certain pros and cons exist and as the associate, you should study and understand the risks involved.

- **Pros:** Allows for the greatest number of transaction possibilities in which the company may be involved and from which commissions may be derived.
- **Cons:** Requires the consent of all parties to the transaction, which many buyers and sellers may not want to give. This policy always poses the possibility of liability, even if consented to by the seller and buyer. As a result, the Associate must spend a great deal of resources and time monitoring transactions in which dual agency might occur or will occur.

Breach of Fiduciary Duties

Care

If an agent represents a **seller**, care and skill may include assisting the seller in:

- Establishing a realistic market price.
- Advising the seller in making the property more marketable.
- Advising the seller on disclosure issues.
- Using available industry standard tools and techniques to market the property.
- Assisting the seller in evaluating terms and conditions of any offers.
- Preparing and explaining transaction documents and ensuring that all transaction deadlines are met.

If an agent represents a **buyer**, care and skill may include:

- Locating property meeting the buyer's criteria.
- Assisting the buyer in evaluation of the property as to condition, value, and neighborhood.
- Assisting in locating financial alternatives available to the buyer.
- Explaining and preparing the terms and implications of the buyer's offer and responses to counteroffers and other documents.
- Tracking and ensuring that transaction deadlines are met.

Loyalty

- **Information relating to confidential matters gained from the principal may not be disclosed.** A seller's agent may not disclose the financial condition of the seller, the seller's willingness to take a lesser price, the seller's desperation to sell, etc., unless specifically authorized by the seller. Simply put, unless the principal desires that certain matters be disclosed to third parties, the agent is under a legal obligation to protect the confidentiality of those matters. However, there is a limitation imposed on this duty by statute and case law. The protection of confidential information does not include or permit a licensee to withhold material facts that must be disclosed as a matter of good faith and honest dealing. Because the concept of confidentiality is so intertwined with the duty of loyalty, it is viewed as one aspect of the duty of loyalty, rather than a separate fiduciary duty.
- **The duty of loyalty prohibits a divided agency**, also known as an undisclosed dual agency, where an agent acts on behalf of an adverse party without the principal's knowledge or consent.

- **The duty of loyalty requires an agent to disclose an ownership interest of 5% or more in a property for sale**, and to disclose that he/she has a real estate license if he/she is making an offer on a property for his/her own account.
- **The duty of loyalty prohibits competing with the principal** either for another principal or for the agent's own account in matters relating to the subject of the agency. A common example of this prohibited conduct would be for a licensee to take an under-priced listing and then purchase the property with full knowledge that it will sell for more. Any profit made on the resale of the property may be subject to a claim by the principal. Anything that an agent obtains by virtue of placing his/her interest above that of principal belongs to the principal.

The duty of loyalty requires the agent to place the interests of the principal above all others, particularly the agent's own interest.

Accounting

At all times, the agent must be able to account for all funds received from or on behalf of the principal. In addition, this duty requires the agent to keep accurate records of all documents relating to a transaction, an engagement to sell property, or agreements relating to the leasing of real property. Most states have specific requirements for record keeping that must be strictly adhered to.

Obedience

An agent must act according to the instructions and wishes of the principal unless it is illegal or unethical.

Disclosure

The duty of disclosure requires the agent to keep the principal informed of all material facts that the **agent knows or should have known** that may have an impact on the principal choosing a particular course of action. These facts may be either favorable or unfavorable to the principal.

Potential Liability Relating to Fair Housing

Company policy is to follow the Fair Housing law at all times.

Prohibited Actions

In the sale or rental of property, unless an exemption applies, no Associate may take any action that will discriminate against another in the seven protected classes listed in Section 14 above. Among the prohibited actions are the following examples:

- To refuse to rent or sell housing.
- To refuse to negotiate for housing.
- To make housing unavailable.
- To deny a dwelling.
- To process an application more slowly or otherwise act to delay, hinder or avoid the sale, rental, or financing of property.
- To set different terms, conditions or privileges for sale or rental of a dwelling.
- To provide differing housing services or facilities.
- To falsely deny that housing is available for inspection, sale, or rental.
- To channel or steer any person toward or away from a property.
- To "for profit" persuade owners to sell or rent (blockbusting).
- To deny anyone access or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.
- To refuse to make a mortgage loan.

- To refuse to provide information regarding loans.
- To impose different terms or conditions on a loan, such as different interest rates, points, or fees.
- To discriminate in appraising property.
- To refuse to purchase a loan or to set different terms or conditions for purchasing a loan.
- To threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right, or assisting others who exercise that right.
- To advertise any statement that indicates a limitation or preference based on the seven protected classes (this prohibition against discriminatory advertising applies to single family and owner-occupied housing that is otherwise exempt from the Fair Housing Act).
- To refuse to let a disabled person make reasonable modifications, at their expense, to a dwelling or common areas if necessary for the disabled person to use the housing.
- To refuse to make, if necessary, reasonable accommodations in rules, policies, practices, or services for the disabled person to use the housing.

The Role of Federal, State, and Local Governments in Fair Housing Law

The Department of Housing and Urban Development (HUD) has been given the task of administering the federal fair housing laws. Rules and regulations developed by HUD have further defined and interpreted the provisions of those laws. **Protected classes include Race, Color, National Origin, and Religion.**

Disability

A disability for purposes of fair housing laws may be defined as a physical or mental impairment that substantially limits one or more major life activities.

Fair Housing Laws as Applied to Those with Disabilities

Federal fair housing law, as set forth above, provides for the following with respect to persons with disabilities:

- It is unlawful to refuse to rent to someone with a disability.
- It is unlawful to apply special rules requiring extra deposits or rental charges.
- It is unlawful to make a false statement that housing is not available when the housing is available.
- It is unlawful to advertise in such a way that it limits housing available for persons with a disability.
- It is unlawful to restrict persons with a disability to a specific part of an apartment complex or neighborhood.
- It is unlawful to not make reasonable accommodations or modifications for those persons with disabilities.

Reasonable accommodations are changes in policies, rules, procedures, or practices and services that would enable a disabled person to have equal opportunity to enjoy and use the housing available.

Examples of reasonable accommodations that may have to be made are:

- Providing notes to visually impaired tenants in large print.
- Modifying a "no pet" policy to permit a guide dog.
- Giving a rent reminder call on the day before the rent is due for those with cognitive disabilities.
- Using alternative pest control methods for those with allergies.
- Using alternative cleaning agents for those with allergies.
- Providing a reserved parking spot near the disabled person's unit in an apartment complex which has unassigned parking.
- It is unlawful not to permit or make building modifications. A disabled tenant has the right to make reasonable modifications to their living unit at their own expense so that they may be able to have full use and enjoyment of their housing.

Examples of modifications may include:

- Lowering cabinets for wheelchair persons.
- Installing grab bars in bathrooms.
- Changing door knobs for those that have disabilities affecting hands (round v. lever type knobs).
- Installing an electric range and oven as replacement for gas appliances for those allergic to gas fumes.
- Lowering light switches and/or thermostats for people in wheelchairs.
- Installing visual alarm systems for those with hearing impairments.

Familial Status

The Fair Housing Amendments Act of 1988 added familial status as a protected class to the Federal Fair Housing Act of 1968. **It is unlawful under this act to deny housing to families having children under the age of 18 living with their parents or legal custodians, or to any woman who is pregnant.** The single exception to this rule is housing that meets the definition of housing for older persons.

MOBILE HOME PARKS - It is often assumed that mobile home parks may exclude families with children. This assumption is made because mobile homes are often the only affordable housing available to older persons and, consequently, older persons tend to have a high concentration in mobile home park communities. **The federal law does not allow exclusion from a mobile home park on a basis of familial status (child under the age of 18 or pregnant woman) unless all of the required factors discussed above are met under the retirement community classification.**

Fair Housing Practices

Redlining

Refusing to make mortgage loans or issue insurance policies in specific geographical areas for reasons other than the qualification of the applicant is known as redlining.

Steering

Steering is the practice of discouraging buyers from considering certain neighborhoods or channeling buyers to particular neighborhoods based upon assumed buyer preferences regarding racial, religious, or national origin composition of a neighborhood.

Real estate agents must show available properties to a prospective purchaser in all neighborhoods where the housing price and type fits the purchaser's parameters. The purchaser is the only one who can make the decision about a neighborhood.

Blockbusting

Blockbusting means that an agent encourages people to either sell or rent their houses by claiming that the character of a neighborhood is changing due to the entry of a protected class.

Real estate licensees, whether performing the actual blockbusting and making the subsequent profit, or simply assisting in the Blockbusting process by encouraging sellers to leave the area, are violating the Fair Housing laws.

Racial Tipping

Racial tipping means supplying truthful and factual information about the racial composition of a neighborhood in response to a buyer's stated desire to live in a neighborhood of a particular racial composition. Racial tipping is not a prohibited activity.

Advertising

Licensee is advised as to which are acceptable words and phrases and which are not permitted in advertising. The following is only a partial list:

Acceptable Words and Phrases

- Close to downtown
- Den

- Family room
- Near (such as "near UCLA")
- No smoking/drinking
- Number of bedrooms
- One apartment
- Play area
- Privacy
- Private setting
- School district
- Schools

- Secluded
- Security provided
- Senior discount
- Seniors (if certified by HUD as senior housing)
- Square Feet
- Townhouse
- Tradition (style of home)
- View
- Walking distance to...

Unacceptable Words and Phrases

- Adult (adult building, adult park, etc.)
- Adults only
- Bachelor pad
- Black
- Blind
- Board approval
- Catholic church
- Christian
- Couple (couples preferred, couples only, etc)
- Crippled
- Deaf
- Drinker(s)
- Ethnic landmarks
- Executive
- Exclusive
- Family (Great for families)
- Female
- Gay
- Gentleman's Farm
- Grandma's house
- Handicap limitations (not suitable for)
- Integrated
- Jewish
- Male
- Man
- Marital Status
- Membership approval
- Mentally handicapped
- Mentally ill

- Mentally retarded
- Mormon Temple
- Muslim
- Name of School
- Nationality (Oriental, Hispanic, etc)
- No children
- No play area
- Number of people
- Older person, senior citizen
- One child
- One person
- Oriental
- Physically fit person (idea for or limited to)
- Private
- Race
- Religious landmark
- Religious name
- Restricted
- Retired
- Sex (except in advertising for roommates)
- Single
- Single person
- Smoker(s)
- Student
- Traditional (settings)
- Two people
- White
- Words descriptive of dwelling landlord or tenants

Questionable Words and Phrases

- Female Roommate
- 55 or older (must meet HUD guidelines)

Fair Housing Practices

- Male Roommate
- Neighborhood
- Older persons
- Senior (must meet HUD guidelines)

Selective Use of Photographs or Illustrations of People

Selective use of models, photographs, illustrations of people in ad content can also be perceived as discriminating against a protected class. For example, a real estate brokerage represents a builder who has housing projects located throughout a metro area. One of the projects is in a predominately minority community, the other is in a predominantly white community. In the minority community, African-American models are used in advertising. In the white community, Anglo-American models are used. Advertising in that manner would be viewed as indicating a preference for buyers based upon race and would be considered discriminatory.

Fair Housing Law Violation Consequences

One helpful practice that all licensees should adopt is to keep good records to demonstrate that fair housing laws were complied with in dealings with a customer or client. These records are the best defense against any potential fair housing violation claim.

Types of documentation that should be maintained for all clients and customers in your Google Drive

- Name, address, and telephone number of prospect
- Stated housing requirements, including price range
- Dates and addresses of properties offered and/or shown

Voluntary Affirmative Marketing Agreement

- The use of the Equal Opportunity logo and/or slogan in advertising.
- The display of the Fair Housing logo in real estate offices, lender offices, and title offices.
- Development of educational materials and training courses that promote fair housing practices and procedures.
- Recruitment of minority salaried employees for positions with the real estate industry.

Potential Liability Relating to Environmental Issues

The real estate licensee's responsibilities with regard to environmental issues are:

- To recognize common environmental hazards in residential properties.
- To recognize environmental hazards in commercial, industrial, and agricultural properties.
- To recommend that the seller retain appropriate experts to identify and evaluate the scope of any potential environmental hazard.
- To have either the seller or buyer engage an attorney to draft appropriate disclosure documents regarding an identified hazard.
- To ensure that a property has been cleaned up and received an environmental clean bill of health before the buyer takes title to a property, if representing a buyer.

Note: The potential liability resulting from taking title to a property with an environmental hazard is so great that a buyer should be encouraged not to take such a risk. If the buyer insists on purchasing such a property, the licensee should advise the buyer, in writing, not to proceed with the transaction without first consulting with an attorney.

Potential Liability Relating to Antitrust Law Violations

Price Fixing

Due to the nature of a price fixing case, the best advice that can be given to any real estate licensee is NEVER DISCUSS WITH OTHER LICENSEES THE COMMISSIONS YOU OR THEY ARE CHARGING THEIR BUYER OR SELLER!

Reducing Antitrust Liability

- When discussing commission rates with clients, licensees should use language clearly indicating that their firm sets their commission rates unilaterally and independently of competitors.
- Any licensee who finds himself/herself in the midst of a prohibited commission rates discussion with competitors should take immediate steps to disavow any connections with the discussion. Mere silence may infer that the licensee participated in a price fixing conspiracy!
- Any preprinted forms should not contain any predetermined commission rates, listing periods, automatic renewal clauses, or predetermined protection periods. All of these items should be addressed by blanks that are to be filled in as negotiated between the licensee and client.
- **NEVER use the following dangerous words and phrases.** These are examples of words or phrases that would permit a judge or jury to find that a licensee had engaged in illegal antitrust activity. (Note: These phrases are taken from the Antitrust and Real Estate Compliance Program for REALTORS®.)
 - a. "No one else will cooperate unless you accept the listing on these terms."
 - b. "Before you decide to list with XYZ Realty, you should know that because they are a discount broker, other REALTOR® board members would not show their listings."
 - c. "This is the rate every firm charges."
 - d. "If you valued your services as a professional, you wouldn't cut your commissions."
 - e. "Before you list with XYZ Realty, you should know that nobody works on their listings"
 - f. "I would like to lower the commission rate, but the board, as a rule.... "
 - g. "This is the rate that everyone charges."
 - h. "The MLS will not accept less than a 120-day listing."
 - i. "I would like to lower the commission, but no one else in the MLS will show your house unless the commission is X%."

SECTION 15: LITIGATION & CLAIMS HANDLING

General

You are required to immediately report problems to the Company that pertain to:

- Any party having questions or complaints, whether written or verbal, involving any listing agreement, purchase, lease, or other real estate transaction.
- Automobile accidents involving property damage or personal injury to you or others occurring while the Associate is engaging in Company business.
- Physical injuries within the office or while participating in duties on behalf of the Company.
- Criminal charges against you with the exception of minor traffic offenses.
- Civil lawsuits or administrative actions involving Company business.
- Anytime you are contacted by the DRE, the local, California, or National Association of REALTORS® or the MLS for any matter that may pertain to an infraction, dispute, or disciplinary action.
- Threatened legal or administrative actions involving a real estate transaction.
- Any party who defaults under an accepted contract.

- Acts of discrimination or harassment committed by Associates or parties to transactions
- Unresolved disputes between Associates within or outside the office.

You are also required to cooperate with the Company in the defense of a claim. You must promptly pay, to the Company, any amounts due hereunder upon notice to you from the Company.

Legal Defense

When a claim or demand is made, or a lawsuit or other action is filed, against either you or the Company by a third party which alleges any breach of any duty, error or omission, or negligence in the performance of “Professional Services,” as that term is defined in the Company’s Errors & Omissions Policy of Insurance, for activities covered by the Insurance Policy, the Company shall defend the claim, and the cost of such defense shall be allocated as set forth herein.

The Company has the right to make all decisions concerning the defense of the claim, including choice of counsel. In the event you object to any decision made by the Company, you may obtain your own attorney at your own expense; however, you shall not be relieved from the obligation to pay your portion of the cost of the claim as set forth herein.

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

Allocation of Costs of Defense

You shall be solely responsible for the cost of defense of the Claim, or to defend or protect against any potential or possible Claim where the Company or you are involved as a party, including attorney’s fees, and the cost of any settlement or a judgment (collectively the “Costs of Defense”), applicable for the transaction or prospective transaction that led to the Claim, whether or not the transaction actually closed. Costs of Defense shall be solely your responsibility regardless of whether there is a finding of liability on the part of you or the Company.

You shall be solely responsible for the Costs of a claim if you fail to follow any law, regulation, or Company policy as set forth in this Policy Manual, and that failure results in a judgment or other final adjudication based on that failure.

You shall be solely responsible, and shall reimburse the Company, for all of the Company’s Costs of Defense if a judgment or other final adjudication on any Claim averse to the Company and/or you:

1. Establishes that dishonest, fraudulent, criminal, or malicious acts, errors or omissions were committed;
2. Results in a finding of intentional tort, slander, defamation, or any conduct which leads to the imposition of punitive, exemplary or multiple damages, or fines or penalties; or
3. Establishes discrimination on the basis of race, creed, religion, ethnic background, national origin, age, sex, handicap, familial status, physical disability, sexual preference, or any other unlawful classification.

The Company will not pay the attorney fees nor the cost of defending, nor will it pay the cost of settlement or judgment, involving any claim:

1. That does not involve the business operations of the Company;
2. That seeks redress for actions outside the scope of your Independent Contractor Agreement;
3. That is based on or arising out of the formulation, promotion, syndication, or operation or administration of any limited or general partnership, property syndication, real estate investment trust, joint venture or corporation, or any interest therein;
4. That is based on or arising out of bodily injury or property damage; or
5. That is excluded from the Errors & Omissions Insurance Policy.

You agree to promptly accept a tender of defense on any such claims and pay the entire Costs of Defense incurred, including any Company attorney’s fees. The Company shall have no obligation to bring a legal action, mediation, or arbitration on your behalf to recover a disputed commission or other allegation. The Company shall participate in the costs and fees of prosecuting

such a claim only if the Company agrees to do so; the costs shall be allocated between you and the Company as outlined in the Independent Contractor Agreement.

Disputes during Escrow

If a dispute arises during an escrow between the seller, buyer, the listing or cooperating Broker, third-party vendors, servicers, or other entities, and/or the Company:

- a. Which cannot be resolved by negotiations between the parties and the agent(s) involved; and
- b. Company determines that it is in the best interest of the Company to resolve the matter during escrow rather than risk a potential claim or litigation after close of escrow or for another reason; the Company has the right to negotiate a resolution of the dispute on its own behalf, and on the behalf of the Associate, which may involve a reduction in the commission to be received, and/or a credit given to one of the parties. In that event, regardless of actual Company or agent liability or responsibility in the dispute, the Associate and the Company will participate in the commission reduction or credit pro rata in the same proportion as the commission split(s) of the agent(s) involved for that transaction.

Agent Owned Property

Any property in which you have, or will acquire, an ownership, financial, or other legal interest, either wholly or partially, is “Agent-Owned Property.” The purchase, sale, or lease of Agent-Owned Property is business belonging to the Broker, unless otherwise agreed in writing. You must generally comply with the same contract, disclosure, and other requirements for Agent-Owned Property as with other transactions. The Company’s E&O Insurance Policy governs insurance coverage of the sale or purchase of any Agent-Owned Property. In any sale, purchase, or lease of Agent-Owned Property not covered by the E&O Insurance Policy, you shall be solely responsible for costs of defense, settlement or judgment on any claim, suit, or action of any nature arising there from, regardless of whether you handle the matter as Company business or as your own personal transaction. In the event you are selling or purchasing Agent-Owned Property, you must:

- a. Notify your Manager in advance.
- b. Obtain, in advance, your Manager’s approval of all marketing material and disclosure documents; any purchase contract provisions prior to their execution; and any correspondence or other writings that pertain to the purchase or sale.
- c. Not act as the listing agent on the sale. You must list any Agent-Owned Property with another salesperson in the office.
- d. Not represent buyers or prospective buyers in the sale of Agent’s Property.
- e. Notify your Manager immediately in the event that any of the Company’s agents writes an offer on your Agent-Owned Property.

SECTION 16: RESOLUTION OF DISPUTES

In order to reach a fair resolution, disagreements between Associates or other personnel within the Company regarding leads or sales are to be handled through the following processes. Such disputes may involve, among other things:

- The equitable right to work with a certain prospect.
- The right to a share of the commission 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, never tell or involve the client/customer in any dispute between Associates. Second, the agents must try to come to an acceptable resolution themselves.

All intra-office disputes must be reported promptly to the Company. In the event Associates cannot meet a satisfactory agreement among themselves, the Company shall hear both sides of the argument in a meeting with the involved parties. If, in the sole judgment of the Company, a legitimate dispute exists, the Company will make a determination of action to follow. In the event the Company's action is not satisfactory to any party, the complaint may be taken to the local Association of REALTORS® for disposition through its dispute resolution procedure.

Disagreements between Company and Associate

Disagreements or disputes between Associates and the Company pertain to:

- A conflict arising out of, or in connection with, their business relationship and dealings.
- The Company policy.
- Transactions or real estate laws.

The Associate and the Company agree to mediate all disputes and claims between them arising from or connected in any way with their business relationship before resorting to court action. If any dispute or claim is not resolved through mediation or otherwise, the Associate and the Company may mutually agree to submit the dispute to arbitration at, and according to the rules and bylaws of, the local Association of REALTORS® to which both parties belong.

Arbitration

In matters of arbitration, dispute resolution services of the local Association of REALTORS® or an attorney may be employed, at the discretion of the Company. The responsibility as to payment of arbitration or attorney fees will be determined on a case-by-case basis by the Company.

Code of Ethics and License Law Violations

In matters of alleged violation of the NAR Code of Ethics, MLS rules, and/or real estate law, an attorney may be employed at the discretion of the Company. The responsibility for payment of such attorney fees will be determined on a case-by-case basis by the Company.

SECTION 17: CONFIDENTIALITY OF INFORMATION

Confidential Information

All records of this office, as well as conversations between the Associates, the Company and the Associates, and the Associates and clients, are considered confidential information. No files shall be removed from any office or downloaded from the Company hard drive without the permission of the Company and no other information obtained while working for this Company shall be used to the detriment of the Company, its associates and employees, and its clients and customers.

You must safeguard the privacy and personal information of the Company's clients in compliance with federal and state laws. Information security is fundamentally a management issue, not a technology issue.

One of the most important duties of an agent is to maintain the confidentiality of the client, whether it is a buyer or seller. Agents should pay particular attention not to make unauthorized or offhand comments about a client's situation or a client's

property in a way that could be considered a violation of the duty of confidentiality. The following areas are considered of particular importance:

1. That a seller client may agree to a price, terms, or any conditions of sale other than those established by the seller.
2. That a buyer client may agree to a price, terms, or any conditions of sale other than those offered by the buyer.
3. The motivation of a client for engaging in the transaction unless disclosure is otherwise required by statute or rule.
4. Any information about a client which the client has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

If dual agency is offered (must be permitted in your State), it is particularly important for each agent to realize that she/he must hold confidential the information of both buyer and seller, regardless of which party the particular agent is working with.

You must be sensitive to confidential information within the office and among the Associates of the Company. The following procedures and policies are intended to protect the confidentiality of the Company's clients.

- **Associates should refrain from discussing confidential information of the client with anyone (including another Associate) absent the client's consent.**
- **Comments at sales meetings should not reveal confidential information of the client without the client's permission.**
- **Office files of listings and pending sales should be kept confidential and may not be accessed except by authorized staff and the particular agent involved in the listing or transaction.**
- **Fax transmissions should be kept confidential.**
- **Contracts, offers, counter-offers or other transactional documents will be delivered to the person addressed in envelopes. Persons other than the addressee are not authorized to open any such envelope.**

SECTION 18: TERMINATION

Grounds for Termination

Your association with the Company can be terminated by either party, with or without cause, at any time upon written notice given to the other party.

Termination for cause could result from any violation of Company policies, the MLS rules, the NAR Code of Ethics, any conviction of any illegal act, any violation of the Real Estate License Law, or any dishonest or unethical act.

Associate's Compensation on Termination

If this Agreement is terminated while you have any listings or pending transactions that require further work normally rendered by you, your Manager will make arrangements with another salesperson or salespersons in the Company to perform the required work. **The licensee performing the work shall be reasonably compensated for completing work on those listings or transactions; such reasonable compensation shall be deducted from your share of the compensation.** Except for such offset and other expenses, you shall receive the compensation due as specified above.

Listings

Listings are the property of the Company, even upon your termination. Within 24 hours after notice of termination by either party, you must provide your Manager with a list of all active listings taken by you and all pending transactions in which, if completed, you will be entitled to compensation from the Company in accordance with the terms of your Independent Contractor, or other written, agreement. **You specifically agree that you may not contact the sellers of properties where listings were taken by you for the purpose of directly or indirectly soliciting or inducing the client to terminate their listing with the Company.**

SECTION 19: REFERENCES & ADDITIONAL ATTACHMENTS

Below are additional attachments incorporated into this Policy Manual (digital online links are provided for easy reference).

Associates must read and familiarize themselves with all of these attachments.

- NAR Fair Housing Handbook
<https://www.nar.realtor/sites/default/files/documents/Fair-Housing-RE-Brokerage-Essentials-Chapter-06-2016.pdf>
- REALTOR® Code Standard of Practice
<http://www.realtor.org/mempolweb.nsf/pages/code>
- NAR Antitrust Compliance Guide (Sign Acknowledgement)
<http://www.swflrealtors.com/files/2012/03/Antitrust-Guide.pdf>
- Injury and Illness Prevention Program
<https://www.osha.gov/dsg/topics/safetyhealth/OSHAwhite-paper-january2012sm.pdf>
- AARE Code of Ethics
<https://www.aare.org/about.php>

ATTACHMENT #1

Do's and Don'ts for Buyer's Agents

DO ask the buyer whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you should not, according to the Code of Ethics and/or the law, interfere with the agency of another real estate agent. You may enter into another agreement with the buyer upon release from the other agreement. If a non-exclusive agency exists, you may enter into another non-exclusive agreement, but do not enter into an exclusive agreement until the buyer is released from the other agreement.

DO go over the "Working with Real Estate Agents" brochure or similar agency disclosure in your State prescribed by the Real Estate Commission at "first substantial contact" with the buyer and get the buyer's signature on the brochure's "tear-off" signature panel. According to the Real Estate Commission, "first substantial contact" will usually occur "...when you and a prospective buyer discuss in any detail the buyer's interest in purchasing property." Retain the signature panel of the brochure for your files. Explain the agency options the buyer has with your company. If your firm offers subagency and the buyer elects to work with you as a seller's subagent rather than as a buyer's agent, check the box in the bottom portion of the brochure's signature panel and have the buyer initial in the space provided. Then, go to "Subagency Do's and Don'ts." If the buyer will not sign the signature panel in the space provided, make a notation on the signature panel as to the time and place that the brochure was given to the buyer and that the buyer refused to complete it. If first substantial contact occurs by telephone or by means of other electronic communication, you should go over the contents of the brochure with the buyer at that time, and then, at the earliest opportunity thereafter (but in no event later than three days from the date of first substantial contact), mail or otherwise transmit a copy of the brochure to the buyer.

DO, if the buyer desires to engage you as a buyer's agent and is willing to enter into a written buyer agency agreement, use a written buyer agency agreement that complies with the rules of the Real Estate Commission. Explain the agreement, especially how buyer's agents are paid.

DO, if your company permits oral buyer agency relationships and you enter into an oral buyer agency agreement with a buyer,

clearly disclose your agency relationship to the buyer in accordance with the company's policy. Encourage the buyer to put the agency agreement in writing as soon as possible. Remember that the Real Estate Commission's rules require that the agreement be put in writing no later than the time an offer to purchase is presented to a seller or the seller's agent.

DO tell the buyer of any potential for dual agency, including the option of designated agency if your company uses designated agency. If the buyer consents to dual agency, have a written agreement with the buyer authorizing your firm to engage in dual agency and, if offered, designated agency. The written agreement should specify the duties of a seller's agent and the duties of a buyer's agent.

DO disclose your agency status orally to the seller or seller's agent no later than the initial contact with the seller or seller's agent, and confirm it in writing no later than the presentation of the offer -- written confirmation can be in the contract.

DO represent the buyer, acting according to your agreement with the buyer and the duties of State law. Represent the buyer with the utmost good faith, loyalty, and fidelity.

DO exercise reasonable skill and care for the buyer.

DO seek a price and terms acceptable to the buyer.

DO present all written offers to and from the buyer in a timely manner, regardless of whether the buyer is presently under contract to buy a property.

DO disclose all material facts to the buyer which you know or should know. Material facts include facts about the property itself (such as a structural defect or defective mechanical systems); facts relating directly to the property (such as a pending zoning change or planned highway construction in the immediate vicinity); and facts relating directly to the ability of the buyer to complete the transaction (such as the buyer's need to sell his/her current home before closing).

DO advise the buyer to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

DO account in a timely manner for all money and property received on behalf of the buyer.

DO comply with all real estate licensing laws, regulations, civil rights laws, fair housing laws, and any other applicable laws.

DO search for and present the buyer with the selection of properties specified in your buyer agency agreement. This could include MLS properties, FSBO's, REO property, and unlisted property.

DO recommend an appraisal and appropriate inspections such as building, termite, environmental, lead paint, etc.

DO work for the lowest amount of earnest money that is appropriate given the market, type of house, and type of offer the buyer wants to present.

DO point out good and bad features of a property, especially features affecting value such as poor floor plans or over improvement for the neighborhood.

DO point out any relevant information you know about the area, such as proposed roads, power lines, school changes, commercial developments, local tax increases, etc.

DO complete a Comparative Market Analysis before an offer is made on a property. Make sure it is a thorough comparison of all properties, active, sold and pending. Analyze the data with the buyer and assist the buyer in formulating an offer price.

DO prepare the offer with favorable and protective terms for the buyer, especially in inspections.

DO counsel with the buyer as to negotiating strategies on terms and price. Share your experience in negotiating with the buyer and give your recommendations, if appropriate.

DO keep information of the buyer confidential unless you have permission to disclose it or disclosure is required by law. Go over with the buyer and interview this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the seller and other agents in a transaction.

DO treat the customer and the seller honestly.

DO disclose to the seller any material facts, including facts relating directly to the ability of the buyer to complete the transaction.

DO disclose all information you receive from the listing agent. This is especially helpful regarding the seller's negotiating position and intention.

DO disclose buyer-paid retainer fees (or other fees received or to be received from the buyer) to the seller if you are also getting commission from the seller, and get the informed consent of your buyer to accept commission from the seller.

Buyer's Agent "DON'Ts"

DON'T disclose confidential information of your client, the buyer, during the term of your agency relationship with the buyer. Confidential information likely includes at least the following:

- That the buyer may agree to a price, terms, or any conditions of sale other than those offered by the buyer.
- The buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule.
- Any information about the buyer which the buyer has identified as confidential, unless disclosure of the information is otherwise required by statute or rule.

DON'T try to balance "fairness" between the seller and buyer. You represent the BUYER, your only obligation to the seller is to be fair and honest and to disclose material facts. If you learn important information about the seller's negotiating position, tell your buyer, don't make decisions about what to disclose in the interest of being "fair" to the seller.

DON'T accept a bonus, prize, trip, or incentive from a seller or listing broker without timely disclosure to and informed consent of your client, the buyer.

DON'T, if you are working with a buyer under an oral buyer agency agreement, assist the buyer in preparing a written offer to a seller unless the buyer puts the buyer agency agreement in writing.

Do's and Don'ts For Seller's Agents

Seller's Agent "DO's"

DO ask the seller whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you should not, according to the Code of Ethics and/or the law, interfere with the agency of another real estate agent. You may enter into another agreement with them upon release from the other agreement. If a non-exclusive agency exists, you may enter into another non-exclusive agreement, but do not enter into an exclusive agreement until the seller is released from the other agreement.

DO go over the "Working with Real Estate Agents" brochure or similar brochure prescribed by the State Real Estate Commission at "first substantial contact" with the seller and get the seller's signature on the brochure's "tear-off" signature panel. Explain the agency options that the seller has with your company. Retain the signature panel of the brochure for your files. If the seller will not sign the signature panel in the space provided, make a notation on the signature panel as to the time and place that the brochure was given to the seller and that the seller refused to complete it. If first substantial contact occurs by telephone, or by means of other electronic communication, you should go over the contents of the brochure with the seller at that time and then, at the earliest opportunity thereafter (but in no event later than three days from the date of first substantial contact), mail or otherwise transmit a copy of the brochure to the seller.

DO have a written listing agreement with the seller that complies with the rules of the Real Estate Commission.

DO tell the seller of any potential for dual agency, including the option of designated agency if your company uses designated agency. If the seller consents to dual agency, have a written agreement with the seller authorizing your firm to engage in dual agency and, if offered, designated agency. The written agreement should specify the duties of a seller's agent and the duties of a buyer's agent.

DO represent the seller, acting according to your agreement with the seller and the duties of State law. Represent the seller with the utmost good faith, loyalty, and fidelity.

DO exercise reasonable skill and care for the seller.

DO seek a price and terms acceptable to the seller.

DO present all written offers to and from the seller in a timely manner, regardless of whether the seller's property is presently under contract.

DO disclose all material facts to the buyer which you know or should know. Material facts include facts about the property itself (such as a structural defect or defective mechanical systems); facts relating directly to the property (such as a pending zoning change or planned highway construction in the immediate vicinity); and facts relating directly to the ability of the agent's principal to complete the transaction (such as a pending foreclosure sale).

DO advise the seller to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

DO account in a timely manner for all money and property received on behalf of the seller.

DO comply with all real estate licensing laws, regulations, civil rights laws, fair housing laws, and any other applicable laws.

DO work for the highest amount of earnest money that is appropriate given the market, type of house, and type of offer the buyer presents.

DO complete a Competitive Market Analysis before listing the property.

DO negotiate the offer with favorable and protective terms for the seller, especially in inspections.

DO counsel with the seller as to negotiating strategies on terms and price. Share your experience in negotiating with the seller and give your recommendations, if appropriate.

DO keep information of the seller confidential unless you have permission to disclose it or disclosure is required by law. Go over with the seller on the listing call this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the buyer and other agents in a transaction.

DO treat the customer and the buyer honestly.

DO disclose all information you receive from the buyer's agent. This is especially helpful regarding the buyer's negotiating position and intention.

Seller's Agent "DON'TS"

DON'T disclose confidential information of your client, the seller, during the term of your agency relationship with the seller. Confidential information likely includes at least the following:

- That the seller may agree to a price, terms, or any conditions of sale other than those offered by the seller.

- The seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule.
- Any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

DON'T disclose the price or other material terms contained in a party's offer to purchase to a competing party without the express authority of the offering party.

Disclosed Dual Agency Do's and Don'ts

Disclosed Dual Agent "DO's"(if dual agency is permitted in your State)

DO have a specific company agency policy providing for disclosed dual agency.

DO go over the "Working With Real Estate Agents" brochure prescribed by the Real Estate Commission with both the buyer and the seller, following the same procedures with the seller and with the buyer as explained in the Do's and Don'ts for a seller and for a buyer.

DO discuss the possibility of Dual Agency with BOTH buyer and seller at the earliest possible time in your relationship, including the option of designated agency if your company uses designated agency.

DO have a written agreement with both buyer and seller, authorizing dual agency and, if offered, designated agency. The written agreement should specify the duties of a seller's agent and the duties of a buyer's agent.

DO, if your company permits oral dual agency and you are representing the buyer under an oral buyer agency agreement, clearly disclose your dual agency relationship to the buyer in accordance with the Company's policy. Obtain written authority to act as a dual agent when the buyer puts the buyer agency agreement in writing by having the buyer complete the "Dual Agency" paragraph of the buyer agency agreement (varies by State) or similar provision or document in your State forms. Remember that the Real Estate Commission's rules require that written authority to act as a dual agent must be obtained no later than the time one of the parties represented by the company makes an offer to purchase, sell, rent, lease, or exchange real estate to the other party.

DO represent the seller and the buyer, acting according to your agreements with the seller and the buyer and the duties of California law. Represent BOTH the seller and the buyer with the utmost good faith, loyalty, and fidelity.

DO exercise reasonable skill and care for the seller and the buyer.

DO seek a price and terms acceptable to both the seller and the buyer.

DO present all written offers to and from both the seller and the buyer in a timely manner.

DO disclose all material facts to both the buyer and the seller which you know or should know. Material facts include facts about the property itself (such as a structural defect or defective mechanical systems); facts relating directly to the property (such as a pending zoning change or planned highway construction in the immediate vicinity); and facts relating directly to the ability of the agent's principal to complete the transaction (such as a pending foreclosure sale).

DO advise both the seller and the buyer to obtain expert advice as to material matters about which you know, but the specifics of which are beyond your expertise.

DO account in a timely manner for all money and property received on behalf of the seller and the buyer.

DO comply with all real estate licensing laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

DO keep information of both the seller and the buyer confidential unless you have permission to disclose it.

DO give written disclosure of your agency status no later than the presentation of the offer.

DO conduct yourself with the knowledge that the brokerage (and therefore you) represent BOTH buyer and seller.

DO, if YOU are both a buyer's agent and the listing agent, ALWAYS have company management involved.

DO, if YOU are both a buyer's agent and the listing agent, stay completely neutral.

Disclosed Dual Agent "DON'Ts" (if dual agency is permitted in your State)

DON'T disclose confidential information of either the buyer or the seller during the terms of your respective agency relationships with them. Confidential information likely includes at least the following:

- That either party may agree to a price, terms, or any conditions of sale other than those offered.
- Either party's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule.
- Any information about either party which the party has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

DON'T accept compensation from both parties, unless disclosed to both parties and you get the informed consent of both parties. This includes nonrefundable retainer fees accepted from buyers.

DON'T accept a bonus, prize, trip, or incentive from a seller or listing broker without timely disclosure to and informed consent of both clients, buyer and seller.

DON'T act like you are the agent of only one of the parties, even after having made disclosure and obtained consent to act as a dual agent.

DON'T take the position of or advocate on behalf of one or the other parties. Remain neutral as to advising either party about negotiations or any other aspects of the transaction, whether it be pricing or other terms.

Acknowledgment of Receipt and Agreement of Office Policy Manual (to sign and return)

This is to acknowledge that I have received a copy of the Office Policy Manual dated _____.

I understand that the Office Policy Manual contains important information about the Company's general office policies. I know I am expected to read, understand, and adhere to the Company policies. I understand that, from time to time, the Company may, in its sole and absolute discretion, change any policies, benefits, or practices in the Manual, with or without prior notice.

Initial _____

Furthermore, I understand that I am an Independent Contractor and that my association with the Company is not for a specified term. I understand that the Office Policy Manual is not an express or implied contract of employment. Accordingly, either I or the Company can terminate our association at will, with or without cause, at any time.

Initial _____

Furthermore, I acknowledge that the Office Policy Manual contains the Company's Policy Against Harassment. I agree to comply with all aspects of the policy against sexual harassment and other forms of harassment. I understand that if I violate any aspect of the Company's Policy Against Harassment, I may be subject to disciplinary action, including termination.

Initial _____

THIS OFFICE POLICY MANUAL IS NOT INTENDED AS AN EXPRESS OR IMPLIED CONTRACT OF EMPLOYMENT. THE COMPANY RESERVES THE RIGHT TO TERMINATE THE ASSOCIATION OF ANY AGENT, BROKER, INDEPENDENT CONTRACTOR, OR EMPLOYEE AT ANY TIME, WITH OR WITHOUT CAUSE.

As a condition of his or her association, independent contractor relationship or employment with the Company, the agent, independent contractor, or employee agrees to abide by the terms of this Policy Manual as presently adopted and as amended in the future by publication from management of any changes.

My signature below certifies that I have received the Office Policy Manual, NAR Fair Housing Handbook, all of the links to the references and additional attachments and agree to abide by their provisions during my association with the Company. By signing below, I further certify that the Office Policy Manual supersedes all prior agreements, understandings, and representations concerning my association with the Company.

Sales Associate's Signature: _____ Date: _____

Independent Contractor's Signature: _____ Date: _____

Employee's Signature: _____ Date: _____