Indiana Real Estate Brokers

CONTINUING EDUCATION

Brokerage Management: Handling Challenges and Finding Solutions

PDH Academy - 4 CE HOURS

PDH Real Estate

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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.

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Brokerage Management: Handling Challenges and Finding Solutions - Final Exam

1. **The managing broker of a real estate office is paying the firm's monthly expenses. He writes a check for the office rent from the firm's escrow account. This is considered:**
   a. proper procedure
   b. commingling
   c. collusion
   d. conversion

2. **At their regular monthly meeting, the managing brokers of several different firms agree that the introduction of "discount brokerages" in the area is bad for business. They informally agree to commission rates no lower than 6% for the coming year. This type of "friendly", but non-binding, agreement:**
   a. violates the Realtor Trade Agreement.
   b. violates the Sherman Anti-Trust Act.
   c. is acceptable if non-binding.
   d. violates the statue of frauds.

3. **Personal assistants in Indiana:**
   a. are required to be licensed.
   b. may prepare real estate advertisements under the employing broker's supervision.
   c. may host open houses.
   d. must be unlicensed.

4. **Which of the following is an example of commingling?**
   a. A broker deposits earnest money checks into the operating account.
   b. A broker deposits tenant's security deposits into the escrow account.
   c. A broker deposits commission checks into his/her personal account.
   d. A broker deposits a tax refund check into his/her Individual Retirement Account.

5. **Which of the following would constitute an "incompetent practice"?**
   a. Paying a principal to the transaction a disclosed inducement of $500.
   b. Not advertising listings.
   c. Acting as the agent for the seller and signing documents with power of attorney.
   d. Failing to account for and remit any funds or documents belonging to others, that come into the licensee's possession.

6. **The act of a broker promising future profits from the resale of real property is:**
   a. an incompetent practice.
   b. poor judgment.
   c. permitted only if supporting data is provided.
   d. a competent practice.

7. **A managing broker may open a second office under which circumstance?**
   a. Only if they have an adequate number of agents to staff the office
   b. When the managing broker notifies the Board of Realtors
   c. When the managing broker designates to the Commission a broker to manage the office. *
   d. Once the managing broker has a duplicate license issued for that location.

8. **The branch manager:**
   a. may also be the managing broker. *
   b. need not display their license in the branch office at all times.
   c. must be present during business hours.
   d. must be paid a salary.

9. **At what point in time must the earnest money check be deposited in the designated broker's escrow account?**
   a. Two banking days after acceptance of the offer.
   b. Immediately upon acceptance of the offer.
   c. Prior to delivery of the offer to the seller.
   d. Five days prior to scheduled closing date

10. **Under Indiana license law, the managing broker:**
    a. Is responsible for their actions and those of all brokers associated with them
    b. Is not responsible for the actions of their licensees if the maintain errors and omissions insurance.
    c. Are responsible for their actions only. With broker associates individually liable.
    d. Are not responsible only if they employ independent contractors.

11. **To become a managing broker, an applicant must:**
    a. Have been licensed for the previous 2 years in any status.
    b. Have been licensed for the previous 12 months in any status
    c. Have been licensed for the previous 2 years in an active status and have completed the managing brokers course.
    d. Have been licensed for the previous 12 months in an active status and have completed the managing brokers course.

12. **An unlicensed secretary in a real estate office may do which of the following?**
    a. List property on behalf of the employing licensee.
    b. Negotiate commissions with sellers.
    c. Give the list price and directions to listed properties.
    d. Hold open houses for the managing broker only.

13. **Personal assistants in Indiana:**
    a. may prepare ads without approval of the employing licensee.
    b. can perform any duties a licensee can perform.
    c. may not discuss and/or explain contracts.
    d. may conduct telemarketing.

14. **Which is not a fiduciary duty to a client?**
    a. accounting
    b. fairness
    c. loyalty
    d. care

15. **A broker may pay a referral or finder's fee to an unlicensed person:**
    a. if the unlicensed person is the broker's assistant and full disclosure is made.
    b. if notification is sent to the Indiana Real Estate Commission.
    c. if it is not a monetary reimbursement.
    d. never.

16. **All of these people are considered members of protected classes except:**
    a. a member of Alcoholics Anonymous.
    b. a visually disabled person with a seeing-eye dog.
    c. a person diagnosed with AIDS.
    d. a person convicted of the manufacture or distribution of illegal drugs.

17. **An Indiana licensee representing both the buyer and seller in a transaction is called a:**
    a. dual agent.
    b. in-house agent.
    c. limited agent.
    d. traditional agent.

18. **Which of these are exempt from the federal Fair Housing Act?**
    a. owner-occupied buildings with no more than four units
    b. apartment buildings with 10 or more units
    c. buildings that are not publicly advertised as being for sale or for rent
    d. single family homes by the owner who uses a real estate agent

19. **Which protected class refers to someone's ancestry?**
    a. familial status
    b. color
    c. national origin
    d. religion

20. **All the real estate companies in a local market agree to charge the same commission. This practice is called:**
    a. supply and demand.
    b. market correction.
    c. a tying agreement.
    d. price fixing.

21. **Persuading homeowners to sell their home because a protected class is moving into the neighborhood is called:**
    a. blockbusting.
    b. steering.
    c. redlining.
    d. stereotyping.

22. **Which is not a protected class under the fair housing act?**
    a. color
    b. sexual orientation
    c. religion
    d. familial status

23. **The name of the law that makes it illegal to price fix is the:**
    a. Federal Trade Commission Act
    b. Clayborn Act
    c. Sherman Act
    d. Commission Act

24. **When a group of brokers refuse to do business with another broker it is called a:**
    a. realtor boycott.
    b. MLS boycott.
    c. group boycott.
    d. business boycott.

25. **The fiduciary duty that require a real estate agent to inform their client about defects in a property is:**
    a. disclosure.
    b. loyalty.
    c. care.
    d. loyalty.

26. **What must a limited agent disclose to a buyer?**
    a. Why the seller is selling
    b. That the seller will accept less that list price
    c. That the seller has filed bankruptcy
    d. That the fireplace does not work

27. **A sale is scheduled to close while the listing agent is on vacation. The agent should:**
    a. obtain the sellers written consent to be absent.
    b. appoint another licensed agent to act on their behalf.
    c. arrange for an attorney to act in the agent's place.
    d. have a friend or relative attend the closing.

28. **An Indiana licensee who has an agency relationship with a buyer should:**
    a. disclose to the seller that the buyer is a minority.
    b. only present offers to the seller that are acceptable.
    c. disclose to the listing agent the maximum price the buyer is willing to pay.
    d. advise the buyer if the listing price of the home is unrealistic.

29. An Indiana licensee entering into a listing agreement and agency relationship with a seller has the duty to:
- a. present all offers when it is most convenient for the licensee.
- b. disclose all material matters concerning the property.
- c. not present unreasonable offers.
- d. seek price and terms satisfactory to potential buyers.

30. Which of the following laws was enacted to provide buyers with complete settlement costs?
- a. The Truth in Lending Act
- b. The Real Estate Settlement Procedures Act
- c. The Equal Credit Opportunity Act
- d. The Federal Fair Housing Act

31. An "in house agency relationship" is:
- a. an agency relationship involving two (2) or more clients represented by different licensees within the same real estate firm.
- b. when the buyer is represented by a real estate firm and all offers to purchase must be generated by that office.
- c. when the seller is represented by a real estate firm and all offers to purchase must be generated "in house".
- d. is illegal in Indiana.

32. The Equal Credit Opportunity Act prohibits discrimination in the lending process based on:
- a. race.
- b. religion.
- c. sex
- d. all of these.

33. Companies that illegally call numbers on the National do Not call Registry can be fined up to:
- a. $53,420 per call.
- b. $23,350 per call.
- c. $35,420 per call.
- d. $42,530 per call.

34. Common exclusions in a E&O policy includes all except:
- a. attorney fees
- b. mold
- c. bodily injury
- d. bankruptcy

35. A telemarketer must update their list from the National Do Not call Registry:
- a. everyyear.
- b. every 3 months.
- c. every 6 months.
- d. everymonth.

36. Company policies and procedures:
- a. are used to standardize tasks and expectations.
- b. are used in lieu of Indiana license law.
- c. required to be signed by all company clients.
- d. only apply to the companies licensed agents.

37. The REALTOR Code of Ethics is made up of:
- a. 10 articles
- b. 15 articles
- c. 17 articles
- d. 13 articles

38. Which article in the Code of Ethics requires mediation and arbitration?
- a. article 17
- b. article 3
- c. article 11
- d. article 14

39. Which article in the Code of Ethics REALTORS to maintain an escrow/trust account?
- a. article 15
- b. article 1
- c. article 12
- d. article 8

40. At the annual local Association of REALTORS meeting, a group of Managing Brokers agree that commissions continue to shrink in the market is bad for business. They informally agree to commission rates no lower than 6% for the coming year. This type of agreement:
- a. is acceptable if it is a verbal agreement.
- b. violates the Sherman Antitrust Act.
- c. violates the Statue of Frauds.
- d. violates the Code of Conduct.

MANAGING YOUR BROKERAGE

The role of the managing broker far exceeds that of a broker affiliated with a real estate company. The managing broker is not only responsible for their own actions but also the actions of all the brokers and employees within the company. The managing broker must not only manage, but also be a marketing director, accountant, counselor, referee, head cheerleader and much more.

Owning or operating a real estate company interests many entrepreneurs because of the ability to enter the industry with few obstacles. Although the real estate industry is extremely competitive and typically a localized business, the opportunities are endless. Forming a new brokerage requires many decisions and considerations. This process can be overwhelming due to major decisions having a significant impact. The managing broker must be prepared to create a business plan for preparing their real estate company to compete now and in the future. They must decide on the type of business structure they want such as a corporation, a sole proprietorship, or a partnership. Policies and procedures must be created that all agents and employees are required to abide by.

These are just some of the issues that managing brokers will have to address, along with the multitude of other responsibilities and obligations that are necessary in order to set up and run a successful real estate business.

The managing broker must have a clear understanding of their duties and responsibilities according to the Indiana Real Estate Commission (IREC). According to Indiana license law the managing broker is responsible not only for their own actions but also the actions of any of their affiliated licensees. The managing broker must maintain a trust account that is subject to inspection by the office of the attorney general and the IREC. They are also required to maintain records of active and closed transactions.

Being a managing broker can be a challenging endeavor filled with responsibilities and obligations. It requires individuals who are committed to understanding the rules and regulations and how to apply them to successfully govern a brokerage.

The Indiana Professional Licensing Agency (PLA) website is a tremendous resource for managing brokers. The web address is www.in.gov/pla/real. On the website brokers can find applications for new brokers, managing brokers and broker company and branch office registrations. In addition, you can find license law and administrative rules, approved education providers and courses, and find information for online transfers of a real estate license. One of the best features of the site is the "frequently asked questions" section. Here you can find answers regarding licensing issues, continuing education requirements, filing a complaint against a licensee and many others.

LICENSING REQUIREMENTS AND RESPONSIBILITIES

To become a managing broker, an individual must:

(1) Hold an active broker license for at least two years preceding the date of application.

(2) Take and pass a twenty-four (24) hours of broker management course approved by the IREC.

(3) Submit to the Commission proof of the course.

Once the requirements are completed as required by the IREC, the broker's license is designated as managing broker eligible by the Indiana PLA. This is a designation and not a license thus it does not automatically make the broker a managing broker. The broker must be designated as the managing broker by the Indiana PLA. A broker may have the managing broker eligible designation without that broker actually being a managing broker. The broker must have the eligible designation and be identified to IREC by the company as the managing broker.

When the broker has both the PLA designation and the company designation to the IREC to be a managing broker, there are specific responsibilities as outlined in Indiana license law. These responsibilities include:

1. The main and all branch offices must be managed by a designated broker.
2. They must maintain an accurate list and evidence of licensure for all affiliated licensees.
3. Associating with unlicensed persons can cause the broker to have their license suspended or revoked after a notice and hearing by IREC.
4. They are responsible for the acts of all affiliated licensees.
5. They must submit to the Commission a Branch Office Registration Form prior to opening a branch office, naming the managing broker and all licensees with that office.
6. Ensure the compliance of the firm and all affiliated licensees with all elements of Indiana License Law, including but not limited to: the firm's office policy on agency, agency disclosures, escrow accounts, and all required documentation such as; closing statement, lead based paint disclosures and seller's residential disclosures.

LICENSE LAW

Licensing of New Brokers

As a managing broker one will come into contact with many people exploring a career in real estate. To be successful a company should always be growing. It is important that you know the requirements for licensing

if you are going to recruit new brokers to the real estate industry. The current requirements for licensing of new brokers are to complete an approved 90-hour relicensing course. The course consists of three 100 question exams. To pass the course you must have a minimum cumulative score of 225 out of the 300 questions. After passing the course one may apply for and take the Indiana real estate brokers exam. The exam is in two (2) parts. The first part is an 80-question exam on the principles of real estate. The second part is a 50-question exam on Indiana license law. The applicant must pass both parts of the exam. Upon successfully passing both parts of the exam one may apply for their license and affiliate with a managing broker. Within two (2) years of being licensed the broker must complete a 30-hour post licensing course in order to maintain their license. This course counts as their first two (2) years of continuing education.

Continuing Education

Managing brokers and associate brokers must also obtain 36 hours of continuing education every three (3) year license cycle. They can count only 12 hours of continuing education every year even if they complete more than 12 hours. The year starts on July 1 and ends June 30 of the following year. If the broker were to complete all 36 hours in one year for example, he/she can only count 12 of those hours. If he/she renews their license attesting to the fact they had completed all 36 hours of required education they would be in violation of Indiana license law and subject to sanction of their license. Four (4) of the annual 12 hours required each year of a managing broker must be "dedicated to the necessary business and management skills and legal knowledge needed by a managing broker and approved by the Commission for managing broker credit". As a managing broker it is also important to track your broker associates continuing education hours and their license renewals. If a licensee renews their license without having completed the continuing education hours, they are guilty of committing fraud. As the managing broker you potentially will also be guilty of fraud. Since their renewal is not valid neither is their license. This means that you would be guilty of affiliating with an unlicensed individual.

Advertising

As the managing broker you are responsible for all company advertising whether it is done by the company or an individual broker licensed with the company. Any display, classified advertising, signs, internet advertising, or business cards, which carry a licensee's name must contain the name of the broker company with whom the licensee is associated, and the company's name must be clearly visible. All advertising shall be under the direct supervision and in the name of the broker company. Any advertising by a broker company must reveal the name of the broker company either as it appears on the broker company's license issued by the Commission or by its officially known name. Any internet, television or radio advertising that carries the name of any licensee associated with a broker company must carry the name of the broker company, either as it appears on the broker company's license issued by the Commission, or by its publicly known name. However, when disclosing the name of the broker company is not practical in electronic displays of limited information (such as thumbnails, text messages and tweets) the broker company's name does not need to be included if the electronic display is linked to a display that includes the broker company's name. A licensee shall not advertise in a manner indicating that the property is being offered by a private party not engaged in the real estate business. Advertising where only a post office box number, telephone number, or street address appears shall not be used. No licensee shall place a sign on any property, advertise or offer any property for sale, lease, or rent without the written consent of the owner or the owner's authorized agent. In addition to license law requirements, you must also be aware that any form of advertising that violates fair housing laws, RESPA or any other state or federal regulations is your responsibility.

Attendance at Closings

Since the rule changed in July 2014 pertaining to brokers' attendance at closings there are certain situations when a broker is not required to attend. The first is if it is a commercial multifamily property except for 1-4 family residential. The rationale for this rule change is that the majority of these types of transactions usually involves legal representation for the parties. The second is when the broker is representing an institutional client such as a bank, HUD, Fannie Mae or any type of foreclosure. The third reason is if the broker's client of the client's authorized representative is not attending the closing. If the broker is not able to attend any other type of closing, they may send an associated broker or designate another broker to attend on their behalf.

Purchase Agreements and Earnest Money

Any written offers to purchase or authorization to purchase must be communicated to the seller for the seller's formal acceptance or rejection immediately upon receipt of the offer. The listing broker shall, on or before the next two (2) banking days after final acceptance of the offer to purchase, do one (1) of the following:

1. Deposit all money received in connection with a transaction in the listing broker's escrow/trust account.

2. Deposit money received in connection with a transaction to whoever is indicated in the purchase agreement to receive the deposit. This could be the title company, builder in the case of new construction or the selling broker.

The escrow account should be non-interest bearing. If the broker has an interest-bearing account, any interest earned must be credited to the individual who deposited the earnest money with the broker. The earnest money must be deposited in a federally insured financial institution. The Commission shall hold any broker with

whom money is deposited responsible for the money. If the earnest money deposit is other than cash, this fact shall be communicated to the seller before the seller's acceptance of the offer to purchase and shall be shown in the earnest money receipt. All money must be in the escrow/trust account so designated until disbursement thereof is properly authorized. The listing or selling brokers holding any earnest money are not required to make payment to the purchasers or sellers when a real estate transaction is not consummated unless the parties enter into a mutual release of the funds or a court issues an order for payment. The broker holding the earnest money when the parties won't sign a mutual release may release the earnest money deposit as provided in the offer to purchase or, if no provision is made in the offer to purchase, the selling or listing broker, holding the earnest money, may initiate the release process. The release process shall require the selling or listing broker to notify all parties at their last known address by certified mail that the earnest money deposit shall be distributed to the parties specified in the letter unless all parties enter into a mutual release; or one (1) or more of the party's initiate litigation within sixty (60) days of the mailing date of the certified letter. If neither the buyer nor the seller initiates litigation or enters into a written release within sixty (60) days of the mailing date of the certified letter, the broker may release the earnest money deposit to the party identified in the certified letter.

Listing Agreements

It is important that the managing broker reviews and signs all listing agreements entered into with the company. You want to make sure that the listing agreement is signed by all parties in title to the property or those that have the authority to sign on behalf of the title holders. All listing agreements are required to have a definite date of expiration and must be in writing. Verbal listing agreements are not enforceable and should never be allowed. It is also important to remember that a signed copy of the listing agreement must be delivered to the owner with three (3) business days of the time of signing. The listing agreement can be in either paper or electronic format. The original and all electronic files must be retained in the office of the listing broker. Net listings are illegal in the state of Indiana unless it provides for a maximum commission to be paid by the seller to the broker company.

Closing Statements

At the time of closing the transaction, listing and selling brokers are required to deliver to their client a complete detailed closing statement. Most brokers rely on the title company to prepare the closing statement for them which is acceptable. The listing and selling broker are required to keep copies of the statements for a minimum of five (5) years.

Disclosure of Interest by the Broker

It is common for real estate brokers to buy and sell their own properties. Anytime a license broker with your company is purchasing a property or selling their own property they must disclose in writing their interest in the property and the fact that they hold a valid real estate license.

Investigation of Escrow Accounts

Managing brokers are required to cooperate with the Indiana Real Estate Commission and the office of the Indiana attorney general in escrow investigations. The managing broker is required to provide a detailed summary of the company's escrow account upon request of either the Commission or office of the attorney general for investigative purposes. A managing broker that fails to cooperate is subject to sanctions by the real estate commission. Lack of cooperation may include failure to submit a requested written response to a pending investigation or failure to comply with any lawful demand for information made by the office of the attorney general, including failure to comply with any lawfully issued subpoena.

Referral Services

A managing broker may participate in a referral service or franchise that provides a referral service. There must be a written agreement with the cooperating broker regarding fees to be paid. When referring a seller or buyer to a cooperating broker for a referral fee you must have a written agreement with them to refer them.

Incompetent Practice

The incompetent practice section (876 IAC 8-2-7) of is just a small part of Indiana real estate license law but the most important to the managing broker. It covers everything that a managing broker or their broker associate could do wrong to jeopardize an individual's real estate license or the company's real estate license. The following is a review of incompetent practices.

Incompetent practice of real estate includes the following:

1. Failing to account for and remit any funds or documents belonging to others that come into the licensee's possession. (*Typically, this concerns earnest money in real estate transactions. It can also include other items such as keys, surveys, garage door openers etc.)*

2. Accepting or offering any inducement or rebate for the purpose of obtaining a listing or inducing a sale, where full disclosure in writing has not been given to all parties to the transaction at the time of the offer or acceptance. *(Offering and inducement to a buyer or seller to obtain their business is legal. You are required to disclose in writing to all the parties involved in the transaction that you are doing it. Be aware that rebates may only be paid to the buyer or seller. Paying anyone outside the transaction would be a violation)*

3. Receiving, accepting, or giving an undisclosed direct profit on expenditures made in conjunction with a real estate transaction. *(If you were paid a fee for selling*

a home warranty, failure to disclose to your client would be a violation.)

4. Acting in dual capacity of licensee and undisclosed client in any transaction. *(Any time you are the seller or purchaser in a real estate transaction you must always disclose it.)*

5. Guaranteeing, authorizing, or permitting any person to guarantee future profits that may result from the resale of real property. *(Be careful what you say.)*

6. Listing or offering real property for sale, exchange, option, rent, or lease without the written consent of, or on any terms other than those authorized by, the owner or the owner's authorized agent. *(You must have permission from the seller or their agent to advertise the property. Suggesting a price other than the current list price of the property would also be a violation.)*

7. Inducing any party to a written agency agreement or a contract of sale to breach such agreement or contract for the purpose of substituting a new contract with another person.

8. Accepting employment or compensation that is contingent upon the issuance of an appraisal report on real estate at a predetermined value.

9. Issuing an appraisal report on real property in which the licensee holds an interest and fails to disclose the interest in writing to all parties.

10. Soliciting or negotiating, or both, a written agency agreement, a sale, exchange, or lease of real property directly with lessor, lessee, seller, or buyer if the licensee knows that the party has a written contract in connection with the property that guarantees an exclusive agency to another licensee unless the seller, buyer, lessor, or lessee initiates the action in writing prior to expiration of the agreement. *(You cannot solicit another broker's listing. However, if the seller contacts you about listing it with you once their contract expires you may meet with them about a future listing.)*

11. As a licensee representing, or attempting to represent, more than one (1) Indiana broker company. *(A licensee may be licensed under only one (1) managing broker.)*

12. Paying a commission to or otherwise compensating a person who is not licensed for performing the services that, by law, require a license. *(You cannot pay anybody who does not hold a real estate license part of your commission.)*

13. Committing any act of fraud or material deception while engaged in acts that, by law, require a license. *(This is a broad statement they basically cover most types of illegal activity while licensed.)*

14. Having been convicted of a crime having a direct bearing on whether or not the person should be trusted to serve the public as a licensee. *(Licensees must disclose any conviction of a crime to the Commission within 30 days of the conviction. The conviction may not be the sole basis for section or denial of license.)*

15. Having been finally determined to have engaged in an unlawful discriminatory practice under the Indiana Civil Rights Act.

Personal Assistants

Many real estate offices employ unlicensed personnel to handle day to day duties such as answering calls, scheduling appointments, preparing marketing materials, etc. It is necessary that a managing broker understand which real estate activities require a real estate license and which activities do not. Unlicensed assistants cannot perform any activity that requires a license. Thus, their activities are generally behind the scenes, supervised by the employing licensee and are specifically limited by license law as follows. They cannot:

(1) Prepare ads or promotional materials without review or approval of the employing licensee.

(2) Show property or hold open houses.

(3) Answer questions from customers or clients about properties other than those concerning list price, address, or geographic directions.

(4) Discuss or explain contracts or other relevant documents.

(5) Conduct telemarketing.

(6) Negotiate or discuss any commission/fee structure on behalf of the licensee or firm.

Agency Law

In the past 25 years, there is nothing that has had as much impact on the real estate industry as agency law. In Indiana, like other states, we continue to adapt to the changes that agency obligations place on licensees through legislative requirements as well as evolving broker business models. Since real estate brokerage has been around, the principle of agency has applied. It was presumed that when a seller listed their property with a broker, the broker was the agent of the seller. (Note: most states require that real estate listing contracts be in writing, as does Indiana. In a few states, oral listing agreements are enforceable.) You have probably heard the term caveat emptor, or "buyer beware". This refers to the principle that the broker was the agent of the seller, and thus had fiduciary responsibilities to the client (also called the principle). The buyer is on his own.

While the concept of cooperation between brokers has always been encouraged by the National Association of REALTORS® and its Code of Ethics, two brokers cooperating in the same transaction was not always commonplace. It was not until Multiple Listings Services (MLS's), gained popularity in the 50's and 60's that cooperation really gained popularity.

In regard to agency, though, the concept of cooperation presents a problem. We know that the listing broker represents the seller. We are now introducing a second broker into the transaction. Who does that broker represent? With whom does that broker have an agency relationship?

Most MLS's were organized through local Associations of REALTORS, under directive of the National Association. So, it came to be that, if you wanted to participate in an MLS, you had to agree that if you were the listing broker, you would submit your listing information to the service and make a blanket offer of subagency to the other members. The seller had hired the listing broker. The listing broker was asking other brokers to help sell his listing. If you wanted to show a member's listing, you had to agree to accept his offer of subagency, thus acting as an agent broker, and a sub-agent of the seller. All agents acted on behalf of the seller. The buyer was not represented.

This went on for many years and seemed to be working well. In fact, MLS's have become the most successful marketing tool in the industry, facilitating countless transactions to the benefit of both consumers and agents.

But there was an inherent problem in the system. While legally all agents were representing the seller, the parties to the transaction were not being told that that was the case. When surveys were done with home buyers and sellers regarding agency relationships, homebuyers would generally answer the question, "Did you have an agent representing you when you bought your home?", by saying, "Yes!" And sellers, when asked, "Did the agent who brought the buyer for your home represent you or the buyer?", would respond by saying, "The buyer!".

Obviously, the consumer did not understand agency relationships when it came to the real estate industry and was not being informed about them. Looking back, it is no wonder! Real estate agents were not being taught what agency really meant. While licensing classes taught the concept of fiduciary responsibilities, rarely was it put in legal perspective. Agents just wanted to list and sell real estate! What was the problem?

The problem was this. If you are someone's agent, you have fiduciary duties to your client, also called the principal. These fiduciary responsibilities have been created in a variety of ways, most notably through common law interpretations through court decisions, and statutes and regulations enacted by state legislatures or instituted by state regulatory agencies (i.e., the Indiana Real Estate Commission). Responsibilities are also furthered voluntarily through membership in the National Association of REALTORS® (and adherence to its Code of Ethics), and participation in a Multiple Listing Service (MLS), abiding by their rules and regulations.

The responsibilities include care, obedience, accounting, loyalty, and disclosure. In licensing classes, we use the acronym COALD. Let us examine the meaning behind each of these:

- CARE. This refers to skill and expertise. The agent is legally presumed to have skill and expertise upon which the client can rely. A buyer client who decides not to have a home inspection done because their agent says that the lender will order an appraisal, which is the same thing is a great example. Later, when physical defects are discovered, and the buyer suffers financial loss, they may claim their agent should bear some responsibility because they violated their obligation to *care* for their client through lack of expertise. It is important that licensees not endeavor to offer expertise in areas in which they lack competence for this reason.

- OBEDIENCE. An agent has an obligation to obey the legal instructions of the principal. If the client tells you they do not want to have open houses, you are obliged to obey their wishes. This responsibility does not extend to illegal directives, such as instructing the agent to violate fair housing laws, or to not disclose the existence of physical defects in the property.

- ACCOUNTING. The agent has the responsibility to account for money or property given to the agent by the client in the course of the agency relationship. This could refer to earnest money, or other things, such as blueprints, documents, and such, relating to the property.

- LOYALTY. This is an especially important concept in the realm of *agency law.* To be loyal to your client, you will put the interest of the client above the interests of all others in the transaction, including your own. This can have significant ramifications for the agent when you think about the typical compensation arrangement, which, in real estate, is often a contingent fee. You have probably heard stories of fiduciaries (lawyers, agents, attorneys-in-fact) who used funds for their own benefit, to the detriment of the client. Agents need to exercise care in this area. Also inherent with loyalty is the obligation of *confidentiality.* Agents have an obligation to keep confidential information they know about their client. This obligation extends beyond the end of the agency relationship, with certain legal and ethical exceptions.

- DISCLOSURE. In relation to agency, disclosure goes beyond the obligation to disclose physical defects in the property. An agent is obligated to disclose to the client everything they know about the situation (unless legally prohibited), so the client can make an informed decision. This is a critical area, and one in which an agent can create value for themselves. Information regarding market trends, property values, motivations, just to name a few, should be disclosed for the client's benefit. The more knowledge you have, which you share with your client, the more valuable you become!

Both buyers and sellers believed that the buyer was being represented. This being the case, two possible things were occurring, both of which present problems for agents.

If the buyer thought the agent with whom they were working was their agent, they may have been telling that agent things that they would not want the seller to know, such as why they were motivated to buy the home they were looking at, how much they would ultimately pay for the property, or other confidential information.

Because the licensee was a sub-agent of the seller, they were obligated to disclose this information to the seller. Failure to do so would be a violation of their fiduciary *responsibilities and* could result in disciplinary action or could have legal ramifications.

If the agent had led the buyer to believe that the agent was acting on their behalf, the agent may have created an implied agency relationship. This means that even though there was no agreement between the two that the agency relationship existed, the words and/or actions of the agent led the buyer to believe that it did. ("Don't worry, I can help you!", or "I'll take care of everything.", or "You can count on me.", would be phrases that could create an implied agency relationship.) Under implied agency, the same fiduciary duties discussed earlier apply. Telling the seller, the type of information mentioned above would violate the agency relationship with the buyer.

Because the agent was a sub-agent of the seller and was the implied agent of the buyer, he was acting as a *dual agent*, meaning the agent was representing both parties in the same transaction. Dual agency is permissible, as long as both parties to the transaction are aware of it, and voluntarily agree to the dual agency.

If the agent had not informed the parties that he was a dual agent, he would be acting as an *undisclosed* dual agent. Undisclosed dual agency is illegal! In addition to licensing sanctions, the agent could be legally liable to both parties.

As you can see, the concept of agency was filled with more peril than agents were being taught in licensing classes.

By the early 1980's, the industry was becoming more aware of the scrutiny being placed on licensees. Some changes were implemented, such as language in purchase agreements informing the buyer that the agent was in fact the agent of the seller, not the buyer. These attempts generally lacked both substance and timeliness.

Enter Edina Realty. Edina Realty, in the late 1980's, was one of the largest real estate companies in the country. (They still are, operating as part of what today is Home Services of America.) They made the decision to allow their associates to act as buyer's agents. Their position was that the listing agent represented the seller. The selling agent could represent the buyer. At closings, the parties signed disclosures acknowledging the agency positions. That was a problem. Agency positions must be disclosed at the beginning of a relationship, not at the end. And because of Edina Realty's industry prominence, they became the poster child for what was wrong in the real estate industry when it came to agency law. Multiple lawsuits ensued, from governmental agencies and others claiming Edina Realty had been acting as undisclosed dual agents in thousands of transactions. Millions of dollars legal claims were initiated. Now, this really caught the attention of the industry. In 1992, the President of the National Association of REALTORS® Commissioned an advisory group to study the problem. They came back with the following recommendations:

- Modify Multiple Listing Service policies regarding mandatory sub-agency.
- Encourage legislative requirements to disclose agency positions.
- Modify NAR positions regarding sub-agency.
- Have written company policies regarding agency practices.
- Emphasize training and education for real estate practitioners.
- Be consistent in use of terminology and definitions throughout the industry.

By 1994, every state in the country had enacted agency legislation for real estate licensees.

GENERAL DEVELOPMENTS IN AGENCY COMPLIANCE

While states approached agency reform in different ways, three general developments were universally addressed:

- The abolishment of mandatory sub-agency
- Disclosure of agency options
- Increased representation for buyers

In Indiana, the first legislation, which became effective in 1994, gave real estate buyers the option of being treated as a customer (as was the past practice), or being a client (meaning the agent would act as a buyer's agent). At the time, most practitioners still did not understand what all the fuss was about. In fact, many agents felt the whole agency issue would just go away. But, increasingly, when given the choice, buyers opted to have the agent represent them. When informed, they recognized the benefit of having an agent act on their behalf.

Our agency reform still kept the broker at the center of the agency relationship. That meant that agents worked for a broker (called the managing broker). When agents engaged a client, be it a buyer or seller, the agency relationship was created between the client and the broker.

If an agent was listing a house, the listing agreement was between the seller and the broker. The listing agent was an agent of the broker, thus a sub-agent of the seller. All agents affiliated with the managing broker were sub-agents of all sellers listed with the firm. This, of course, was the way it had always been.

With buyer agency, it worked the same way. When a buyer opted to be treated as a client, the agency

relationship was also created with the broker, and the agent acting as a sub-agent. And, as with sellers, all agents of the firm were sub-agents of all buyers being represented by their broker. This became quite confusing. At least with sellers, when you saw a yard sign, or an ad with your company name on it, you knew you were an agent of that seller. With buyers, we did not have that luxury. There was really no way of knowing whether buyers were being represented by your broker. Technically, an agent was legally acting as a sub-agent of countless buyers but did not know who they were. This also gave us our first introduction to disclosed dual agency, or as we call it, limited agency. Dual agency occurs when an agent is representing both parties in the same transaction. When done without the parties' knowledge, it is illegal, and can result in serious action being taken against the agent, including civil action by either or both parties, as well as licensing sanctions. It is perfectly legal, though, when both parties to the transaction have been informed of the dual agency and give their permission, in writing.

Remember, agency relationships were being created between the client (either buyer or seller), and the broker. When any agent in a company was showing any company listing to a buyer client, a dual agency occurred. This needed to be disclosed to the parties. As aforementioned, Indiana calls this limited agency. It is called limited agency because there are limitations placed on the agent. There must be written consent by all parties to the limited agency. The written consent must contain a description of the real estate transaction in which the limited agency is occurring. It must inform the parties that the agent is representing parties whose interests may be adverse. And it must state that the agent will not disclose the following, without the written consent of the parties to the transaction:

A. Any material or confidential information, except adverse material facts or risks actually known by the licensee concerning the physical condition of the property and facts required by statute, rule, or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the property by the parties.

B. That a buyer or tenant will pay more than the offered purchase price or offered lease rate for the property.

C. That a seller or landlord will accept less than the listed price or lease rate for the property.

D. What motivates a party to buy, sell, or lease the property.

E. Other terms that would create a contractual advantage for one (1) party over another party.

The written consent must also state that there will be no imputation of knowledge between the licensee and any party; that a party does not have to consent to limited agency; and that the consent to limited agency has been given voluntarily, and that the disclosure has been read and understood.

The concept of limited agency was confusing to consumers and real estate agents alike. If, and how well it was being explained to consumers, was highly suspect. And there was another problem. About 40-50% of transactions involved limited agency, because the buyer and seller were being represented by agents working in the same company, thus, they were not getting full representation.

Engrossed Senate Bill No. 358 Effective July 1, 1999

Indiana's first major overhaul of their real estate agency law came in 1999. By then, agents had come to realize that agency law was not going away, and buyers were invariably opting for client representation as opposed to customer service. But the *limited agency concept* was confusing, especially to consumers, who did not understand that the broker of the company was legally their agent. After all, in all likelihood, they had never met the broker. Their interactions were with their real estate agent.

So, in an attempt to eliminate confusion, Senate Bill No. 358 drastically altered agency relationships. The new legislation changed the agency relationship. Rather than the broker being the agent of all clients, the agency relationship was created between the client and the licensee. A licensee, by new definition, is an individual or entity issued a salesperson's or broker's real estate license by the Indiana Real Estate Commission.

It also changed the way the agency relationship was created. The new law stated, specifically, "A licensee has an agency relationship with, and is representing, the individual with whom the licensee is working, unless:

1. There is a written agreement to the contrary; **or**

2. The licensee is merely assisting the individual as a customer."

The new law created another new concept, called and in-house agency relationship. This occurs when two or more clients are being represented by different licensees within the same real estate firm. So, when an agent (licensee) lists a home, the agency relationship is created directly between the seller and the agent. The employment agreement is still between the seller and the broker. When a licensee starts working with a buyer, the licensee automatically becomes the agent of the buyer. No longer does an agent have a relationship with all the sellers who have their homes listed with their company, nor do they represent all the buyer clients of their company. The only agency obligations are with their sellers and buyers.

This concept is called designated agency. Rather than the broker being the agent in all situations, one agent is designated as the agent of the client. Many states have gone to this system. This major change was generally welcomed. The automatic, legal, presumption of agency was much easier to understand. The confusion of limited agency was greatly reduced, as the only transactions involving limited agency occur when a listing agent is also representing the buyer for that listing. As before, the

limited agency position must be disclosed and agreed to, voluntarily, in writing, by the parties prior to entering into a purchase agreement. And the second major change in the 1999 legislation was the elimination of sub-agency. It is no longer legal for an agent to offer, or act in a capacity of, sub-agency. (By that time, sub agency had greatly diminished anyway, since, as previously mentioned, most buyers were choosing to have agency representation.)

The issue of compensation in relation to agency was also clarified. Senate Bill 358 specified that compensation does not create agency. The fact that a party is compensating another party in no way creates an agency relationship.

There were a few minor adjustments. Confidentiality of information became a bigger issue. Since two agents in the same office could be representing different parties in the same transaction, brokers had to be more concerned about availability of information within the firm or office. And the position of managing brokers in transactions in which they were personally involved also became an issue. The new law stated that because the managing broker was potentially aware of confidential information about their agents' clients, they would have to act as limited agents in those transactions in which they personally represented a buyer or seller in an in-house sale.

Aside from these minor adjustments, most agents seemed to adapt to the new agency legislation quite well, and felt more comfortable knowing that, in most cases, they could give full representation to their clients.

THE CHANGING REAL ESTATE BUSINESS

In "traditional" situations, agency relationships had been simplified, and both agents and consumers were more knowledgeable and comfortable. By "traditional", we mean transactions in which the client was getting what has become to be known as full-service representation, and brokers were cooperating with other brokers as they had been doing for years through their MLS's.

But different business models had been gaining momentum in the real estate industry. Instead of offering "full-service brokerage" under a commission type compensation agreement, alternatives began arising.

The principle behind alternative concepts is called unbundling of services. In the "full service" model, a seller would list a home with a broker, and the broker would be involved in all facets of the sale, from marketing the home, to writing and negotiating contracts, to helping with financing and inspections, to arranging and attending the closing, and following up through possession. In return, the seller paid an agreed upon commission, generally a percentage of the sale price.

Alternative models started offering limited services. That meant that rather than offer the traditional full service, they would let the seller choose what services they wanted, and charge them only for those services, whether it was a flat fee, or a lower commission being charged by full-service brokers. And while this concept has been around for decades, it has seen more rapid growth in recent years.

Perhaps the most extreme example of a limited-service model is called the entry only broker. In this situation, the seller contracts with the broker to perform one service only: submission to the Multiple Listing Service. The seller pays a flat fee to the broker. The seller is acting as a 'For Sale by Owner', while offering to cooperate and compensate a buyer's agent. Generally, if an agent wants to show that home, they will contact the owner to schedule the showing. If they write a contract, they present it directly to the owner. If accepted, the buyer's agent follows through on the buyer side of the transaction, while the seller does what is necessary on their end. While there is certainly nothing illegal about alternative business models, and entry-only brokers in particular, there is concern within the industry about some issues, and *agency* is one of them.

The problem arises for a buyer's agent dealing with an entry-only broker. Because the agent must deal directly with the seller, who generally is not deeply knowledgeable when it comes to the transaction, they may be put in a position of having to answer questions posed by the seller. The seller may even ask for advice, which they should be asking of their listing agent, but they have contracted away that option (unless they pay additional fees, which is what they were trying to avoid in the first place.) By answering the seller, the buyer's agent runs the risk of creating an implied agency relationship. (Remember, implied agency is created unintentionally, through words or actions.) The seller may mistakenly believe that the buyer's agent is looking out for them as well.

If the buyer's agent tries to take a position of neutrality, they would be violating their agency responsibilities. The buyer's agent is the fiduciary of the buyer and should be working in the best interests of the buyer client. This puts the seller in a very precarious position in which they may easily be taken advantage of.

Limited-service brokers argue that the seller should have the right to choose the services they wish to receive, in return for lesser fees. A For Sale by Owner, for example, has the right to proceed on their own with no representation. Why shouldn't a seller be able to choose nominal services if they so desire?

This argument will certainly continue for some time. And the industry will continue to evolve into different models as new entities look to make inroads into the real estate brokerage business. But from an agency standpoint, many states have decided which position they are going to take. Their stance is that if someone is licensed as a real estate practitioner, and they purport to be an agent, then there are certain minimal obligations they owe their client. Indiana is one of those states.

House Bill No. 1339

In 2006 Indiana adopted its second major change in relation to agency law. While the changes are not as

dramatic as in 1999, they do address concerns regarding agency representation, and they continue with the premise that real estate licensees in Indiana have a level of obligation that must be met.

This is referred to as minimum services requirements, and Indiana is not the first state to pass legislation of this manner. It requires real estate licensees to perform at least a minimum level of services when representing sellers, regardless of the nature of the contractual agreement.

This type of legislation has proven controversial in the small number of states that have considered it. The reason for the controversy comes from the federal government. In general, the government believes that imposing minimum requirements on listing agencies is an antitrust issue. It is argued that such impositions cause fees for real estate services to increase, essentially leading to standardization within the industry. Such standardization could be construed as an anti-trust violation, detrimental to the consumer. The Department of Justice has gone so far as to warn states not to pass such legislation. Other governmental agencies have suggested that the real estate industry be investigated. Some states have reconsidered their positions on *minimum services*.

But, on July 1, 2006, House Bill No. 1339 became law in Indiana. While it impacts a variety of real estate issues, we will focus here on the agency changes and obligations. The primary emphasis regarding agency law involves those *minimum service requirements* we mentioned. The new law requires the following, whether the licensee is working with a seller or a buyer: the licensee *must:*

1. Be available to receive and timely present offers and counteroffers for the purchase or lease of:

   A. the property of the individual if the individual is a seller or landlord; or

   B. the property that the individual seeks to purchase or lease if the individual is a buyer or a tenant.

2. Assist in negotiating, completing real estate forms, communicating, and Timely presenting offers, counteroffers, notices, and various addenda relating to the offers and counteroffers until:

   A. a purchase agreement or lease is signed; and

   B. all contingencies are satisfied or waived.

3. Timely respond to questions relating to offers, counteroffers, notices, various addenda, and contingencies from the seller, landowner, buyer, or tenant pertaining to the subject property.

As aforementioned, the 1999 legislation created the automatic presumption of agency. It stated that a licensee has an agency relationship with the individual with whom they are working. But it also allowed for the possibility of declining agency representation, by including the language, "unless there is a written agreement to the contrary." In other words, you did not need something in writing to be someone's agent, you needed something in writing *not* to be someone's agent.

So, what about a broker who contracts with a seller or buyer to provide services, but includes language specifying that the broker is not acting as an agent? That would make the individual a customer. The law addresses that possibility with the following language:

"A licensee has an agency relationship with, and is representing, the individual with whom the licensee is working, unless:

1. there is a written agreement to the contrary; **or**

2. the licensee is merely assisting the individual as a customer without compensation."

Therefore, if a broker tries to avoid agency obligations by treating a buyer or seller as a customer, it does not matter. If they are being paid, they are still obligated to perform those minimum services as outlined above.

The law also states that if a licensee, who is not acting as an agent, fails to perform the duties as set forth, and another licensee performs those duties on behalf of, or at the request of the seller, landlord, buyer, or tenant, the performance of those duties by the other licensee does not constitute an agency relationship.

Finally, the law states that a licensee is not prohibited from performing duties in addition to the duties specified in the new law on behalf of or at the request of a seller, landlord, buyer, or tenant in a real estate transaction.

That is where we currently stand. What the future holds, no one knows. But what is a certainty is that as the real estate industry continues to evolve, agency law for real estate practitioners will evolve as well.

FEDERAL REGULATIONS

The Fair Housing Act

Strict adherence to fair housing laws is the responsibility of every real estate licensee. The managing broker however bears even more responsibility because they are responsible for the actions of all their affiliated licensees. So, it is a good idea to constantly provide training on the subject. The Fair Housing Act protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing related activities. Additional protections apply to federally assisted housing.

Who Is Protected?

The Fair Housing Act prohibits discrimination in housing because of:

- Race

Race refers to a group of people who share common

characteristics. A racial group is typically socially constructed by physical characteristics, such as skin color. The group is often treated the same socially due to the association with their race.

• Color

Different skin colors exist, even within racial groups, and some people may believe they have been treated unfairly because of their skin color. For example, people have filed charges on the basis that they were discriminated against as a result of being lighter skinned or darker skinned.

• National Origin

National origin is defined as a person's country of birth or from where their ancestors come. The US Department of Justice has acted against municipal governments that have tried to limit the number of ethnic minority families who have tried to settle in a specific community. Housing providers cannot deny a housing application or charge more rent to home seekers on the basis of their national origin or ancestry. Lenders have also been sued for offering stricter or less favorable loan terms to minority borrowers.

• Religion

Showing a preference for or against a religious group or showing intolerance for that group's observation of its religious practices or dietary habits is religious discrimination.

• Sex

Homebuyers cannot be discriminated or sexually harassed on the basis of their sex. In many of the discrimination cases, women encounter sexual harassment from landlords who want sexual favors in exchange for housing. Unfortunately, women, many who may be of low income, and therefore, have limited affordable housing options, are forced to tolerate these situations because they fear that they and their families will be evicted from their homes. The US Department of Justice also notes that women—particularly minority women—have also experienced pricing discrimination from mortgage lenders.

• Familial Status

Familial status refers to the presence of children under the age of 18 who are members of the household, because of their birth or adoption, or because they have been legally placed in the household. Discrimination in this protected class includes placing limitations on the number or age of the children in the family.

• Disability

Under the American Disabilities Act of 1990, a person with a disability is: "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."

What Types of Housing Are Covered?

The Fair Housing Act covers most housing. In limited circumstances, the Act exempts owner occupied buildings with no more than four units, single-family houses sold or rented by the owner without the use of an agent, and housing operated by religious organizations and private clubs that limit occupancy to members.

What Is Prohibited?

In the sale and rental of housing:

It is illegal discrimination to take any of the following actions because of race, color, religion, sex, disability, familial status, or national origin:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Otherwise make housing unavailable
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide a person different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- Make, print, or publish any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination
- Impose different sales prices or rental charges for the sale or rental of a dwelling
- Use different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements
- Evict a tenant or a tenant's guest
- Harass a person
- Fail or delay performance of maintenance or repairs
- Limit privileges, services, or facilities of a dwelling
- Discourage the purchase or rental of a dwelling
- Assign a person to a particular building or neighborhood or section of a building or neighborhood
- For profit, persuade, or try to persuade, homeowners to sell their homes by suggesting that people of a

particular protected characteristic are about to move into the neighborhood (blockbusting)

- Refuse to provide or discriminate in the terms or conditions of homeowner's insurance because of the race, color, religion, sex, disability, familial status, or national origin of the owner and/or occupants of a dwelling
- Deny access to or membership in any Multiple Listing Service or real estate brokers' organization

Harassment:

The Fair Housing Act makes it illegal to harass persons because of race, color, religion, sex, disability, familial status, or national origin. Among other things, this forbids sexual harassment.

Housing providers must make reasonable accommodations and allow reasonable modifications that may be necessary to allow persons with disabilities to enjoy their housing.

In your firms' company policy, it should state that your firm prohibits its agents to discrimination based on race, color, religion, national origin, sex, familial status, and handicap. In addition, it should echo the realtor Code of Ethics prohibits discrimination based on sexual orientation and gender identity.

Antitrust Laws

Licensees today are serving clients and customers in the face of mounting legal complexity. Failure to understand antitrust laws can lead to litigation of monumental proportions. Managing brokers are responsible for the conduct of their brokers and ignorance of the antitrust laws is not a valid excuse. Ignorance of the antitrust laws is not a valid excuse. The Sherman Antitrust Act of 1890 outlaws all contracts, combinations, and conspiracies that unreasonably restrain interstate and foreign trade. This includes agreements among competitors to fix prices, rig bids, and allocate customers, which are punishable as criminal felonies. The Act has had a major impact on the real estate industry. The following are potential antitrust violations.

1. Price Fixing

Real-estate brokers typically price their services based upon a percentage of the sales price. At the same time, they usually offer a share of that commission to a broker that brings in a buyer. It sometimes appears that these commissions and offered commission-splits are similar and almost standard within certain markets. That is not to say that they are fixed. There are many reasons they could end up at the same level. Any written or verbal agreement with a competing brokerage to charge a certain commission or offer the same compensation in a cooperative transaction is a violation of the antitrust laws that can result in both civil and criminal charges. The key to avoiding antitrust violations based upon the fees a broker establishes for professional services rendered to a client are to establish the fees unilaterally without consultation or discussion with persons affiliated with any other competing firm. Ensure that when the company's brokers discuss fees with actual or potential clients, they use words that convey the impression to the listener that the company is in fact pricing its services independently

2. Market or Customer Allocation

Brokers should not agree to divide real estate markets by either written or verbal agreement. Real estate companies that agree to divide a real estate market by area violate antitrust laws. Another type of violation is an agreement to allocate customers. Brokers may agree to stay away from each other's clients or former clients. Poaching may seem impolite but agreeing not to do it can violate the antitrust laws.

3. Bid Rigging

Real-estate properties, particularly foreclosures, are often sold via auction. These auctions are often local (within a county) with the same players as participants. Bidders should not make any agreements about their bids or lack of bids. In fact, it is best not to discuss this sensitive information with competitors at all.

4. Group Boycotts

Starting in the early 2000's discount brokers, MLS entry only brokers, fess for service brokers and other similar real estate company business models entered the real estate industry to compete with the traditional full-service brokers. This caused the traditional brokers to react by refusing to cooperate with the new models and in some cases not allowing them to join the local association of Realtors or the Multiple Listing Service. Instead of competing better for customers, the traditional brokers will instead compete against the new business models. This conduct often leads to antitrust violations. When two or more brokers agree to refuse to do business with a new entrant to the real estate market it can be an antitrust violation.

5. Real Estate Brokers Cooperate with Each Other

Local realtor associations sometimes own and run Multiple Listing Services. Real estate brokers despite competing with each other work together all the time. They sometimes serve together on local, state or National Association of REALTORS® board of directors, committees and other activities. This interaction can sometimes result in illegal collective activities. A Multiple Listing Service provides a database for homes in a market for sale, along with information about the properties and their asking prices and terms. This is beneficial for both sellers and buyers. However, the MLS's are often owned by local realtor associations. If their membership policies discriminate against certain brokers or individuals it might create an antitrust violation. Anyone involved in operating an MLS should seek antitrust counsel because it is quite easy to cross the line into anti-competitive territory.

Real Estate Settlement Procedure Act (RESPA)

The Real Estate Settlement Procedures Act, or RESPA, was enacted by Congress to provide homebuyers and sellers with complete settlement cost disclosures. The Act was also introduced to eliminate abusive practices in the real estate settlement process, to prohibit kickbacks, and to limit the use of escrow accounts. RESPA is a federal statute now regulated by the Consumer Financial Protection Bureau (CFPB).

Initially passed by Congress in 1974, RESPA became effective on June 20, 1975. RESPA has been impacted over the years by several changes and amendments. Enforcement initially fell under the jurisdiction of the U.S. Department of Housing and Urban Development (HUD). After 2011, those responsibilities were assumed by the Consumer Financial Protection Bureau (CFPB) due to the Dodd-Frank Wall Street Reform and consumer protection legislation.

Equal Credit Opportunity Act (ECOA)

The Federal Trade Commission enforces the Equal Credit Opportunity Act (ECOA), which prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or someone on public assistance. Creditors may not use this information when deciding whether to grant credit or when setting the terms of credit. Factors such as income, expenses, debts, and credit history are among the consideration's lenders use to determine the granting of credit. The law provides protections for individuals who deal with any organizations or individuals who regularly extend credit, including banks, finance companies, retail and department stores, credit card companies, and credit unions. Anyone who participates in the decision to grant credit or in setting the terms of that credit, including real estate brokers who help a buyer in financing a home must comply with the ECOA.

National Do Not Call Registry

The life blood of the real estate industry for years was "cold calling". Agents would spend hours at a time calling random homeowners to ask them if they were interested in selling their home. This practice is now frowned upon due to the National Do not call Registry.

Under the federal rules, REALTORS may not engage in cold calling or a "telephone solicitation" for new clients and must refrain from calling numbers (residential and wireless) on the do-not-call registry. A "telephone solicitation" is a telephone call or message, unless exempt, "for the purpose of encouraging the purchase or rental of, or investment in, property, goods, services, which is transmitted to any person". Consumers can currently register their telephone numbers on the do-not-call registry (administered by the Federal Trade Commission) via the Internet or a toll-free number. The registry (sorted by area code) is available to telemarketers/businesses www.ftc.gov/donotcall. It is the responsibility of the telemarketer to maintain a record of the do-not-call requests and update their lists quarterly. A telemarketer must "scrub" or "cross-check" their list at least once every three months. Companies that illegally call numbers on the National Do Not Call Registry or place an illegal robocall can currently be fined up to $42,530 per call.

ERRORS AND OMISSIONS INSURANCE (E&O)

Risk management is both avoiding or mitigating inherently risk-potential situations in business and dealing effectively with problems when they inevitably do occur. One of the tools used by brokers to manage the risk exposure for their firms is insurance. The typical office will carry many different types of insurance ranging from fire insurance for the office and its contents to liability for vehicles to fidelity bonds for employees who handle the firm's money. One type of insurance that is unique to the real estate business is real estate agent errors and omissions insurance.

Know your policy

When making the decision whether or not to purchase E&O insurance the broker must understand that there are many policies and options available. Every insurance company has their own insurance policy forms with its own description of the coverage and the terms and conditions. E&O insurance provides coverage in instances where a real estate broker has failed to carry out their legal responsibilities or have been negligent in their delivery of services. To better understand the various policies available when shopping for E&O insurance the managing broker should always carefully read any E&O policy they are considering. The following identifies issues you need to understand when comparing different policies. Who and what is covered under the policy and the conditions under which the broker and company is covered? The total costs, coverage limits, deductibles of coverage; and how your company policies may affect your insurance coverage?

Who is covered?

Determining who will be covered under the policy is an important first step. There will be the named insured (the person or entity in whose name the policy is obtained) and whoever is included in the definition of that term. Knowing how the policy defines the "named insured" will answer questions such as: Are the firm's employees and independent contractors included in coverage? Are personal assistants (licensed and unlicensed) included, even if they are compensated by the salesperson rather than the broker? Are related companies also covered under the policy? This will also be particularly important to brokers who have formed multiple business structures to manage their affairs. Related firms, even those with common ownership, may not be included under the coverage provided by a real estate brokerage E&O insurance policy.

What is covered?

Although the insurance covers liability for professional services you must review the exclusions from coverage. Each policy will identify circumstances under which it will not provide insurance coverage. The list of exclusions can be quite lengthy, and it is important that each be considered in evaluating a particular policy. Some common exclusions include claims arising from: bodily injury; fraudulent or criminal acts by the insured; bankruptcy; discharge of or failure to identify pollution; mold; other environmental issues; employment related issues for the brokerage staff; misappropriation or commingling of funds; discrimination; related business activities such as property management, title insurance, property/casualty insurance or mortgage brokerage; violation of securities laws; and dealing in properties owned by the insured. While not a comprehensive list, the foregoing demonstrates that the coverage can be diminished by exceptions if the buyer is not careful in reviewing the scope of coverage the policy actually provides.

In states with mandated E&O insurance requirements, the scope of the policy's coverage may be a part of the statutory or regulatory requirements. Before selecting any carrier's policy, it will be necessary to compare the policy's coverage with that of the state's requirements.

The policy review should also determine if the coverage fits the business of your brokerage. If you do not use lock boxes, a policy that excludes claims arising from their use will not be a factor in your decision, but if you use a lock box on all your properties it will be very important. Similarly, you will want to fit the policy to the types of transactions in which your brokerage specializes. A broker that does all commercial work is not going to want a policy that limits coverage to residential real estate.

Understanding the exclusions will also enable the broker to identify areas where critical gaps in coverage exist. It is possible to negotiate with the insurance provider and many, although not all, of the exclusions listed in the policy can be reinserted into the policy for an additional premium. It is not uncommon for insurance companies to have standard endorsements and fees for adding back coverage for exclusions that are listed in the policy. In reviewing the coverage exclusions in the policy, whether or not coverage is available for an additional fee should be reviewed with the insurance broker.

When does coverage begin and end?

Most E&O insurance will be sold as a "claims-made" policy. This is in contrast to most other insurance policies with which brokers are familiar that are sold on an "occurrence" basis. A claims-made policy only covers claims that are filed during the term of the policy and for a relatively short period of time following the policy's expiration. Often there is a special provision dealing with coverage for claims which arise from events that occurred prior to the effective date of the policy. The event must have occurred during a specified period of time prior to the initial effective date of the policy and the insured must not know of the potential claim at the time the policy is issued. The policy may then provide coverage if a claim does arise from such an event during the specified time period prior to the effective date and the claim is filed during the term of the policy. Similarly, at the end of the policy there is usually a period of time during which claims can be filed if the event giving rise to the claim occurred during the policy period. However, if an event occurs during the term of the policy, but the claim is not made until after the expiration of the policy and the post expiration window for filing claims, then there is no coverage under a claims-made policy.

Understanding these time frames is vital, particularly for a brokerage changing insurance providers, if gaps in coverage are to be avoided. When changing to a new company the time frame for filing claims after the expiration of the policy can often be extended. Again, the length of extension that is desirable will be affected by the statute of limitations for bringing lawsuits against real estate agents. You should consult with your attorney to determine the appropriate amount of time for an extension.

How much coverage is available?

Understanding the amount of coverage is also important to understanding what is being purchased. While the face amount of the policy may be obvious, the insurance buyer should ascertain whether the policy includes a "per claim" limit and/or an "aggregate" limit for all claims during the policy term. Many policies contain both limits.

The managing broker needs to know the difference between defense costs coverage and indemnity. Indemnity coverage is for the amount of damages that the broker or company will be liable for as a result of the claim. The maximum limit the insurance company would be liable for is the amount of the policy limit. Defense costs are the cost of defending a claim and are typically not subject to the policy limits listed in the policy. There are some types of claims for which the insurance only provides defense cost and not indemnification. In those instances, there are likely limits on the amount of defense costs that the policy covers.

Control over any settlement proposed by the insurance company may be important to some managing brokers. Keep in mind that sometimes being resistant to an insurance company's proposed settlement or even worse trying to negotiate your own settlement could result in a huge financial loss. It may also result in higher premiums or cancelation of the policy. If this is an issue for the broker, they may want to investigate a special endorsement to the policy which requires that the broker consent to any settlement proposed by the insurance company. This "consent" endorsement gives the broker a degree of control over the coverage that does not exist if the provision is not included. However, the broker must fully understand the consequences as they relate to the coverage if a proposed settlement suggested by the

insurer is rejected by the broker. These may include caps on subsequent amounts the insurance carrier will pay for settlement or defense costs.

Deductible Expenses

One of the principals means the insured has to affect the cost of the insurance is the deductible. In some market's brokers may find it necessary to accept substantial deductibles, essentially self-insuring the amount of the deductible, in order to obtain affordable insurance against the possibility of an exceptionally large claim.

How and when that deductible applies differs in different policies and understanding how it applies in connection with a policy affects the value of that policy to a broker. There are two principal ways in which deductibles are applied in the event of a claim. In some policies the deductible applies only to indemnity payments and all defense costs are paid by the insurer. In most policies however, the deductible must be paid by the insured before the insurance company will pay anything towards the defense of the claim.

Office Policies for Brokers

Before beginning the process of shopping for E&O insurance the broker should prepare a summary of the office policies that have been established to eliminate or minimize situations in which the brokerage may be sued by clients or customers. The summary should include not only the processes used in the office (e.g., standardized forms, property condition disclosure requirements, broker supervision of sales people, use of state mandated forms, etc.), but also the client or customer relation steps taken to address potential problems before they lead to lawsuits or claims. What has the company done and what is it doing to minimize the risk exposure and how successful have these efforts been for your company.

Using this summary of your company's policies and their effectiveness to demonstrate why an insurance company would want your company as a customer can influence the availability of insurance for your company in at least three ways. First, your summary will demonstrate the importance of risk management in your office and if these policies have resulted in no or very few claims against the company, more insurers may be interested and will ensure your company and compete for its business. Second, insurers sometimes have different rates at which they will offer policies based upon a company's loss experience or other factors. Showing your company is a "good risk" may get you the best available rate from that insurer. Finally, some policies precondition certain types of claims on the insured having taken specific steps, for example using a property condition disclosure form. If your summary of office policies demonstrates that you meet the condition, then you are maximizing the scope of the coverage under the policy.

It is common for licensees in the office to participate in the payment of the premium and the deductible for any claim arising out of the actions of the licensee. The expectations should be carefully spelled out in the office's policies and in the agreement maintained with the independent contractor agents in the office. Each agent should have indicated that they have read and understand this provision along with the balance of the office policies.

Understand any obligations you may have to assure that a claim will be honored. In particular you will want to be sure you know where and when claims must be reported and what information must be included. As importantly, you should also know what may and may not be done by you in attempting to resolve the claim as the policy may penalize you if you have compromised any defenses you may have had to the claim.

Cost of Insurance

To get the best price it is sometimes necessary to shop with different companies. In preparing to do so the broker should identify all the companies offering E&O insurance in your marketplace and whether these companies are themselves good insurance risks as providers. If you are a good risk you want all of these companies competing to get your business. If you use multiple insurance brokers, make sure to know who (which insurance companies) the insurance broker is planning on working with to place the insurance. This will enable you to avoid making your company look desperate by having your information sent multiple times to the same insurer.

When discussing the cost of the policy brokers should use their office risk management plan that includes all of the reasons why the broker and his or her firm are good risks for the insurance company and should receive the best premium quote. The broker should also determine what services or benefits (in addition to the insurance itself) that the insurer may provide to assist or even supplement the broker's existing risk management program. You may be able to replace elements of your risk management program with something provided at no additional cost by the insurer.

The cost of the insurance is far from the last consideration in selecting a policy, but it is only after comparing these other factors that anyone can truly compare the value of different policies.

COMPANY POLICIES AND PROCEDURES

Written office policies are useful for standardizing operational tasks and expectations, which in turn is an important component of a brokerage's enterprise risk management. The content will obviously vary with the size and complexity of the brokerage, and it may be started in a small way and grow in content as the broker considers it necessary to augment the procedures. The whole purpose is to provide guidance for all related licensees and for employees and others who perform duties on behalf of the brokerage. It is a combination of instructions and procedures to be followed and the

documents or forms that should be used. The following section outlines the typical recommended subject matter that should be included in the written office policies.

1. Orientation for new licensees to the company

Orientation is the process of informing new employees about the nature of the organization, its policies, procedures, and rules, and the duties and responsibilities of the job. Orientation is the employee's first step in the process of learning the norms, values, attitudes, and behaviors that are expected in the organization. It provides new employees with basic information about the duties of the job; working conditions; compensation and benefits; policies, procedures, and rules; and will also serve to correct any erroneous impressions which may have been created in the recruitment and selection process.

Formal orientation programs are usually conducted within the first week of an employee joining an organization. Examples of the items to be included in an orientation program are listed below:

a) Read, date and sign acknowledgement of office policy manual and in the future revision pages at specified periods

b) Accessibility of policy manual or provision of personal copy of policy manual

c) Regular attendance required for information meetings

d) Timely pay license renewal fee and complete other license renewal requirements

e) Duty to account requirements (broker policy and regulatory requirements):

1. Submission of deposits to the brokerage

2. Cash policy, including identification of party (know who party is if paying cash)

3. Other

f) Transaction flow process and requirements

g) Identity of go to person for questions and problem

h) Sexual harassment

I) Discrimination

j) Personal safety procedures and requirements

k) Other

2. Multiple responsible brokers – delegation of duties.

A broker cannot delegate his duties and eliminate responsibility and liability. A broker may appoint an alternate person, on a temporary basis, who may be in charge in the absence of the broker however, the broker is fully responsible at all times. The same is true for branch offices. In these cases, the broker may appoint a branch broker to supervise the activities of the licensees (and any assistants) at the branch location however, the broker is still fully responsible for all activities at all locations.

Ensure licensees comply with Indiana licensing requirements.

The importance of maintaining an active real estate license is paramount and if regulatory requirements are not met on a timely basis, the license could be placed inactive, revoked or suspended. In order for a licensee to legally operate and attempt to limit their liability and risks, the licensee should timely meet all renewal requirements. The licensee in addition to paying the renewal fee, is required to successfully complete continuing and/or post-license education prior to each license renewal.

In addition, if the licensee is a member of a professional association, i.e., real estate boards/associations, Multiple Listing Service, etc. The professional association requires the member to pay regular membership dues and complete additional training in specific content areas, i.e., to retain REALTOR membership the member must complete a REALTOR Code of Ethics course every three (3) years.

In addition, if the licensee maintains certain professional designations that require yearly requirements to remain certified, these requirements must be met in order to maintain the professional designation.

The broker should address these requirements with all licensees and have a system designed to constantly remind the licensees of the yearly requirements.

If a licensee is placed inactive for not completing active license renewal requirements the Indiana Real Estate Commission may initiate a complaint against the broker and licensee for failure to supervise, unlicensed activity, false advertising, etc.

Establishing Competency

The new real estate agent has only been exposed to the real estate industry in a classroom setting and usually understands only basic real estate terminology. The new agent has not been educated on real estate activities like how to obtain a listing, how to show a property, how to write a contract, etc. It is the managing broker's responsibility to educate their agent on all of these procedures and share their real estate knowledge and expertise.

A licensee should only work in the area of their expertise such as residential sales, property management, commercial, etc. If licensees are to provide services in other specialty areas like commercial or property management, it is suggested that additional education and certifications be obtained by the agent prior to them providing services to the consumer. NAR is a tremendous resource for this type of education

Advertising and Solicitation

The rules applying to advertising and other solicitations generally restrict real estate agents from knowingly

publishing real estate advertising containing any false statement or misrepresentation concerning real estate, a trade in real estate or the provision of real estate services. In addition, licensees are generally prohibited from publishing real estate advertising concerning real estate sales or other disposition unless the owner of the real estate, or an authorized agent of the owner, has consented to the advertising. These provisions would include pamphlets, letters, and electronic communications, and would also cover press releases about real estate deals and even references in letters to matters pertaining to properties. The brokerage's written policies should address the following:

a) Definition of advertising (as per the regulatory authority)

b) Forms of advertising (newspaper, internet, social media, billboards, etc.)

c) Distribution methods for advertising

d) General mandated rules for advertising (federal, state, province, territory, etc.)

e) brokerage approval process

f) Client solicitation and consent

g) Joint advertising

h) Special promotions

I) Self-promotion and marketing

j) Teams and Groups

k) Unlicensed assistants

l) Personally, owned property

m) Responsibility of costs related to advertising

Unlicensed Activity

A managing broker must be actively engaged in the management of their related brokerage, ensuring that the business of the brokerage is carried out competently and in accordance with the applicable legislation and rules. The managing broker must ensure that there is an adequate level of supervision for licensees, licensee assistants, employees and others who perform duties on behalf of the brokerage. The broker must take steps to deal with any conduct that may constitute a breach of the licensing requirements to include Code of Ethic violations, if applicable. The written office policies may assist in this regard, and should include the following information:

a) Identify what activities require a license

b) Must possess an active license prior to performing licensed activity

c) Prohibited from splitting a fee with an unlicensed person

d) Unlicensed assistants

e) Report individuals who perform licensed activity without a license

Marketing

In addition to the restrictions dealing with advertising and solicitation regarding specific properties, there are some specific rules that a broker must address regarding the marketing of real estate services generally. In addition to the marketing of the brokerage's services, these rules also apply to the marketing of personal offices, including an office that is in the residence of an individual licensee or of any other person and deal with the placement of signage and the manner in which the brokerage name and address is presented in any advertisement.

Organization and Administrative Procedures

A managing broker must be actively engaged in the management of their related brokerage, ensuring that the business of the brokerage is carried out competently and in accordance with the applicable legislation. The broker must ensure that there are adequate resources available for licensees, employees and others who perform duties on behalf of the brokerage. The written office policies may assist in this regard, and should address the following:

1. Identify contact and resource person for questions
2. Timely deposit of earnest money or items
3. Ethical conduct
4. Process and procedures:
   - i. Residential Sales:
     - a. Contract Usage and Resources
     - b. Listing – Obtaining and Servicing
     - c. Buyer Representation Agreement
     - d. Showings, Open House Prospects
     - e. Obtaining and Presenting the Purchase Agreement
     - f. Counteroffers, Back-up Offers
     - g. Inspections
     - h. Title and abstract
     - i. Appraisal
     - j. Closing Procedures
     - k. Commission/compensation/referral fee/finder's fee, etc.
     - l. Other
   - ii. Lease Purchase
   - iii. Property Management
   - iv. Commercial
5. Disclosures:
   - i. Agency or broker relationship
   - ii. Sellers residential disclosure
   - iii. Property Condition
   - iv. Beneficial interest
   - v. Referral compensation

vi. Lead-based Paint
vii. Radon
viii. Meth labs
ix. Mold
x. Floodplain certification
xi. Landlord and Tenant
xii. Other

6. Forfeiture of earnest money or items
7. Return of earnest money or items
8. Closing
9. File reconciliation
10. Other

Teams and Groups

The managing broker must ensure that there is an adequate level of supervision for related licensees, including groups of licensees who work together (possibly referred to as a "team or group"). As for any other licensees or employees and others who perform duties on behalf of the brokerage, the broker is responsible for ensuring that such groups are supervised accordingly and that they are conducted in such a way as to avoid misleading the public (e.g., that they do not give the impression of being an incorporated company or a separate real estate brokerage). Written office policies may assist in this regard and should include direction on the following:

a) Broker authorization
b) Broker and team identification in advertising
c) Advertising of team must meet local statutes and regulations
d) Meet all local statutes and regulations, i.e., team leader name must be in the advertising; team leader must supervise team members, etc.
e) Unlicensed persons
f) Compensation
g) Other

Professional Conduct

A managing broker is responsible for exercising all of the rights of the brokerage, performing the duties imposed on the brokerage and controlling the brokerage's real estate business, which includes supervising all activities performed on behalf of the broker. As such, the professional conduct of the licensee and others who perform duties on behalf of the brokerage is the responsibility of the broker, and the written office policies should address the standards and expectations of the industry in general and of the brokerage in specific.

Regulatory Compliance

The managing broker is responsible for performing the duties imposed on the brokerage and controlling the brokerage's real estate business, which includes the services and activities performed by licensees and others on behalf of the brokerage. The written office policies should reflect any applicable legislative requirements, such as:

a) License Code and Rules

b) Related Laws (federal, state, province, territory, etc.):

1. Do Not Call Registry Act
2. Human Rights Act
3. Fair Housing Act
4. Anti-Trust
5. Financial Transaction Accounting Act
6. Electronic Monitoring Act
7. Taxation
8. Real Estate Settlement and Procedures Act (RESPA), Truth in Lending Act (TILA)
9. Foreign Investment in Real Property Tax Act (FIRPTA)
10. Interstate Land Sales Act (ILS)
11. Reporting Cash Payments of Over $10,000
12. Other

The Code of Ethics

The responsibilities of a broker are extraordinarily complex and are required to be performed with an increasingly high degree of professionalism. For this reason, knowledge of the law and business standards is crucial to maintaining good standing as a real estate licensee. The most important source of standards is the applicable legislation however, legislation can only set a basic or minimum standard of legal conduct. Therefore, the National Association of REALTORS® established a Code of Ethics in order to raise general business standards to a higher level and also to provide guidelines for interaction between professional members. The written office policies should address professional ethics in general, and professional association rules specifically, as applicable. The following is the preamble and the 17 articles of the code of ethics.

Code of Ethics and Standards of Practice of the National Association of REALTORS® Effective January 1, 2020

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

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

Preamble

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

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

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

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

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

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

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

Duties to Clients and Customers

Article 1

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

Article 2

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

Article 3

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

Article 4

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

Article 5

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

Article 6

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

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

Article 7

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

Article 8

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

Article 9

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

Duties to the Public

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

Article 11

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

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

Article 12

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

Article 13

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

Article 14

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

Duties to REALTORS®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about other

Article 16

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

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as

REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. *(Amended 1/12)*

CONCLUSION

As a managing broker you are required to wear many hats. Real estate sales are different from just about every other industry. Real estate agents are independent contractors. Whether they act like it or not, they all are running their own businesses. The managing broker is there to answer questions and help an agent handle problem and discover solutions. Having strong working knowledge of the many facets of the real estate industry will make the job far less stressful and much more rewarding.

Brokerage Management: Handling Challenges and Finding Solutions Review Questions

1. **Personal assistants of a managing broker are allowed to:**
   a. show property or hold open houses.
   b. conduct telemarketing.
   c. negotiate or discuss any commission/fee structure on behalf of the licensee or firm.
   d. None of the above.

2. **The Fair Housing Act prohibits discrimination in housing because of, but not limited to:**
   a. race
   b. religion
   c. disability
   d. All of the above.

3. **A signed copy of the listing agreement must be delivered to the owner within how many business days of the time of signing?**
   a. 1
   b. 3
   c. 7
   d. 10

4. **Brokers _____ agree to divide real estate markets by either written or verbal agreement.**
   a. always
   b. often
   c. should not
   d. should

5. **The Real Estate Settlement Procedure Act (RESPA) became effective on:**
   a. June 20, 1975
   b. June 20, 1995
   c. June 20, 1999
   d. June 20, 2005

6. **To become a managing broker, an individual must pass a _____ hour broker management course approved by IREC.**
   a. 50
   b. 20
   c. 24
   d. 12

7. **Agency reform has been approached by states in different ways, but the following areas were generally addressed:**
   a. Decreased representation for the buyers
   b. Disclosure of agency options
   c. The abolishment of mandatory sub-agency
   d. B and C

8. **According to Indiana license law, the manager broker is _____ for the actions of any of their affiliated licensees.**
   a. responsible
   b. not responsible
   c. responsible in only special cases

9. **A copy of the closing statement is required to be kept by the listing and selling broker for a minimum of _____ years.**
   a. 7
   b. 3
   c. 5
   d. 10

10. **If a licensee renews their license without having completed their continuing education hours, they are _____ of committing fraud.**
    a. innocent
    b. guilty

Review Question Answers:

1. d 2. d 3. b 4. c 5. b 6. c 7. d 8. a 9. c 10. b