# Indiana Real Estate Brokers

# CONTINUING EDUCATION

## Office Supervision for Managing Brokers

### PDH Academy Course Approval #CE21600004 | 4 CE HOURS

PDH Real Estate

### COURSE DESCRIPTION

This course is designed to help managing brokers understand the requirements for successfully running their offices. This course specifically addresses: office procedures and policy manuals; documents and record retention; trust accounts; place of business requirements; unlicensed assistants; and closing procedures. In addition, this course will review important laws affecting the practice of real estate in Indiana essential for effective office supervision. These laws include: residential property condition disclosure; psychologically affected properties; appraisal requirements; distressed property sales; and the consumer protection act.

### HOW DOES THIS COURSE WORK?

To enhance comprehension, non-graded review questions will be asked throughout the course. After reading the course, take the final exam. These questions will be graded.

If you do not pass the final exam, you can review the course material and retake the exam at no additional cost.

If assistance is needed with this course you can contact PDH Academy at 888-564-9098 or at support@pdhacademy.com

After completing the course and final exam, we ask that you take our course survey to help us continue to provide high-quality continuing education.

# Office Supervision for Managing Brokers
# Final Exam

1. **Which of the following statements is true?**
    a. Indiana licensure law requires managing brokers to develop an office policy and procedures manual.
    b. A policy and procedures manual must require employees to sign a written acknowledgement that they will follow the ethical standards of the company.
    c. A policy and procedures manual should cover all required meeting schedules for independent contractors.
    d. A policy and procedures manual could include the requirement for brokers to carry Errors and Omissions insurance.

2. **A policy and procedures manual should include only general employee or contractor responsibilities rather than detailed expectations because**
    a. it is illegal in Indiana to include the details of a contractor's responsibilities in the manual.
    b. each employee and contractor will have an employee agreement that includes those details.
    c. including details would make the manual too lengthy.
    d. responsibility details change over time and would require the manual to be constantly updated.

3. **For how long must a broker retain records related to a cooperative agreement with an out-of-state commercial broker?**
    a. 1 year
    b. 3 years
    c. 5 years
    d. 7 years

4. **If the attorney general takes possession of abandoned records, when can the records be destroyed?**
    a. Immediately upon taking possession
    b. Only when the records' owner gives written permission
    c. 5 years after attempted notification to the records' owner
    d. 3 years after the records were obtained by the attorney general

5. **Indiana law requires _____________ to maintain trust accounts to keep all funds belonging to others that have been provided in relation to a real estate transaction.**
    a. closing agents
    b. attorneys
    c. licensed brokers
    d. managing brokers

6. **Which of the following is NOT considered good funds?**
    a. $5,000 in wired funds
    b. $5,000 personal check
    c. $5,000 government issued check
    d. $5,000 cash

7. **If more than one broker company is located at the same address,**
    a. the same managing broker may manage all of the companies.
    b. each company must have its own managing broker.
    c. each company is considered a branch office of the principal place of business.
    d. only one of the companies can be the managing brokers sole place of business.

8. **Where does Indiana law require that evidence of a broker's current licensure be retained?**
    a. Displayed at every branch office of the same broker company
    b. In the broker's personnel file
    c. On the broker's person while conducting business
    d. Displayed at the office where the broker conducts business

9. **If a broker transfers from one branch office to another within the same company,**
    a. the broker must submit a transfer request to the Indiana Real Estate Commission.
    b. the managing broker must sign the broker's transfer request.
    c. the managing broker must notify the Indiana Real Estate Commission of the transfer.
    d. nothing needs to happen since the transfer is within the same company.

10. **An unlicensed assistant may**
    a. show listed property.
    b. create and place advertisements.
    c. choose which properties on which to place signs.
    d. monitor personnel files.

11. **Indiana prohibits unlicensed assistants from**
    a. answering any questions about a listed property.
    b. scheduling property showings.
    c. canvassing for listings.
    d. calculating commission checks.

**12. If an unlicensed assistant negotiates a commission on behalf of the broker and the broker knew about it,**

a. the assistant is liable for the violation and will be penalized with jail time.
b. the broker is liable for the violation and can be penalized.
c. the managing broker is liable for the violation and will be terminated.
d. there is no problem since the broker knew about the unlicensed assistant's actions.

**13. When must a closing statement be created?**

a. At the closing
b. Within 5 days after the closing
c. When the buyer obtains financing for the mortgage
d. Prior to closing

**14. A closing statement must be retained by the brokerage**

a. until closing.
b. for 30 days after closing.
c. for 3 years.
d. for at least 5 years.

**15. When is a listing and selling broker allowed to skip a closing?**

a. When the client or the client's representative does not attend
b. When an attorney attends
c. When a representative from the title company does not attend
d. When the lender or the lender's representative attends

**16. What is an escrow closing?**

a. When all disbursements have been made from the escrow account
b. When either party backs out of the transaction and demands refunds of escrow monies be paid
c. When a third party conducts the closing without the buyer or seller in attendance
d. When a third party creates the closing statement to detail all deposits and disbursements from the escrow account

**17. How does a property inspector calculate the value of a property?**

a. By inspecting the structure for soundness
b. By inspecting the condition of the soil on the property
c. By developing a detailed report of all damage and necessary repairs
d. The property inspector does not calculate the property value.

**18. What is the purpose of a property inspection?**

a. To find problems that must be repaired prior to closing the real estate transaction
b. To help the buyer make an informed decision about purchasing the property
c. To give the buyer a reason to request the seller lower the asking price for the property
d. To provide the lender with information to determine the appropriate loan amount

**19. What is the main purpose of a property survey?**

a. To locate underground utilities
b. To calculate acreage
c. To show property lines
d. To locate corner stones

**20. When is a property condition disclosure required?**

a. With the lease of a condominium
b. With the sale or exchange of any property
c. With a lease with the option to buy a single family home
d. With an installment sales contract to buy a 5-unit apartment building

**21. Which of the following statements is true?**

a. A property owner is not required to disclose property defects that may impact the buyer's decision to purchase the property.
b. A property owner is required to disclose if a former occupant had HIV.
c. A property owner is not required to disclose mechanical system defects because the buyer should have a property inspection performed to find those.
d. A property owner is required to disclose if an airport is near the property.

**22. Who is liable if a property owner fails to disclose a property defect the owner should have known about but did not?**

a. The property owner
b. The seller's agent
c. The buyer
d. No one

**23. Which of the following statements is true?**

a. A property condition disclosure is a good substitute for a property inspection.
b. A property seller must submit the disclosure form to the buyer prior to accepting the buyer's offer to purchase.
c. The buyer must receive and sign the property disclosure form prior to submitting an offer to purchase.
d. A seller's failure to provide the buyer with a copy of the disclosure form after closing invalidates the transaction.

**24. A property is considered psychologically affected if, on the property,**

a. the police have questioned an occupant.
b. an occupant has been infected with Hepatitis C.
c. a member of a local gang resided.
d. cocaine has been sold.

**25. John is selling his property through agent Tim. John's mother died in the home 2 years ago, and Tim knows this. Sue now wants to buy the home through her agent Connie. Neither Sue nor Connie know about John's mother's death in the home. If Sue finds out about the death in the home, she will not want to buy it. Who can be held liable for not telling Sue about the death?**

a. Connie, if Sue asks about deaths in the house
b. Tim
c. John, if Sue asks about deaths in the house
d. John, whether Sue asks or not

**26. Which of the following would prevent an individual from becoming licensed or certified as an appraiser in Indiana?**

a. Failure to pay property taxes in full
b. Owing more than $10,000 to the IRS
c. Conviction for a misdemeanor
d. Missing a child support payment

**27. How many members of the Indiana Real Estate Appraiser Certification Board must be certified appraisers?**

a. 7
b. 5
c. 3
d. 1

**28. How many hours of residential appraisal experience must a Certified Residential Appraiser applicant have?**

a. 90
b. 200
c. 1000
d. 1500

**29. Once an appraiser license applicant passes the appropriate examination, when must the applicant obtain his or her license?**

a. Immediately
b. Within 30 days
c. Within 1 year
d. Within 5 years

**30. When Indiana adopted USPAP under Title 876, which of the following happened?**

a. All references to standards 6 through 10 were deleted by Title 876.
b. Standards 4 and 5 were retired by Title 876.
c. Title 876 made allowances for any new editions without limitations.
d. Title 876 also adopted the 32 Advisory Opinions as part of its rules.

**31. Which of the following statements is true?**

a. The Statements on Appraisal Standards show how appraisal standards are applied in specific situations.
b. There are 10 current, active Standards included in USPAP.
c. USPAP requires appraisers to act as advocates for homeowners obtaining an appraisal.
d. Indiana will reject any new edition of USPAP if rulemaking provisions of the law were not followed.

**32. A distressed property is one**

a. where someone has died.
b. that is under foreclosure.
c. with an asking price equal to the loan balance.
d. where the seller will make repairs.

**33. A short sale is one where**

a. the property sells in a short amount of time.
b. the sale is quick and easy.
c. the property needs lots of repairs.
d. the property sells for less than the outstanding loan balance

**34. When a lender forecloses on a property, what typically is the lender's first step?**

a. To improve the condition of the property
b. To have the property inspected for sale
c. To auction the property
d. To list the property for sale

**35. Which of the following was NOT a stated aim of the Dodd-Frank Act legislation?**

a. To end "too big to fail"
b. To protect families by decreasing property foreclosures
c. To protect taxpayers by ending bailouts
d. To protect consumers from abusive financial services practices

**36. What agency was created by Dodd-Frank?**

a. Volcker Council
b. Consumer Oversight Council
c. Consumer Financial Protection Bureau
d. American Family Protection Bureau

**37. Combining federally required mortgage disclosures into a single form to make costs and risks of the loan clear was a responsibility of what agency?**

a. The Dodd-Frank Enforcement Agency
b. HUD
c. The Consumer Financial Protection Bureau
d. Federal Housing Authority

**38. Under financial reform, what is a golden parachute?**

a. Exorbitant benefits given to executives forced to leave the company
b. The maximum age an executive may work before forced retirement
c. The amount of compensation shareholders voted to pay executives
d. The pay and benefits provided to an executive for not retiring

**39. An owner of which of the following properties would be required to use the Indiana residential real estate sales disclosure?**

a. A 16-unit apartment building
b. A mobile home park with 35 lots
c. A triplex
d. An office condominium

**40. The residential property condition disclosure is NOT required in which of the following property ownership transfers?**

a. From one neighbor to another
b. First sale of occupied home
c. From father to son
d. By foreclosure sale

# OFFICE SUPERVISION FOR MANAGING BROKERS

# OFFICE PROCEDURES, POLICY MANUAL

## Requirements

The managing broker needs to develop a policy and procedures manual to make sure that all brokerage employees and contractors understand the company philosophy. The policy manual will set boundaries under which staff and brokers can operate. It will also reflect the company's unique culture. All of the policies included in the manual must comply with Indiana laws, including real estate license laws. The manual should be given to each employee and relevant sections explained to independent contractors. Each recipient of a manual should sign an acknowledgement form confirming he or she has received a copy of the company's policy and procedures manual.

## Contents

An office policy and procedures manual should include the following as well as additional topics as the managing broker sees fit.

**Ethical standards**. The manual should explain the company's ethical standards. The manual should also explain how employees and brokers are expected to follow the standards. If the licensed brokers affiliated with the company are members of NAR, it might be required that they complete the Code of Ethics training offered by NAR.

**Responsibilities of managing broker**. This section of the manual would explain what responsibilities the managing broker has to employees and brokers. It should cover the level of supervision the managing broker will exercise over staff and brokers, licensing requirements, the managing broker's policy on enforcing rules and laws, application and transfer request procedures and signing, and so forth. The manual should also include explanations regarding the managing broker's responsibilities to brokers should his or her own license become inactive. It should also cover the procedures for broker termination.

**Responsibilities of staff and brokers**. Because each employee and contractor will have an employee agreement that includes the details of expectations of that individual, this section of the policy and procedures manual should cover general responsibilities such as following and staying up to date on all real estate and license laws, adhering to office policies, fiduciary duties to clients, maintaining appropriate insurance coverage, responsibilities if terminated, and so forth.

**Personnel policies**. This section could include company policies on dress code, desk space and whether it will be shared, the purpose and schedules for floor time, cooperation among brokers and staff, telephone procedures, expense reimbursement, dispute prevention and resolution, office rules violations, causes of and procedures for termination, and so forth. The manual could include policies on the use of company resources such as office supplies, secretaries or assistants, photocopies, etc. It could also include required or recommended insurance coverage, such as Errors and Omissions insurance or liability insurance. If the company requires any professional affiliations, that should be covered here as well. This is also the section where performance reviews would be covered.

**Workplace privacy**. In this section, any alcohol and drug testing requirements would be covered, as would phone or email monitoring and access to performance and medical records. The employee and broker's privacy rights must be maintained while balancing the need to maintain a safe and productive work environment. Having employees give written acknowledgement to the privacy policies can avoid future issues as long as the policies are strictly followed.

**Technology policies**. With today's advanced technology, it is necessary to include policies in the manual on such topics as virus protection requirements, personal use of company email programs, use of personal technology devices, social networking language and potential liability issues, sharing equipment and password access, cell phone use, types of allowed devices, etc. There also may be a need for policies on data storage and backup.

**Legalities**. Most laws related to the practice of real estate are covered in licensure education; however, it is a good idea to reiterate certain laws in the policy and procedures manual. For example, covering discriminatory practices and how to avoid them can minimize liability issues. What constitutes sexual harassment, ways to avoid it, and what to do in case it happens should also be covered in the manual. Fair housing laws should also be included, not necessarily in detail, but in how they should be incorporated into every-day conduct. RESPA, Do Not Call, and CAN SPAM should also be included. It's always a good decision to also include an equal opportunity statement in the manual.

**Advertising**. The manual should detail who is responsible for and legally allowed to write advertisement content as well as place the ads. The manual should also include what media the company permits to be used for advertising, who pays for advertising and signs, what is to be included or avoided in advertising.

**Listings and open houses**. This section would include the company's procedures on showing properties and conducting open houses as well as safety measures to keep brokers safe during showings. This section would also include the company's policies on procuring listings and what types of listings to seek, what contracts and forms the company uses for listings and agreements including disclosures, working with cooperating brokers and out-of-state brokers, entertaining clients and who pays for the entertainment, allowable means for prospecting for clients and listings, how commissions and referral fees are handled, offers and counteroffers, escrow monies, and closings.

## DOCUMENTS AND RECORDS

Indiana law requires certain types of records and documents to be kept for prescribed lengths of time. However, whether required by law or not, the following records should be maintained.

**Expense records**. If the broker has an agreement with the company to be reimbursed for expenses, the broker will need to keep copies of receipts and records for any expenses related to performance of the job. These might include advertising expenses, client entertainment expenses, gas and mileage expenses, and so forth for anything that is reimbursable. Also, when the broker files tax returns, he or she will need a record of the expenses to include in the return.

**Out-of-state commercial broker records**. When an Indiana broker is working with an out-of-state commercial broker, the brokers must enter into a written agreement to work together and comply with all applicable laws. The out-of-state broker must also provide the Indiana broker with a copy of his or her license. Any documentation related to this cooperative agreement must be retained by the Indiana broker for at least 5 years.

**Transaction records**. Documents and records of real estate transactions must be maintained by the brokerage. Such records would include contracts, leases, closing statements, listing agreements, offers and counteroffers, correspondence, and other documents related to the transaction. Records of sales transactions must also include earnest money agreement, the final settlement statement, and any addenda related to the disposition of funds belonging to others. Brokers must provide copies of all transaction records to the brokerage.

**Abandoned records**. According to Indiana law, abandoned records are any documents voluntarily surrendered, relinquished, or disclaimed by a regulated professional with no intention of reclaiming or regaining possession. The attorney general must make a determination of abandonment of the records and then may take possession of, store, maintain, transfer, protect, or destroy any abandoned records that contain personal information. The attorney general must make every effort to notify the individual(s) whose records have been abandoned and may attempt to return the records to those individuals. If the records are not claimed within 3 years of the date they were obtained by the attorney general, the records may then be destroyed.

# TRUST ACCOUNTS

## Requirements

As required by Indiana law, each managing broker must maintain one or more trust or escrow accounts to keep all funds belonging to others that have been provided to the managing broker or any affiliated broker. The account must be established with a federally insured financial institution. The account also must be clearly identified as a trust or escrow account and can be either interest bearing or noninterest bearing. The account is to contain all earnest money deposits, funds held for closing escrows, sale proceeds not yet disbursed, and all other funds belonging to others. The managing broker is not allowed to use the trust account for personal or business funds and must keep a detailed record of the funds, any interest that may accrue, and any disbursements from the account. The interest is to be held for the beneficiary of the funds.

If the managing broker is terminated or dies, or if his or her license expires, is revoked, or is suspended, the Indiana Real Estate Commission will take custody of the trust accounts. The Commission may appoint a trustee to protect and distribute the funds from the account.

A closing agent may also open and maintain a trust account for transaction-related funds other than loan financing. The closing agent is required to be licensed as an insurance producer.

Any licensee who receives transaction-related funds must immediately turn those funds over to the managing broker for deposit into the appropriate trust fund.

Improper handling of trust funds can lead to revocation or suspension of the broker's license, financial damages, and possible jail time.

A brokerage with trust accounts is required to provide a detailed summary of the accounts when requested by a representative of the Commission or by the attorney general's office for investigative purposes.

## House Enrolled Act

To protect homeowners selling or buying properties or refinancing an existing mortgage, the House Enrolled Act 1374 (HEA) was enacted in 2009. The Act requires the money funding a real estate purchase or refinance be secured funds, known as "Good Funds." Because the Act requires good funds, the involved parties are assured that a check deposited in relation to the transaction is actually good. In other words, the parties know the money that is supposed to be in the bank account is actually there. Prior to the HEA, this assurance did not exist.

The Act guarantees that the money funding a real estate transaction is immediately available for disbursement. Good funds can be in any of the following forms:

- United States currency
- wired funds
- certified or cashier's checks from an existing account at a bank, savings and loan association, credit union, or savings bank chartered under Indiana laws or federal laws
- checks from an Indiana licensed broker's trust account if the closing agent believes sufficient funds will be available for withdrawal when disbursement from the check's account occurs
- personal checks not exceeding $500 per closing
- checks issued by Indiana, the United States, or a political subdivision of either
- checks from another closing agent's escrow account if there is reason to believe sufficient funds will be available for withdrawal when disbursement from the check's account occurs
- checks issued by a farm credit service authorized under the Farm Credit Act of 1971

The Act also requires that

- closing agents must deposit all transaction-related funds into an escrow account unless the involved parties agree to a different arrangement
- total funds of $10,000 or more must be wired funds
- checks for $10,000 or more may not be accepted
- total funds less than $10,000 must be in the form of good funds
- closing agents may advance no more than $500 from an escrow account to pay specified incidental fees related to the transaction
- when a mortgage is being paid off at closing, the payoff may be wired funds if the wired funds deposited in the escrow account are sufficient to cover the payoff

# PLACE OF BUSINESS REQUIREMENTS

Every brokerage company must be directed and managed by an individual broker. The broker company must be the broker's principal and sole place of real estate business. However, if more than one broker company is located at the same address, the broker may manage all of those companies.

This managing broker is responsible to the Commission for the company's actions.

## Evidence of licensure

Indiana law requires every real estate office to maintain evidence of current licensure for all of the brokers affiliated with that office. The licenses must be displayed at the office where the individual brokers work.

If requested by the Commission or its investigators, the managing broker must provide proof of current licensure for all affiliated licensees.

## Branch offices

If a broker company has office locations in addition to its principal place of business, those offices are known as branch offices. Each branch office must be managed by a branch manager.

Branch managers may manage more than one branch office of the same company. The company's managing broker may be a branch manager of any of the company's branch offices.

Branch offices must be registered with the real estate Commission prior to opening. The broker company or managing broker must notify the Commission when the company has a new branch manager and when any affiliated licensed broker transfers from one branch office to another within the same company. The managing broker must provide the Commission with a list of all affiliated brokers conducting business at each branch office.

If individual affiliated brokers work from only one branch office, those brokers' licenses must be displayed at the branch office where they conduct business.

# UNLICENSED ASSISTANTS

Indiana requires an individual who sells, buys, trades, exchanges, options, leases, lists, advertises, appraises, or manages real estate or negotiates to perform any of these services to be licensed as a real estate broker. However, licensed brokers often use unlicensed associates or assistants to help them conduct their real estate business.

So that the unlicensed assistant does not violate real estate laws by performing activities that require licensure, Indiana has guidelines for what activities an unlicensed assistant can and cannot perform. If a licensed broker allows an unlicensed assistant to perform any task that requires licensure, the broker is liable and can be disciplined through license suspension or revocation, a letter of reprimand, probation, and/or a civil penalty.

The unlicensed assistant's job is typically administrative or clerical in nature. Allowed activities include the following:

- answer telephones and forward calls to a licensed broker
- provide property addresses, directions, and list prices
- provide listings to an MLS
- follow up on loan commitments after a contract has been negotiated
- assemble closing and other transaction-related documents
- obtain documents from utility offices, title companies, courthouses, etc.
- place broker-approved advertising with the appropriate medium
- record deposits and rents
- transcribe contract forms to be approved by a licensed broker
- monitor personnel files and licenses
- calculate commission checks
- place signs on properties as directed by a broker
- pick up and deliver items and documents as approved by a broker
- schedule property showings
- assist with open houses without discussing, negotiating, or soliciting offers, and only if the licensed broker is also present at the open house
- order repairs or services for a property as directed by a broker

An assistant who is not adequately supervised and who has considerable contact with the public may find him or herself performing activities that require licensure. Therefore, it behooves licensees to know what activities an unlicensed assistant may not perform, as follows:

- prepare or place advertising materials that have not been approved by the supervising broker
- show properties or conduct open houses
- provide information or answer questions about a listing other than price, address, and directions
- discuss any kind of contract with a client, customer, or unaffiliated broker
- canvass for listings
- negotiate any commission or fee on behalf of the licensed broker
- mislead anyone to believe the assistant is licensed or legally allowed to engage in any real estate service requiring licensure

It may be tempting for a busy broker to have the unlicensed assistant "help" by performing activities that actually require licensure. For example, an assistant who has worked with a particular broker for quite some time may be familiar with the content the broker likes in advertising or how the broker likes to conduct an open house. When the broker gets busy, it might be easy to just have the assistant create a new ad or set up and run an open house to save the broker time. While this conduct may help out the broker initially, it can easily result in problems for the broker that could impact his or her career.

## CLOSING PROCEDURES

The real estate transaction has many steps from initially entering into a listing agreement to showing the property to accepting an offer to purchase to receiving and depositing earnest money into a trust account and so on. All of these steps, if completed successfully, lead to the consummation of the transaction. The closing is the final step in which the seller delivers the title to the buyer, and the buyer pays the purchase price.

### Requirements

Before the actual closing, a statement must be created to show the financial details of the transaction. The closing statement is typically prepared by an escrow officer or other qualified individual. The statement details all monies received, all charges and credits, and all monies paid out for the transaction to be completed.

According to Indiana law, every listing and selling broker must provide a detailed closing statement to the principals when the transaction is finalized. The law requires that the statement show all receipts and disbursements. The statement must be kept by the broker for a minimum of 5 years.

Indiana law also requires that the listing and selling broker be present at the closing or have an affiliated broker be present to act on the original broker's behalf. In the following situations, the broker is not required to attend the closing:

- when a commercial property (other than one to four family residential properties) transaction is closing
- when an institutional property (such as a bank) transaction is closing
- when the client or the client's authorized representative will not be present at the closing

The parties involved in the transaction may choose to have their attorneys attend the closing to examine the documents. They may also choose to have the lender's representative attend to assure the title is in order. A representative from the title company will also be present and can answer any questions about the closing or the title.

When all involved parties are present at the closing, it is said to be a face-to-face closing. When a third party such as an escrow agent conducts the closing on behalf of the buyer and seller without either being present, it is said to be an escrow closing. With a face-to-face closing, any issues that arise can be resolved by all of the parties in one meeting. An escrow closing may not be completed in one meeting if issues arise, and the involved parties may never even meet.

Even though the broker is required to attend a face-to-face closing, his or her responsibilities are typically completed before the meeting. The broker may have helped the buyer find a lender or schedule necessary repairs. The broker will also keep an eye on the progress of any activities related to the transaction so the closing can go smoothly.

Like the broker, the lender's responsibilities are typically handled prior to the closing. The lender may require title insurance and homeowners insurance, both of which will need to be in place prior to closing. The lender may also require an inspection or appraisal of the property.

The seller and buyer must be sure to fulfill the terms of the sales contract. They both must also pay any fees for which they are responsible. To be sure that all is in order with the property itself and there will be no surprise problems, the buyer will want to have the property inspected and/or surveyed. Typically, the buyer's broker will order the inspection or survey.

### Inspections

Property inspections and surveys are conducted during what is called the escrow period, or contingency period. The offer normally includes a condition for an inspection and/or survey. The condition for inspections may include a property inspection, a termite or pest inspection, an environmental hazard inspection, or other inspection procedure.

The inspection condition may also include a clause that the buyer can back out of the offer if significant problems are found during any of the inspections. With this clause, the buyer could not be penalized for backing out within a specified timeframe. On the other hand, the buyer and seller may agree to have the seller make repairs that will take care of problems found.

Whether problems are discovered or missed will depend largely on the quality and diligence of the inspector. Although not all states regulate property inspectors, Indiana requires anyone inspecting property for compensation be licensed as a home inspector. The laws regulating home inspectors are found in Indiana Code § 25-20.2. Additionally, professional associations for property inspectors, such as the American Society of Home Inspectors (ASHI), provide education, training, and networking. ASHI, provides standards of practice and a code of ethics which disallows an inspector engaging in conflict-of-interest activities that might impact objectivity.

A licensed inspector can evaluate the condition of the home's roof, foundation, HVAC systems, plumbing, electric wiring and systems, water and sewage, and fire and safety issues. The inspector should also be qualified to look for insect, water, or fire damage.

The property inspector evaluates the condition of the property, not the value of the property as an appraiser does. The inspection can provide the buyer with information to make an informed decision about purchasing the home.

It should be noted that pre-closing property inspections are non-invasive where no part of the structure is removed, dismantled, or drilled into. Consequently, there is always a chance that some problem or damage could be hidden within walls or framing. Some inspectors may offer thermal imaging inspections which uses an infrared camera to catch structural heat loss, moisture content, and overheat conditions on electrical wiring – all of which would not be seen by the inspector's naked eye.

Many property inspectors offer services in addition to the general inspection. These additional services might include inspections for pools, sprinkler systems, septic tanks, environmental hazard issues, pests, and soil conditions.

A general inspection typically takes 2 or 3 hours. Buyers should be present throughout the inspection to become familiar with the home and anything the inspector discovers. After completing the inspection, the inspector should provide a report that details his or her findings. The report should note the following:

- each problem found and whether it is a safety issue, major defect, or minor defect
- items that need to be replaced and items that need to be repaired or serviced
- items that should be watched over time for potential repair or replacement
- any areas that need routine maintenance

A property inspection report may cause controversy between the seller and the buyer since the buyer wants all problems fixed and the seller does not want to spend the money to do so – the sellers want to sell essentially "as-is." To alleviate this conflict, principals may be advised to separate the major issues from the minor ones. Sometimes, a seller will reduce the price of the property to provide the buyer with funds to take care of the repairs rather than the seller doing it.

## Surveys

In addition to a property inspection, the buyer may want to have a property or land survey done. The survey will show property lines and help prevent encroachments and boundary disputes. Often times, a fence is installed on a property without surveying the land for property lines. If a survey is performed at a later date, it may reveal that the fence is actually on neighboring land and may then result in conflict between neighbors. Having a survey completed prior to purchasing a home can prevent and/or reveal potential problems.

In Indiana, every deed, parcel, and legal land document in the state is tied into the original survey performed in the early years of settlement. Section corner stones were set to mark each square mile of the state, and those corner stones are maintained today. The County Surveyor is required to maintain a corner record book showing original government section corners. The Surveyor is also required to establish, locate, and reference at least 5% of the corners each year.

Surveys are also performed prior to the commencement of a construction project. During site development, the surveyor uses the architect's design plan and places stakes at corner locations on the ground so construction workers can place the buildings, roads, fences, electrical and other underground utilities in their correct location. Thus, cable or telephone companies can rely on pre-construction surveys to locate underground wiring for repairs and replacements.

## review questions...

The following 18 questions will be a review of the content from this section. These questions will NOT be graded. Answers to the review questions can be found on the next page.

1. **Managing brokers are required to complete how many hours of office policy and procedures manuals education?**
   a. 1 hour
   b. 2 hours
   c. 3 hours
   d. 4 hours

2. **Which of the following would not be included in a policy and procedures manual?**
   a. Legalities
   b. Broker general responsibilities
   c. Broker commission rates
   d. Ethical standards

3. **Records that are relinquished with no intent to reclaim are called**
   a. voluntarily surrendered records.
   b. disclaimed records.
   c. involuntarily surrendered records.
   d. abandoned records.

4. **Brokers are required to keep expense records for how long?**
   a. 2 years
   b. 3 years
   c. 5 years
   d. None of the above

5. **Which type of funds are to be deposited into a brokerage trust account?**
   a. Broker's commission payments
   b. Brokerage advertising funds
   c. Client's earnest money
   d. Referral fees

6. **If a managing broker is terminated, who takes custody of the trust accounts?**
   a. An affiliated broker
   b. The brokerage company
   c. The Commission
   d. The Attorney General

7. **Which of the following does NOT qualify as Good Funds under the House Enrolled Act 1374?**
   a. Euros
   b. Wired funds
   c. Farm credit service checks
   d. State government checks

8. **Who is to receive interest earned on trust funds?**
   a. The listing broker
   b. The managing broker
   c. The funds' beneficiary
   d. The closing agent

9. **Improper handling of trust funds can lead to**
   a. jail time.
   b. a letter of reprimand.
   c. probation.
   d. all of the above.

10. **If Broker John works at the Ace Realty branch office on 58th Street, where must his license be kept?**
    a. At Ace Realty's main office on Central Avenue
    b. In his managing broker's files
    c. With John at all times
    d. On display at the branch office on 58th Street

11. **Ace Realty has one main office and five branch offices. Which of these offices may Branch Manager Steve manage?**
    a. Only one of the offices
    b. Only the main office
    c. Only the branch office where Steve works
    d. Any or all of the offices

12. **Unlicensed assistants may NOT**
    a. show properties.
    b. provide listings to MLS.
    c. transcribe forms.
    d. calculate commission checks.

13. **Unlicensed assistants may**
    a. negotiate fees.
    b. canvass for listings.
    c. discuss contracts with affiliated brokers.
    d. none of the above.

14. **Broker Andy has asked his unlicensed assistant Jill to help him canvass for listings, an activity that requires licensure. What can happen as a result of Jill performing this task?**
    a. Jill can be fired.
    b. Andy can be disciplined.
    c. Jill can receive a bonus for the extra work.
    d. Andy can be praised for being innovative in obtaining listings.

15. **What is an escrow closing?**
    a. The closing of a trust account
    b. The paying out of all required disbursements
    c. The closing of an escrow account when the transaction is canceled
    d. The transaction closing that is not attended by either the buyer or the seller

Questions continued on the next page

16. **Who provides a closing statement to the client and when is it provided?**
    a. The lender when the loan application is signed
    b. The lender 5 days prior to transaction closing
    c. The listing agent when the purchase offer is accepted
    d. The listing and selling brokers when the transaction is finalized

17. **If the seller does not want to pay to have repairs made that were noted in the home inspection, what other options exist?**
    a. The buyer may back out of the deal and penalize the seller for lack of cooperation.
    b. The selling price may be reduced.
    c. The inspector may alter the inspection report.
    d. All of the above

18. **In Indiana, how are square miles marked for surveys?**
    a. With corner stones
    b. With mile markers
    c. With stakes at corner locations
    d. With an X at each corner of the square mile

*Review Question Answers:*

| | | | | | |
|---|---|---|---|---|---|
| 1. c | 2. c | 3. d | 4. d | 5. c | 6. c |
| 7. a | 8. c | 9. a | 10. d | 11. d | 12. a |
| 13. c | 14. b | 15. d | 16. d | 17. b | 18. a |

## SELLER'S RESIDENTIAL PROPERTY CONDITION DISCLOSURE

### When required

A property condition disclosure is known within Indiana law as a ***residential real estate sales disclosure***. For a residential property that contains four or less residential dwelling units, disclosing the condition of the property through a sales disclosure is required with the following transactions:

- the sale or exchange of property
- an installment sales contract
- a lease with the option to buy

Indiana law does not require sales disclosures for the following property transfers:

- ordered by a court including .in the administration of an estate
    - by foreclosure sale
    - by a trustee in bankruptcy
    - transfers by eminent domain
    - from a decree of specific performance
    - from a decree of divorce
    - from a property settlement agreement
- by a mortgagee who acquired the property through a foreclosure sale or through a deed in lieu of foreclosure
- by a fiduciary during the administration of a decedent's estate, a guardianship, a conservatorship, or a trust
- from one or more co-owners solely to one or more other co-owners
- solely to any combination of a spouse or a blood relative of at least one of the transferors
- due to the record owner's failure to pay federal, state, or local taxes
- to or from any government entity
- through the first sale of a dwelling that has never been occupied
- to a living trust

### Contents and form

If a sales disclosure is required, the seller must inform the buyer of any issues or defects with the property that may impact the buyer's decision to purchase the property. Issues or defects can involve appliances, water and sewer systems, electrical systems, heating and cooling systems, any other mechanical systems, and roofs. The individual must also disclose whether or not there have been any hazardous conditions impacting the property, whether the property is in a flood plain, or whether there are any structural or foundation issues.

**Defect defined**. A defect is defined in the law as "a condition that would have a significant adverse effect on the value of the property, that would significantly impair the health or safety of future occupants of the property, or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises."

**Required disclosure form provisions**. The Commission-adopted form used for informing the potential buyer of the property's condition is Indiana State Form 46234 (R/1293). The link to the form is: http://www.in.gov/pla/files/Sellers_Disclosure_Form.pdf

The property seller may choose to use this form or any other form that includes the same required information as on the state form.

In addition to disclosing any issues or defects, the form must also include the following two notices to the buyer:

1. "The prospective buyer and the owner may wish to obtainprofessional advice or inspections of the property and provide forappropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property."

2. "The representations in this form are the representations of theowner and are not the representations of the agent, if any. Thisinformation is for disclosure only and is not intended to be a part of any contract between the buyer and owner."

The property disclosure form must also disclose if an airport is located within a specified geographical distance from the property. The distance is determined by the Commission who considers whether or not the airport serves commercial airlines.

### Procedure

**Completion**. When the form is filled, the owner certifies the veracity of the included information by signing the form. Although the owner is certifying the truth of the information, that information is based on the owner's actual knowledge. Therefore, the disclosure form is not a warranty by the owner or owner's agent and may not be used in place of any property inspections or warranties the involved parties may obtain later.

If the owner does not know or cannot obtain any required information when the disclosures are made, the owner can note that the information is unknown or may estimate the information if the estimate is clearly identified as that, is reasonable, is based on the owner's actual knowledge, and is not used to avoid the required disclosures.

If any material changes occur to the property after the disclosure form has been signed by the seller, the seller is required to disclose those changes at or before closing. If no changes have occurred, the seller must certify that the property is substantially the same as it was when the disclosure form was completed.

**Disclosure submission deadline and rescission**. The owner must submit the completed disclosure form to the prospective buyer before accepting an offer to purchase the property. If the property is being appraised for the buyer or the buyer's lender, the appraiser may also be provided a copy of the disclosure form.

If the owner accepts an offer to purchase and then provides the buyer with a disclosure form or amended form that indicates a defect, the buyer can nullify the contract. The buyer must provide a written rescission to the owner or the owner's agent within 2 business days of receiving the disclosure. The buyer will not be held liable for nullifying the contract under this circumstance and must have any deposits returned to him or her.

**Buyer acknowledgement**. After the disclosure form has been delivered to the buyer and no further amendments have been made, the buyer must sign the disclosure form prior to closing. The offer is not enforceable until both the seller and the buyer have signed the form.

If the seller fails to provide the buyer with a copy of the disclosure form after closing, that failure by itself does not invalidate the transaction.

**Errors on the disclosure form**. Because specific property condition information is required by Indiana law to be disclosed, the owner will be held liable for any errors, inaccuracies, or omissions of the required information. However, the owner will not be liable if:

- the error, inaccuracy, or omission was not actually known by the owner; <u>or</u>
- the error, inaccuracy, or omission was based on information provided by a public agency or a third person with a professional license or special knowledge who provided a written or oral report or opinion that the owner believed to be accurate; <u>and</u>
- the owner was not negligent in obtaining information from a third party and passing the information on to the buyer

The owner also will not be liable if any act, circumstance, information, or agreement after the form has been delivered to the buyer results in the form becoming inaccurate.

## PSYCHOLOGICALLY AFFECTED PROPERTIES

Indiana law defines a psychologically affected property as "real estate or a dwelling that is for sale, rent, or lease and to which one or more of the following facts or a reasonable suspicion of facts apply:

- an occupant of the property had, or died from, a disease related to HIV
- an individual died on the property
- the property was the site of a criminal felony, a criminal gang activity, the discharge of a firearm involving an on-duty law enforcement officer, or the illegal manufacture or distribution of a controlled substance"

A property owner and the owner's agent are not required to disclose any facts that resulted in a property becoming psychologically affected. For example, if a previous occupant was murdered on the property, the owner is not required to tell a prospective buyer what happened to that occupant.

The owner and the owner's agent are not liable for refusing to disclose that the property is psychologically affected or any details related to the nature of the psychological effect.

However, if a buyer or lessee directly asks, the owner or agent cannot intentionally misrepresent any fact concerning the property. For example, if a prospective buyer asks if anyone has ever died on the property, the owner or agent must tell the buyer what they know about any deaths that may have occurred on the property.

Most buyers or lessees want to know if something has happened on a property that would impact their sense of safety and wellbeing. For example, if a property has been the site of criminal gang activity, gang members or rival gang members may try to regain entrance to the property, thus potentially putting the new occupants in danger.

## APPRAISAL LICENSING REQUIREMENTS

### Licensure and certification

The Indiana Real Estate Appraiser Certification Board approves applications and issues licenses to appraisers in Indiana. The governor appoints seven members to the Board, five of whom are licensed appraisers with at least 5 years' experience. Three of those five must be certified appraisers. One Board member is a lender representative qualified to make Federal Housing Administration insured loans and Veterans Administration guaranteed loans. This member must also be qualified to sell loans to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. The seventh member must not be associated with real estate business in any way other than as a consumer. Each Board member serves for 4 years.

The Board submits recommendations to the Indiana Real Estate Commission regarding the following:

- implementation and operation of the real estate appraiser licensure and certification program
- rules governing licensed and certified real estate appraisers
- establishment of a fee sufficient to fund the investigative fund
- rules governing the administration of the investigative fund

An individual must meet the following requirements to become licensed or certified as a real estate appraiser in Indiana:

- no convictions for an act that would warrant disciplinary sanctions, for a crime that impacts the individual's ability to practice competently, for fraud or material deception, or for a crime that endangers the public
- submit fingerprints for a national criminal history background check and pay fees associated with the background check; evidence of compliance may be required in the form of the national background check, credit histories, and other background checks the Board deems necessary
- Licensed Appraiser Trainee - 90 hours of appraisal education and training, 15 of which must cover national USPAP ethics and standards of practice, all of which must be completed within 5 years prior to application date, and passing the trainee examination
- Certified Residential Appraiser – 200 hours of appraisal education and training, 15 of which must cover national USPAP ethics and standards of practice; 2,500 hours of appraisal experience (1,000 hours of residential appraisal experience and 1,500 hours of non-residential appraisal experience) in 30 or more months; passing the certified residential appraiser examination; college bachelor's degree or higher
- Certified General Appraiser – 300 hours of appraisal education and training, 15 of which must cover national USPAP ethics and standards of practice; 3,000 hours of appraisal experience ( 1,500 hours in residential experience and 1,500 hours in non-residential experience) in 30 or more months; passing the certified general appraiser examination; college bachelor's degree or higher
- pay appropriate fees
- pay all personal property taxes in full
- no child support payment delinquency of more than $2,000 or 3 months
- provide Social Security number to Board
- submit examination application, pay examination fee, and pass examination
- obtain license within 1 year after passing examination

No license or certification is required for

- a county assessor or employee
- a township assessor or employee

Real estate appraiser licenses are to be renewed every 2 years. To qualify for renewal, the appraiser must complete 28 hours of continuing education within the 2-year renewal period. Continuing education courses must be approved by the Appraiser Qualifications Board or by the Indiana Real Estate Appraiser Certification Board. The continuing education required hours must include 7 hours of Uniform Standards of Professional Appraisal Practice (USPAP) within 6 months after any new edition of USPAP becomes effective.

While a licensed real estate broker may appraise some property, transactions governed by the federal act and any regulations adopted under the federal act must be appraised by a licensed or certified appraiser.

Performing the acts of a licensed or certified appraiser without holding a license or certificate is a Class B infraction. Each transaction is a separate offense.

### Introduction to USPAP

The Uniform Standards of Professional Appraisal Practice (USPAP) is a set of national standards that are applicable to most U.S. appraisals. The document has become the recognized ethical and performance standards for appraisers to follow. USPAP was adopted in 1989 by Congress to protect the public and to promote public trust in the appraisal profession. All state-licensed and certified appraisers are required to comply with USPAP when appraising any federally related real estate transactions.

USPAP contains rules and standards for developing an appraisal and for reporting the appraiser's value opinion to the client. It details what an appraiser must consider to be independent, impartial, and objective and to determine a credible opinion of value. Following the standards and rules are important so the appraiser can provide a lender with an unbiased and competent opinion of value so the lender can make the best lending decision.

Indiana Real Estate Law Title 876 recognizes USPAP as though it were created by this same law. Title 876 adopted the Statements on Appraisal Standards from USPAP as part of its rules. Title 876 further requires that any new editions, amendments, supplements, or releases of USPAP must follow the rulemaking provisions of Indiana law. Failure to do so will mean the new document cannot be in effect in Indiana. Title 876 also deleted standards 6 through 10 and any references to these particular standards from its adoption of USPAP.

USPAP was developed by the Appraisal Standards Board of the Appraisal Foundation and includes the following 10 standards:

- Standards 1 and 2 establish requirements for developing and reporting a real property appraisal
- Standard 3 establishes requirements for developing and reporting an appraisal review assignment for real or personal property appraisal
- Standards 4 and 5 were retired as of January 1, 2014
- Standard 6 establishes requirements for developing and reporting mass appraisals
- Standards 7 and 8 establish requirements for developing and reporting personal property appraisals
- Standards 9 and 10 establish requirements for developing and reporting business or intangible asset appraisals

USPAP also includes the following:

- 10 Statements on Appraisal Standards that clarify, interpret, explain, or elaborate on a Standards Rule and that carry the same weight as a Standards Rule
- 32 Advisory Opinions that show how appraisal standards are applied in specific situations and that offer advice for the resolution of appraisal issues.

An appraiser is not an advocate to help secure a loan or to determine a specified value. In that realm, it is a violation of USPAP for an appraiser to act as an advocate when providing valuation services. The appraiser must remain impartial throughout the entire appraisal process and not favor a predetermined outcome.

## DISTRESSED PROPERTY SALES

A distressed property can be any of the following:

- a property that is under foreclosure
- a property the owner needs to sell quickly, usually at a reduced price
- a property whose loan balance is higher than the value of the property
- a property that is in poor physical condition

The distressed property is typically sold as-is with no repairs or discounts in price.

The following are situations that might result in a property becoming distressed:

- divorce or death of the homeowner
- financial issues leading to delinquent mortgage payments or failure to maintain or update the property's condition
- job relocation
- job loss
- change in the market that results in property values dropping

In a poor financial situation, a distressed property can be sold by the owner to avoid foreclosure. In this case, the lender must agree for the property to be sold at a price that is less than the balance of the mortgage loan. This type of sale is called a short sale. Sort sales are more complicated than normal sales and take much longer to close.

In a foreclosure, the lender takes ownership of the property because the borrower has defaulted on the mortgage loan. The property is designated as REO, or Real Estate Owned (by the lender). The lender first attempts to sell the REO property at a foreclosure auction. Properties being sold at auction are not available for inspections and are sold as-is. If the sale fails at auction, the property reverts to the bank that held the original mortgage. That bank then attempts to sell the property.

Many investors and "flippers" buy distressed homes because of the reduced price. They often pay with cash and are prepared to bring the property back to a condition conducive to occupancy. Investors may retain the property for rental purposes, while flippers will repair and update the home and then sell it at a profit.

For an individual thinking about buying a distressed property as a place in which to live, the reduced price may make the purchase a good idea. However, these properties are often in very poor condition and may need extensive electrical or plumbing repairs or may need all new appliances and fixtures. Given these problems, the property may not meet the requirements of a lender, so the buyer will most likely need all cash to purchase the home.

## DODD-FRANK ACT

The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law in 2010 as a result of needed changes in the regulatory system and the financial crisis of 2007-2010. The Act was named after U.S. Senator Christopher Dodd and U.S. Representative Barney Frank because of their significant involvement in the creation and passing of the Act.

The aim of this Act is:

- to promote the financial stability of the United States by improving accountability and transparency in the financial system
- to end the "too big to fail" problem posed by highly consolidated banking institutions
- to protect the American taxpayer
- to protect consumers from abusive financial services practices

Before the financial crisis, there were seven regulators with authority over the consumer financial services marketplace. The Act changed the existing regulatory structure by creating several new agencies and removing or merging others to streamline the regulatory process. In addition the Act increased oversight of specific institutions and promoted operational transparency.

Dodd-Frank also created an independent agency to set and enforce rules for the financial marketplace. This agency, the Consumer Financial Protection Bureau (CFPB), exists to prevent predatory mortgage lending, improve the clarity of mortgage paperwork for consumers, and reduce incentives for mortgage brokers to overlend on and oversell unaffordable housing. The CFPB also changed the way credit card companies disclose their terms to consumers by requiring loan terms to be presented in an easy-to-read-and-understand format.

The Volcker Rule was added to Dodd-Frank to restrict the way banks can invest and trade in derivatives – an exotic and potentially risky investment instrument.

Financial reform under CFPB includes provisions to stop excessive risk-taking and to hold Wall Street accountable. Among the principal provisions are the following:

- taxpayers will not bear the costs of wall street's actions
- proprietary trading is separated from the business of banking, as detailed in the Volcker rule which ensures that banks may not own, invest, or sponsor hedge funds, private equity funds, or proprietary trading operations for their own profit
- bailouts are ended by limiting the growth of the largest financial firms, restricting the riskiest financial activities, and creating a means for the government to shut down failing financial companies without causing a financial panic
- the Financial Stability Oversight Council is created to identify and address systemic risks that may be posed by large, complex companies, products, and activities before they can threaten the economy's stability
- increased transparency related to executive compensation and exorbitant pay or benefits should the executive be forced to leave the company (known as golden parachutes)
- new rules for transparency and accountability for credit rating agencies
- enforcement of regulations already on the books to strengthen oversight and identify financial fraud, conflicts of interest, and manipulation of the system benefitting special interests

Further, the CFPB is to enforce federal consumer financial laws and protect American families by

- combining federally required mortgage disclosures into a single form that makes the costs and risks of the loan clear and allows consumers to comparison shop
- giving consumers a choice about joining expensive overdraft programs so they are not unknowingly charged unnecessary fees
- prohibiting credit card practices that are unfair, such as allowing a consumer to exceed the card limit and then imposing an over limit fee
- making credit card rates and fees more transparent so consumers understand how much they are paying for their credit card thus enabling comparison shopping
- making sure students and families have the necessary information, as provided on a financial aid disclosure form, to make sound financial decisions for higher education

## review questions...

The following 16 questions will be a review of the content from this section. These questions will NOT be graded. Answers to the review questions can be found on the next page.

**1. A residential property condition disclosure form must include**
   a. a statement of property ownership.
   b. proximity to railroad thoroughfare.
   c. a property condition warranty.
   d. a note of estimated or approximated information.

**2. If a change is made to the property that affects the disclosure after the seller signs it, when must the seller disclose those changes to the buyer?**
   a. At or before closing
   b. At the time the change is made
   c. Prior to accepting the purchase offer
   d. The seller is not required to disclose changes after the disclosure is signed.

**3. The property owner will be held liable for errors on the property condition disclosure form if**
   a. the information was obtained from a third party professional.
   b. the form becomes inaccurate as a result of action taken after the form was delivered to the buyer.
   c. the owner was negligent in obtaining the information from a third party.
   d. the owner was unaware of the information causing the error.

**4. When must a seller disclose that a particular property is psychologically affected?**
   a. When the seller's agent lists the property
   b. When someone has died on the property
   c. When a potential buyer asks
   d. Never

**5. How many members make up the Indiana Real Estate Appraiser Certification Board?**
   a. 3
   b. 5
   c. 7
   d. 9

**6. Which of the following is NOT a licensing or certification requirement for appraisers?**
   a. No acts warranting disciplinary sanctions
   b. Submit proof of U.S. citizenship or legal permanent residency
   c. Provide fingerprints
   d. Pay personal property taxes in full

**7. How many hours of education and training are required to become certified as a general appraiser?**
   a. 300
   b. 200
   c. 150
   d. 90

**8. How many hours of appraisal experience are necessary to become a certified residential appraiser?**
   a. 1000
   b. 1500
   c. 2000
   d. 2500

**9. Performing appraisals without a license or certificate is a**
   a. Class A misdemeanor.
   b. misdemeanor.
   c. Class B felony.
   d. Class B infraction.

**10. USPAP includes ____ statements and ____ opinions.**
   a. 10, 32
   b. 12, 29
   c. 9, 34
   d. 15, 30

**11. Which specific appraisal method is required by USPAP?**
   a. Sales comparison approach
   b. Cost approach
   c. Income capitalization approach
   d. None

**12. Which USPAP standards were adopted by Title 876?**
   a. 1 through 10
   b. 1 through 5
   c. 6 through 10
   d. None

**13. Why does a buyer typically need unfinanced cash to purchase a distressed property?**
   a. Lenders require cash in foreclosure sales.
   b. The price is too low to finance.
   c. The seller does not want to wait for the buyer to obtain a mortgage loan.
   d. The condition of the property does not meet lender requirements.

Questions continued on the next page

**14. Who is not protected by the Privacy Act?**
a. John Jones, an incarcerated felon
b. Janet Bailey, an employee of the U.S. Postal Service
c. Todd Jenkins, a circuit court judge
d. Shawn Kelly, an Irish citizen attending a U.S. college on an expired visa

**15. The Dodd-Frank Act is another name for**
a. Title 876.
b. the Wall Street Reform and Consumer Protection Act.
c. the Privacy Act.
d. nothing; there is no such act.

**16. The Volcker Rule restricts**
a. how banks invest.
b. rates charged by credit card companies.
c. profits banks can earn.
d. predatory mortgage lending.

***Review Question Answers:***

| | | | | | |
|---|---|---|---|---|---|
| 1. d | 2. a | 3. c | 4. c | 5. c | 6. b |
| 7. a | 8. d | 9. d | 10. a | 11. d | 12. b |
| 13. d | 14. d | 15. b | 16. a | | |

# Office Supervision for Managing Brokers
# Snapshot Review

**OFFICE PROCEDURES; POLICY MANUAL**

**Requirements**

- set boundaries for employee operations and to reflect company's culture
- comply with Indiana laws
- signed confirmation of receipt by each broker or employee

**Contents**

- managing broker responsibilities; level of supervision; rules enforcement; transfer request procedures; broker terminations; procedures if managing broker's license becomes inactive; broker and staff general responsibilities; personnel policies; workplace privacy policies; technology policies; nondiscriminatory practices; sexual harassment; fair housing; RESPA; do not call rules; CAN SPAM; equal opportunity; advertising policies and rules; listing and open house policies; contracts and forms; cooperating brokers; prospecting for clients; commission and referral fees; offers; escrow monies; closings

**DOCUMENTS AND RECORDS**

- broker to keep: expense records; records related to working with out-of-state commercial brokers; records related to all real estate transactions
- real estate schools to keep records regarding students for at least 5 years; records can be inspected by Commission
- abandoned records: attorney general determines if records are abandoned and notifies owners; records not reclaimed in 3 years may be destroyed

**MANAGING TRUST ACCOUNTS**

**Requirements**

- managing broker must maintain trust account for funds belonging to others
- account must be: at federally insured financial institution; identified as trust account
- account can be: interest bearing or noninterest bearing; interest held for beneficiary of funds
- account cannot be used for broker's personal or business funds
- managing broker must keep records of funds, interest, and disbursements
- Commission takes custody of account upon managing broker's termination or death
- closing agent as licensed insurance producer may maintain trust account for transaction-related funds
- licensees must turn funds over to managing broker for deposit into account

**House Enrolled Act**

- House Enrolled Act 1374 (Good Funds Act) assures that secured funds are good and immediately available for disbursement; good funds can be US cash, wired funds, cashier's checks, checks from broker's trust account, personal checks under $500, checks issued by state or federal government, checks from another closing agent's trust fund, or checks issued by a farm credit service
- requires all transaction-related funds be deposited into trust account unless other arrangements are made; $10,000 or more must be wired; no checks for $10,000 or more; less than $10,000 must be good funds; $500 or less can be advanced for transaction-related fees; mortgage payoffs can be wired funds
- improper handling of account leads to license revocation or suspension, financial damages, and/or jail time
- brokerage to provide detailed summary of accounts to Commission or attorney general as requested

**PLACE OF BUSINESS REQUIREMENTS**

- broker company must be managed by managing broker and must be managing broker's sole place of business
- managing broker can manage multiple companies located at same address
- managing broker responsible to Commission for company's actions

**Evidence of Licensure**

- evidence of current licensure for each broker to be maintained by real estate office
- licenses must be displayed at offices where brokers work
- proof of current licensure provided to Commission upon request

**Branch Offices**

- office locations in addition to principal place of business
- each branch office to be managed by branch manager
- branch managers may manage more than one branch
- managing broker may be branch manager
- branch offices to be registered with Commission prior to opening
- Commission to be notified of new branch manager and transfers of brokers from one branch to another; Commission to be provided list of brokers conducting business at each branch office
- licenses to be displayed at branch office where broker conducts business

## UNLICENSED ASSISTANTS

- administrative or clerical support
- broker who allows violations can be disciplined by license suspension or revocation, letter of reprimand, probation, and/or civil penalty
- unlicensed assistants may: answer phones; provide property address and list price; provide listings to MLS; obtain and assemble documents; transcribe forms for broker approval; deliver documents; place broker-approved advertising with media; place signs on properties; schedule property showings; assist with open houses; calculate commission checks; monitor personnel files and licenses; record deposits and rents; order repairs for property as directed by broker
- unlicensed assistants may NOT; prepare or place advertising without broker approval; show properties or conduct open houses; provide information other than price, address, and directions; discuss contracts with client, customer, or unaffiliated broker; canvass for listings; negotiate fees; pretend to be licensed

## CLOSING PROCEDURES

**Requirements**

- closing statement must be created before closing to show financial details of transaction
- statement to be kept by broker for at least 5 years
- listing and selling agent required to attend closing unless commercial or institutional property is closing or unless client will not attend
- attorneys, lender representative, and title company representative may also attend
- face-to-face closing is when all parties are present at closing
- escrow closing is when a third party conducts the closing without the buyer or seller being present
- broker and lender responsibilities typically completed prior to closing
- seller and buyer must fulfill terms of sales contract and pay any fees

**Inspections**

- conducted during escrow period, after offer is accepted and monies deposited
- offer may include condition for property inspection, pest inspection, hazard inspection, etc.; condition may allow buyer to back out of offer if significant problems are discovered during inspection; buyer and seller may agree for seller to make necessary repairs
- property inspectors required to be licensed in Indiana; inspectors and inspections regulated by IC 25-20.2
- general inspection takes 2-3 hours and should have buyer present
- inspection report should include identification of problems as safety issue, major defect, or minor defect; items that need replacing, repairing, or watching over; and areas needing routine maintenance

**Surveys**

- surveys show property lines and prevent overlaps of land ownership
- all deeds, parcels, and legal land documents in Indiana are tied into the original survey with section corner stones set to mark each square mile of the state
- County Surveyor is required to maintain corner record book and to locate 5% of the corners each year
- pre-construction surveys set where buildings, roads, fences, underground utilities should be located; use architect's design plan to place stakes at corner locations on the ground
- after construction, underground utility companies can use pre-construction surveys to locate wiring for repairs

## SELLER'S RESIDENTIAL PROPERTY CONDITION DISCLOSURE

**When required**

- for residential properties with 4 or fewer units
- sale or exchange, installment sales contract, lease with option
- not required for property transfers: in the administration of an estate; by foreclosure sale; by trustee in bankruptcy; by eminent domain; from decree of specific performance; from decree of divorce; from property settlement agreement; when acquired through foreclosure sale; with deed in lieu of foreclosure; by fiduciary administrating decedent's estate, guardianship, conservatorship, or trust; from co-owner to co-owner; to spouse or blood relative; due to nonpayment of taxes; to or from government agency; with first sale of never occupied dwelling; to living trust

**Contents and form**

- must disclose to buyer any issues or defects that may impact decision to buy
- must disclose hazard conditions, flood plain, structural issues, proximity to airport
- must use disclosure form same as Indiana disclosure form; form to include statements regarding inspections and owner representations

**Procedure**

- owner to certify truth of information on form based on actual knowledge
- disclosure not to replace inspection
- owner to note unknown information
- seller to disclose material changes after form signed by seller
- owner to deliver disclosure form to buyer prior to accepting offer to purchase; buyer can back out of offer if disclosure provided after offer accepted
- offer not enforceable until both seller and buyer sign disclosure form
- owner held liable for errors on form unless information was not known, was obtained from third party agency or professional, no negligence in obtaining information from third party, or action after delivery of form results in form becoming inaccurate

## PSYCHOLOGICALLY AFFECTED PROPERTIES

- defined as property for sale or lease where any of the following has occurred: occupant had or died from HIV-related disease; someone died on the property; criminal felony; criminal gang activity; discharge of firearm involving police; illegal making or distributing of controlled substance
- no disclosure required unless asked directly
- no liability for refusal to disclose unless asked directly
- cannot misrepresent facts if asked directly

## APPRAISAL LICENSING REQUIREMENTS

**Licensure and certification**

- license issued by Indiana Real Estate Appraiser Certification Board; 7 members on Board – 5 licensed appraisers with 5 years experience, 3 of those 5 must be certified; 1 lender representative able to make FHA and VA loans; 1 no associated with real estate in any way; members serve for 4 years
- Board submits recommendations to Real Estate Commission regarding appraiser licensure, rules, fees, and investigative fund
- licensure or certification requirements: no acts that warrant discipline; no crimes that impact competent practice; no fraud or material deception; no endangering the public
- submit fingerprints for background check; pay fees; pay all personal property taxes; pay child support; provide Social Security number; apply, pay, and pass examination; obtain license within 1 year of passing exam

- Licensed Appraiser Trainee – 90 hours education including 15 hours of USPAP ethics and standards of practice, all completed within 5 years prior to application for licensure; pass examination
- Certified Residential Appraiser – 200 hours education including 15 hours of USPAP ethics and standards of practice; 1,000 hours of residential appraisal experience and 1,500 hours of non-residential appraisal experience completed in 30 or more months; pass exam; hold bachelor's degree
- Certified General Appraiser – 300 hours education including 15 hours of USPAP ethics and standards of practice; 1,500 hours of residential appraisal experience and 1,500 hours of non-residential appraisal experience completed in 30 or more months; pass exam; hold bachelor's degree
- no license or certification required for county or township assessor or employee
- licenses renewed every 2 years
- 28 hours of continuing education required within 2-year renewal period; continuing education to include 7 hours of USPAP education within 6 months of any new editions
- appraising without licensure or certification is Class B infraction

**Introduction to USPAP**

- set of national standards for appraisers adopted in 1989 to protect public and to promote public trust
- all licensed and certified appraisers are required to comply with USPAP when appraising federally related transactions
- contains rules and standards for appraisal development and reporting to clients
- requires appraiser to be independent, impartial, and objective and to determine a credible opinion of value
- recognized by Title 876 as though created by that law; Statements on Appraisal Standards adopted by Title 876
- new editions or amendments must follow Indiana rulemaking provisions or cannot be in effect in Indiana
- includes 10 standards, but #4 and #5 were retired in 2014, and #6 through #10 were deleted by Title 876's adoption
- also includes: 10 statements on appraisal standards that clarify a standards rule: 32 advisory opinions to show how standards are applied
- acting as an advocate violates USPAP

## DISTRESSED PROPERTY SALES

- distressed properties include foreclosures, need for quick sale at reduced price, loan balance higher than property value, poor physical condition; distressed properties sold as is
- causes of distress include: divorce, financial issues, job relocation or loss, and changes in market
- short sale – property sold by owner to avoid foreclosure; lender must agree to price if below loan balance; more complicated and takes longer than normal sale
- foreclosure – lender takes ownership after borrower defaults; property is designated as REO; lender attempts to auction property with no inspection allowed; unsold at auction returns to bank for sale with inspections
- distressed property may not meet lender's requirements so may need to be purchased with all cash

## WALL STREET REFORM AND CONSUMER PROTECTION ACT

- named after Senator Dodd and Representative Frank; signed into law in 2010
- aimed to: promote financial stability; end too big to fail; protect taxpayers by ending bailouts; protect against abusive financial services practices
- streamlined regulatory process, increased oversight of specific institutions, promoted transparency, and amended the Federal Reserve Act

- created Consumer Financial Protection Bureau to: set and enforce rules for the financial marketplace; prevent predatory mortgage lending; improve clarity of mortgage paperwork; reduce mortgage broker incentives to push home buyers into more expensive loans
- CFPB requires credit card companies to present loan terms in easy-to-read-and-understand format
- Volcker Rule addition to Dodd-Frank restricts how banks can invest and regulates trading in derivatives
- Wall Street reform includes: holding Wall Street accountable for its own actions; separating proprietary trading from business of banking; ending bailouts; creating Financial Stability Oversight Council to address systemic risks; providing shareholders a voice on pay and corporate affairs; providing transparency and accountability rules for credit rating agencies; enforcing existing regulations
- CFPB protects families by: combining mortgage disclosures to make costs and risks of loans clear; providing choice about joining expensive overdraft programs; prohibiting unfair credit card practices; making credit card rates and fees transparent; poviding necessary information to students regarding financial aid