

# Office Policy Manual Guide

## Purpose of the Office Policy Manual Guide

The Office Policy Manual Guide is designed as a tool to assist Brokers who are drafting or revising Office Manuals. The Tennessee Association of Realtors® provides this material solely as a guide and highly recommends the review of your legal counsel before implementing your finished Office Policy Manual.

## Goals of an Office Policy Manual

1. A clear Associate relationship to the Broker is established pertaining to the rights and responsibilities owed between both parties.
2. By providing standard operating procedures, disputes can be avoided and proactively addressed through the implementations of standard practice and procedures.
3. Productivity can be enhanced when the processes are clearly identified and laid out in a manner that makes them second nature.

## Implementation of an Office Policy Manual

1. Upon the new affiliation between the Associate and Broker, each Associate's orientation should include a copy of the Office Policy Manual including a signed acknowledgement that the Associate has read and understands the material set forth. You should also reserve the right to amend and make changes to policies.
2. The contents should be reviewed in a formal atmosphere setting in which the material has been fully presented and the Associate understands the policies. Regular staff meetings provide ideal times to review your Office Policy Manual. If you have a formal orientation for new associates, this is considered an ideal time for presenting the Office Policy Manual.

All new Associates should be trained on the policies set forth in the manual.

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*\*Divisions of expenses vary from firm to firm. TAR is not suggesting any predetermined arrangement and those listed above are not necessarily a representation of the norm.*

# Introduction

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

The right to amend and change content of the Office Policy Manual is reserved for the Broker on an as needed basis. The amendments and changes shall be reviewed during meetings directly following any change to the policy. It is the responsibility of each Associate to keep abreast of all policy changes and to understand the policy set forth. Absence from any meeting discussing changes to policy does not provide an exemption to any Associate from these responsibilities.

## *Chapter 1*

# Affiliation: Broker and Associate

## **Mutual Benefit**

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

### **Broker and Associate Agreement of Mutual Benefit**

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

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

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

## **Associate Affiliation Requirements\***

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

### **Real Estate License, Mandatory Continuing Education, Mandatory Errors & Insurance Coverage, Automobile Insurance Coverage**

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

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

- The Associate agrees to become a member of the local Board/Association, Tennessee Association of REALTORS<sup>®</sup>, National Association of REALTORS<sup>®</sup> and to be responsible for all applicable dues and fees.
- The Associate expressly understands that they may choose to join any Board/Association in which the Broker holds membership. The associate can also join other Boards/Associations as a secondary membership if the broker holds no membership in the particular Board/Association.
- The Associate also understands the Broker is a member of the Tennessee Association of REALTORS<sup>®</sup>, the National Association of REALTORS<sup>®</sup> and may belong to any of the Institutes and Societies of the National Association of REALTORS<sup>®</sup>.
- The Associate agrees to abide by the rules and regulations of these organizations to which Broker must adhere as a member thereof.

*\*Divisions of expenses vary from firm to firm. TAR is not suggesting any predetermined arrangement and those listed above are not necessarily a representation of the norm.*

## **Miscellaneous Associate Expenses**

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

## **Automobile**

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

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

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

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

The Broker shall determine which expenses shall be paid by the firm and which expenses shall be paid by the Associate. The following are examples of business expenses that should be covered in a written agreement between the Broker and Associate:

1. Office, office telephone, and desk space
2. Office supplies, equipment
  - a. Writing utensils
  - b. Paper
  - c. Firm stationery
  - d. Business mail, shipping, handling, and postage
  - e. Brochures, farming materials, etc.
  - f. Newsletters

*\*Divisions of expenses vary, from firm to firm. TAR is not suggesting any predetermined arrangement and those listed above are not necessarily a representation of the norm.*

3. Secretarial and clerical assistance for Associate for the purpose of:
  - a. Word processing needs through forms and contracts
  - b. Processing earnest money
  - c. File maintenanceThe remainder of the secretary's time is devoted to company business.

4. Membership in the Multiple Listing Service

5. Office equipment/office machinery

The following office equipment and supplies are for business use only:

- a. Typewriter
- b. Copy machine - The copy machine is to be used for business document duplication only. Personal use of the copy machine requires permission.
- c. Facsimile machine - The facsimile machine is to be used for business related transmittal and receipt of real estate documentation.
- d. Computers/word processors

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

## **Resolution of Disputes**

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

### **What Constitutes a Dispute?**

Disputes are disagreements between Associates in regards to:

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

### **Intra-office Disputes Between Associates**

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

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

## **Disagreement between Broker and Associate**

Disagreements or disputes between Associate and Broker pertaining to:

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

## **Independent Contractor**

### **Definition**

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

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

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

### **Independent Contractor's Agreement**

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

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

### **Tax Filing Requirements**

Each Associate is responsible for maintaining the necessary personal financial records for purposes of reporting income for state and federal tax requirements. The Broker's obligation is limited to providing a W-2 form which summarizes any annual *non-production* income and must have Social Security payments withheld from any non-production income, to which the Broker also contributes. Otherwise, the Broker is not liable for deduction of Social Security, or income or unemployment taxes for any *production based* income.

### **Workers' Compensation Requirement**

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

### **Broker Authorization to Contract**

The obligation, commitment, or binding of a promise or representation by the Broker is not valid unless the Associate receives authorization from the Broker in writing and provided the Associate is authorized to execute listing contracts, buyer/seller agency contracts, and other approved forms in behalf of the Broker and that the commission involved in the transaction is not less than that specified by the Broker.

Authority to terminate a listing contract, buyer/seller agency contract, or other agency agreement, or make amendments to the contract that alter the term and/or change the amount of compensation established in the contract is 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.

## Chapter 2

# Office Policies

## Discrimination Issues

### Federal Fair Housing Laws

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

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

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

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

## **Discrimination Accusations**

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

## **Fair Employment Practices**

It is the Broker's policy that no person shall be discriminated against in either hiring or firing of personnel.

According to T.C.A. § 4-21-401, it is discriminatory practice for an employer to:

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

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

## **Harassment**

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

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

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

## **Office Security**

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

## **Office Appearance**

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

## **Dress Code**

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

## **Eating in the Work Area**

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

## **Parking**

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

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

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

## **Telephone Use**

### **General**

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

### **Long Distance Calls**

Long distance service is available for business purposes only and if it is imperative to call with no other means to satisfy communication. If you must call, call after 5:00 PM or before 8:00 AM if practicable.

## **Messages for Other Associates**

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

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

## **Computer**

### **Use Information Systems Policy**

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

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

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

### **Proprietary Equipment and Information**

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

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

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

## **Information Systems Usage**

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

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

## **Information Systems Conduct**

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

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

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

## **Computer Safety and Security Measures**

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

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

## **Viruses**

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

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

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

## **Copy-right Infringement**

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

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

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

## **The World Wide Web**

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

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

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

### **Summary**

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

### **Maintaining Contact with the Office**

In the course of business, it is necessary for Associates to be away from the office. However, the Associate must provide a means of communication for the receptionist to contact the Associate. A register to sign IN and OUT of the office is in place for all Associates to use when leaving the business premises during work hours. When Associates are absent from the office, they should:

- Contact the Office Receptionist or leave a message with their personal assistant
- Sign the IN / OUT register

### **Drug and Alcohol Use Substance Use**

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

### **Client or Customer Substance Use**

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

## **Smoking**

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

## **Legal and Tax Advice Prohibited**

### **Legal Advice**

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

### **Tax Advice**

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

## **Problem Reporting Procedures**

Immediately report problems to the Broker that pertain to:

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

# Contacting the Broker

## Emergency Contacts

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

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

## Branch Offices

This company has (*insert number*) branch offices as follows:

Office:  
Managing Broker:  
Office Phone:  
Home Phone:

Office:  
Managing Broker:  
Office Phone:  
Home Phone:

Office:  
Managing Broker:  
Office Phone:  
Home Phone:

## Confidentiality

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

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

## **Office Duty Time**

### **Purpose**

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

### **Rotation\***

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

## **Sales Meetings**

### **Purpose**

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

### **Attendance Requirements**

Sales meeting attendance is expected of all Associates. Mandatory attendance of sales meetings covering real estate law and license law matters is required unless excused by the Broker. These meetings will be announced in advance to permit Associates to make necessary adjustments in their appointment scheduling. Sales meetings will be held each (*insert day Of the week*) at (*insert time*) a.m. in the (*insert location*) room.

## **Observance of Safety Practices**

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

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

\*Different practices vary from firm to firm. TAR is not suggesting a standard operating procedure and what is listed above is not necessarily the norm.

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

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

## **Sign Policy**

### **Sign Riders**

The Broker requires that all Associates use uniform name signs or sign riders. To insure uniformity, these sign riders will be ordered by the office secretary at the Associate's expense.

Sign riders will be stored (*insert location*). Sign riders will be placed on the (*insert location*) portion of the yard sign.

### **Direction Signs**

Directional signs will be purchased by the Broker and will be used to direct prospective buyers to the property. Directional signs will be stored (*insert location*) and may be charged back to the Associate.

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

Only after all contingencies of the offer have been waived or satisfied and after obtaining the permission of the seller, "Sold" signs shall be posted. "Offer pending" or similar signs may be posted, with the seller's permission, after acceptance of an offer but prior to waiver or satisfaction of contingencies. Sold signs will be stored (*insert location*).

### **Expired Listings**

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

## **Employee Office Hours**

Office hours are:

Mondays-Fridays: *(insert time)*

Administrative Staff: *(insert time)*

Saturdays & Sundays: *(insert time)*

Administrative Staff: *(insert time)*

## **Observed Holidays**

The following holidays will be observed: *(list all holidays)*

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

## **Legal Assistance for Associates**

### **Legal Counsel Involvement**

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

### **TAR Legal & Ethics Hot Line**

The Tennessee Association of Realtors® provides a Legal & Ethics Hot Line to field questions. If you have a legal question, inform your Broker of the question. If he cannot answer the question, he may use the Legal & Ethics Hot Line provided free by TAR. Realtor® members can access the Legal & Ethics Hot Line through Designated Brokers only. The Legal & Ethics Hot Line can be reached toll free by dialing 1-800-899-5297 or (local to Nashville) 244-3344.

### **Lawsuits and Threats of Action**

If the Associate is sued or threatened with a lawsuit or administrative action in conjunction with a real estate transaction, immediate attention of the Broker is required. The Broker will then report the suit to the Errors and Omissions insurance carrier. The responsibility as to payment of legal fees will be determined on a case-by-case basis between the Broker and Associate.

### **Arbitration**

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

## **Code of Ethics & License Law Violations**

In matters of alleged violation of the Code of Ethics and/or License Law, an attorney may be employed at the discretion of the Broker. The responsibility for payment of such attorney fees will be determined on a case-by-case basis between the Broker and Associate.

## **Inspection Services, Surveys, Etc.**

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

## **Document Control**

### **Document File**

The following documents must be placed and maintained in the Broker's file:

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

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

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

## **Personal Assistants**

The Tennessee Real Estate Broker License Act of 1973 prohibits the Associate from personally employing licensed persons to engage in real estate practice. All personal assistants, whether licensed or unlicensed, shall be employed and supervised according to the terms and conditions set forth in the agreement between the Broker and the personal assistant.

### **Unlicensed Assistants**

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

**Unlicensed assistants MAY:**

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

**Unlicensed assistants MAY NOT:**

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

**Licensed Assistants**

Licensed assistants may engage in activities which constitute negotiation provided that they are properly supervised and monitored by the Broker and only by the Broker and therefore, are considered and recognized only as Affiliate Broker status by TREC. The Tennessee Real Estate Commission does not formerly recognize licensed assistants. TREC specifically holds any licensed agent to the rules and regulations that govern an Affiliate Broker regardless of the specific duties placed upon the licensed assistant by the Managing Broker. Licensed assistants shall join the local Board/Association of REALTORS<sup>®</sup>, Tennessee Association of REALTORS<sup>®</sup> and the National Association of REALTORS<sup>®</sup>. Membership dues shall be the responsibility of the licensed assistant.

## Agency

*ATTENTION MANAGING BROKER: PLEASE CHOOSE ONE OF THE FOLLOWING OPTIONAL AGENCY POLICIES TO BE PLACED IN YOUR OFFICE MANUAL. DISCARD ANY OF THE REMAINING OPTIONAL AGENCY POLICIES.*

### **Instructions:**

The new agency law, effective as of January 1, 1996 and amended in the middle of 1996, makes a wide variety of options for company practice available to owner/brokers. By NO means do the suggested policies that follow address ALL of the possible options for office policy under the new agency law.

The suggested office policy options which *are* included on the following pages are numbered for the sake of convenience and reference only. Numbering does not indicate a priority or preference for one policy over another.

As you read through these policy options, remember that a company (or individual) is identified as an agent (or facilitator/transaction broker) *within a transaction*...not just for one of the parties to that transaction. For example, if a company, through a sales associate, declares that it is working as a Facilitator with either a Buyer or a Seller, this means that the company - exclusive of any Designated Agents within the company - will work as a Facilitator with BOTH the Buyer AND the Seller in any transaction involving that consumer, unless the company changes its agency status. The very definition of a Facilitator is *one who is not working as an agent for either of the parties to a transaction*. Similarly, if the company is working as a Seller's Agent for a Seller, then the company - unless it changes status - will also disclose that it is a Seller's Agent to any buyers that want to see or negotiate on that Seller's property.

**NOTE:** "Facilitator" as used in the following pages may refer to either a **Facilitator** or **Transaction Broker**. The 1996 Agency Law amendments provide that the two terms may be used interchangeably.

# **Company Agency Policy #1:**

## **Seller Agency with Sellers, Facilitator with Buyers Except for In-House Transactions**

\_\_\_\_\_ has adopted the following agency policy,  
[COMPANY]

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

- A. Sales Associates will verbally disclose their agency status to every prospective Buyer or Seller with whom they work, PRIOR to providing any real estate services to a Buyer or Seller. With Sellers, Sales Associates will indicate their status as a **Seller's Agent or Subagent**. With Buyers, Sales Associates will indicate their status as **Facilitator**, except for the showing or purchase of a company listing in which case they will indicate **Seller's Agent**.
- B. After disclosure, Sales Associates will immediately negotiate a listing agreement with any Seller that includes a provision that the Company is serving as a **Seller's Agent** in the marketing of that property. Sales Associates will also explain various options for cooperation in a sale and will secure the Seller's instructions and/or authorization for extending cooperative compensation to subagents, buyer's agents, and facilitators.
- C. Sales Associates must notify a Buyer of a change in agency status from **Facilitator to Seller's Agent or Subagent** if the Buyer wishes to see, or negotiate the purchase of, a company listing; if Buyers desire their own agency representation, they will be referred to another company.
- D. Upon initial contact with any other licensee, Sales Associates will immediately disclose the Company's agency or facilitator status in the transaction. If this role changes at any time, Sales Associates will immediately notify any other licensees and parties (involved in the transaction) of this change
- E. Prior to preparation or presentation of an offer, Sales Associates will confirm the Company's status in the transaction as a **Seller's Agent or Subagent** for Company listings, and the Company's status as a **Facilitator** for all other transactions, with both Buyer and Seller - by use of the "**Confirmation of Agency Status**" form, providing signed copies to both signatories and retaining a signed copy to be filed with the associate's files for the transaction.

## F. PERSONAL INTEREST PROVISIONS

If a Sales Associate with this Company is representing himself/herself (or a family member or relative) in a transaction, the Associate will complete the "**Personal Interest Disclosure & Consent**" form, securing the signatures and consent of all parties to the transaction, giving a signed copy of the form to other parties, and keeping a signed copy for the Associate's files on this transaction. If a Sales Associate with this Company is representing himself/herself (or a family member or relative) as either Seller or Buyer in an *in-house transaction*, the Managing Broker may exercise any of the following options:

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

## Company Agency Policy #2: Buyer Agency Exclusively

\_\_\_\_\_ has adopted the following agency policy,  
[COMPANY]

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

- A. Sales Associates will verbally disclose their agency status to every prospective Buyer (or Seller with whom they come in contact), PRIOR to providing any real estate services to that consumer. Sales Associates will indicate the Company's status as a **Buyer's Agent**.
- B. After the initial disclosure, Sales Associates will immediately negotiate and complete a written Buyer Representation Agreement with any Buyer. If a Buyer is not comfortable or agreeable with a Buyer Representation Agreement, the Associate must disclose the company's Company status as **Facilitator**, and postpone negotiation of a Buyer Representation Agreement until a later date; such a Buyer should, nevertheless, be encouraged to enter into such an agreement as soon as possible.
- C. Upon initial contact with any other licensee, Sales Associates will immediately disclose the Company's agency or facilitator status in the transaction. If this role changes at any time, Sales Associates will immediately notify any other licensees and parties (involved in the transaction) of this change.
- D. The Company will only work with Sellers to negotiate on behalf of a Buyer client; any Buyer clients who are also selling must be referred to another Company for their listing services and/or representation as a Seller.
- E. Prior to preparation of an offer, Sales Associates will confirm their status in the transaction as a **Buyer's Agent**, with the Buyer and Seller - by use of the "**Confirmation of Agency Status**" form, providing copies to both signatories and retaining a copy to be filed with the Associate's files for the transaction.
- F. **PERSONAL INTEREST PROVISIONS**  
If a Sales Associate with this Company is representing himself/herself (or a family member or relative) in a transaction, the associate will complete the "**Personal Interest Disclosure & Consent**" form, securing the signatures and consent of all parties to the transaction, giving a signed copy of the form to other parties, and keeping a signed copy for the Associate's files on this transaction.

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

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

### **Company Agency Policy #3: Single Agency for Sellers or Buyers, Default to Facilitator for In-House Transactions**

\_\_\_\_\_ has adopted the following agency policy,  
[COMPANY]

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

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

E. Prior to preparation or presentation of a contract, Sales Associates will confirm their agency status in the transaction with both Buyer and Seller - by use of the "**Confirmation of Agency Status**" form, providing signed copies to both signatories and retaining a signed copy to be filed with the Associate's files for the transaction.

F. **PERSONAL INTEREST PROVISIONS**

If a Sales Associate with this Company is representing himself/herself (or a family member or relative) in a transaction, the Associate will complete the "**Personal Interest Disclosure & Consent**" form, securing the signatures and consent of all parties to the transaction, giving a signed copy of the form to other parties, and keeping a signed copy for the Associate's files on this transaction.

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

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

## **Company Agency Policy #4: Single Agency for Sellers and Buyers, Default to Designated Agency for In-House Transactions**

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

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

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

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

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

# Company Agency Policy #5:

## Designated Agency for Sellers and Buyers, Default to Facilitator for Transactions Involving Same Agent on Both Sides

\_\_\_\_\_ has adopted the following agency policy,  
[COMPANY]

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

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

E. Prior to preparation or presentation of a contract, Sales Associates will confirm their agency status in the transaction with both Buyer and Seller - by use of the "**Confirmation of Agency Status**" form, providing signed copies to both signatories and retaining a signed copy to be filed with the Associate's files for the transaction.

F. **PERSONAL INTEREST PROVISIONS**

If a Sales Associate with this Company is representing himself/herself (or a family member or relative) in a transaction, the Associate will complete the "**Personal Interest Disclosure & Consent**" form, securing the signatures and consent of all parties to the transaction, giving a signed copy of the form to other parties, and keeping a signed copy for the Associate's files on this transaction.

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

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

## Chapter 3

# Advertising

## Real Estate Advertising

### Advertising Media

The Broker regularly advertises in the following media:

Daily newspapers, Sunday edition: *(insert media)*

Weekly, local newspapers: *(insert media)*

Real Estate Magazines: *(insert media)*

Other (Internet sites, etc.): *(insert media)*

### Open House Ads\*

Open Houses shall be advertised on Sunday. The deadline for submitting open house ads is *(insert time)* on *(insert day)*. Broker shall pay for one Open House ad per listing per week.\* If the Associate desires to place additional Open House ads in the same or other publications, the cost of any additional ads is the responsibility of the Associate.

### Allocation and Costs of Advertising

Allocation of advertising to listings will be the sole responsibility of the Broker. Additional requests for more ads must be approved and is at the discretion of the Broker since the Broker pays for all approved advertisements. Promotional materials that are costly and expensive such as brochures should not be promised to the client unless pre-approved by the Broker.

### TREC Advertising Rules

#### General Principles:

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

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

\*Divisions of expenses vary from firm to firm. TAR is not suggesting any predetermined arrangement and those listed above are not necessarily a representation of a norm.

## **Advertising for Franchise or Cooperative Advertising Groups:**

Any licensee using a franchise trade name or advertising as a member of a cooperative group:

- Shall clearly and unmistakably indicate his name, broker or firm name, and business telephone number and/or office address adjacent to any specific properties advertised for sale or lease in any media.
- When advertising other than specific properties for sale or lease, shall cause the following legend to appear in a manner reasonably calculated to attract the attention of the public:  
*"Each (Franchise Trade Name Or Cooperative Group) Office is Independently Owned and Operated."*

## **Fair Housing Advertising**

### **Equal Opportunity Slogans and Logos**

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

### **Prohibited Advertising Language**

Advertising copy used by Associates must describe the property, NOT THE DESIRED BUYER OR TENANT.

Examples of prohibited advertising language are:

1. Race, color, national origin: Real estate advertisements may not state a discriminatory preference or limitation on account of race, color, national origin or any other protected class, and shall not describe the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms. However, Associates may use phrases such as "master bedroom", "rare find" or "desirable neighborhood."
2. Religion: Associates shall not use advertisements which contain an explicit preference, limitation or discrimination on account of religion. Advertisements which use the legal name of an entity which contains a religious reference (i.e., Sisters of God Catholic Home) or a religious symbol (such as a cross) must contain an appropriate disclaimer against any religious preference or limitation. Associates may use descriptions of the property (apartment complex with chapel) or the services (kosher meals available), and terms (Merry Christmas or Happy Easter) or symbols (Santa Claus or Easter Bunny) relating to certain religious holidays.
3. Sex: Associates shall not advertise single family dwellings or separate dwelling units in multifamily housing in a manner which explicitly indicates a preference, limitation or discrimination on the basis of sex. Associates may, however, use terms such as "master bedroom," "mother-in-law suite" and "bachelor apartment" which describe a property type.

4. Handicap: Associates' real estate advertisements shall not contain exclusions, limitations or other indications of discrimination based on handicap. Associates may describe the property (great view, fourth floor walk-up, walk-in closets), the services or facilities (jogging trails), the neighborhood (walk to the bus stop), the conduct required of residents (nonsmoking), and accessibility features, such as a wheelchair ramp.
5. Familial Status: Associates shall not place advertisements which contain limitations on the number or ages of children or state a preference for adults (unless the property meets the housing for older persons exemption), couples or singles. Associates may use descriptions of the property (two bedroom, cozy, family room), services and facilities (no bicycles allowed) or neighborhoods (quiet streets).

## Chapter 4

# Compensation

## Commission and Fee Rates

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

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

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

## Associate Commission and Fee Compensation

### Definition

Compensation shall be defined to include commissions, buyer agency fees, referral fees, fees for negotiating construction contracts or referring customers to builders, appraisal fees, (**A:** incentives received while buying property for personal use or investment) or any other thing of value received in connection with the Associate's real estate brokerage services. (**B:** incentives received when buying property for personal use or investment are not considered compensation and are paid directly to the Associate.) (STRIKE A OR B)

### Schedule of Compensation

Associate compensation checks are issued by the Broker within (*insert number*) days following the closing or the Broker's receipt of payment, whichever is later. Special situations or special requirements for the compensation checks will be handled through the Broker on a case-by-case basis.

### Partial Receipt of Commissions

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

## **Reduction of Commissions and Fees**

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

## **Referrals and Bonuses**

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

## **Commission Agreements and Disputes**

### **Entitlement to Commission**

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

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

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

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

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

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

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

*The percentage (%) split on commission is for example only and does not reflect a TAR suggested entitled percentage compensation whatsoever, as this may vary from firm to firm.*

## *Chapter 5*

# **RESPA Policy**

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

## **Prohibition Against Kickbacks and Unearned Fees**

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

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

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

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

## **What is Permitted**

Regulation X specifically does permit:

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

## **Key Referral Fee Reminders**

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

## Chapter 6

# Listing Policy

## Agency Disclosure

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

## Residential Property Condition Disclosure

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

- A residential property disclosure statement
  - Provides the condition of property including any material defects known to the owner.  
The disclosure form must contain:
    1. Include all items listed on the disclosure form required in T.C.A. § 66-5-210.
    2. Notice to prospective purchasers and owners that the prospective purchaser and the owner may wish to obtain professional advice or inspections of the property.
    3. Notice to purchasers that the information contained are representations of the owner solely.

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

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

## Disclosure of Adverse Facts

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

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

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

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

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

### **Disclosure Requirements**

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

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

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

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

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

The new EPA/HUD requirements for the disclosure of LBP apply to all transactions to sell or rent target housing, subject to certain exceptions. The following discussion specifies what types of residential properties are covered under the new LBP rules and those which are not subject to the rules' requirements.

### **Target Housing**

"Target housing" means any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age lives in or expects to live in such housing), and except for any "0-bedroom" dwellings.

### **Excluded Properties**

1. Housing for the Elderly (No Resident Children Under 6). Housing for the elderly means retirement communities or similar types of housing designed specifically for households where at least one person is 62 years of age or older at the time of initial occupancy.
2. Housing for Persons with Disabilities (No Resident Children Under 6). With both housing for the elderly and housing for persons with disabilities, the exclusion from the LBP disclosure rules is lost if children under the age of 6 live there or are expected to live there. The parties to any sales or lease transaction involving housing for the elderly or persons with disabilities where children under 6 live or are expected to live would need to comply with the federal LBP disclosure rules.
3. "0-Bedroom" Dwellings. "0-bedroom" dwellings means residential dwelling units where the living area is not separated from the sleeping area. This includes efficiencies, studio apartments, lofts, dormitory housing, military barracks and rentals of individual rooms in residential dwellings.

## **Transactions Subject to LBP Rules**

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

## **Exempted Transactions**

1. Foreclosure (sheriff) sales.
2. Leases of Housing Found to be Lead Free. Leasing transactions involving target housing that has been found to be LBP free by a certified inspector are excluded from the LBP disclosure rules. "Lead-based paint free housing" means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.
3. Short-Term Leases of 100 Days or Less (No Renewals or Extensions).
4. Lease Renewals if Disclosures Done and No New Information. LBP disclosures need not be repeated for the renewal or extension of existing leases where the landlord previously disclosed all information required by the rules and no new information concerning LBP on the premises has come to the attention of the landlord. In situations with no formal renewal process involved, i.e., a month-to-month holdover after the expiration of a one-year lease term, "renewal" shall be interpreted to occur at the point where the parties agree to a significant written change in the terms of the lease such as a rent rate adjustment. Then disclosure would be required as to any new LBP information not previously disclosed to the tenant.
5. Purchase, Sale or Servicing of Mortgages.

## **Agents Covered**

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

## **Buyer Opportunity to Inspect for LBP**

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

This requirement may be met by having an LBP inspection contingency in the offer, similar to the home inspection contingencies typically used in residential offers. There is no mandatory language or provision for this purpose, so the contingency may be negotiated by the parties. Thus, the terms and conditions for the conduct and completion of the LBP inspection or evaluation will be reached by mutual agreement and not by federal mandate. A lead-based paint inspection contingency which is included in the LBP disclosure and acknowledgment addendum to the offer is discussed later. Buyers may choose to waive their opportunity to inspect for LBP. The rules do not contain any requirement for providing tenants with the opportunity to conduct an LBP inspection. Sellers may not reject an offer to purchase simply on the basis that it contains a lead inspection/contingency provision. They may, however, attempt to negotiate the terms and conditions of the provision.

## **Timing of LBP Disclosures**

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

## **Agent Responsibilities**

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

### **To ensure compliance, the agent must:**

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

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

## **Listing the Residential Property**

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

1. Determine if the property is target housing.
2. Look for painted surfaces in bad condition while inspecting the property.
3. Advise the seller of his or her obligations under the LBP rules.
4. Ask the seller if he or she has any knowledge of LBP or LBP hazards on the property.
5. Obtain copies of any available LBP records pertaining to the property.

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

## **Listing Contracts**

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

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

## **Filing Listing Documentation**

Listing contracts and the appropriate supporting forms (agency confirmation form, MLS profile sheets, seller property condition report, etc.) shall be turned in no later than (*insert number*) working days after execution to the office manager/person in charge of processing listing information for dissemination.

## **New Listing Tours**

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

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

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

## **Security of Listed Property**

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

## **Cancellation of Listing Contract**

Associates shall not have the authority to cancel a listing contract nor amend the listing contract to provide for an early termination without the written consent of the Broker or the Associate's manager. In the event a seller desires to cancel a listing contract, the Associate must notify the Broker. This shall apply regardless of whether the seller's request is verbal or in writing or whether the seller uses the words "cancel," "terminate," "revoke," etc. If the seller's intent is evident, the Associate shall report the request to the office manager or Broker. Such requests from sellers shall, in all cases, be honored.

If the Broker determines that a seller's demand of release from the listing contract is a result of substandard performance on the part of the Associate, the Broker reserves the right to charge the Associate for costs incurred during the period the listing was in effect. If the early termination is for other reasons, the Broker shall make the determination of whether any expense reimbursements or other damages shall be requested from the seller.

## **Listing Protection**

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

## **Cooperating Compensation**

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

## *Chapter 7*

# **Buyer Brokerage**

## **Associate's Capacity as Buyer's Agent**

### **Buyer Representation Agreement**

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

### **Agency Disclosure**

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

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

### **Negotiations**

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

### **Compensation**

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

### **Cooperation as Listing Agents with Buyer's Brokers**

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

If the Associate, as listing agent, is advised that a cooperating Broker, employed under a Buyer Agency Agreement, requests to show the listed property, the Associate must advise the seller of the cooperating Broker's representation. The Associate shall be present at all showings and inspections.

## **Dual Agency**

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

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

## *Chapter 8*

# **Selling Policies and Procedures**

## **Information Provisions**

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

## **Lead Generation**

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

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

## **Agency Disclosure**

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

## **Servicing the Prospects**

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

## **Drafting Offers**

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

There is no designated amount of earnest money that is required with an offer. It is desirable, however, to obtain a minimum of approximately \$ (insert *dollar amount or % amount*). This is good faith money; consequently, deposits should be larger on loan assumptions, owner financing and all cash offers.

## **Confidentiality of Offers**

### **Intra-office**

AVOID PROBLEMS:

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

### **To Cooperating Brokers**

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

### **Timeliness in Offers**

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

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

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

## **Delivery of Accepted Offers**

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

## **Referral Fees**

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

## Chapter 9

# Closing Procedures

## Listing Associate Responsibilities

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

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

## Failed Transactions

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

## Attorneys at Closing

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

## Deposits and Earnest Money

### Handling

Unless otherwise agreed to in the contract by the buyer and seller, all checks received by the Associate shall be turned over to the office secretary as soon after receipt as practicable. Checks received after office hours or on weekends will be placed in the (*insert location*) designated by the Broker until the next workday.

### Disbursement

Disbursement of earnest money is the responsibility of the Broker who will make a determination as to the recipients in accordance with provisions of the license law and any earnest money disbursement agreement signed by both parties. In this regard, the Associate should not commit the Broker to any decision as to the disposition of the earnest money being held except that it will be applied to the amount owed by the purchaser when the sale closes. The secretary will place a copy of all papers relative to disbursement in the canceled file and make a notation on the canceled contract as to how disbursement was made. If there is a dispute in disbursements of such funds, the Broker will be responsible for and will file an interpleader action in a court of competent jurisdiction.

## Chapter 10

# Antitrust

## Summary of Principal Federal Antitrust Laws

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

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

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

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

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

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

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

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

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

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

## **Antitrust Compliance**

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

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

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

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

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

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

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

## **DOCUMENT RETENTION POLICY**

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

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

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

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

## *Chapter 11*

# **Termination of Affiliation**

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

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

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

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