

U S PROPERTIES
Office Policy Manual

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Chapter 1

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.

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.

CHAPTER 2

MISSION STATEMENT

It is the mission of this company to profitably and ethically provide high quality professional real estate services to the home buying, home selling and real estate investing public.

STATEMENT OF BUSINESS PRINCIPLES

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

1. **PROFESSIONALISM:** Professionalism at this company means approaching the business with ethical conduct toward our customers and clients. Abiding by the REALTOR® CODE OF ETHICS (REALTORS® ONLY) forms the basis of that standard. Secondly, constant training and education keep us informed and at the peak of awareness for customer and client. Each agent and employee of this company is pledged to these ideals.
2. **INTEGRITY:** Simply put, honesty in all business dealings is the best way to get and keep business over the long term. Simple honesty also forms the basis for the best business protection we can get. It is a simple, effective, efficient and cost-effective risk reduction method.
3. **PROFITABILITY:** This company is in business to make profits in the course of its ordinary activity. Each agent and staff member has a responsibility to the company to contribute to its profitability, whether it is in terms of direct production of revenue or careful expenditure of company funds.

This Office Policy Manual for this company is designed to guide each agent and staff member in the most important areas of company activity. If a matter is not covered, bring it to the attention of the President/Owner for possible inclusion in future revisions. If a matter is covered, the agent or staff member is expected to act according to this Manual. Failure to act in accord with company policy will be taken into account in future evaluations of the agent or staff member. This company welcomes each new agent and employee to the business of professional, ethical and profitable real estate sales.

CHAPTER 3

BROKER AND ASSOCIATE RELATIONSHIP

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, South Carolina real estate brokers and affiliate brokers.
- Strict adherence to the governing rules and regulations of the South Carolina Real Estate Commission, the Real Estate Broker License Act, The Code of Ethics of the National Association of REALTORS® , 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, Errors & Omissions 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 South Carolina Real Estate Commission
- 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 coverage of errors and omissions insurance
- The Associate is responsible for all CE, licensing and license renewal fees, errors and omission premiums, or fees relating to name changes.

MEMBERSHIP IN THE BOARD OF REALTORS ®

- 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 agrees to abide by the rules and regulations of these organizations to which Broker must adhere as a member thereof.

MISCELLANEOUS ASSOCIATE EXPENSES

- Any expenses relating to customer/client entertainment and an 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® designation courses, unless otherwise approved in writing in advance by the Broker.
- Personal file supplies.

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 intra-office 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 that 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

This company has a policy of associating with its licensees as independent contractors. Each agent will be required to sign a Broker-Salesperson agreement setting out the relationship as an independent contractor. While the exact terms of the relationship are covered in the contract, a few reminders about being an independent contractor follow.

1. **Income Taxes:** All income taxes, federal and state, are the responsibility of the agent. The company does not withhold or pay Social Security taxes on commission earnings. The agent must pay self-employment tax.
2. **Unemployment Taxes:** As an independent contractor, the agent is not covered under state or federal unemployment laws. Independent contractor real estate agents acting under an agreement such as the South Carolina Association of REALTORS® form, are exempt from the unemployment laws by South Carolina statute. Accordingly, this company does not pay unemployment taxes on the earnings of its agents.
3. **Worker's Compensation:** As with unemployment taxes, an independent contractor real estate agent signing a proper independent contractor agreement is exempt from the worker's compensation laws by South Carolina statute. Given this statute, this company does not cover agents under its worker's compensation insurance policy. An agent should check that her/his insurance, particularly health and accident insurance, is adequate.
4. **Automobile Insurance:** Each agent should carry adequate automobile insurance to protect not only the agent but also the customer or client. In today's legal climate, liability coverage of \$300,000 per person/\$500,000 per accident should be obtained. Any lesser amounts could cause unnecessary exposure of personal assets. Consult

carefully with your insurance agent. The agent must name this company as an additional insured and provide the company with a certificate reflecting that status.

Each agent is reminded that state law requires each person in an automobile wear a seat belt. In addition, state law charges the driver with the responsibility of requiring each occupant over 6 and less than 17 years of age to wear a seat belt. State law also requires that any child age 6 or younger must be in an approved car seat when seated in the front seat. This company has an approved car seat in each office for your use when transporting customers or clients with young children. To reduce risk, we strongly recommend that you insist that all occupants of your vehicle wear seat belts and that all children age 6 or younger sit in an approved car seat regardless of where the car seat is located. You should also note that any infant's car seat, (children approximately 1 year or younger) should not face forward, but should face the rear of the vehicle. In cars equipped with passenger side airbags, a car seat should never be installed in the front passenger seat but always installed in the rear seat(s). In addition, children and small adults should not sit in the front passenger seat. Airbags are known to release with such force that injury or death is possible for children and small adults.

5. Expenses: As an independent contractor, each agent is expected to be in business for herself/himself. Generally, the expenses of that business will be the responsibility of the agent. This company will provide the following items and/or pay for the following expenses:

Some of these expenses may include office space, newspaper advertising, business cards, yard signs, telephone expense, stationary, etc.

The agent will be expected to pay for all other expenses, including these items:

Some of these expenses may be things such as business cards, personal car, yard signs or personal advertising.

This list of expenses paid by the company or agent may be amended by the company from time to time by appropriate publication to all agents.

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.

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.

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 South Carolina Real Estate Commission. 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.

CHAPTER 4

EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is the company policy to provide equal employment opportunities without regard to race, color, religion, gender, age, national origin, marital status, disability, mental, physical and/or sensory handicaps unrelated to job performance, or citizenship, as well as other classifications protected by applicable federal, state, or local laws. This policy applies to all areas of employment, job assignment, training, promotion, transfer, compensation, discipline and discharge. The company abides by all federal and state laws regarding employment practices, including, but not limited to the Americans with Disabilities Act.

POLICY AGAINST SEXUAL HARASSMENT

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

No agent, employee, staff member, customer or vendor, male or female, may sexually harass an employee, agent or other person associated with the company by:

1. Making unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexually suggestive nature; or
2. Making submission to or rejection of such conduct the basis for employment, continued employment or any other employment decision affecting the employee; or
3. Creating an intimidating, hostile or offensive working environment by such conduct.

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

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

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

following steps:

1. If appropriate, discuss the situation directly with the person whom you feel is harassing you, and politely request that the person cease harassing you because you do not like or welcome his/her conduct. You might also add that if such conduct does not cease altogether, you will take further steps under this procedure. (If the person involved is a customer or client, please refer the complaint to senior management instead.)
2. If you believe that some adverse employment consequence may result from your discussions with that person, or if the harassment continues, go to a higher level of supervision including any senior executive of the company. You may be required to state in writing the specific details of the harassing behavior including date, time, place and witnesses, if any.
3. An investigation of any complaint will be undertaken immediately. All complaints will be handled in a prompt, confidential manner insofar as the investigation permits. There will be no adverse action directed toward any complaining agent or employee or witness as a result of making or supporting the complaint, unless there clearly was bad faith.

CHAPTER 5

USE OF PERSONAL ASSISTANTS

A growing trend in the real estate business is for high producing agents to use specific persons as their assistants. This company encourages the appropriate use of personal assistants as a tool for high earning agents to be even more productive. Several caveats are in order from the perspective of the company. Many of the distinctions are based on whether a licensed or unlicensed assistant is used. This company's policies on the use of personal assistants are as follows:

1. **EMPLOYEE v. INDEPENDENT CONTRACTOR:** Whether licensed or unlicensed, the agent must decide whether to associate with the personal assistant (hereafter "PA") as an employee or independent contractor.

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

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

2. **UNLICENSED PERSONAL ASSISTANTS:** The policy of this company is that unlicensed personal assistants WILL NOT UNDER ANY CIRCUMSTANCES do the real estate business as defined in South Carolina law (Section 40-57-10. Et.seq., South Carolina Code of Laws, 1976, as amended). The agent associating with the PA is strictly responsible for maintaining this policy. If an unlicensed PA does any acts that constitute the real estate business, the agent puts himself/herself in jeopardy of disassociation. Please review the section on "Functions of Unlicensed Office Personnel" to determine these items. The policy of this company is that unlicensed personal assistants fall into the same category as unlicensed office personnel.

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

3. **LICENSED PERSONAL ASSISTANTS:** By definition, a licensed PA can do the

real estate business. The license of the PA must be held by this company and any payments for the real estate business must come from the company. The licensed PA will be in violation of the license law if any compensation for doing licensed activities is accepted from anyone other than the broker with whom the PA is associated. Please review the section of "Functions of Unlicensed Office Personnel" to determine the difference between "clerical" functions and "real estate" functions.

The easiest and cleanest way to accomplish this end is for the agent to split commissions as they are earned with the licensed PA in whatever proportion the two parties negotiate. The amount of the split between the PA and the agent should be specific and regular and should not vary per transaction. The company requires written agreements between the company and both agents to delineate the relationship and also requires the PA and agent enter into a written agreement defining the relationship and specifying the compensation arrangement.

CHAPTER 6

OFFICE HOURS

Our regular office hours are 9:00 a.m. to 6:00 p.m. daily. From mid-November to mid-March, the offices will close at 5:30 p.m. On Sundays, opening time is 1:00p.m.

HOLIDAYS AND HOLIDAY HOURS

This company closes on the following days: New Year's Day, Easter Sunday, Thanksgiving Day and Christmas Day. Abbreviated days are observed on the following days: Memorial Day (3:00 p.m.), Independence Day, July 4 (3:00 p.m.), Labor Day (3:00 p.m.), Christmas Eve (Noon) and New Year's Eve (3:00 p.m.).

OFFICE OPENING AND CLOSING PROCEDURES

Procedures to open and close the office include locking doors, turning off computers and copiers, etc.

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 SCAR and the local Board/Association of REALTORS®. The Associate is responsible for any fees associated with name, address and telephone number changes from SCAR or the Board/Association of REALTORS®.

FIREARM POLICY

The possession of guns (concealed or otherwise) or other lethal weapons on company premises is strictly prohibited.

SMOKING POLICY

This company permits smoking only in those areas designated as smoking areas. Each office or sales manager shall designate such an area in each office and post signs to indicate the area. Smoking is permitted in private offices at the discretion of the office holder. Rest rooms and conference rooms shall not be considered as smoking areas.

TRAINING PROGRAM AND SCHEDULE

Training of agents and staff is accomplished by one-on-one instruction or with an in-house program.

SALES MEETINGS/PROPERTY INSPECTIONS

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 Monday at 10:00 a.m. in the Sales Office conference room.

INQUIRIES/VISITS BY GOVERNMENT OFFICIALS

Any inquiry by a government official, whether by telephone, letter or in person, should immediately be forwarded to the broker (sales manager). In the absence of the broker (sales manager), the name of the official and agency or department he/she represents should be obtained. Then, the President or other officer of the company should be contacted. If none of these persons are available, the person receiving the inquiry should immediately contact the company's attorney by phone and request that he/she

come to the office. Unless presented with a valid search warrant signed by a federal judge or a judge of the county in which the office is located, the person receiving the inquiry should not allow any representative from a local, state or federal office to see any files or any information maintained in the office, nor should the person ever answer any questions of such a representative official unless the company's attorney is present.

SUBPOENAS

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

COMPUTER USE POLICY

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 that 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 that 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.

COPYRIGHT INFRINGEMENT: Broker licenses the use of computer software from a variety of outside sources. Broker does not own this software or its related documentation, and unless authorized by the software developer, does not have the right to reproduce it. Associates shall use the software only in accordance with the relevant license agreement. Any duplication of copyrighted software, except for backup purposes, is a violation of the Federal Copyright Law. All software installed in the information systems must be pre-approved by the network administrator and be non-proprietary or properly licensed. Broker will not tolerate any Associate making or importing unauthorized copies of software or data.

Likewise, Broker will not tolerate any Associate conveying software or data to an outside third party, including clients, members, customers, or associates in other companies, without proper written authorization.

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

THE WORLD WIDE WEB: The World Wide Web or Internet can be a very powerful and beneficial tool for our Associates, clients and customers. In addition to MLS-like marketing opportunities, the internet provides an unlimited resource tool for access to and delivery of information and interpersonal contacts. When properly utilized, it can

increase our capabilities and efficiency. However, access to the Internet also carries with it significant risks and potential problems including non-secure transfer of data and non-reliability and accuracy of information found on the internet. Associates must have written approval from their immediate supervisor to access the Internet via brokerage facilities. All of the previous provisions of this policy apply to access to and use of the Internet.

Most Internet communications are not secure. The Internet should not be used for communications that require confidentiality or involve financial transactions without both ensuring the security of the communication via an accepted mechanism and receiving written approval from the associate's or employee's immediate supervisor for such communications. Use of the Internet also requires conformance to certain etiquette as recognized by other users of the Internet. When using the Internet, Associates are to conduct themselves as "ambassadors" of the Broker and must show consideration and respect to others. Do not swear, use vulgarities or any other inappropriate language in your messages. Transmission or importing of any material or data in violation of any federal or state law or regulation is prohibited, including, but not limited to, copyrighted material, threatening, pornographic, or obscene material, or information constituting trade secrets. It is the responsibility of each Associate to ensure that use of the Internet is done responsibly and economically, and that access to the Internet services does not adversely affect his/her productivity.

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

MAINTAINING CONTACT WITH THE OFFICE

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

Associate. 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

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
- Real Estate Commission contacts concerning disciplinary actions or other purposes
- Party default under an accepted contract
- Threatened legal or administrative actions involving the parties and/or a real estate transaction
- Acts of discrimination committed by Associates or parties to transactions
- Unresolved disputes between Associates, within or outside the office
- Physical injuries within the office or while in performance of services or duties in the name of the Broker
- Local Board/Association contacts concerning disciplinary action or other purposes.

CONTACTING THE BROKER

Emergency Contacts

The Broker generally will be available during work hours to discuss real estate matters. In the case of an emergency, the Broker may be contacted at his home after business hours. If the Broker cannot be reached, the Associate should not act until he or she is able to contact the Broker; however, if the emergency pertains to the wording of a contract, a protective clause to the effect that “this contract is subject to the review and approval of legal counsel within (an agreed upon time frame) acceptance of this offer” should be inserted in the contract.

Branch Offices

This company has one branch offices as follows:

Office: US Properties

Managing Broker: Deborah Coleman

Office Phone: 803-936-9970

Home Phone: 803-936-9970

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.

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 at the branch office. Sign riders will be placed on the lower 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 at the branch office 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 at the branch office.

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 thirty days after closings provided that the consent of the new owner (buyer) has been obtained.

CHAPTER 7

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.

LEGAL AND TAX ADVICE PROHIBITED

No Associate shall give legal advice to a party, offer opinion, 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.

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.

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.

SCAR Legal Hot Line

The South Carolina Association of REALTORS® provides a Legal 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 Hot Line provided free by SCAR. Realtor® members can access the Legal Hot Line through Designated Brokers only. The Legal Hot Line can be reached toll free by dialing 1-800-233-6381 or (local to Columbia)

772-5206.

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 five years according to South Carolina Real Estate Commission 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.

AGENT SAFETY

It is critically important that an agent be aware of safety risks inherent in any business. The residential real estate business presents certain safety risks because of the time of day and week when much of the business is conducted. This company has the following safety policies, guidelines and suggestions:

1. If the agent does not know a customer, try to arrange a meeting at the office.
2. NEVER meet a prospect at a vacant house ALONE. ALWAYS take another person with you. DO NOT meet the prospect after dark.
3. ALWAYS let the office or someone at your home know where you will be when showing property, especially to prospects you are first meeting.
4. When on the showing, DO NOT go to dark areas, basements, garages, or areas without multiple exits. Allow the prospect to view those areas on his/her own and stay in an area that allows for quick exit.
5. ALWAYS drive your own car. DO NOT let a prospect you do not know drive your car. Preferably, meet the prospect at the office, tell the office your destination and expected time of return and drive separate cars to the showing.
6. USE COMMON SENSE. If something doesn't feel right or look right, trust your instincts and remove yourself from the situation.
7. Whether to use self-defense techniques and how to handle a crisis if it occurs are personal decisions. Think about your choices in advance.
8. View safety videotapes and talk to your local police. The company has a videotape available on agent safety and urges each agent to view it regularly. In addition, the videotape is regularly shown at a sales meeting, and the local police are asked to make safety presentations at a sales meeting periodically. Take advantage of these opportunities to be smart and be safe. No commission is big enough to justify personal risk!

CHAPTER 8

FUNCTIONS OF UNLICENSED OFFICE PERSONNEL

The policy of this company regarding the functions and use of unlicensed office personnel is to follow the South Carolina Real Estate Commission Rules and Regulations. The general policy is that unlicensed office personnel (secretaries, assistants, personal assistants, receptionists, accounting personnel, etc.) are to be used in a support role to the main real estate business function of the company.

UNDER NO CIRCUMSTANCES will unlicensed office personnel be allowed to do the real estate business.

"Doing the real estate business" means doing any of the acts for which a license is required as defined in South Carolina real estate license law.

Further defining this area is Section 40-57-135(E)(2)-(4) of the South Carolina Code of Laws, 1976, as amended. This section implicitly allows for the use of unlicensed clerical personnel to support licensed activities but strictly limits the position to the duties normally attributed to such positions and such personnel shall not solicit or accept listings, show listed properties, negotiate real estate transactions or otherwise hold themselves out to the public as engaged in the real estate business.

A secretary or assistant CAN:

1. Answer the phone and forward calls to a licensee
2. Submit listings and changes to a multiple listing service
3. Follow up on loan commitments after a contract has been negotiated
4. Assemble documents for closing
5. Secure documents (public information) from courthouse, sewer district, water district, etc.
6. Have keys made for company listings
7. Write ads for approval of licensee and supervising broker and place advertising (promotional information, newspaper ads, etc.)
8. Record and deposit earnest money, security deposits, and advance rents
9. Type contract forms for approval by licensee and supervising broker
10. Monitor licenses and personnel files
11. Compute commission checks
12. Place signs on property
13. Order items of routine repair as directed by licensee
14. Prepare flyers and promotional information for approval by licensee and supervising broker
15. Act as a courier service to deliver documents, pick up keys, etc.
16. Place routine telephone calls on late rent payments

17. Schedule appointments for licensee to show listed property
18. Show rental units to prospective tenants
19. Furnish published information
20. Provide applications and lease forms
21. Receive applications and leases for submission to the owner or the licensee for approval

A secretary or assistant CANNOT:

1. Host open houses, kiosks, home show booths or fairs, or hand out materials
2. Prepare promotional materials or ads without the review and approval of licensee and supervising broker
3. Show property
4. Answer any questions on listings, title, financing, closing, etc.
5. Discuss, negotiate, or explain a contract, listing, lease, agreement, or other real estate document with anyone outside the firm
6. Work as a licensee/secretary in one firm and do real estate related activities with that firm, while licensed with another firm
7. Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings, sales, etc.
8. Negotiate or agree to any commission, commission split, management fee or referral fee on behalf of a licensee
9. Vary or deviate from the rental price or other terms and conditions previously established by the owner or licensee when supplying relevant information concerning the rental of property
10. Approve applications or leases or settle or arrange the terms and conditions of a lease
11. Indicate to the public that the unlicensed individual is in a position of authority that has the managerial responsibility of the rental property

PAYMENTS TO UNLICENSED PERSONS

This company maintains a strong policy that no unlicensed person will be paid for any real estate activity requiring a license. The license law (Section 40-57-145(A)(11)) makes clear that an unlicensed person may not be paid for doing the real estate business. Therefore, the policy of this company is that it will not split commissions or fees with any unlicensed persons such as attorneys at law, auctioneers, receivers, trustees in bankruptcy, personal representatives, managers of apartments buildings, officers or employees of federal agencies or state government, etc.

CHAPTER 9

AGENCY POLICY (Client Services)

SELLER & BUYER AGENCY – including Disclosed Dual Agency

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

The Company acts as seller's agents (and/or landlord's agents) or as buyer's agents (and/or tenant's agents) through written listing agreements or written buyer (and/or tenant) agency agreements or other written agreements for brokerage services with sellers (and/or landlords) or buyers (and/or tenants).

In acting as seller's agents (and/or landlord's agents) or as buyer's agents (and/or tenant's agents), the Company acts as an agent as that term is defined by the Statutes of the State of South Carolina and per the duties and obligations of an agent of a seller (and/or landlord) or buyer (and/or tenant) as specified by the Statutes of the State of South Carolina. The Company's written agency agreements include the licensee's duties and responsibilities as an agent of the seller (and/or landlord) or of the buyer (and/or tenant).

If a represented buyer desires to purchase a company listing (in-house sale), the Company will act as a disclosed dual agent in the transaction with the consent of all parties to the transaction. Written consent of all parties to the transaction is required before the Company will act as a disclosed dual agent. The Company's listing agreements and buyer agency agreements contain permissions for the Company to act as a disclosed dual agent

If acting as a disclosed dual agent, the Company will be a disclosed dual agent for both the seller and buyer or the landlord and tenant as defined in the Statutes of the State of South Carolina.

The Company will also work with unrepresented buyers (and/or tenants) to sell its listings or will work with those buyers (and/or tenants) to sell listings of other brokers as subagents of those brokers when offers of cooperation and compensation are offered to subagents, either through written offers of subagency or through unilateral offers of subagency made in any multiple listing services in which the Company participates. Licensees of the Company engaging in subagency must comply with applicable law and regulations regarding disclosure of subagency to the buyer (and/or tenant) when accepting a unilateral offer of subagency.

AGENCY DISCLOSURE POLICY

Complementing the agency policy chosen by the company are the South Carolina Real Estate Commission Rules and Regulations on Agency Disclosure. This company maintains a policy promoting discussion of agency relationships at the first reasonable opportunity with a customer or a client. Each agent is required to attend training and education on agency disclosure within the company training program.

South Carolina law requires use of the Agency Disclosure Form as prescribed by the South Carolina Real Estate Commission. The Agency Disclosure Form must be given to any person who has not entered into an agreement to be represented. This includes prospective sellers, buyers, landlords and tenants. The Form must be given to the person at the first substantial contact as defined by law.

The Rules and Regulations require the licensee to give disclosure of his/her agency relationship on the following terms.

1. **SELLER'S AGENT:** A licensee who becomes a seller's agent shall provide a completed agency disclosure form to the seller at the time the listing is obtained and signed.

2. **BUYER'S AGENT:** A licensee who becomes a buyer's agent shall provide a completed agency disclosure form to the buyer at the time an agency agreement is signed. A licensee who begins working with a potential buyer shall provide to the potential buyer a completed agency disclosure form at the first substantive contact. At the time of contact, it must be established between licensee and potential buyer whether the buyer will be a 'customer' or 'client'. Substantive contact must be the earlier of:
 - (1) prequalifying by requesting specific financial information in order to determine ability to conclude a real estate transaction; or
 - (2) prior to showing real estate to a prospective buyer, other than at an open house.

If first contact occurs over the telephone, a licensee shall provide a buyer with the completed agency disclosure form at the first meeting.

3. **DUAL AGENCY:** A licensee may act as a disclosed dual agent only with the prior informed and written consent of all parties. Consent is presumed to be informed if a party signs a completed copy of the required agency disclosure form prescribed by the South Carolina Real Estate Commission. The form shall specify the transaction in which a licensee shall serve as dual agent and shall state:
 - (1) that in acting as a dual agent, a licensee represents clients whose interest may be adverse and that agency duties are limited;
 - (2) that the dual agent may disclose any information gained from one party to

another party if the information is relevant to the transaction, except if the information concerns:

- (a) the willingness or ability of a seller to accept less than the asking price;
 - (b) the willingness or ability of a buyer to pay more than an offered price;
 - (c) confidential negotiating strategy not disclosed in an offer as terms of a sale;
 - (d) the motivation of a seller for selling property or the motivation of a buyer for buying property.
- (3) that the clients may choose to consent to disclosed dual agency or may reject it;
- (4) that the clients have read and understood the agency agreement and the agency disclosure form and acknowledge that their consent to dual agency is voluntary.

This company prefers and urges that each agent discuss agency relationships with customers and clients at the earliest possible time in the relationship to avoid later misunderstandings. All agents must disclose not later than the time periods required by the law.

The South Carolina agency statute and Real Estate Commission Rules and Regulations require that a copy of the Agency Disclosure Form in each of the above cases be retained by the disclosing licensee's broker. Completed Agency Disclosure Forms and written agency agreements are to be sent to the branch sales manager for further processing and retention by the company. If a prospective customer refuses to sign the Agency Disclosure Form, this company requires that the licensee set forth, sign and date a written explanation of the facts of the refusal and that the explanation must be retained by the licensee's broker. Any written explanations of this type must be forwarded to the branch sales manager for further processing and retention by the company. Agency disclosure forms should be obtained at the first substantial contact and retained on file at the branch office.

MANDATORY BUYER AGENCY EVENTS

It is the policy of this company that any agent working in the following circumstances **MUST** act as a buyer's agent and may not act as a subagent of the seller.

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

STRONGLY RECOMMENDED BUYER AGENCY EVENTS

It is the policy of this company that any agent working in any of the following

circumstances is strongly urged to work as a buyer's agent.

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

AGENCY AND CONFIDENTIALITY

One of the most important fiduciary duties of an agent is to maintain the confidentiality of the client, whether buyer or seller. South Carolina statute defines confidential information. It includes information made confidential by written instruction from the client and information made confidential by the statute. An agent should treat confidential information provided by the client that may reasonably be expected to have a negative impact on the client's real estate activity. Agents should pay particular attention not to make unauthorized or offhand comments about a client's situation or a client's property in a way that could be considered a violation of the duty of confidentiality. In particular, four areas are considered of particular importance. They are:

1. The lowest price a seller is willing to accept.
2. The highest price a buyer is willing to pay.
3. The motivation of either party to enter into the transaction.
4. Confidential negotiating strategy not disclosed in an offer as terms of a sale.

If disclosed dual agency is offered, it is particularly important for each agent to realize that she/he must hold confidential the information of both buyer and seller, regardless of which party the particular agent is working with.

In offering disclosed dual agency, the company and all of its associates must be sensitive to confidential information within the office and among the associates of the company. The following procedures and policies are intended to protect the confidentiality of the company's clients.

1. Associates should not discuss confidential information of the client between or among themselves.

2. Comments at sales meeting should not reveal confidential information of the client without the client's permission.
3. Office files of listings and pending sales are confidential and may not be accessed except for authorized staff and the particular agent involved in the listing or transaction.
4. Fax transmissions are confidential. Office staff will distribute faxes in envelopes so as not to reveal contents to persons other than to whom the fax is addressed.
5. Telephone messages with confidential information will be distributed in an envelope.
6. Contracts, offers, counteroffers or other transactional documents will be delivered to the person addressed in envelopes. Persons other than the addressee are not authorized to open any such envelope.

Please refer to the attachments to the policy manual which refer to "Buyer Agency Do's and Don'ts", "Subagency Do's and Don'ts", and "Disclosed Dual Agency Do's and Don'ts."

CUSTOMER SERVICES

Prospective buyers of real estate who do not choose to establish an agency relationship with an agent of the company, but who use the services of the company are considered customers and shall receive the following services:

1. A meaningful explanation of agency relationships in real estate transactions including the customer's right to choose no representation by the company;
2. An explanation of scope of services to be provided by the company; (NOTE: This section should include what ministerial services the company provides to customers.)
3. Fairness, honesty, and accurate information in all dealings.

CHAPTER 10

COOPERATION AND COMPENSATION POLICY

1. **COOPERATION/COMPENSATION OF SUBAGENTS AND BUYER'S AGENTS:**
This company believes it is in the best interests of the company's seller-clients to give property the widest possible exposure of possible showings. Because both subagents and buyer's agents conduct showings in the market, this company cooperates and compensates both subagents and buyer's agents at the same level of cooperative

compensation.

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

1. The company's policy regarding cooperation with subagents and/or buyer's agents;
2. If the company cooperates with buyer's agents, the disclosure must also state that buyer's agents, even if compensated by this company will represent the buyer, not the seller; and
3. Any potential for this company to be a disclosed dual agent, if company policy allows disclosed dual agency.

REALTORS®: These disclosures must be made under provisions of the Code of Ethics.

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, 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.

Schedule of Compensation

Associate compensation checks are issued by the Broker within ten 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.

CHAPTER 11

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 SCAR'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 that are defined to be "settlement 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 homeowner 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 brokerage and referral arrangements or agreements.”

KEY REFERRAL FEE REMINDERS

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

CHAPTER 12

FAIR HOUSING POLICY

This company believes that fair housing policies are not just the law of the land but simply the right thing to do. This company maintains a strong policy upholding all federal and state fair housing laws and Article 10 of the REALTOR® Code of Ethics (REALTORS® ONLY) and the NAR Code of Fair Housing Practices (REALTORS® ONLY). In addition, this company requires each agent and staff member to participate in fair housing education.

Accordingly, this company prohibits any agent or staff member from discriminating against any person in the provision of any of the company's services on the basis of race, color, religion, sex, handicap, familial status or national origin.

Among the prohibited practices which are against this policy and the law are:

1. Refusing to show, sell or rent based on a person being a member of a protected class.
2. Different treatment/disparate treatment to persons of a protected class.
3. Steering: A person shall not encourage or discourage another from moving in to any area because of the race, color, religion, sex, handicap, familial status or national origin of the present residents.
4. Discriminatory advertising that "expresses" a preference for buyers or tenants of a particular race, color, religion, sex, handicap, familial status or national origin
5. Harassment (i.e., coercion, intimidation, threats or interference with a person's fair housing rights or because a party is abiding by fair housing law)
6. Applying more burdensome criteria to applicants of protected classes
7. Blockbusting: A person is prohibited from inducing or attempting to induce another to sell or rent a property by making any express or implied representations regarding the entry or prospective entry into a neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status or national origin.

Agents and staff should be aware that persons with AIDS are considered handicapped and "familial status" means families with children.

FAIR HOUSING DECLARATION

As an agent of this Company, you agree to:

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

CHAPTER 13

LISTING PROCEDURES

This company accepts listings and seeks to build an inventory of available merchandise for sale to buyers of homes and investment real estate. It offers the merchandise directly to the public and by cooperating with other licensed agents, whether they be subagents or buyer's agents.

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

1. **TYPES OF LISTINGS:** In accord with the REALTOR® Code of Ethics (REALTORS® ONLY), this company urges the exclusive listing of property, unless it is

contrary to the best interests of the owner. Open listings may be accepted (Option 1:) at the agent's discretion OR (Option 2:) only with consent of a manager or broker of the company. Net listings are not accepted. A net listing is one in which the owner agrees to let the agent keep any sale proceeds over a "net" price the owner wants for the property.

EXCLUSIVE AGENCY LISTINGS:

Exclusive Agency listings provide an opportunity for the seller to market the property simultaneously with the Listing Company and pay no commission if the sellers is successful in finding a buyer through his/her efforts. Whenever you take an Exclusive Agency listing this fact must be disclosed by a specific symbol in the MLS of your Local Board/Association.

VARIABLE LISTINGS AND EXCEPTIONS:

In some areas a practice has developed where a company will take a listing that provides a different commission if the listing office finds a buyer, as opposed to when the listing office is cooperating with another firm representing the buyer. For example: "Seller A signs a listing agreement whereby he agrees to pay 1% less in commission if the property is sold by an agent of the listing firm. It is the duty of the Listing Company to disclose such Variable Commission so that cooperating agencies clearly understand that there is not a level playing field and that their buyers may be at a disadvantage in the event that a competing offer comes in from an agent of the Listing Company. Each Local Board has symbols to disclose the existence of a variable commission rate.

An exception occurs when the seller signs a listing agreement, but specifically excludes certain prospects that may already have seen the property. This exception must be disclosed by a special notation in the MLS, accompanied by comments such as "call listing office".

A company may choose to accept any type of legal listing, may choose to restrict its listings to a certain type or types or may limit its acceptance of certain types of listings to certain situations. Local competitive market conditions may influence the types of listings accepted.

COMMISSION POLICIES

a. Rates and prices charged for services to the public. Examples of areas to consider, depending on the company's selection of agency policy and business practice, are:

1. Charges to sellers for listings.
2. Charges to buyers for representation.
3. Charges to owners for leasing.
4. Charges to clients for consulting.
5. Charges for any other services it renders.
6. Compensation offered to subagents.

7. Compensation offered to buyer's agents.
8. Compensation offered to the company's licensees.)

3. **OTHER LISTING TERMS:**

(NOTE: A company should specify any policies it has as to other terms in a listing contract such as length of listing, length of protection period, i.e. time after end of listing term in which a commission is owed if a buyer procured by broker purchases property, if any, whether and for what length of time exclusions from the listing contract will be accepted and who in the company has authority to accept the listing on behalf of the firm.)

4. **DISCLOSURE OF ADVERSE MATERIAL FACTS:** South Carolina statutes require the disclosure to any customer all adverse material facts actually known or which should have been known by the licensee.

For a Seller's Agent:

A licensee who represents a seller shall treat all prospective buyers honestly and may not knowingly give them false or misleading information about the condition of the property which is known to the licensee or, when acting in a reasonable manner, should have been known to the licensee. A seller's agent is not obligated to discover latent defects in property or to advise the agent's clients on matters outside the scope of the agent's real estate expertise.

For a Buyer's Agent:

A licensee who represents a buyer shall treat all prospective sellers honestly and may not knowingly give them false or misleading information about the buyer's ability to perform the terms of a transaction. A buyer's agent is not obligated to discover latent defects in property or to advise his clients on matters outside the scope of his real estate expertise.

5. **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 SCARget

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 SCARget 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 land-lord.

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 per-formed 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.

6. SELLER PROPERTY DISCLOSURE STATEMENTS: Seller Property Disclosure Statements are a detailed statement by the seller of his/her knowledge of the condition and features of the property. This company has a policy of urging the use of seller disclosure statements to clarify and declare the condition of the property at the time of listing. An agent should request a disclosure statement on every listing. It is in the best interest of the seller to complete a disclosure statement because it can avoid future misunderstandings with a buyer as to what the seller's knowledge of the condition of the property was at time of listing.

In addition, it is a valuable risk reduction tool this company and assists the company in complying with its obligations to disclose adverse material facts. By the seller making accurate, factual statements as to his/her knowledge of the property, later controversies as to "who said what" can be minimized.

A listing agent should be careful to keep the seller disclosure statement current. If the information becomes inaccurate because the property's condition has changed, a seller (and agent!) could have liability for allowing known inaccurate information to be given to buyers.

Some sellers may refuse to sign a seller disclosure statement. In South Carolina, there are no state or federal laws that require a seller to execute such a statement. This company (WILL) (WILL NOT) accept a listing for which a seller refuses to complete a seller disclosure statement. If a seller will not complete a disclosure statement, she/he can be counseled that completion can be a protection for him/her in that a buyer would have difficulty in claiming an oral representation in conflict with a written representation.

Also, a seller should be reminded that the vast majority of properties are sold with completed seller disclosure forms. His/her failure to have such a disclosure form available to buyers could place the property at a competitive disadvantage and bring into question the credibility of the property.

Particular note should be paid to lead based paint disclosures. Current FHA regulations require that a special lead based paint disclosure form be signed by all parties to a contract with FHA financing BEFORE entering into the contract if the transaction involves a property built prior to 1978. Also, a new federal law took effect late in 1996 which requires certain disclosures on properties built prior to 1978 about the hazards of lead based paint and requires that the buyer be given the opportunity for inspections for lead based paint in the sale contract.

In certain situations, "representatives," such as personal representatives of estates, trustees and corporate owners may not be willing to complete a disclosure statement in that the representative may have not occupied the premises and thus have no personal knowledge of the property. In that event, the agent should have an uncompleted

disclosure statement form signed by the representative clearly indicating the lack of personal knowledge by the signer.

In completing the disclosure statement, the seller MUST fill in the form. An agent of this company MAY NOT complete the form on behalf of a seller. If an agent completes the form, much of the benefit of this risk reduction technique is lost.

In general, the agent may rely on the statements of the seller. The South Carolina agency statute states that the agent owes no duty to conduct an independent inspection of the property for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.

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

In addition, an agent should pay particular attention to inclusions and exclusions in the sale of the property and verify the seller's intention. For example, if an owner checks off that the master bedroom draperies will not be sold with the house, the agent should verify that this is the seller's intent and then make clear in any promotional material mentioning draperies that the master bedroom draperies are excluded.

Also, it is very important to make sure the exclusion is expressly specified in the contract. The seller disclosure statement is not usually incorporated into the terms of the contract. Thus, an agent should not rely on the seller disclosure statement to control the contract but must make sure that the exact understandings of the parties are reflected in the sale contract.

Another example of proper agent procedure involves using reasonable diligence to check the seller disclosure statement. If an owner states in the disclosure statement that there has never been any water in the basement and the agent notices brown water stains in one corner of the basement, the agent must question the owner about the accuracy of the statement. Again, an agent may not ignore his/her reasonable, normal, real estate agent knowledge and information because an owner represents otherwise.

7. **ACCURACY OF LISTING INFORMATION:** Several "traps" of liability exist in taking a listing. These are covered below. Each agent should take careful note of these hazard areas and be particularly diligent in handling these issues.

a. **ROOM COUNTS:** Agents must be careful to accurately represent the number of rooms, bedrooms and bathrooms in a property. Generally, questions of whether an area constitutes a room, bedroom or bathroom are resolved by determining whether an appraiser would count the area as such. For example, basement rooms that are below grade are not generally considered rooms, bedrooms or bathrooms for appraisal purposes. Another example is that a room normally must have a closet to be considered a bedroom. Also, "walk-through" rooms are not usually considered separate bedrooms. These ambiguous areas can be denoted by a symbol such as a "+" sign after the room count (e.g. 8+ rooms, 4+ bedrooms) or highlighted in remarks for the property or other descriptive information.

b. **ROOM SIZES:** The agent should personally measure each room. **DO NOT** take room sizes from a former listing company's form. Be cautious about taking room sizes from plans. There may have been construction changes not reflected on the plans. Measure room sizes to feet and inches. (NOTE: Many MLS systems do not allow input of room sizes to feet and inches. In such case, round inches to the nearest foot, e.g., 7 feet 7 inches rounds to 8 feet but 7 feet 5 inches rounds to 7 feet.)

c. **LOT SIZE:** Lot size and acreage should only be determined from an accurate survey, the owner's real estate tax bill or the county tax records. The agent should **NOT** attempt to measure lot size on her/his own.

d. **TAXES:** Taxes should be determined from county tax records or the owner's tax bill. The agent should not rely on the statements of the owner as to tax amounts.

e. **MODERNIZATION INFORMATION:** Often, good selling features about a property are the updates or upgrades made by the owner. In order to accurately advertise these items, this company requires that the owner verify any information given to us before it can be used in any promotional material on the listing.

Items such as "new" roof, "new" air conditioner, "new" furnace, "new" bathroom, "new" kitchen, etc. are misnomers because of the difficulty in defining what "new" means. Substantiation of the information means the owner must supply this company with receipts, canceled checks or other proof of payment of upgraded or rehabbed items. Once provided, then this company will accurately advertise and promote these good selling features with language like "New roof, 1990", "New furnace, 1989", "Kitchen remodeled, 1991". If it is not possible to substantiate modernized features, they can be advertised or promoted as "Newer" or "Recent", as in "Newer furnace" or "Recently remodeled bathroom".

8. **SIGNATURES:** South Carolina law requires written listing agreements signed by all sellers. In addition, this company desires that listing agreements be enforceable in every possible situation to ensure that the company and agent will be paid under the terms of the listing agreement. Because of these factors, agents must secure listing

agreements with the proper signatures before the listing will be promoted or advertised in any way. Agents should be especially aware in the several situations below.

a. **SPOUSAL SIGNATURES:** A spouse must ALWAYS sign a listing agreement unless certain conditions exist, as follows:

- (1) A waiver of marital rights given by the non-signing spouse exists and a copy is provided to this company.
- (2) A quitclaim deed made to the signing spouse has been executed and recorded by the spouse not signing and a copy is provided to this company,
- (3) A prenuptial agreement waiving the non-signing spouse's rights exists, a copy of the prenuptial agreement has been given to this company and legal counsel for the company has consulted with a title company to determine the validity of the prenuptial agreement.

Most often, these questions come up when the property is titled only in the "selling" spouse's name and the "non-selling" spouse claims that he/she has no interest in the property. Typical situations are a widowed person who has remarried or a divorced person who has remarried. The spouse not on the title may have a marital interest under the Probate Code of the State of South Carolina and should sign the listing agreement unless one of the three exceptions noted above exists.

b. **PROPERTY IN ESTATE:** When property is in an estate, ALL heirs AND spouses must sign. If a Personal Representative (Executor) has been named, it is possible that the Personal Representative has authority to sell the property. The agent must secure a copy of the part of the will or court decree that empowers the Personal Representative to sell property. The power of sale granted the Personal Representative by a will may not be acceptable to a title company until the time to file a will contest has expired, which is six months after the first publication of notice of Letters of Administration being issued. Management or legal counsel of this company will consult with a title company to determine if the power to sell in the will is acceptable.

c. **TRUSTEES:** If a property is held by a trust, the trustee will normally be empowered to sell. However, the agent must secure a copy of the part of the trust which empowers the trustee to sell because some trusts require the signatures of more than one trustee to sell as in the case of an individual and corporate trustee (bank). The trustee's spouse does not sign the listing agreement because the trustee is acting in a representative capacity.

d. **SELLER INCAPACITATED:** If a seller is not mentally competent to sell, a guardian must be appointed by the Probate Court and the guardian must obtain a court order to sell the property. Until such time, the property cannot be sold even if a child, sister, niece, nephew, etc. is also on the title. Also, if a property is jointly owned in this fashion, the spouse of the "second signer" (child, sister, niece, nephew, etc.) must also sign the listing contract. It is possible that a properly drawn Durable Power of Attorney may provide a means to sell this type of property. However, before relying on the

Durable Power of Attorney, a title company should be consulted to determine whether the company will insure the title based on the existing Durable Power of Attorney. Also, refer to the paragraph on Powers of Attorney, below.

e. **DIVORCES:** A person is NOT legally divorced until a court so orders. A person "in the process of divorce" cannot sign the listing agreement alone. The spouse must also sign, regardless of whether the spouse is living on the premises or the couple has a "legal separation." Once divorced, the person may sign alone. However, if the county records continue to show the property in both names, the agent must secure a copy of that part of the divorce decree which awards the property to the signing spouse for this company's files.

f. **POWERS-OF-ATTORNEY:** A Power-of-Attorney is acceptable for signature on a listing contract. However, not all powers-of-attorney authorize the sale of real estate. A copy authorizing the sale of real estate must be secured for the files of this company.

9. **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. **NO FEES WILL BE PAID ON LISTING CONTRACTS NOT CURRENTLY UNDER A PURCHASE AND SALES AGREEMENT.**

Listing Contracts are the personal property of the Company. The Company will assign listings of a terminated Associate to another Associate. The renewal or re-listing of expired or canceled Listing Contracts by another Associate shall not be a basis of a commission due and owing if the property did not sell during the association of the terminated Associate.

10. **ASSIGNMENT OF LISTING CONTRACTS:** When an Associate leaves this Company, the Manager will re-assign all listings. The departing Associate may not assign or promise these listings to another Associate - it is the prerogative of the Broker-in-Charge.

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

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

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

Note also that, as a possible material limitation on the client's ability to perform the transaction, this condition may be considered an adverse material fact to be disclosed to the customer.

Estimated Seller Net Proceeds Calculation forms are available in each office.

12. **LOCK BOX PROCEDURES:** This company as part of the local Board of REALTORS® common lock box system (if applicable), encourages the use of lock boxes on all listings as a safe, secure, efficient tool in marketing property. Specific permission from the owner must be obtained on each listing before installing a lock box. Forms for this purpose are in each office. (NOTE: Many local boards or companies have automatic authorizations or "check-off" authorizations in the listing contract. If such is the case, no separate form is required.)

13. **OPEN HOUSE PROCEDURES:** The "how-to" of holding open houses, etc., is covered elsewhere in this company's training programs and manuals. However, this company must maintain a policy that adequately informs owners of their responsibilities in consenting to open houses. Agents must strongly recommend to owners that they take common sense precautions with any valuables in the house during the time of the open house. This includes removal of all jewelry boxes, collectibles of value, (sentimental or dollar value), small audio or video equipment or other items which may be of value. Owners should also be informed that their homeowner's insurance company is the responsible party for any losses on an open house.

As in all other areas, an agent may not act carelessly or recklessly. If for no other reason, an agent must be diligent in conducting an open house to maintain good business relations and rapport with the owner.

14. INTERNAL VERIFICATION PROCEDURES: This company maintains a system of checking and verifying both listing contracts and documents and sale contracts and documents for accuracy, enforceability and compliance with South Carolina Real Estate Commission Rules and Regulations. The sales manager or a central person will verify the files. Each agent is expected to cooperate fully and promptly with any requests for verification, further information or correction of any oversights in the documents. For other related policies, see the section on Risk Reduction Policies.

CHAPTER 14

BUYER QUALIFICATION POLICY

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

1. LOAN QUALIFICATION

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

- a. Completion of a financial qualification form.
- b. Setting up a meeting with a lender and buyer to discuss financial ability to qualify for a loan.
- c. Providing necessary information to a buyer so that he/she can respond as to whether he/she can get a loan.

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

- a. Completion of a financial qualification form. This form should be in sufficient detail and sufficiently accurate that the buyer is reasonably sure of qualification. If an

agent is not sure of his/her level of skill to complete such a form, the agent should get further education and training and immediately call a sales manager or lender to assist.

b. Consultation with the buyer and a lender to determine financial ability to qualify for a loan.

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

2. ESTIMATED CLOSING COSTS

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

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

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

Lender closing costs are generally reviewed in loan qualification procedures. One note of caution is in order. Some lenders unbundle services and charge for each service. These so-called "extra" costs are in addition to origination fees and points. They may include charges for "processing fee", "underwriting fee", "lender's closing fee" (apart from title company closing fee), "notary fees", "document preparation fee", "courier fee", etc., totaling \$500.00 or more on a single closing.

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

CHAPTER 15

SALE CONTRACT POLICY

1. **SALE CONTRACT COMPLETION: REALTORS® ONLY:** As a member of the (Your local board) Board of REALTORS®, This company uses the standard contract form available through the Board or state association.

This company adheres strictly to these provisions. Accordingly, a sample sale contract form book is available to all agents of the company. Agents must use the approved language and fill-ins included in the sample contract book. If a situation is not covered, an agent is not authorized to alter a form or add language without prior approval from company legal counsel that can be obtained through company management. Company management maintains a file of pre-approved clauses for situations not covered by the form book.

Likewise, any amendments or supplements to sale contracts must be written on available company Supplement or Amendment to Sale Contract forms. These forms provide for most typical amendments and changes to sale contracts such as changes to closing dates, possession dates, loan commitment dates, loan terms, waivers of financing, building, structural or mechanical inspections, etc. If an agent requires unusual language, his/her must consult company management who will consult with legal counsel to determine whether the appropriate language can be approved.

If a customer or client asks us to prepare one of these forms, the agent should ask the customer or client to seek the advice of his/her own legal counsel.

2. **SALE CONTRACT TERMS:** Several areas of contract terms are traps of risk for the unsuspecting agent. This company maintains policies regarding these areas to reduce risk and heighten awareness. These are covered below.

a. **EARNEST MONEY:** Several concerns regarding earnest money are involved. First is the "how much" issue. The company cannot maintain a policy that requires any specific amount of earnest money, as the company and agent are not parties to the contract. However, if the company represents the seller, the advice to the seller will be that sufficient earnest money is very important in that it shows how "earnest" a buyer is. The company has seen many cases where low earnest money (1-2% of offer price or less) has resulted in a buyer simply defaulting on the contract and forfeiting the low amount of earnest money, banking on the fact that it is unlikely that a seller would sue. It has also seen many cases where sufficient earnest money (4-7% of the offer price or more) has kept an anxious buyer in a contract to closing because of the prospect of losing a substantial amount of earnest money.

If the company represents the buyer, the classic approach to buyer representation might suggest providing the lowest possible earnest money in every case. However, the agent is cautioned that this may not serve the best interests of the buyer in all cases. For example, because earnest money indicates how "earnest" a buyer is, or

how "strong" an offer is, a buyer may be put at a competitive disadvantage if low earnest money is offered in a situation where the buyer's offer is competing with one or more other offers. As in all other situations, if the company represents the buyer, its job is to give the buyer the best of the agent's and company's expertise, advice and talent which may include advice which on first impression does not follow the "typical" rules.

A second earnest money issue deals with what can be accepted as earnest money. The policy of given this company is that only cash, checks or money orders are accepted as earnest money without further permission from the seller. The company's policy regarding the rule is that items such as post-dated checks are not acceptable. The company will not hold checks even if not post-dated. Any money given this company in a real estate sales or exchange transaction must be deposited as follows in a separate real estate trust account so designated:

- (a) cash monies or certified funds must be deposited within forty-eight hours of receipt, excluding Saturday, Sunday, and bank holidays;
 - (b) checks must be deposited within forty-eight hours, excluding Saturday, Sunday, and bank holidays, after acceptance of an offer by the parties to the transaction;
- Agents must promptly have funds to the broker for deposit.

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

b. **INCLUSIONS AND EXCLUSIONS:** As covered in the section on Seller Disclosure Statements, the contract is the primary method to determine what is being sold with the property. Do not rely on the Seller Disclosure Statement as to the inclusions and exclusions in a contract. It is not normally made a part of the contract.

This area is of great importance for risk reduction purposes. Personal property inclusions and exclusions cause a great number of the disputes in a sale contract and can be expensive for an unwary agent. As a general rule, try to keep the contract free from personal property matters. Not only do these matters "clutter" the real estate aspects of the transaction, but they may affect the maximum loan amount depending on the loan-to-value ratio.

Some common problem areas the company is familiar with are as follows:

- (1) Loose laid carpet that resembles tacked down carpeting.
- (2) Draperies, curtains, window treatments, etc., especially as to which may be excluded (e.g. master bedroom draperies which match the bedspreads).
- (3) Stoves/ranges (check contract for inclusion in printed matter)

- (4) Portable dishwasher
- (5) Refrigerator (Even if built-in.)
- (6) Burglar alarms (Be sure to determine whether leased or owned and whether any continuing service fees apply.)
- (7) Outside mailbox and post (Typically "fancy" or ornate mailboxes and posts which a seller may want to remove.)
- (8) Swimming pool equipment and pool equipment.
- (9) Porch swing
- (10) Bathroom mirrors
- (11) Farm equipment
- (12) Riding lawn mower
- (13) Fireplace equipment and/or screen
- (14) Gas lights or BBQ's (Be sure to check whether these are paid off.)
- (15) Above ground pool
- (16) Hot tub or spa
- (17) Swag lights
- (18) Book shelves (Watch shelves where brackets are attached and wood shelves are not.)
- (19) Special showerheads
- (20) Playhouse/tree house
- (21) Special or ornate door knockers
- (22) Water softener (Check whether leased or owned.)
- (23) Central vacuum equipment (hoses, nozzles, etc.)
- (24) Stained glass (Even though usually attached, can sometimes have sentimental value to seller who intends to remove.)
- (25) LP gas tanks (Check whether leased or owned.)
- (26) Fireplace logs
- (27) Ben Franklin stove
- (28) Fireplace inserts (May or may not be attached.)
- (29) Satellite dish and converter boxes/units.
- (30) Under counter appliances (Microwave, coffee maker, can opener, radio)
- (31) Basketball hoop
- (32) Garage door opener controls

This list certainly does not address all of the possible problems. For example, the company is also aware of a seller who removed a flagstone walk that was obviously attached to the property. Be aware of the potential hazards in this area and act with caution, making sure inclusions and exclusions are clear in the contract. Agents are cautioned not to use simple statements in the address section of the contracts stating "per MLS sheet" or "per MLS #XXXX." These create confusion as to what MLS sheet and when the MLS sheet was run. (NOTE: If a company wants to allow its agents to use this type of format, company legal counsel should be consulted as to appropriate language to be included which can incorporate the terms of an MLS sheet into a contract by reference.)

c. "AS-IS" CONTRACTS: Often, listings may be offered in "as-is" condition. This term is unclear, at best. The policy of given this company is to clarify the meaning of this term so that the parties have a clearer understanding of the intentions of the other.

Accordingly, a form is available in each office that the agent should use in any "as-is" contract. The parties must initial one of the three options and sign the form. The three options are explained below.

(1) The property is sold exactly as seen. Any building, mechanical or structural inspection is waived by the buyer. The seller will make no repairs or corrections.

(2) While the property is being sold "as-is", the buyer is entitled to a building, mechanical or structural inspection to determine status of the property. This option includes a right of the buyer to cancel the contract if the results of the inspections are unsatisfactory.

(3) While the contract states the property is being sold "as-is", the buyer is entitled to all rights allowed in the building, mechanical or structural inspection clauses of the contract, including the right to ask for repairs. Typically, this option may be selected if the seller's statement of "as-is" is simply intended to convey the seller's position that it is unlikely the seller will repair any requested items.

In addition, South Carolina law is clear that an "as-is" sale does not relieve the licensee of the obligation to disclose all material facts of which he/she has knowledge or which are readily available to him/her relating to the condition of the property.

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

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

PRESENTATION OF OFFERS

This company requires the agent to present all offers to the seller until closing and all counter offers to the buyer, regardless of how many offers received and regardless of the order in which the offers were received. This company urges any agent involved in a multiple offer situation to contact management to review the proper procedures.

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

multiple offers so that the client may determine whether the client wishes to give the agent or company different instructions. The following information should be used as a guideline in developing your policy on multiple offers.

MULTIPLE OFFERS: JUGGLING YOUR CLIENT'S BEST INTERESTS

We live in a litigious society where every REALTOR® has come to recognize the caveat "let the buyer beware." At the same time, REALTORS® are increasingly cognizant the caveat can now be extended to both REALTORS® and Sellers. Sellers and REALTORS® have to be on their toes to understand each other implicitly so as to protect their respective interests.

The handling of multiple or backup offers on a listed property, particularly when one or more offers are written by another agency, represents a difficult situation for any REALTOR®. No matter how one proceeds, someone is sure to be disappointed. Too often, no one ends up satisfied, even though the property is finally sold. Prospects and REALTORS® are quick to point a finger whenever there is even the slightest question concerning partiality or unfairness.

In answer to the questions of the members of the South Carolina Association of REALTORS®, the following "how-to" scenario is intended to show the REALTOR® how to best handle multiple offers and what precautions REALTORS® must take. The following scenario should not be regarded as legal opinion, but serves to provide direction to our members. Perhaps one of the best ways to explain the responsibilities of the listing REALTOR® and the seller is by following this example:

REALTOR® Alex obtained an Exclusive Right-of-Sale listing to a desirable piece of waterfront property on Wednesday afternoon. Alex entered the listing into the M.L.S. that same evening and the paperwork was mailed to the board. The same information was distributed via the electronic bulletin, "The Hot Sheet," available to all members of the M.L.S. with computer access. The property in question was obviously considered very desirable, for REALTOR® Alex received numerous requests from fellow REALTORS® asking for additional information and for permission to show it to potential prospects. REALTOR® Alex was also aware of the fact that the particular property appeared to meet the requirements of a long-time friend and client, and immediately arranged to have his friend and client meet with him to view the property. REALTOR® Alex showed the property on Friday afternoon, informing his friend that because of the interest shown by other REALTORS®, it was imperative for a valid offer to be submitted as soon as possible.

On Saturday morning, REALTOR® Alex received two telephone calls from fellow REALTORS® Biff and Cindy, who said that they had offers to submit on the property. REALTOR® Alex immediately told REALTORS® Biff and Cindy that he had also shown the property to a friend and prospect who wished to submit an offer. REALTOR® Alex went on to say that he would immediately convey this information to the Seller and to provide an impartial opportunity for the consideration of all offers, would set up a

meeting for the presentation of offers that Saturday afternoon. Subsequently, REALTOR® Alex spoke to the Seller, who was given all the facts and who agreed to meet with any and all REALTORS® who had offers to submit at 4:00 p.m. that Saturday afternoon. REALTOR® Alex then telephoned REALTORS® Biff and Cindy and asked them to be sure to make up “net” sheets and include them with their offers, which should either be delivered to him beforehand or presented to the Seller at the prearranged meeting that afternoon.

REALTOR® Alex then contacted his friend and prospect, informing him that all offers would be presented to the Seller that afternoon. REALTOR® Alex informed his prospect and REALTORS® Biff and Cindy that any offers submitted should be their best offers as three offers would be considered. Later that afternoon, REALTOR® Alex and REALTOR® Cindy met at the Seller’s home. REALTOR® Biff was unable to attend the presentation, but submitted his offer to REALTOR® Alex on the understanding that it would be presented in an impartial manner. REALTOR® Alex then arranged with the Seller for the presentation of the three offers in the order in which they had been received. REALTOR® Alex also cautioned the Seller not to comment on or make any decision concerning the offers until he had an opportunity to review all offers and satisfy himself that he understood them.

The offers submitted by REALTOR® Alex and REALTOR® Biff both appeared to meet most of the requirements of the Seller, though each had their limitations. The offer submitted by REALTOR® Cindy was considered unacceptable due to a number of contingencies it contained. REALTOR® Cindy’s prospect, when advised of the fact that his offer was not being considered, withdrew. REALTOR® Alex then advised the Seller to review the two offers which he felt most comfortable with and that he could accept one or counter one or both of them. If he wanted to counter both, the REALTOR® Alex advised the Seller to have his attorney draft appropriate language to include so as to avoid becoming bound on both contracts. Alternatively, REALTORS® Alex advised that the Seller could request both prospects to submit another offer with terms that Seller would consider accepting. The Seller then considered both offers and agreed to counter to the offer submitted by REALTOR® Alex.

Following this meeting, REALTOR® Alex immediately telephoned REALTOR® Biff, advising him that the Seller had countered to REALTOR® Alex’s prospect, but the offer from REALTOR® Biff would be held as a backup offer if REALTOR® Biff’s prospect was still interested. REALTOR® Alex then telephoned his prospect, informing him that a counter offer had been made by the Seller, but that there was a backup offer available which would also be countered if the first counter offer was not accepted. REALTOR® Alex’s prospect then discussed the counter offer with his attorney and advised REALTOR® Alex that he had accepted. This information was immediately conveyed to the Seller and to REALTOR® Biff. REALTOR® Biff’s prospect then elected to withdraw.

Subsequent to the acceptance of the counter offer by REALTOR® Alex’s prospect, the

next day, REALTOR® Alex received a telephone call from REALTOR® Cindy to the effect that REALTOR® Cindy's prospect had decided to submit another offer at over full price. REALTOR® Alex immediately responded to REALTOR® Cindy that the Seller had signed a contract with REALTOR® Alex's prospect and a binding contract was now in place. REALTOR® Cindy then argued that REALTOR® Alex had a responsibility to submit his offer, which she said was obviously better than the contract which had already been signed. REALTOR® Alex responded that he would submit REALTOR® Cindy's offer as a backup contract. When REALTOR® Alex presented REALTOR® Cindy's offer, he advised the Seller that Seller was already bound by the terms of the contract with REALTOR® Alex's prospect and can only accept REALTOR® Cindy's offer with language added to make it clear that the Seller had no obligation to REALTOR® Cindy's prospect unless Seller did not close on the first contract as a result of a default by the Buyer under the first contract. REALTOR® Alex advised Seller to consult legal counsel to draft an appropriate clause before signing the backup contract.

It is important to recognize that this information is for guidance only. In many cases, the circumstances involved will create additional problems and the REALTORS® involved should seek the advice and opinions of their own counsel, where deviation is considered desirable.

Listing REALTORS® should pay specific heed to the following points when confronted with similar situations:

- 1. Keep everyone informed.**
- 2. Avoid any act or reference that could be interpreted as partiality or unfairness.**
- 3. Maintain a record of the date and time all offers are conveyed.**
- 4. Arrange with the Seller a date, place, and time for the presentation of all offers and invite all selling REALTORS® to participate, but in their presentations only.**
- 5. Advise the Seller that he can accept one of the offers, counter one of them, or reject all and request that they submit other offers specifying the terms that would probably be acceptable to the Seller.**
- 6. If Seller elects to counter one offer, then the remaining offers should be listed in order of preference by the Seller for subsequent counter offers if the first counter fails. Keep selling REALTORS® informed at all times concerning the follow-up on the counter offers.**
- 7. Once a contract had been signed, submit any subsequent offers to the Seller and advise Seller to seek legal counsel so as to avoid problems associated with a Breach of Contract suit by the first Buyer and to include appropriate language**

to make it a backup contract.

8. Prior to the signing of any contract, any additional offers should be communicated to the Seller.

9. To assist the Seller in analyzing the various pro's and con's of multiple offers, it is suggested that cooperating REALTORS® be asked to submit "net" sheets with their offers.

10. Don't hold up the presentation of offers but do advise Seller of any possible offers that may be forthcoming. Don't claim multiple offers exist unless it is true.

11. Finally, remember the Golden Rule and adhere strictly to the REALTOR® Code of Ethics. Ask yourself, "What would I want if I was the Seller" and "What would I expect if I were the other REALTOR®?"

FIVE ANSWERS TO FIVE COMMON QUESTIONS

1. How do you avoid having more than one accepted offer? Have the sellers respond to only one offer at a time. If negotiations do not result in a contract, they should turn to the next best offer.

2. What about agency conflicts? Your company needs permission in advance from the seller to act as a disclosed dual agent. Buyers must also consent.

3. How do you avoid an auction mentality? Make it clear that all buyers get one chance to make their best offer. Having the sellers choose the best of the offers is nothing like an auction.

4. Should all salespeople present their offers at once? Yes. Set up a time for the sellers to consider offers. Have each salesperson make a presentation while you are present. If you, too, have an offer from a buyer, present it directly to the sellers.

5. What if co-brokers complain that they are at a disadvantage because of the offers prepared by salesmen from the listing salesman's office? Understandable procedures and communication through every step of the process go a long way toward maintaining harmony between the salespeople.

VERBAL OFFERS

A final issue regarding presentation of offers regards whether a verbal offer must be presented. South Carolina Real Estate Commission Rules and Regulations speak to presentation of all written offers. However, the REALTOR® Code of Ethics speaks only of submitting all offers to the seller (REALTORS® ONLY).

In accord with agency obligations of disclosure and loyalty, this company has a policy of

giving the seller client all material and relevant information of which the agent has knowledge. In accord with this policy, if a customer insists on a verbal offer, the company believes that the seller is entitled to that information.

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

TIMING OF PRESENTATION: This company also strongly supports and maintains a policy to present all offers and counter offers as quickly as possible. The REALTOR® Code of Ethics (REALTORS® ONLY) and South Carolina law provides the standards in this area. South Carolina law uses the term "timely" as to tendering offers and counter offers and the Code states offers must be submitted "as quickly as possible."

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

In the case of a buyer agency, the same principles apply with equal weight. The buyer is the client and must be treated with the same high levels of fiduciary duty as a seller who is a client. These same principles should be adhered to even in the case of a buyer who is a customer and not a client. South Carolina Real Estate Commission Rules and Regulations and the Code speak to "promptly" tendering any counter offer to the buyer with no reference of client-agent relationship.

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

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

CHAPTER 16

ADVERTISING POLICY

South Carolina law states that a real estate licensee may not advertise or offer to conduct a real estate transaction without first obtaining a written agency agreement, and in addition, all advertising (including site signs, internet, etc.) shall clearly identify the real estate company.

A company that practices exclusive buyer agency, does not accept listings or does not accept subagency should delete references to listings. However, several other sections are appropriate, especially those regarding salesperson advertising.

The specific procedures for advertising properties with this company are found in other training materials. These procedures, such as where and when properties are advertised are subject to change. The policies stated here primarily regard the legal and risk reduction aspects of advertising.

The following policies apply to all property listed with this company.

1. This company adheres strictly to the REALTOR® Code of Ethics (REALTORS® ONLY) regarding advertising. Agents shall be careful at all times to present a true picture in their advertising and representations to the public.
2. No property will be advertised in any way without a signed written listing agreement on file with the broker (sales manager). The listing agreement in the hands of the agent is not sufficient. If a listing agent has a listing he/she wants to advertise, the original or a fax of the original must be in the hands of the broker (sales manager).
3. One party listing agreements (also called "one-shots" or "one-time listings") will not be discussed, orally or in writing, with any person outside of the company's agents unless a signed one party listing agreement is obtained. To do otherwise is advertising the property in possible violation of the Rules and Regulations.
4. A listing which is due to expire by the publication date of a newspaper or magazine ad will not be inserted into the ad unless a written extension of the listing is received by the broker (sales manager) before the deadline for placing the ad.
5. No price changes or other substantive changes to the listing will be advertised unless a written change of the price or other appropriate information is received by the broker (sales manager) before the deadline for placing the ad.
6. Information on features of the property will not be advertised as "new" unless substantiated by written receipts or other evidence of payment from the owner showing the date the work was done. If the verification is received, it will be advertised with the appropriate date. If the verification is not received, the listing agent must use other

words such as "newer" or "recent" to describe the feature.

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

7. "For Sale" signs and lock boxes will be removed immediately upon expiration or withdrawal of a listing.

8. This company's policy (NOTE: Also in the REALTOR® Code of Ethics), prior to closing, is that only the sold sign of the listing broker is allowed on the listing, unless the listing agent consents otherwise. After the closing has taken place, the cooperating broker may also post a sold sign. Either the listing broker or the cooperating broker may claim to have sold the property in advertising and representations to the public.

9. Personal advertising by individual agents is encouraged. The broker (sales manager) must approve any personal advertising. South Carolina law requires that the salesperson include the company name and telephone number if the salesperson's name and/or telephone number is used. This policy covers all types of salesperson advertising, including personal sign riders, business cards, car signs, homes magazine ads, classified ads, direct mail solicitations, specialty items (key chains, pens, pads, etc.), newsletters, farming materials, neighborhood newsletters, billboards, etc. This list does not include all possible types of salesperson advertising. One possible problem may exist in the use of a salesperson's first name only in advertising. While the Rules and Regulations do not specifically address this issue, this company believes that the Rule's and Code's use of the term the salesperson or licensee's "name" means the full name of the person and not just a first name, initials, or a first name with last initial. Without the full name, the public cannot identify the person doing the advertising. Without further clarification from the Real Estate Commission, use of first names, initials, or first name with last initial only in salesperson advertising is not allowed.

10. Any advertising containing financial terms of the offering must comply with federal Truth-in-Lending laws, also known as Regulation Z. Regulation Z requires that all of the terms of the financing be stated if any of the "triggering terms" are used. "Triggering terms" are terms such as the amount of down payment ("10% down"), the amount of any payment ("Only \$550 per month"), the period of repayment ("40 year loan available") or the number of payments ("Only 48 monthly payments).

If any of these terms are used, the following disclosures are required:

- a. Amount or percentage of down payment.
- b. Terms of repayment.
- c. Annual Percentage Rate, stated and calculated as such.

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

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

ADVERTISING MEDIA

The Broker regularly advertises in the following media:
Daily newspapers, Sunday edition: The State Newspaper
Weekly, local newspapers: The State Newspaper
Real Estate Magazines:
Internet sites, etc.:

OPEN HOUSE ADS*

Open Houses shall be advertised on Sunday. The deadline for submitting open house ads is 12:00 noon on Monday prior to Sunday to be advertised. 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.

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 advertise in any medium by utilizing letters in their name larger than those of the firm with Broker's consent only.
- Licensees are exempt from this list if the licensee's advertising shall include the

designation “owner/agent” and the property is not listed.

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 that 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 that 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 17

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 who 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.

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 South Carolina Association of REALTORS®. The Associate shall familiarize himself/herself with the standard forms as well as the rules of South Carolina Real Estate Commission 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 10% of the amount of contract. 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 that 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 that 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.

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 branch office file designated by the Broker until the next work day.

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 18

ANTITRUST POLICY

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

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

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

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

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

This company prohibits any agent or staff member from making any agreement or suggestion with a competitor, including an individual agent, that he/she or the company will not deal with a third broker or agent, whether it be a listing company, buyer's

brokerage, discount broker or any other broker or agent whatever.

All companies are strongly urged to consider using the NAR materials available in this area. Contact NAR headquarters (312-329-8200) for supply and prices.

REALTORS® ONLY: Each agent and staff member of this company is required to view the NAR videotape on antitrust, read the NAR guide book "Antitrust Compliance Program," execute the acknowledgment in the guide book and participate in training on 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 that 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 South Carolina 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 that 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 SCAR, 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® 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, is 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® 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 ® as an ethical and responsible business person are incalculable. Even if the government's prosecution or private plaintiff's treble damage suit against a Realtor ® 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 ® 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 ® business.

CHAPTER 19

RISK REDUCTION POLICY

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

- 1. COMPLIANCE WITH ALL LAWS, RULES AND REGULATIONS:** As an agent of this company each person assumes the obligation of strict compliance with all laws, rules and regulations which govern real estate licensees in the State of South Carolina.
- 2. COMPLIANCE WITH THIS POLICY MANUAL:** As an agent of this company each person agrees to comply with all policies as stated in this manual and its additions, changes and amendments as from time to time published by management of the company. Failure to comply with the policies herein subject the agent or staff member to disciplinary action which may include termination of association with the company.

3. **PHYSICAL CONDITION OF THE PROPERTY:** In accord with the REALTOR® Code of Ethics (REALTORS® ONLY), South Carolina Real Estate Commission Rules and Regulations, South Carolina law and South Carolina common law, the policy of this company is to disclose to all appropriate parties any known material physical conditions or defects of a property and any adverse material facts. This applies whether this company is the listing agent, subagent or buyer's agent.

Physical conditions on the property may include water in the basement, foundation cracks, drainage problems, defects in any of the major systems of the property (electrical, plumbing, heating, cooling), environmental conditions on or near the property, roof problems, etc.

As previously stated, adverse material facts which are known or which should have been known by the licensee are required to be disclosed. Adverse material facts are defined as facts related to the physical condition of the property not reasonably ascertainable or known to a party which affect the value of the property.

4. **PSYCHOLOGICAL "STIGMAS" ON THE PROPERTY:** These include whether homicide or other felony, or a suicide occurred on the premises or if an occupant or former occupant of the real property has or had AIDS or any HIV positive condition. The "psychological impact" statute in South Carolina which became provides that no cause of action may be brought against a real estate agent or broker for failure to disclose to a buyer or other transferee of real property that the real property was a psychologically impacted real property. Although this statute protects an agent for failure to make a disclosure, it does not prohibit disclosure. Likewise, the Code of Ethics does not require disclosure in situations where state law defines these factors as not material. (As mentioned above, South Carolina statutes do provide that these facts are not material.)

The 1988 amendment to the Fair Housing Act includes a person with AIDS, HIV, or other related illness as a handicapped person. The Act likely prohibits an agent or broker from disclosing that the occupant or the former occupant of a dwelling suffered or suffers from AIDS. Therefore, it is the policy of this company that an agent should not make an unsolicited comment that the current or former occupant has or had AIDS. Further, if an inquiry is made by the buyer as to whether the occupant has AIDS, the agent shall not respond to such a question. The agent should state to the effect "**it is the policy of this company not to answer that type of question one way or the other since it is not material and may violate the Fair Housing Act.**" If the buyer persists, the agent shall state, "**if that information is important to you, you must determine that information yourself.**"

Because of the practical problems of the inevitable "disclosure" of these factors (often by the neighbors), the policy of this company is to discuss with the seller-client the inevitability of this disclosure and to recommend disclosure of psychological factors

other than AIDS, HIV, or related illnesses that may have an impact on a purchaser's decision to buy. Recent violent crimes or suicides are specific examples of such events. If, after this discussion, the seller-client instructs the company not to disclose these factors, the company will comply with such request and rely on the protection of the South Carolina statute.

5. **DOCUMENTATION OF DISCLOSURE:** As is apparent, this company advocates full disclosure in appropriate circumstances. However, all the disclosure in the world does no good if it can not be proven. While it would be ideal to have every single disclosure as to every material item disclosed to the parties in writing with their acknowledgment of the disclosure, such is not usually possible.

The company's preferred policy is to have just such a written disclosure and acknowledgment as in the case of a Seller Property Disclosure Statement.

Recognizing that this ideal can not be attained in every situation, the policy of this company is that the agent should document in his/her own personal notes and files each item that is disclosed in a transaction.

This simple policy can reduce risk and potentially save many thousands of dollars. It assumes that the agent has a regular, systematized method of organizing and keeping files. This is vitally important to a good documentation procedure.

(NOTE: If a company does not provide a record keeping system for each transaction, the following paragraph should be deleted. However, companies are strongly urged to consider adopting some type of standardized record keeping system for each agent to use in each transaction as a significant risk reduction tool.)

While the company does not require an agent to use any one method, it does provide standardized files/folders/envelopes for agents to use in each transaction. Agents are strongly encouraged to use this organization system as it has been developed to keep track of details, act as a transaction checklist and risk reduction method.

Disclosure is great, but documentation of the disclosure is the glue that seals the cracks.

6. **USE OF EXPERTS & "RECOMMENDATIONS":** This company maintains a strong policy that an agent not go beyond his/her area of expertise regarding a transaction. The company strongly recommends that an agent advise the use of an expert in situations where appropriate. For example, if questions arise with a buyer about the adequacy of the electrical system, the agent should advise that a building inspector, engineer or licensed electrician be consulted.

However, an equally strong policy exists in NOT recommending any particular inspector, engineer, electrician or other expert. While advising that AN expert be used

is a good risk reduction technique, the benefits of this technique are lost if a specific expert is recommended. Recommendation of a specific expert could lead to liability if the expert fails to do his/her job and the agent was negligent in recommending that person.

The policy of this company is to give the names of three experts in each field whenever asked for a recommendation. Do not fall into the trap of responding to a customer/client saying "Yeah, but which one do you really recommend?" The agent should be firm in having the customer/client make the choice.

Some agents have found a helpful tool in keeping several sample reports from various building/mechanical inspectors, engineers, roofers, etc. When the customer/client asks for a recommendation, the agent gives the customer/client the samples and suggests that they choose the style and cost of the expert which fits their style and needs the best.

A related issue is ordering the report. The policy of this company is that the agent should not order the report if at all possible. The company recognizes that certain situations require the agent to place the order, but, in general, the agent should have the customer/client place the order. This removes the company and agent from any involvement in the selection process and reduces the liability of possible negligence in "recommendation" of an expert.

7. **TRAINING:** As stated in other parts of this manual, training and education are integral parts of any risk reduction and professionalism program. All agents are expected to complete the company's initial training program and are strongly encouraged to take advantage of company, board and association education programs.

8. **USE OF LEGAL COUNSEL:** Whenever an agent believes he/she requires legal assistance, the broker (sales manager) should be contacted. The company has legal counsel for appropriate legal questions and problems. In addition, the South Carolina Association of REALTORS® provides a free Legal Assistance Hotline (**FOR MEMBERS ONLY**) for legal educational information for the designated broker of the company. The earlier a legal question or problem is brought to the attention of management, the earlier the problem can be solved. The company's position is that wisely spent legal fees early in a problem can save many thousands of dollars if a formal complaint or lawsuit arises.

9. **ERRORS AND OMISSIONS INSURANCE:**

Option 1:

This company carries errors and omissions insurance in the amount of \$_____ with a deductible of \$_____ (NOTE: Fill in the appropriate

amounts of your policy.) All agents and staff of the company are covered by the policy. The policy is paid by (NOTE: The company should insert here the method of payment for the policy, whether by the company, on a cost sharing basis with the agents, by the agents or some other arrangement.)

Errors and omissions insurance generally covers the negligent acts of the insured. It does not cover all possible damages for which the company could be liable. For example, no errors and omissions insurance covers punitive damages. For other exceptions, contact the broker (sales manager) for a copy of the policy.

Errors and omissions insurance does cover defense costs, that is, the legal fees involved in defending a claim against the company or agent. This is very valuable coverage.

The policy of this company is that each agent must notify the broker (sales manager) as soon as the agent is aware of a possible claim against the agent/broker. "Possible claim" means the potential of a disagreement which could lead to a lawsuit against the company or agent. Only in this way can the company properly invoke the errors and omissions coverage, if necessary.

Option 2:

While the company does not carry errors and omissions coverage, each agent should consider doing so. Such individual coverage is available through the National Association of REALTORS® (REALTOR® ONLY). The agent should contact the broker (sales manager) for details on securing such coverage.

Errors and omissions insurance generally covers the negligent acts of the insured. It does not cover all possible damages for which the agent could be liable. For example, no errors and omissions insurance covers punitive damages.

Errors and omissions insurance does cover defense costs, that is, the legal fees involved in defending a claim against the company or agent. This is very valuable coverage.

The policy of this company is that each agent must notify the broker (sales manager) as soon as the agent is aware of a possible claim against the agent/broker. "Possible claim" means the potential of a disagreement that could lead to a lawsuit against the company or agent. Only in this way can the company properly defend itself against the possible claim.

10. COMPLAINT HANDLING PROCEDURES: One of the simplest and most cost effective risk reduction methods is a good complaint handling process. Accordingly, this company establishes the following procedures for handling complaints.

- a. If the complaint comes to an agent involved in a transaction, the agent will be the primary contact person to handle the complaint with whatever management assistance the agent requires. At a minimum, the agent should notify the broker (sales manager) of the complaint and the agent's progress with the complaint.
- b. If the complaint comes in without specifying an agent, the broker (sales manager) will handle the complaint. If a specific management person is requested (such as "I want to speak to the President!"), the person answering the call should courteously direct the call to the requested person, if available, or the broker (sales manager) in the requested person's absence. The caller should ALWAYS be assisted in some way. The person taking the call should not say "Oh, she isn't here right now." or "You'll have to call him later." or "Please call her office." It is very important to handle an aggravated or upset caller with the utmost courtesy and care.
- c. Whoever takes the complaint, the key factor in handling the call is to LISTEN to what the caller's complaint is. The most appropriate and helpful thing the call handler can do is give the person filing the complaint a full and fair airing of his/her grievance. Many times, simple listening to the complaint does much to alleviate the caller's frustration. Sometimes, being listened to is all the person really wants. ACTIVE LISTENING is critical.
- d. Usually, the most successful way to handle the initial complaint call is to validate the caller's concerns. In general, it is best not to challenge the caller or become defensive. GET THE FACTS!! Simply try to get all necessary information from the caller's perspective, even if the complaint handler knows it may not be 100% accurate. Remember to document the conversation in writing. Make notes or write a memo about the conversation as soon as possible.
- e. Usually the call can be ended by assuring the caller that the matter will be investigated. The complaint handler should tell the caller what he/she can expect. For example, "Mr. Smith, I would hope you understand that I need to do some research. I will look in to the matter, discuss it with Suzie and get back to you by Tuesday." The caller should always be told what the complaint handler will do and by when. THEN DO IT!!

CHAPTER 20

MEDIATION - THE WAY TO RESOLVE DISPUTES

What is Mediation?

Mediation is an alternative form of dispute resolution using the services of a trained facilitator who works to bring the parties together in a meeting of minds where they write their own settlement agreement.

Other forms of dispute resolution include:

1. Conciliation, or
2. Negotiation - Usually, the first step in resolving any dispute.
3. Arbitration - A formal process where an Arbitrator hears evidence from both parties and issues a binding decision. (Usual time frame 6 – 12 months)
4. Litigation- Through state or Federal courts. Use of attorneys virtually mandatory and high legal costs. (Usual time frame 18 months – 2 years)

Advantages of Mediation:

- Lower cost than arbitration or litigation
- Win-Win. Parties work out an agreement acceptable to everyone.
- Quick. Average mediation conducted between 30 and 60 days.
- Great PR. REALTORS® are not the bad guys. Buyer and Seller back in the market.
- Do not give up your legal rights in event mediation is unsuccessful.
- 85%-90% of disputes are successfully resolved through mediation.

Mediation of Disputes with other REALTOR® Firms (REALTORS® ONLY):

Our policy is that if we are involved in a dispute with another REALTOR® firm we will first try to conciliate or negotiate a settlement with the involvement of all Brokers. If this is not possible, we will seek mediation using the services of our Local REALTOR® Board/Association or the South Carolina Association of REALTORS®. Only, in the event that mediation is unsuccessful, or the other parties decline mediation, will we pursue arbitration to resolve any dispute.

Mediation of Disputes between Buyers and Sellers using DRS:

Inclusion of a mandatory mediation clause in any sales contract protects the agents, the firm, and also all parties to the transaction. The increased cost of litigation directly impacts our bottom-line. The damage to our firm image when a dispute is unresolved is unacceptable today. Our firm policy is to make every effort to resolve disputes between buyers and sellers as quickly as possible, get the property back on the market or get the buyer back into a purchasing position. For that reason, all agents are required to use sales and rental contracts that include a mandatory mediation clause.

Buyers and sellers, lessors and lessees are to be advised of the advantages of

mediation and the fact that the average dispute through the courts costs \$3,500 and takes two years to resolve. In the event of a dispute, the broker-in-charge is to be notified immediately and steps taken to seek mediation using the DRS procedures developed by the NATIONAL ASSOCIATION OF REALTORS® and available through our Local Board/Association or the South Carolina Association of REALTORS® (REALTORS® ONLY). The costs of DRS mediation are usually around \$100 to \$200 and these fees are usually split between the parties. In the event mediation is unsuccessful then the parties may move forward to arbitration or litigation. DRS mediation is particularly valuable in resolving earnest money deposit disputes. A videotape explaining the DRS Mediation process is available from your Local Board/Association or S.C.A.R. (REALTORS® ONLY)

The basic risk reduction techniques in this manual can contribute significantly to the safe and successful practice of the real estate business for this company and each agent. The company appreciates each agent's and staff member's enthusiastic endorsement of these concepts.

SAMPLE OFFICE POLICY MANUAL

BUSINESS ITEMS LIST

The member may consider the following business items for inclusion in a Office Policy Manual. Too many possible variations are possible for appropriate inclusion in the main body of the manual. In addition, these items generally do not impact risk and risk reduction methods of the company to a significant extent.

1. List of expenses borne by agent.
2. List of expenses borne by company.
3. Training schedule
4. Sales meetings/property inspection tour procedures
5. Telephone protocol and opportunity time
6. Opportunity time desk procedures
7. Message Procedures
8. "How-to" market analysis procedures
9. "How-to" Listing procedures
10. "How-to" Qualifying procedures
11. "How-to" Sale contract procedures
12. "How-to" Negotiation procedures
13. Advertising procedures
14. Open house procedures
15. Follow-up after closing procedures

ACKNOWLEDGMENT AND AGREEMENT

The undersigned agent or employee of this company acknowledges receipt of a copy of the company Office Policy Manual.

As a condition of his/her association or employment with this company the agent or employee agrees to abide by the terms of this Manual as presently adopted and as amended in the future by publication from management of any changes.

Failure to abide by the terms of this Manual as adopted and amended will be grounds for disciplinary action of the agent or employee, including termination of association or employment.

Agent or Employee

Date

FAIR HOUSING DECLARATION

As an agent of this Company, you agree to:

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

Agent or Employee

Date

DO'S AND DON'TS FOR BUYER'S AGENTS

Buyer's Agent "Do's"

DO give the Agency Disclosure Form and explain the agency options the buyer has with your company. Get the Agency Disclosure Form signed.

DO have a specific buyer interview session. Explain how buyer's agents are paid. Explain the buyer agency contract.

DO tell the buyer of any potential for dual agency.

DO disclose your agency status to the seller or seller's agent not later than first showing of property and confirm it in writing not later than the presentation of the offer - written confirmation can be in the contract.

DO ask the buyer whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you should not interfere with the agency of another Realtor. You may enter into another agreement with them upon release from the other agreement. If non-exclusive, you may enter into another non-exclusive agreement, but do not enter into an exclusive agreement.

DO represent the buyer, acting according to your agreement with the buyer and the duties of the South Carolina statutes. Represent the buyer with the utmost good faith, loyalty and fidelity.

DO Exercise reasonable skill and care for the buyer.

DO seek a price and terms acceptable to the buyer.

DO present all written offers to and from the buyer in a timely manner, regardless of whether the buyer is presently under contract to buy a property.

DO disclose all adverse material facts to the buyer which you know or should know.

DO advise the buyer to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

DO account in a timely manner for all money and property received on behalf of the buyer.

DO comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

DO search for and present the buyer with the selection of properties specified in your buyer agency agreement. This could include MLS properties, FSBO's, REO property and unlisted property.

DO recommend an appraisal and appropriate inspections such as building, termite, environmental, lead paint, etc.

DO work for the lowest amount of earnest money that is appropriate given the market, type of house and type of offer the buyer wants to present.

DO point out good and bad features of a property, especially features affecting value such as poor floor plans or over-improvement for the neighborhood.

DO point out any relevant information you know about the area, such as proposed roads, power lines, school changes, commercial developments, local tax increases, etc.

DO complete a Competitive Market Analysis before an offer is made on a property. Make sure it is a thorough comparison of all properties, active, sold and pending. Analyze the data with the buyer and assist the buyer in formulating an offer price.

DO prepare the offer with favorable and protective terms for the buyer, especially in inspections and title examination.

DO counsel with the buyer as to negotiating strategies on terms and price. Share your experience in negotiating with the buyer and give your recommendations, if appropriate.

DO keep information of the buyer confidential unless you have permission to disclose it. Go over with the buyer on the buyer interview this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the seller and other agents in a transaction.

DO treat the customer, the seller, honestly.

DO disclose to the seller any adverse material facts. These facts may include facts concerning the buyer's financial ability to perform the terms of the transaction.

DO disclose all information you receive from the listing agent. This is especially helpful regarding the seller's negotiating position and intention.

DO disclose buyer paid fees to the seller if you are also getting commission from the seller and get the informed consent of your buyer to accept commission from the seller.

DO'S AND DON'TS FOR BUYER'S AGENTS

Buyer's Agent "Don'ts"

DON'T disclose confidential information of your client, the buyer. This is information made confidential by the agency law, other South Carolina laws or written instructions from the buyer. The agency law refers to keeping confidential all information provided by the client that may reasonably be expected to have a negative impact on the client's real estate activity. This likely includes information such as the buyer's motivation to buy, the price or terms the buyer is willing to offer or that you and the buyer believe the property is underpriced.

DON'T try to balance "fairness" between the seller and buyer. You represent the BUYER - your only obligation to the seller is to be honest and to disclose adverse material facts. If you learn important information about the seller's negotiating position, tell your buyer - don't make decisions about what to disclose in the interest of being "fair" to the seller.

DON'T accept a bonus, prize, trip or incentive from a seller or listing broker without disclosure to and informed consent of your client, the buyer.

DO'S AND DON'TS FOR SELLER'S AGENTS

Seller's Agent "Do's"

DO give the Agency Disclosure Form and explain the agency options a buyer might have. Get the Agency Disclosure Form signed.

DO tell the seller of any potential for dual agency.

DO ask the seller whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you should not interfere with the agency of another REALTOR®. You may enter into another agreement with them upon release from the other agreement. If non-exclusive, you may enter into another non-exclusive agreement, but do not enter into an exclusive agreement.

DO represent the seller, acting according to your agreement with the seller and the duties of the South Carolina statutes. Represent the seller with the utmost good faith, loyalty and fidelity.

DO exercise reasonable skill and care for the seller.

DO seek a price and terms acceptable to the seller.

DO present all written offers to and from the seller in a timely manner, regardless of whether the seller's property is presently under contract.

DO disclose all adverse material facts to the buyer or buyer's agent which you know or should know.

DO advise the seller to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

DO account in a timely manner for all money and property received on behalf of the seller.

DO comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

DO work for the highest amount of earnest money that is appropriate given the market, type of house and type of offer the buyer presents.

DO complete a Competitive Market Analysis before listing the property.

DO negotiate the offer with favorable and protective terms for the seller, especially in inspections and title examination.

DO counsel with the seller as to negotiating strategies on terms and price. Share your experience in negotiating with the seller and give your recommendations, if appropriate.

DO keep information of the seller confidential unless you have permission to disclose it. Go over with the seller on the listing call this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the buyer and other agents in a transaction.

DO treat the customer, the buyer, honestly.

DO disclose all information you receive from the buyer's agent. This is especially helpful regarding the buyer's negotiating position and intention.

DO'S AND DON'TS FOR SELLER'S AGENTS

Seller's Agent "DON'T"

DON'T disclose confidential information of your client, the seller. This is information made confidential by the agency law, other South Carolina laws or written instructions from the seller. The agency law refers to keeping confidential all information provided by the client that may reasonably be expected to have a negative impact on the client's real estate activity. This likely includes information such as the seller's motivation to buy, the price or terms the seller is willing to offer or prior offers and counter offers.

SUBAGENCY DO'S AND DON'TS

Subagent "Do's"

DO give the Agency Disclosure Form to a buyer at the earliest practicable opportunity during or following the first substantial contact. Get the Agency Disclosure Form signed.

DO work under a written subagency agreement with another broker or accept a unilateral offer of subagency (MLS) AND disclose to the buyer that you are working as a subagent.

DO represent the seller, acting according to your status as a subagent of the seller and the duties of the South Carolina statutes. Represent the seller with the utmost good faith, loyalty and fidelity.

DO exercise reasonable skill and care for the seller.

DO seek a price and terms acceptable to the seller.

DO present all written offers to and from the seller in a timely manner, regardless of whether the seller is presently under contract to buy a property. Present these from and to the listing agent, who hired you.

DO disclose all adverse material facts to the buyer which you know or should know.

DO advise the seller through the seller's agent to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

DO account in a timely manner for all money and property received on behalf of the seller.

DO comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

DO work for the highest amount of earnest money that is appropriate given the market, type of house and type of offer the buyer presents.

DO negotiate the offer with favorable and protective terms for the seller, especially in inspections and title examination.

DO keep information of the seller confidential unless you have permission to disclose it.

DO treat the customer, the buyer, honestly.

DO disclose all information you receive from the buyer. This is especially helpful regarding the buyer's negotiating position and intention.

DO disclose the identity of the buyer to the seller. Never work with an undisclosed buyer as a subagent.

SUBAGENCY DO'S AND DON'TS

Subagent "Don'ts"

DON'T act like you represent the buyer. Using words or phrases like "I'll take care of you" or "I'll work hard for you" is an open invitation to an undisclosed dual agency.

DON'T suggest a price other than the listing price, even if the buyer asks.

DON'T complete a Competitive Market Analysis for a buyer. You can give the buyer information (especially if it is public information), but do not analyze the information or give an opinion on the information.

DON'T counsel with the buyer as to negotiations or terms.

DON'T recommend an appraisal, even if you think the buyer is overpaying for the property.

DON'T tell a buyer you think a listing is overpriced.

DON'T point out bad features of a property unless they involve adverse material facts that you have an obligation to disclose. Deficiencies such as poor traffic patterns, over-improvements for the neighborhood or other functional obsolescence should not be volunteered. Adverse material facts such as defective roofs, basements, plumbing, electrical, etc. must be disclosed.

DON'T disclose confidential information of the seller you may learn from the listing agent, such as motivation to sell, marital difficulties, possible financial difficulties (short of a filed bankruptcy, published foreclosure, material title defects or material limitation on the seller's ability to sell the property or other adverse material facts), previous offers or counteroffers. Confidential information is information made confidential by the agency law, other South Carolina laws or written instructions from the seller. The agency law refers to keeping confidential all information provided by the client that may reasonably be expected to have a negative impact on the client's real estate activity.

DON'T counsel with a buyer to stop negotiating on one piece of property and go to another. Your obligation to the seller means you must work diligently to sell that seller's property until negotiations fail.

DON'T work with a straw party or unidentified buyer when you are a subagent. Only a buyer's agent can act for an undisclosed principal/straw party.

DISCLOSED DUAL AGENCY DO'S AND DON'TS

Disclosed Dual Agent "Do's"

DO have a specific company agency policy providing for disclosed dual agency.

DO discuss the possibility of Disclosed Dual Agency with BOTH buyer and seller at the earliest possible time in your relationship.

DO have a written agreement with both buyer and seller, allowing you to act as a dual agent, securing both buyer's and seller's consent to the dual agency.

DO specify in your written consent for dual agency the duties of a seller's agent and the duties of a buyer's agent.

DO give Agency Disclosure Forms to both the buyer and the seller, following the same procedures with the seller and with the buyer as explained in the Do's and Don'ts for a seller and for a buyer. Get the Agency Disclosure Forms signed by the appropriate persons.

DO represent the seller and the buyer, acting according to your agreements with the seller and the buyer and the duties of the South Carolina statutes. Represent BOTH the seller and the buyer with the utmost good faith, loyalty and fidelity.

DO exercise reasonable skill and care for the seller and the buyer.

DO seek a price and terms acceptable to both the seller and the buyer.

DO present all written offers to and from both the seller and the buyer in a timely manner.

DO disclose all adverse material facts to both the buyer and the seller which you know or should know.

DO advise both the seller and the buyer to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

DO account in a timely manner for all money and property received on behalf of the seller and the buyer.

DO comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

DO keep information of both the seller and the buyer confidential unless you have permission to disclose it.

DO give written disclosure of your agency status no later than the presentation of the offer. In the written disclosure, disclose your agency status and the sources of the compensation, usually the seller.

DO conduct yourself with the knowledge that the brokerage (and therefore you) represent BOTH buyer and seller.

DO, if YOU are both a buyer's agent and the listing agent, act only to "facilitate" the negotiations and transaction. ALWAYS have company management involved at this point.

DO, if YOU are both a buyer's agent and the listing agent, stay completely neutral.

DISCLOSED DUAL AGENCY Do's AND Don'ts

Disclosed Dual Agent Don'ts

DON'T disclose confidential information of either the buyer or the seller. This is information made confidential by the agency law, other South Carolina laws or written instructions from the seller. The agency law refers to keeping confidential all information provided by the client that may reasonably be expected to have a negative impact on the client's real estate activity. In a dual agency, the following MAY NOT be disclosed: (a) the willingness or ability of a seller to accept less than the asking price; (b) the willingness or ability of a buyer to pay more than an offered price; (c) confidential negotiating strategy not disclosed in an offer as terms of a sale; (d) the motivation of a seller for selling property or the motivation of a buyer for buying property.

DON'T adopt a Disclosed Dual Agency policy until you or your broker have consulted with your company legal counsel and understand the implications and ramifications of using the policy.

DON'T accept compensation from both parties unless disclosed to both parties and you get the informed consent of both parties. This includes nonrefundable retainer fees accepted from buyers.

DON'T accept a bonus, prize, trip or incentive from a seller or listing broker without disclosure to and informed consent of both clients, buyer and seller.

DON'T act like you are the agent of only one of the parties, even after having made disclosure and obtained consent to act as a dual agent.

DON'T take the position of one or the other parties. Remain neutral as to advising either party about aspects of the transaction whether it be pricing or other terms.