

# Indiana Real Estate Brokers CONTINUING EDUCATION

## BROKERAGE MANAGEMENT POLICIES

PDH Academy Course Approval #CE21600004 | 4 CE HOURS



### COURSE DESCRIPTION:

This 4-hour continuing education reviews the general duties and responsibilities of Indiana's managing brokers. It addresses hiring and training brokers and support staff, the creation and maintenance of a Policy and Procedure manual, supervision, attention to financials with an emphasis on escrow accounts, and adherence to key federal and state laws.

The learning objectives of this course are as follows:

1. Recall factors pertaining to hiring and retaining successful team members
2. Recognize training topics and tactics
3. Distinguish contents of a Policy and Procedure manual
4. Identify critical documents in a transaction file
5. Recognize requirements relevant to escrow account management
6. Distinguish between key federal and state laws

### HOW DOES THIS COURSE WORK?

To enhance comprehension, review questions are provided at the end of the course.

A final exam will be administered after the course is completed to check for mastery of the material. If you do not pass the final exam, you can review the course material and retake the exam at no additional cost.

If assistance is needed with this course you can contact PDH Academy at 888-564-9098 or at [support@pdhacademy.com](mailto:support@pdhacademy.com).

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

# Brokerage Management Policies

## Final Exam

- Alice and Bob, both of whom are brokers, form a partnership and have a real estate company. Which of the following is correct?**
  - Both of them are equally responsible in the eyes of the real estate commission or board for supervising the activities of the company.
  - One of them will be the person known as “managing broker” and will be responsible for supervising the activities of the company.
  - The task of supervision must be split evenly, so Alice should do the financials, including the escrow account, and Bob should manage the agents.
  - Because they are partners, and equal, they must hire a third broker to run the company.
- One of the major reasons new agents leave the real estate business is:**
  - Lack of training
  - Lack of understanding how to manage time
  - Unrealistic expectations
  - All of the above
- An ideal new hire might:**
  - Display a “That’s not my job” attitude: this is key to time management
  - Be willing to accept both training and some criticism
  - Consider rejection unacceptable: anyone can be convinced to say “yes”
  - All of the above
- Which of the following is correct?**
  - The production of the highest performing broker sets the benchmark for acceptability in the office
  - The production of the lowest performing broker sets the benchmark for acceptability in the office
  - The benchmark of acceptability in the office for production is the average of all the performances of all the brokers in the company
  - A managing broker does not need a benchmark of acceptable production
- A brokerage has an agent who is very high-performing, needy, sometimes emotional, and believes that the rules in the office do not apply to him/her. This is a:**
  - Mother hen
  - Diva
  - Low-producing agent
  - Problem child
- Agents leave companies for a variety of reasons. One which has nothing to do with money is:**
  - The size of the annual holiday party
  - The décor of the office
  - The stylishness of the managing broker
  - Lack of recognition
- One of the reasons to get a credit report on all prospective hires is:**
  - To find out if they are financially able to buy into the business
  - To find someone who is desperate and will do anything for money
  - To avoid someone who might have financial pressures, which could lead to embezzlement
  - You should only hire people with perfect credit scores
- Which of the following is an argument against hiring an experienced agent?**
  - They have a proven track record
  - They have lasted in the business for a particular length of time
  - They are trained
  - They may have been trained incorrectly
- If your general practice is that when a person is terminated from the company, or leaves voluntarily, they immediately turn in all keys, gather all personal property, and leave, you might make an exception for:**
  - A really sweet person who just tried so hard
  - A person making a planned retirement or relocation
  - Someone you are afraid of
  - Someone who is in jail

- 10. Which of the following is correct regarding files?**
- Brokers may make copies, but not remove original files from the office
  - It is the managing broker's responsibility to retain files for the statutory period
  - Not all files in the office are necessarily accessible to all brokers
  - All of the above
- 11. Office equipment policies include which of the following?**
- Brokers are responsible for maintaining the office equipment
  - The managing broker should provide information about what to do should equipment fail
  - Brokers must purchase and use their own equipment
  - Anti-virus software is not necessary
- 12. One thing to establish about a Contact Relationship Management System (CRM) is:**
- Who owns the CRM
  - Which one should be used
  - Not every broker needs to keep track of their contacts
  - All of the above
- 13. With respect to Errors and Omissions Insurance, which is correct?**
- E & O covers fraud
  - E & O covers Fair Housing violations
  - E & O insurance may not cover claims not promptly reported
  - E & O insurance is not necessary
- 14. With respect to multiple offers, which is correct?**
- Brokers should wait to present an offer because another one is coming in
  - All offers should be accompanied by a pre-approval letter
  - All offers should be accompanied by an earnest money deposit
  - Offers and counter-offers should be presented objectively and as quickly as possible
- 15. Which of the following are ways a managing broker can manage brokers?**
- Periodic check ins
  - Review of files, including checklists
  - Training
  - All of the above
- 16. Which of the following is not necessarily required by most license laws, but is prudent?**
- Holding deposits in a separate escrow account
  - Keeping records of the escrow account
  - Photocopying checks received from buyers for escrow
  - Making the selling broker accompany you or the staff person to the bank to make the escrow deposit
- 17. Which of the following is correct?**
- In all states, the listing broker is required by law to hold the escrow deposit
  - In all states, the selling broker is required by law to hold the escrow deposit
  - In some states, brokers are not required to even have an escrow account
  - In all states, the deposit is divided evenly between listing and selling brokers
- 18. What is the rationale behind a checklist?**
- To ensure that all the legally required documents are in the file
  - To ensure that brokers followed company policy and procedure with respect to disclosures
  - To provide a recap of the entire transaction
  - All of the above
- 19. The retention period in a state is:**
- The time period brokers must keep agents
  - The time period brokers must keep records of closed sales
  - The time period brokers must keep only escrow account statements
  - The same in every state, set at 3 years

- 20. The benefit to the broker and managing broker of a solid file is:**
- They can follow up with buyer and seller
  - In the event of a complaint, they have a very detailed record of the transaction
  - It is just a supplement to their excellent memories
  - In the event of a complaint, whatever the complaint is, if they have a file, they will not be disciplined by the licensing board
- 21. Under what circumstances can brokers fill out the Seller Property Disclosure for a seller?**
- If the seller is elderly and needs assistance
  - If the seller directs them to do so
  - If the seller refuses to fill one out
  - Brokers should never fill out the Seller Property Disclosure for a seller
- 22. Which of the following is correct about depositing escrow funds into a managing broker's escrow account in Indiana?**
- No one but the managing broker can make the deposit at the bank
  - The deposit must be made within one hour of receipt of the funds
  - The deposit must be made within two banking days of receipt of the funds
  - The managing broker can deposit the funds in any account he/she chooses, including a money market fund
- 23. Managing Broker Sue gets a notice from her bank that a personal check from a buyer, which she deposited into her escrow account, has bounced, and the bank has charged her account a \$50 fee. What must Sue do?**
- Notify the buyer to bring her \$50 in cash immediately
  - Call the bank and tell them they cannot, by law, apply an overdraft fee to an escrow account
  - Deposit \$50 from her operations funds to cover the overdraft, and note it in the records
  - None of the above
- 24. Broker Paul has a contract between Sam Seller and Betty Buyer, which fails to close. Buyer Betty is asserting that Seller Sam committed fraud, and is demanding her money back. Seller Sam vehemently denies that, and wants Betty's deposit to be given to him as liquidated damages. Which is correct?**
- Broker Paul should review the contract, and decide who is entitled to the deposit, and give it to them
  - Sam Seller must wait 365 days before he can sue Betty Buyer
  - State-specific laws must be followed: Indiana has what is called a "60-Day Letter" provision
  - The funds go immediately to the unclaimed property in the state
- 25. Managing Broker Joan has unexpected bills in her brokerage. To cover them, she borrows funds from her escrow account to put into her operations account. This is:**
- Commingling, and against the law
  - Conversion, and against the law
  - A business decision
  - Allowable, providing she executes a note
- 26. An example of conversion would be:**
- A managing broker releases an escrow deposit without following all applicable laws and guidelines
  - A managing broker releases an escrow deposit in accordance with the "60-Day Letter" provision
  - A managing broker releases an escrow deposit under a signed "mutual release"
  - All of the above
- 27. The retention period for escrow records in Indiana is:**
- 5 years
  - 3 years
  - 7 years
  - Generally, the same period as the state requires for file retention, plus 2 years

- 28. Broker Hank uses a standard Agreement of Sale, which stipulates the amount of the earnest money deposit and when it is due. The contract in question calls for a \$2500 earnest money deposit, to be made within 2 days of written acceptance by the seller. The contract was written 2/1/2XXX, and accepted by the seller on 2/4/2XXX. By what date must the buyer deliver the deposit?**
- 2/1/2XXX
  - 2/4/2XXX
  - 2/6/2XXX
  - 2/2/2XXX
- 29. Buyer Brooke wants the Agreement of Sale written so that the earnest money deposit will be held by the managing broker pending written acceptance of the offer. Which is correct?**
- This is unacceptable under any circumstances
  - This is acceptable, providing both parties agree in writing
  - The broker cannot hold an uncashed check for any length of time
  - Only Buyer Brooke has to agree to these conditions
- 30. Anti-trust means which of the following?**
- Brokers may not negotiate commissions under any circumstances
  - Brokers should not discuss commission rates the company charges with potential clients
  - Brokers should not discuss commission rates and/or splits with competitors
  - Brokers should not disclose to consumers how brokerage fees are shared
- 31. Broker Price Opinions, under Dodd-Frank, should not be used for:**
- Portfolio analysis
  - Removal of private mortgage insurance (PMI)
  - Pre-foreclosure
  - Origination of a new mortgage
- 32. Which is correct about Fair Housing Laws?**
- States and local governments may add protected classes, but cannot remove any federal protected classes
  - States and local governments may add protected classes, and replace federal protected classes with their own
  - States and local governments may not add any protected classes to the federal classes
  - Any Fair Housing complaint goes immediately to federal court
- 33. Broker Amy and Broker Barry work in competing firms in the same community. They agree that Amy will market exclusively to the east side of the community, and Barry will market exclusively to the west side of the community. This is:**
- Smart business sense, as it allows them to focus their resources on one part of the market
  - An allocation of customers or markets, which is a violation of Dodd-Frank
  - An allocation of customers or market, which is a violation of Sherman Anti-Trust
  - A violation of Federal Fair Housing law, as there may be protected classes in both sides of town
- 34. A commission policy in a Policy and Procedure manual would cover:**
- How commissions are paid for sales pending at the time an agent leaves the company
  - How referral fees are handled
  - A commission split policy, which may or may not be the same for all agents
  - All of the above
- 35. Which is correct?**
- Under the Statute of Frauds, agreements for the sale of real estate, if not in writing, are unenforceable
  - Under the Statute of Frauds, the original agreement must be in writing, but amendments to it may be verbal
  - The Statute of Frauds covers fraud in real estate transactions
  - Under the Statute of Frauds, all real estate contracts must be prepared by an attorney

**36. Which is correct?**

- a. Brokers almost always get written buyer agency agreements
- b. Brokers seldom get written listing agreements
- c. Brokers often rely on a buyer being “loyal” and fail to get a written buyer agency agreement
- d. Brokers never get written buyer agency agreements

**37. According to the National Association of REALTORS®, agency disclosure should be:**

- a. Terse, in writing and confusing
- b. In writing, with legalese
- c. Timely, meaningful, and before the consumer has harmed his negotiating position
- d. In writing only if entering into a contract

**38. Seller disclosure laws:**

- a. All require disclosure of a murder or suicide
- b. All require precisely the same items
- c. Vary from state to state, so Indiana’s specific laws should be referenced
- d. Follow the Uniform Consumer Code

**39. The prior use of a property for a meth lab is a required disclosure in:**

- a. All fifty states
- b. Indiana, among other states
- c. None of the fifty states
- d. Only if someone died from the meth which was manufactured

**40. Broker Dottie draws a sales contract which is subject to a home inspection. The date by which the home inspection is to be completed is 1/2/2XXX. The date by which the buyer needs to respond to the seller with any requests for repairs, or abatement of price, is 1/7/2XXX. The buyer calls Dottie on 1/9/2XXX and asks: “What am I supposed to do with this home inspection report? There are some things which I want the seller to repair.” Which is correct?**

- a. Dottie should contact the listing agent, who will tell the seller they must make all the requested repairs.
- b. Dottie has failed in her duty of care to the buyers, and they may have to purchase the property in its “as is” condition.
- c. Dottie should tell the buyers it was their responsibility to pay attention to the deadlines in the contract, she’s too busy
- d. The buyers should appeal to the sellers directly, asking them for a break

## BROKERAGE MANAGEMENT POLICIES

A managing broker takes ownership of not only their own actions as a real estate professional, but the actions of the other individuals at their brokerage – an ever-changing, always-interesting job. In this course, we'll review the general duties and responsibilities of these licensees.

### Managing Brokers Defined

Different states have different titles for the person who fills this role, including “broker of record,” “managing broker,” “broker in charge.” Regardless of how a state names or describes the broker, or whether it is an all-broker state, or brokers and salespeople, it's understood that **one broker** must be in charge of the activities of the office. In Missouri, for example, their law defines: broker, salesperson, and broker-salesperson. The last category is what is called in some states, such as Pennsylvania, an associate broker.

Even in states which are all broker licensee status, such as Indiana, one of the brokers is responsible for the day-to-day activities of the company. This is the definition from Indiana Law: 25-34.1-1-2 (13) “‘Managing broker’ refers to an individual broker whom the commission holds responsible for the actions of licensees who are affiliated with the broker company.” (For contrast, in Colorado, which is another all-broker state, here's their definition: 12-10-201 (2) “‘Employing real estate broker’ or ‘employing broker’ means a broker who is shown in commission records as employing or engaging another broker.”)

So, we've established who we are talking about when we use the term managing broker in Indiana: the broker responsible for the day-to-day activities of the company. This is the individual who the real estate commission will hold responsible for the activities of the brokers and the company. Many students of American history recall that President Harry Truman was said to have a sign on his desk which read: “The buck stops here.” That is exactly true of managing brokers.

### Hiring Brokers and Support Staff

A chronic problem in the industry is the high percentage of agents who leave the business within the first 3 years. NAR statistics say that the median income for REALTORS® with under 2 years of experience is \$8500. That is clearly not an income, it's a hobby.

A lot of this begins with the myth versus the reality of real estate. Outsiders to the industry envision a job with plenty of free time, showing lovely, immaculate homes to reasonable, well-qualified buyers, putting a sale together and sailing to a

closing without any snags, collecting the entire commission check and going shopping! The **reality** is that although agents have more flexibility than in other jobs, we all know we show and sell ugly, filthy homes; all buyers are not well-qualified; there are many snags between contract and closing; and as self-employed people no matter what percent of the commission the agent receives, there are significant expenses. *Forbes* magazine estimates that self-employed people need to earn 30% more than they would in a salaried position, in order to cover things like various insurances, IRS or 401k savings, vacations, and other benefits typically offered in salaried positions.

Nationally and in Indiana specifically, there are a number of reasons brokers do not succeed. Some of them are:

- The broker does not have the right aptitude or personality for sales
- The broker is not sufficiently mentored or trained
- The broker does not have clear-cut goals
- The broker cannot manage time effectively

Many of these factors can be impacted by the managing broker.

### Job Descriptions

For brokers, and also for support staff, you need well written job descriptions. A solid job description is not just a list of tasks. It includes the overall picture of the operation of the company, and how each person's position fits in. You should also expect people to grow in a job, and have a sense of how their job description can expand.

Although willingness to learn is always a plus, when it comes to some administrative positions, you will typically want the candidate to already be proficient in particular programs, such as Word, Excel or Quick Books. For salaried individuals, you will need to address expectations about overtime and emergencies. Regardless of the person's anticipated role in the company, you want a positive attitude and a commitment to doing what it takes to meet the goals of the company, its clients and customers. In other words, instead of an “That's not my job” attitude, you want a “Let me find the solution to that for you!”

A probationary period is *highly recommended* for all brokers and support staff, as well as background checks and credit checks. Embezzlement has happened at real estate companies; sometimes the embezzler hasn't needed the money, but more often than not they either had a need for more money than they were making, or they had an expensive habit, such as drugs or gambling.

## Hiring the Right Person

The first duty of a managing broker is to avoid hiring *anyone* simply on the basis that they possess both a real estate license and a pulse. Whoever you hire is part of the face of your company. They need to share your goals, vision, ideals and be willing to accept your company culture. They need to have a positive attitude, and be willing to accept both training and some criticism. Anyone in sales has to be able to handle rejection. They need learn how to manage themselves and their time. Many managing brokers use aptitude or personality tests as a beginning step. There are a variety of these available, from the often-used DISC test to others which are more in depth.

The first interview should be informational, and realistic. If you are a managing broker in a market with an average sales price of \$200,000, and a prospective broker tells you that they wish to make \$200,000 in their first year, here's the math for them to attain that goal: assuming a \$200,000 sales price, a commission rate (for example **only**) of 3% to the company, and 55% to the agent (a traditional model) , the average commission would be \$3300 per side. This would require a broker to produce 60.61 sides in their first year! Even if the broker was earning a 100% commission per side, they would need 33.33 transactions to reach an income of \$200,000. And that is gross; they would have many costs. In this case, they are probably quite unrealistic about the business and what they can do in their first year. You should have data from your company which you can share about what the average broker in the company earns, how many sides they do per year, and what kind of change they have as time goes on. For example, a broker who only earns \$25,000 the first year could be earning \$75,000 in 3 or 4 years.

Ideally, a managing broker would conduct more than one interview. In lieu of an initial interview, some managing brokers do "Career Night" where they discuss with potential brokers what the business is all about. You need to be realistic, but not pessimistic. We know that real estate offers a wonderful opportunity for income and personal satisfaction.

## Training

As a long-time instructor in pre-license classes, I can affirm what you already know: pre-license classes equip a student to pass a licensing exam; they do not equip a broker to sell real estate. Knowing contract law is different than filling out a pre-printed contract correctly. Understanding license law is one thing, knowing how to deal with difficult people and situations is completely different. Managing brokers should train their team **constantly**. For new agents, some managing brokers utilize another source, such as a "quick start" or "boot camp" program. Larger companies and franchises generally have specific new broker training.

Even seasoned brokers who are recruited from other companies need basic training and orientation in *your* company. Much of this should be contained in your Policy and Procedure Manual, which every broker should have a copy of. We'll discuss this manual in detail later in the course.

At the first visit, you would give a physical tour of your office, and cover basics of your operation, including policies regarding the physical plant. For example, some managing brokers have a policy that if a broker is in the office after normal business hours, they keep the doors locked. Other minor policies might include turning the heat and a/c back if you are the last person to leave the building. You would include a tour of the equipment in the office, and particular requirements for brokers. For example, in some companies where the broker earns a 100% commission, in addition to fees associated with having their license with the company, they may have to use a passcode to make copies, print documents, etc., and this is then billed back to them. You will cover everything you think you should, and you will still have brokers forgetting things, or asking questions.

**Files:** Not all of the files in the office should necessarily be accessible to brokers. The company's financial records are generally private. Closed sales are usually available to all the brokers. Original files should **never be removed from the office by a broker**. Some companies store files off-site. If this is your policy, cover it with your brokers so any information they want from that file they can obtain before it goes into storage. For example, some brokers send out a copy of the Closing Statement in January of the new year, in case the buyer or seller has mislaid their copy. Clients generally need to refer to this form when filing their federal income taxes. It is the managing broker's responsibility to retain the records for the statutory period required by the licensing body: 5 years minimum in Indiana. You should also have a destruction policy, and adhere to it. Paper records can be labeled: "Shred at the end of 2XXX". Many associations of REALTORS® have shred days when you can bring files to be destroyed. Files should not be put out with trash, as they contain private information.

**Office equipment:** In addition to familiarizing the brokers with the equipment, you should have specific policies if things aren't working. For example, many companies have a maintenance policy on equipment. You may not be large enough to have an internal IT person, but your brokers, and everyone else, should know who to contact in the event equipment stops working. At this point, remind the brokers to **never** open attachments from unknown persons, or even a "joke" in an email from a friend. These can typically contain nasty viruses. Brokers should also be cautioned about bringing in flash drives from home computers and using them in the office. I'm aware of a case where an agent did that, not knowing that one of her kid's friends had used a flash drive which put a virus on her home computer, which

was then carried to the office computer. You will have anti-virus software, but brokers still need educated about how to use your equipment.

## **Mentoring**

Many brokers who succeed in the industry cite that they had a mentor or began in a position that allowed for mentoring. Some managing brokers have new brokers work as an administrative assistant, either for the brokerage, or for a team, for a period of time. The benefit of that is that the person can be paid some money while they are learning the business. Some brokerages spell this out, including expectations for when the broker will transition from part-time broker and part-time admin to full time broker. If instead you offer one-on-one mentoring with another broker, it is only reasonable to pay the experienced broker a percentage of the new broker's commissions until they are able to stand on their own.

## **Time Management**

Although this is a great topic for an office meeting, I'm including it here, because in my observation, this is one of the most prevalent reasons that a new broker fails in the business. Most people come into real estate from a much more regular job. In that job, they were told when to come in, what to do, and when to leave. Most people had jobs which ended at a set time, and they didn't work weekends and evenings. Their previous jobs provided structure.

Managing brokers can help make it clear that for brokers to succeed in real estate, they have to have the ability to create their own structure. They have to be self-directed, and they need discipline. A successful broker will have a plan for the day, the week, the month, the year, and the years to come. Successful brokers keep track of what they need to do so things don't fall through the cracks. Successful brokers have the discipline to do things which may not produce immediate results, but if done diligently, will produce results. These are things like farming, contacting their sphere of influence, making warm calls, etc.

## **Career Adjustment**

The flip side of the managing broker's job with respect to hiring brokers is to cut them loose when it is time. The phrase "career adjustment" in real estate means that the salesperson in question is no longer an asset to the company. The primary reason is usually lack of production, but good managing brokers and may also get rid of high producers, if they are divas. A diva broker can suck time and energy out of an office: they tend to think the company would fail without their presence, and also will begin to feel that rules are for others,

and there should always be exceptions for them. Often it is only after the diva moves on (voluntarily or otherwise) that the managing broker realizes how detrimental their presence was to the rest of the office. Other reasons to tell a broker to move on include a negative attitude, lack of respect for others in the company, an unwillingness to adapt to company culture, unethical behavior, or violation of any laws.

The biggest mistake most managing brokers make is keeping a broker on long past when they should have gone. In one of my consulting jobs with a brokerage, a particular agent "Richard" came up. The broker had furnished me with the statistics on all her agents, including production for the past two years. Richard had had one closing the previous year, and no closings in the current year. "Why is this agent still here?" I questioned. Her response: "He's pleasant, and he'll always take floor time." My response: "And he obviously isn't converting any of those cold calls he takes. If I were one of your top producers, I would not want him answering calls on my listings. And, he represents the lowest denominator for the company. Your other agents understand that if they produce one sale more than he does, their job is safe." She took my advice, and the agent moved on, and left the business completely. Negativity is contagious, and you have to protect the other brokers from this attitude. Keeping brokers around who should not be there is bad for company morale, and the business in general.

Part of what makes a managing broker's job tough is we do build personal relationships with others in the company, and sometimes the appropriate business decision is a painful personal decision. Remember that allowing a person to continue to fail is not in their best interests, nor in your best interests.

## **Exit Interviews**

When the time comes to terminate someone's position with the company, it should be done promptly and professionally. Many experts recommend having a witness present for the interview. Unless it is a planned departure, such as a retirement or relocation, keys should be handed in immediately. All existing emails and voice mail messages should be routed to another person. An inventory may be required to ensure that all files and company property are on site. Some experts say either set the appointment early in the day, before others come in, or at the very end of the day, so that the person can leave before others arrive, or after they leave. Review the reasons for termination, and consider having a termination agreement signed. For this, seek legal counsel. Do not allow the discussion to get personal, and if the person being terminated tries to turn it into a personal issue, ignore that and move on.

## Additional Factors to Consider

Brokers can and do change companies for good reasons. Interestingly enough, an NAR poll taken in recent years revealed that for many agents who changed companies, it was not money, it was recognition. They did a great job, but the broker/manager where they worked took them for granted. And of course, often, it is about money. Every managing broker needs to have a compensation plan which is fair, easy to understand, and rewards productivity. If your company provides certain things to the brokers at the company's expense, it's important to help a broker make an "apples to apples" comparison if they are looking at your plan along with a different one.

That brings us to other reasons brokers stay or go—and one of the big ones is support staff. Many agents in the NAR article cited support staff as an important reason to stay. If the company offers a closing coordinator, for example, that frees up time for a broker to go list or sell another property. Another circumstance which will move brokers, and also support people, is a major change to the company. This can be a change in ownership, a managing broker or owner retiring, or even the death of the managing broker. This can be a distressing circumstance but it may also provide an opportunity to hire both brokers and support staff who are excellent, and would not have even considered another company until this event happened.

Some managing brokers prefer to hire only seasoned brokers, reasoning that if they are seasoned, they should know what they are doing, and if they've done it for a while, the chances of them failing are much less. Of course, the risk is that they may have been trained incorrectly. Some managing brokers prefer new hires only, because they would rather "train them correctly" than undo previous training. Each person should probably be considered on a case-by-case basis. For example, if the broker seeking employment with your company has a good reputation and a great track record, you always want to at least interview them.

Finally, bear in mind: a change of office will not change a person. If they were a diva at their old office, they'll be a diva at your office. If they were a whiner, or a troublemaker, the same will happen at your office. It's surprising how many managing brokers will hire a broker who has drifted from office to office, without trying to figure out why. I observed an agent in my market area work for no less than **eight managers** in a ten-year period, before she finally left the business. Her side of the story was that all the managers were "impossible" to work for and treated her poorly. The analogy would be to take advice about marriage from someone who has been married and divorced several times! One way to get information that you might not get as a managing broker is to ask one of your brokers to ask other brokers in the company where the person is working what they are like. Brokers are often quite candid with each other.

## Training Brokers

This is probably the best way to ensure that brokers don't claim they "didn't know" they were supposed to do certain things. The great English writer, Samuel Johnson, said: "People need to be reminded more than they need to be instructed." Periodic meetings, with specific reminders, will include training and reminding agents of their responsibilities. It has also been said that "people do what you check on." Managing brokers who review checklists carefully, and follow up on missing documents, will get better performance than those who only review a file when there is a problem. At that point, it is too late.

We've already discussed training new hires. But training never ends, it is ongoing. For ongoing training, topics need to include all facets of real estate, some of which are regulatory and some of which are professional development. Below is a partial list; you could do one topic a month, and still have two left over!

<b>Regulatory Training Topics</b>	<b>Professional Development Training Topics</b>
License Law	Negotiation
Fair Housing	Making a listing presentation
Seller property disclosure	Making a buyer presentation
Contracts and forms	Time management
Risk Reduction	Dealing with difficult people
Review of legislative issues	Business planning
Review of issues in the office	Marketing ideas

## Policy and Procedure Manual

A huge part of both new and ongoing training, the P & P manual is key. This alone can fill several office meetings, as you review it with your agents. If you do not have a P & P manual, there are prototypes available from NAR, most franchises, and REBI (Real Estate Broker's Institute). If you have a manual, and it has been some time since you renewed it, it is probably out of date.

Your P & P manual will state your normal business hours, define what you mean by "employee" and "independent contractor," and cite the terms of their agreements, including any renewal or review dates: some managing brokers do all brokers at the beginning of the year, others do it on the

anniversary date of when the broker joined the company. You may choose to have different inserts for employees, who are entitled to benefits, including vacation time, and independent contractors.

Your next paragraphs will be about *behavior*, and will lay out the expectation that all brokers will:

- Obey all licensing laws in your state
- Obey all state, federal, and local laws
- Follow the Code of Ethics
- Follow MLS rules

It's wise to define "good moral character" and list it as an expectation. This allows you to terminate a broker if they have an issue not related to real estate which is nonetheless objectionable.

Finally, you'll list general policies including:

- Business of the office (real estate); you don't want people running another business out of your office
- Internet & computer policies, including IT policies, and password policies
- Wire fraud
- Safety
- Professionalism (including dress codes)
- In-house arbitration and mediation
- Alcohol & drug policies
- Non-discrimination policy
- Confidentiality policy
- File policies
- Forms policy
- Agency policy, both in your state, and what the *firm* allows
- Seller Property Disclosure and Lead Paint Law
- Deposit money law and office policy
- Anti-trust
- Do-Not-Call List
- Communication within the office
- Coverage (even if your brokers do not take floor time or opportunity time, they need to have coverage if they are away)
- Showings & lockboxes
- Referral agreements and splits
- Commission schedule
- Commission policy if a broker leaves the company
- Brokerage owns the listings and buyer contracts
- Insurances

- Liability insurance for brokers (some managing brokers require or recommend an umbrella policy for a broker)
- Errors and omissions insurance

The next section focuses on these suggested contents for your P & P manual in more depth.

## **Policy and Procedure Manual**

This is a brief outline of the Table of Contents of a typical P & P Manual. Short statements are provided for each item, which you would flesh out depending upon your situation.

### **Alcohol, Drugs & Our Workplace**

Most brokerages have a policy prohibiting the use of alcohol and drugs at the office during regular business hours.

### **Commission Policy**

Many managing brokers make the commission policy a separate document, which allows the brokerage to have different policies for different brokers, and to tweak the policy. For example, some companies offer both traditional splits, and 100% commission with desk fees. The commission policy will also cover how referral fees are paid (most of them come off the top, before a split with brokers) and how commission are paid to brokers who leave the company with sales still in pending.

### **Confidentiality Policy**

Both license law and the Code of Ethics require confidentiality for clients. It's important for brokers to understand this.

### **Contact Relationship Management System (CRM)**

Does the brokerage have one? Are all brokers required to enter contact information into the CRM? Who owns the CRM?

### **Defining Employees**

Most real estate brokers are independent contractors, not employees. Make certain you are using an independent contractor agreement approved by an attorney in your state.

### **Deposit Money & the Law**

Review both the law, and the company policy regarding deposits.

### **Disclosures & the Law**

Disclosures include: Federal, such as Lead Paint, State, such as Property Condition, and Real Estate License Law specific, such as an agency disclosure.

## **Do Not Call List**

Remind brokers how to check the Do-Not-Call list, and the general exceptions to the law (previous business relationship, calling a seller because you have a buyer client).

## **Education**

Reminder of required education, and any additional education offered by the company.

## **Ethics, Ethical Complaints, Mediation, Arbitration Requests**

Review of how the Code of Ethics works for REALTORS®, also a reminder that the principal (managing broker) must agree to arbitration requests. Discuss how mediation should be the first resort.

## **Expense Policy**

Statement that unless otherwise authorized, brokers are not authorized to incur expenses on behalf of the company.

## **Fees Paid Upon Departure**

Policy review of what commissions will be paid on pending sales, should the broker leave the company before the property closes. You will generally want to provide latitude here, so that if getting the sale to closing requires a lot of effort, you can pay the broker who did that work. Also, some brokers will have a planned departure because of retirement, and would generally be available to wrap up their sales.

## **Files and Communication**

Files are generally the property of the managing broker. Usually, managing brokers will allow brokers to copy information to have with them. Any potential problems with clients or customers should be reported to the managing broker immediately. In some cases, the managing broker should be looped in on email conversations.

## **Floor Time**

Also known as opportunity time, for self-employed brokers, this is voluntary. However, if a broker volunteers for a specific shift, and cannot be there, they are in charge of getting a replacement.

## **Harassment & Sexual Harassment**

There is no room in a professional office for any kind of harassment, sexual or otherwise. The policy manual should make clear this is not tolerated.

## **Independent Contractor Agreements**

You will want to refer to the agreement you use, but you should have that as a separate document, which should be signed annually by both the managing broker and the broker.

## **In-House Broker Disputes**

You can set basic rules, e.g. if both brokers claim they've been "working with" the client, but one has had no contact with the

client for a specific length of time, then they no longer have a claim. Generally, the managing broker will help the brokers mediate a dispute. Mediation is usually available through the local Association of REALTORS®. Your policy should state that a broker beginning litigation against another broker in the company is grounds for dismissal. The brokerage owns all the clients: this is suing yourself.

## **Internet Policy**

Internet policy should be detailed, cover use of passwords (don't put them on sticky notes around the edge of the screen!), opening attachments, sending long attachments, sites that should not be viewed on company equipment (pornography), use of firewalls and virus protection.

## **Keys**

Both office keys and keys to property should be covered. Do you require a back-up key for a house, if you have one key in the lockbox? Any broker leaving the company should return their keys immediately.

## **Legal Actions Against Sales Associates & Agency**

Review your E & O insurance, including deductibles and what E & O will not cover: fraud, misappropriation of escrow funds, Fair Housing violations. Note that the brokers must notify the managing broker if a lawsuit is threatened (many E & O companies will not cover a claim if not promptly reported).

## **Laws and Regulations**

Cite the various laws, which will range from local sign ordinances to federal anti-trust, Dodd-Frank, RESPA, and lead. Remind brokers that laws change frequently. A good idea for at least one office meeting a year is a refresher on laws.

## **Listing Agreements**

Stipulate the form to be used, the company commission rate and term, and decide if you are giving the broker the opportunity to negotiate these, or not.

## **Moral Character**

This is a catch-all clause, so if, for example, one of your brokers should be caught stealing money from a service organization to which they belong, you can terminate them.

## **Multiple Listing Service (MLS)**

Reference the MLS rules, and highlight certain ones. Remind brokers that any MLS fines incurred because of incomplete information, a listing not entered on time, etc., are the sole responsibility of the broker.

## **Non-Discrimination Policy**

Review all protected classes: federal, state, local and those in the Code of Ethics. Remind brokers it is a serious matter to violate Fair Housing, and grounds for immediate dismissal.

An annual training can be done on Fair Housing. Consider showing the Newsday story (link provided later in the course) about housing discrimination on Long Island, New York.

### **New Broker/Personal Assistant Training**

Review how training occurs (in-house, through the association, etc.) Reference any programs the brokerage provides. Have a timeline for new brokers to complete any on-line training. REBI has training for new brokers as well as for personal assistants.

### **Offers: Proper Handling of Offers & Multiple Offers**

Remind brokers that the Code of Ethics states (SOP 1-6) “REALTORS® shall present offers and counter-offers objectively and as quickly as possible.” This SOP is notable for what it does not say. It does not say “in writing” or “on my favorite form” or “accompanied by a pre-approval letter” or “accompanied by an earnest money deposit.” Discuss with brokers how to communicate all offers, including verbal ones, to sellers, with the caveat that oral contracts are not enforceable. Remind brokers to not wait to present an offer because “another one is coming in.” Also remind brokers that, per the Code of Ethics, SOP 1-15, the decision to share the existence of multiple offers is the seller’s decision. Review affirmations that offers and counter-offers have been presented (SOP 1-7).

### **Office Hours & Holidays**

Cite the days that the office is closed, and the typical hours it is open to the public. Most managing brokers understand and allow brokers to access the office after hours, but may have a requirement to keep the doors, locked, etc.

### **Public Image**

Remind brokers that they are the public face of the company, and the real estate industry. Public image includes social media postings.

### **REALTOR® Safety**

Remind brokers to not meet strangers at houses! If your company has a policy regarding ID, make certain it is equally applied to all potential clients and customers. Consider an annual safety meeting. Encourage brokers to let someone know where they plan to be at all times. There are apps that can map a series of appointments in the most efficient way, and send that list to a spouse, significant other, or office manager. There are also apps a broker can place on a phone which will alert another person they believe they are in danger. GPS on the phone should always be on when brokers are out in the field.

### **Sales Agreements**

Review the form(s) used by the company. Everyone should be familiar with the forms used, including time frames and how they are to be filled out. Again, this is a great office meeting at least once a year, especially if you are using standard forms which are changed.

### **Sales Associates**

You define what a sales associate is, and state expectations of a broker with the company.

### **Sales Meetings**

Sales meetings should be held on a regular basis, and used by the managing broker to reduce risk, inform brokers, and make the company more productive. NAR has many “ready to go” office meetings, complete with handouts, PowerPoint, etc.

### **Showing Procedures & Signs**

Most companies today use software to schedule showings. Remind brokers that any specific showing instructions should be very clear, e.g. “alarm system must be disarmed before showing,” or “don’t let cat out.” Signs: does the company hire someone to put signs up, or do the brokers install them? Signs should be removed promptly after a closing or expiration of a listing, as should lockboxes.

### **Use of Office Space and Equipment**

State that office equipment is for business purposes only. Many companies don’t object to a broker copying a limited number of things for personal use, but you don’t want office equipment tied up for personal use. Also stress that brokers should clean up after themselves. Some companies have a weekly purge of the office refrigerator, for example: anything still in there Friday afternoon gets pitched.

### **Supervising Brokers’ Activities**

We could have a much longer course than this just on supervising brokers, but we will touch on the high points here. At one time in the real estate industry, most brokers worked in the office. One thing which is a challenge in today’s world is that many brokers work out of their homes, cars, and the nearest coffee shop, as opposed to the office. This was true before the pandemic, and is even more pronounced now. That means it is much more difficult for managing brokers to supervise brokers’ activities. Managing brokers cannot be with their brokers at all times, and have to rely on training, checkpoints, reviews, and reminders to ensure brokers are complying with the law.

### **Methods of Supervision**

There are several ways for a managing broker to supervise brokers, whether they’re in the office, or working from home, their vehicle, or whatever coffee shop has good wi-fi. After all, even when brokers worked almost exclusively in the office, the managing broker was usually not able to be there all the time, and would miss things brokers were doing incorrectly. Technology today has some solutions. Some software for standard forms, for example, allows the managing broker to see all the contracts the brokers have

drawn up. Other companies require brokers to furnish copies of all contracts with the managing broker, including basic disclosures with a buyer that may not end up even buying a house. Some companies use programs where brokers enter their showing schedule and share it with others, including family members and the supervisor. This is more of a safety program, for if the agent goes missing, this will tell everyone concerned where to start looking.

A good policy is that a broker communicates with the managing broker on a regular basis, and the manager has copies, virtual or paper, of everything the broker is working on. For example, Broker Adam reports to the managing broker that he has given an agency disclosure to Buyer Bob and has entered into a buyer agency agreement with Bob. Broker Barbara reports that she has entered into a listing agreement with Seller Sue. When Broker Adam writes a sales contract for Bob, a copy is shared with the managing broker—even if it does not close, the company should have a record of this. Once Bob has an accepted offer, the manager wants to confirm that Adam fulfilled all the legal requirements for the state, as well as any specific requirements for the company. Any offers Broker Barbara gets on Sue’s house, whether they go to closing or not, should be retained. This is proof that the broker presented the offer, which is a requirement in state laws. When Sue accepts an offer, certain documentation has to be in the file. When Sue’s house is sold, the same thing applies. An example for both is given below.

Document	State Required	Company Required
Agency disclosure	X	X
Agency agreement (buyer agency) or listing agreement	X	X
Pre-Approval Letter (not needed for seller)		X
Fully executed Agreement of Sale	X	X
Copies of deposit checks		X
Estimated closing costs	Maybe*	Maybe*
Seller disclosure signed and acknowledged by buyer	X	X
Lead paint disclosure	X	X
Copy of home inspection	X	X
Reply to inspections	Maybe*	Maybe*
Any amendments to the AOS	X	X
Lender approval	X	X
Final walk-through form	X	X
Copy of Closing Disclosure	X	X
Copy of Seller ALTA	X	X

Home Warranty Disclosure		X
Other Company Products Disclosure		
Company checklist		X

The above list is basic. The contents of the file should tell what happened in the transaction from beginning to end. The retention period for closed transactions varies from state to state, with 3 to 5 years being the most common—in Indiana, it is 5 years minimum. Even at the low end of that range, 3 years, brokers need to understand that if a complaint is filed with the Real Estate Commission, without a file, they are most unlikely to remember the details of the transaction. In the eyes of an investigator from a licensing board, something not found in the file was probably not furnished to the consumer. In short, the file should provide a recap of the entire transaction. Great care should be taken to have signed copies of all disclosures, contracts, addenda, etc. in the file.

Starting at the beginning, an **agency disclosure** is now required in all states. In many states, a **written agreement of the agency relationship** is the second document. Some states have presumptive agency, or an automatic relationship between broker and buyer: in Indiana, per 25-34.1-10-9.5(a), “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.” States which have presumptive agency for buyers still require a **listing agreement** for a seller. The listing agreement also contains permissions granted by the seller, including signs, lockboxes, social media, IDX, MLS, etc.

A **pre-approval letter** is not usually required by the state, but many companies require it, and it is often included in the presentation of an offer.

**The Agreement of Sale** is a fundamental document, and needs to be in every file. Brokers should take care to have any and all changes initialed and dated.

**Addenda to the Agreement of Sale** Agreements of sale often have addenda, for a variety of reasons. The lender could, upon investigation, determine that one of the two parties who want to buy the house has good credit, but the other does not, and ask for an amended contract removing one party’s name. A home inspection could result in a seller agreeing to make repairs, or reduce the price, or both. An appraisal could be lower than contract price, requiring an addenda. We could end up with a delay, which calls for an extension. Any and all of these should be in the file.

**Copies of deposit checks:** Although they are a good policy for an office, they are generally not a state requirement. In some states, buyers give their earnest money deposit directly to the title company. However, in states like Indiana where the managing brokers maintain an escrow account, there are lots of rules, including how quickly the money, once received, must be deposited; how it can be disbursed in the event of a rescinded sale, and the records the managing broker must keep. We will look at Indiana's requirements in more depth later in the course.

A copy of the check usually has the buyer's name and address, as well as which bank it is drawn on. This is a handy way to have this information available. Sometimes lenders want proof that the borrower made the deposit. (Speaking as a practicing broker, we always make copies of deposit checks, and keep them with our escrow records.)

Some states require brokers to provide their own **estimate of closing costs** for buyers; others do not— again the manager must know what is required. In Indiana, when the transaction is finalized, the broker must provide a detailed closing statement to the principals.

Seller disclosure laws in most states require that the buyer review the **seller property disclosure** *before* signing the AOS, and sign off on it. In Indiana, the seller must provide a signed copy before the AOS is enforceable; if the seller later amends the form, the buyer has 2 days to rescind the contract, and their earnest money will be returned. A file copy is required to remind the broker and manager of what was disclosed to the buyer. A listing broker, and the manager, should review the Seller Property Disclosure to ensure it is complete, and to see if anything in it is contradictory. **Brokers should never fill out the Seller Property Disclosure for a seller.** If the seller is elderly and needs assistance, a family member or friend should do this. Otherwise, in the event of a problem, the seller's attorney will take the position that the broker is the one making a misrepresentation, not the seller. In the case of fraud, where a seller lied on the disclosure, this document proves what was disclosed to the buyer at the time.

**The Lead Paint Disclosure** is required by the Federal Government. Usually, the buyer shares with their broker a copy of the home inspection. Depending upon state law and local practice, either some or all of the report may be attached to a reply to inspections from the buyer to the seller when the buyer is asking for either an abatement in price, or a repair. This would lead to amendments to the AOS. These can be an abatement in price or a repair, a renegotiated price after an appraisal, a change in closing date, or even the addition or deletion of a buyer's name.

The buyer's broker not only wants a copy of the **lender approval**, it usually must be furnished to the seller's broker or the seller in a specific timeframe: this will be set by the purchase agreement.

There should be a **final walk-through** of the property as close to closing as possible, and the buyer should sign a form either accepting or rejecting the property. Some state associations have forms like this in their libraries, and some will have a place where issues can be specifically stated, as in: "seller must remove trash in garage within 24 hours," for example. In Indiana, a final walkthrough is permitted per the purchase agreement, but not required by law, and no timeframe is specified.

The receipt for the transaction is the **Closing Disclosure**, or the **Seller's ALTA**, or both, which indicates that the property closed, the buyer received title and his/her closing costs were paid and the seller received the net proceeds.

A company may offer other products, such as a **Home Warranty**, or even in-house lending. The company usually requires that the broker produce proof that these items were offered to the buyer, and in some cases, the seller. If the broker is offering **other company products**, such as in-house lender or title services, care should be taken that the offering information complies with RESPA requirements, and that the consumer clearly understands that they do not need to use any in-house services.

Periodic review by the manager of the file is one way to ensure a broker is on track with the transaction. Many managing brokers require a complete file before they will issue a commission check. That sounds great, but it isn't foolproof. The author, who is a practicing broker, sat at a closing in very close proximity to a buyer's agent, from another company, who had in front of her **an unsigned agency disclosure and an unsigned buyer agency agreement.** I watched in interest as we went through the entire closing, and at the end, the agent said to the buyers: "Can you hold on a minute please? I have some paperwork that I have to have signed for the office?" Clearly, the time to both make an agency disclosure **and** enter into an agency relationship with a buyer is **long before we reach the closing table!**

**Company checklist:** Many brokerages use a form as a checklist, with boxes checked and the date noted. If the broker is doing his/her job, the agency disclosure and agency relationship would be the earliest documents in the file, and the date would reflect that. A company checklist can be used as a reminder to the broker, e.g. "Second deposit is due 11/1/XXXX" or "Reply to home inspection is due by 12/1/XXXX". The checklist should be as comprehensive as possible, to avoid things falling through the cracks or a broker claiming "I didn't know I was supposed to do that."

A sample checklist appears below; this can be modified for any particular state or brokerage.

<b>Item</b>	<b>Date provided</b>	<b>Provided by</b>	<b>Comments</b>
Required agency disclosure	1/3/2XXX	Seller Broker	
Buyer agent agreement (non-exclusive)	1/3/2XXX	S. Broker	Buyer not willing to commit to exclusive agreement
Review of pre-qualification/pre-approval	1/3/2XXX	S. Broker	Buyer stated they have talked to Bricks & Mortar Bank
Review of in-house services: lender, title	1/3/2XXX	S. Broker	Buyer may use in house title
Disclaimer for services	1/3/2XXX	S. Broker	Explained to buyer they are not obligated to use any in-house services
Buyer counseling session	1/3/2XXX	S. Broker	Reviewed with buyer wants, needs, price range; reminded buyer agent cannot violate any Fair Housing Laws in answer to their questions about neighborhoods
Pre-approval letter	1/9/2XXX	Buyer provided to broker	
Buyer Agency Agreement (exclusive)	1/10/2XXX	S. Broker	Buyer ready to commit
Seller Property Disclosure for: (address)	1/11/2XXX	S. Broker	Reviewed with buyer, got initialed and signed
Sales contract	1/11/2XXX	S. Broker	Reviewed with buyer, initialed and signed
Wire Transfer notice	1/11/2XXX	BOTH brokers have their clients review & sign	Notice that any email telling them wire transfer procedures have been changed is fraudulent, and to CALL the title company or the agent at the numbers they already have for them, not any phone numbers in the email
Initial earnest money deposit	1/11/2XXX	S. Broker	Photocopied check; gave to administrative assistant 1/11/2XXX for deposit
Balance of earnest money deposit	1/13/2XXX	Buyer provided, upon our receipt of signed contract	Photocopied check; gave to administrative assistant 1/13/2XXX for deposit
Home inspection ordered	1/3/2XXX	Ordered by buyer	To be complete on or before 1/14/2XXX
Title report ordered	1/4/2XXX	Ordered by buyer	Buyer using in-house title company
Deed ordered	1/4/2XXX	S. Broker orders on behalf of seller	Sends copy of AOS to attorney/title company
Reply to inspections	1/13/2XXX	Buyer Broker prepared	Per instructions from buyer
Reply to reply to inspections	1/15/2XXX	S. Broker prepared	Buyer agreed to reply from seller

Amendment to AOS	1/15/2XXX	S. Broker prepared, reviewed with buyer, got signed	Calls for price abatement in the amount of \$2500; all repairs requested by buyer to be completed by buyer
Appraisal inspection	1/16/2XXX	Per S. Broker, appraiser did inspection	Notified buyer
Copy of lender approval	2/14/2XXX	Per B. Broker, it has been reviewed with buyer, and they can meet all the stipulations in the approval	
“Clear to Close” notification	2/18/2XXX	Lender/title company provide; both brokers confirm with their respective clients that the date/time works	Time and place confirmed
Closing documents reviewed	2/19/2XXX	B. Broker	Reviews costs with buyers, reminds them that they must wire transfer the funds, or bring a cashier’s check to closing; reminds buyer to sign up for utilities
Closing documents reviewed	2/19/2XXX	S. Broker	Reviews costs with seller; verifies whether or not they are attending closing; if not, gets instructions for how final funds are to be dispersed (bring a check, wire transfer) Reminds seller that house should (generally) be vacant and broom-clean; seller should order final readings on utilities
Walk-through checklist	2/22/2XXX	B. Broker accompanies buyers for final walk-through; checklist is filled out and signed	Any issues must be resolved (e.g. garbage left behind, items which should have been included are missing, etc.)
Closing documents	2/22/2XXX	B. Broker gets copy of buyers closing statement for file	Reviews it with buyers; reminds them they will need this at tax time, and reminds them to change locks
Seller’s ALTA	2/22/2XXX	S. Broker gets copy for file, delivers one to seller if they did not attend	Reminds sellers they’ll need this at tax time; reminds them to cancel home owner’s insurance

## Overseeing Financials

One of the most important jobs a managing broker does is oversee the financial performance of the company. On the management side, the managing broker needs to ensure that the company is profitable, and that any budget is being adhered to diligently. This requires close attention, and not sporadically, but all the time.

### Escrow Financials

In states like Indiana where the managing broker is required to maintain an escrow account, this is usually one of the first things a regulator or inspector will look at. Some states have periodic investigations of a brokerage office, where they simply review the licenses, inspect the office, and look at the escrow account: in Pennsylvania, for example, regulations allow the State Real Estate Commission to make up to four inspections a year as routine inspections. That means they are not coming in on a complaint, they are just checking things.

Commingling and conversion are specifically prohibited.

**Commingling:** This is when the managing broker mixes escrow funds, which always belong to others, with his/her own funds, used for the operation of the business. The one exception, which is not really commingling, is the permission granted by most states for a managing broker to deposit their own funds into the escrow account for the following reasons:

1. To open the account
2. To maintain a minimum balance, so that no service charges are taken out of the account
3. To cover any bank charges, such as if a check deposited in the escrow account bounces

**Conversion:** This is the taking of personal property to which you are not entitled, and the legal remedy is called trover. Trover is the right of the person who owns the property to sue you. Conversion most often occurs when a managing broker releases an escrow deposit without following all applicable laws and guidelines. For example, most states require a written release from both parties if a transaction fails to close, and we need to dispose of the escrow deposit—in Indiana, this is a “mutual release” of the funds. In many states, the managing broker **cannot** make a decision, and the remedies vary.

**Other remedies:** A managing broker needs to be aware of the specific laws in their state regarding disputed deposits. If the contract specifically states that a deposit should go to one party or the other, upon rescission or abandonment, the managing broker is advised to check with legal counsel before dispersing the money. The phrase “the law provides a remedy” is one to remember. Most legislation and regulation

regarding escrow funds have been drafted with an eye to ‘what if?’ and provide direction for the managing broker.

Some states have in their contracts that if the sale does not occur, after a specified period of time, the buyer can demand return of the deposit, via certified mail. The managing broker must then verify that there is no pending lawsuit between buyer and seller, notify the seller in writing, and then release the funds. In states which practice a form of this, the release of the funds by the managing broker does not impede the seller’s ability to sue the buyer to get the money back.

In some states, after a prescribed period of time (for example, 90 days in North Carolina), the managing broker must give notice to both parties that the funds will be deposited with the Clerk of the Superior Court of the county in which the property is located. The parties can then initiate a suit with the Clerk of the Superior Court to get the money back. The Clerk will hear the case, and decide who gets the money. In North Carolina, if one year elapses after the money is given to the Clerk of the Superior Court, and neither party initiates a suit, the funds go to the state’s unclaimed property fund. Some states do not allow this remedy, but instead, make the managing broker responsible for going to a judge to seek directions regarding dispersion of the funds. In other states, such as Missouri, after 365 days the managing broker pays the deposit to the State Treasurer, unless notified in writing by the parties that the deposit is **not** in dispute. Other states require the managing broker to initiate legal proceedings to be directed as to how to disperse the deposit.

Indiana has what is called a “60-Day Letter” provision. Simply stated, it says that upon being notified that one or more party intends to not perform on the contract, the managing broker holding the earnest money may release it, as provided in the offer to purchase. If the offer to purchase doesn’t contain a provision, the managing broker may initiate the release process. The managing broker is required to notify all parties at their last known address, by certified mail. The letter will specify how the managing broker plans to disperse the money and gives the parties two options: either enter into a mutual written release, or start litigation. The letter states that the parties have 60 days to either of these options, or the money will be released.

### Escrow Accounts

The vast majority of state regulations refer to a checking account, generally in a state or nationally-chartered bank, savings bank, credit union, or a regulated savings and loan. Indiana specifically references a federally insured financial institution. Any entity **not specified** would not be allowed, so for example, a managing broker cannot use a money market fund. All states require that the account be labeled or named as an escrow account, and the money cannot be comingled

with the operations accounts.

### **Record Keeping and Retention**

All states which require escrow accounts require detailed records. Most states require the following for records: name of the property owner, address of the property, name of the buyer, address of the buyer, amount of check. In Indiana, a record-keeping system that incorporates both a general journal and individual ledges is recommended, and the records must show the following at a minimum:

- Date funds received
- Amount, nature, and purpose of funds and from whom received.
- Date funds deposited
- Amount, date, and purpose of each withdrawal and to whom paid
- Current running balance

Beyond the minimum, the following deposit basics are recommended:

- Who gave the money, which should be a full name(s)
- Form of the deposit (check, cash, money order, wire transfer)
- Who owns the property on which the deposit was made
- Date received
- Amount of deposit
- Address of the property
- When deposited in the account

When the funds are dispersed, the following basics are recommended:

- Date dispersed
- To whom
- Check number
- Names of the parties
- Address of the property
- Remaining balance in the account

All states reserve the right to inspect escrow accounts at any time. Some states, like Indiana, allow 24 hours for the managing broker to have the account available. Escrow records generally have to be retained for the same period of time which the state requires for retention of files, which in Indiana is 5 years. Escrow accounts would ideally be reconciled monthly, which is generally when banks issue

statements; most states will allow both electronic and/or paper records. (Some managers, including the author, utilize a “suspender and belt” approach and keep both electronic and paper records.)

**Reporting to clients:** The broker must deliver to both buyer and seller a complete, accurate, and detailed statement of the closing. This will include an accounting of all escrow funds, as well as all disbursements made by the broker. This document must be signed by both buyer and seller. If the transaction is co-brokered, the listing broker is responsible for providing this report.

**Good funds:** Some states, including Indiana, specifically define “good funds.” Good funds include the following: wire transfers, cash, certified checks, personal checks of less than \$500, checks written from an Indiana broker or closing agent trust account, or checks issued by a municipal, state, or federal entity, or by a farm credit service. Good funds are those which are immediately available for dispersal to others. Some states do not define good funds, and do not require that the initial escrow deposit over a certain amount be a wire transfer or a certified check. The reason for that is that there is generally ample time between receipt of the initial deposit, and closing of the property, for any personal checks to clear. Most sales contracts today require that the funds needed at closing be a cashier’s check or a wire transfer, which are good funds, because at closing the title company disperses all of the funds.

### **Authorized Users of the Escrow Account**

Although the managing broker is responsible for the escrow account, some states, like Indiana, allow another signatory to be on the account, to sign checks if the managing broker is unavailable. The signatory, in most states, must be a licensee, as opposed to clerical help or an accountant. Generally, anyone can make deposits, so a managing broker can send an administrative assistant or broker to the bank to make a deposit. Regardless, the managing broker remains the responsible party. When a **sole proprietor** passes away, states handle escrow differently. Some states, like Pennsylvania, require the estate of the managing broker to appoint a temporary managing broker, who must wrap up the remaining business within 90 days. This managing broker is put on the escrow account and manages it for those remaining 90 days. Some states require that a specified official be put in charge of the remaining escrow funds: in Indiana, the Commission takes custody of the trust accounts, and may name a Trustee for those funds.

## Time Frames

Most states, including Indiana, require salespeople or brokers to immediately give deposits to the managing broker. The time frame to deposit those funds varies from state to state. Many states reference “business days.” In Indiana, it is “two banking days.” That means that if a broker receives a deposit on Friday, July 3<sup>rd</sup>, the deposit must be made by Monday, July 6<sup>th</sup>. July 4<sup>th</sup> is a federal holiday, and Sunday is not considered a banking day. Indiana law stipulates that those two banking days are after final acceptance of the offer to purchase. So, in the above example, if the offer was made on July 3<sup>rd</sup>, but a counter-offer ensued, and final acceptance was not signed until the 5<sup>th</sup>, the broker would have until close of business the 7<sup>th</sup> to deposit the funds. Indiana law also states “(b) If the earnest money deposit is other than cash, check, or its equivalent, this fact shall be (1) communicated to the seller before the seller’s acceptance of the offer to purchase; and (2) shown in the earnest money receipt.” [876 IAC 8-2-2]

Regardless of what the law requires, depositing the funds immediately is a good idea.

## Holding Escrow Deposits

Some pre-printed Agreements of Sale will include language such as “earnest money to be deposited only after written acceptance by all parties.” This is because an offer may not be accepted, and if the buyer is in a state which does not require good funds, and the broker deposits the funds, the buyer may have to wait several days for the check to clear before the broker will refund the money. Other standard Agreements of Sale include language such as “Deposit to be made within X days of acceptance of offer.” In that case, the broker does not even have a check. When language like that is used in the contract, the brokers must be very diligent about ensuring that the managing broker receives the deposit. Should the buyer **not** make the deposit when it is called for in the contract, they are in breach of the contract. It goes without saying that the seller must understand and acknowledge either situation. It is not just the initial deposit; some contracts call for a second deposit within a specific time frame. Brokers and managing brokers must ensure that this second deposit is made when required.

**Interest bearing accounts:** Most states do not prohibit deposit of escrow funds into an interest-bearing account, but there must be a clear, written agreement between the parties as to who will receive the interest. Most states prohibit the broker from receiving the interest. Some states have other options, such as Indiana: 876 IAC 8-2-2 states: “All money shall be retained in the escrow/trust account so designated until disbursement of the money is properly authorized. If the beneficiary agrees in writing, the listing or selling broker holding the earnest money may voluntarily transfer

any interest earned on the broker’s escrow/trust account to a fund established for the sole purpose of providing affordable housing opportunities in Indiana that meets the requirements of Internal Revenue Code 501 (c ) (3).”

**Escrow held by others:** Most states, including Indiana, do not prohibit another party, such as an attorney or title company, from holding escrow funds. Many states require a written notice to both parties about who is holding the escrow funds. The parties need to understand that if the deposit is held by someone who is not a licensed broker in the state, then the rules for real estate brokers do not apply to that entity.

## Federal Laws

There are a myriad of federal laws which affect real estate, but we will limit our discussion to the ones most likely to affect brokers in their daily practice.

## Anti-Trust

Anti-trust laws, with the most notable one being the Sherman Anti-Trust Law, prohibit real estate agents from fixing prices, conspiring to fix prices, allocating markets or customers, conspiring to have a group boycott, or otherwise engaging in any anti-competitive behavior.

During the past few years, the Department of Justice has been actively investigating the real estate industry. Despite an agreement reached with the Department of Justice and the National Association of REALTORS®, as of this writing, the Department of Justice has chosen not to honor that agreement and has moved forward on a number of issues. One of the more recent ones involves MLS services, and the requirement to disclose on the public side of the data the compensation being offered to buyers’ agents.

At the level of your company, here are things you want your brokers to understand:

- They should **never** engage in a conversation with a competitor about what their company charges for commissions and fees
- They should **never** refer to company fees as “the usual fees,” “what everyone else charges,” etc.
- They should **always** tell consumers that fees are negotiable by law. If the company policy is that only the managing broker negotiates fees, and the client wishes to negotiate a fee, they should be directed to the managing broker
- They should **always explain** to both sellers and buyers how brokerage fees are shared (SOP 1-12; 1-13)

- They should **never** engage in a conversation with a competitor about internal company splits
- They should **never** have an agreement with a competitor about the allocation of customers or markets, e.g. “I’ll farm the Sunnyside Subdivision, and you farm the Mountain View Subdivision; I’ll stay out of your territory, and you stay out of mine.”
- They should **never** suggest or recommend to a competitor that they have a group boycott of another company, e.g. “That cut-rate company doesn’t pay enough commission. We won’t let them show our listings, and we won’t show their listings, either!”

Anti-Trust laws do **not mean** that any broker or company must accept any proposal from a prospective client regarding fees, splits, or term of a listing. A managing broker is free to reject any prospective buyer or seller, as long as it is not a violation of Fair Housing. A managing broker might reject a listing because it is too far away, or a type of property the managing broker does not have experience in marketing; they might reject a buyer for those reasons, or other ones. Managing brokers often set different commission rates for different properties, based upon a number of factors: distance from the office, complexity of the marketing process, marketing and advertising expenses, etc.

### **Dodd-Frank**

Dodd-Frank, in Title X, created the Consumer Financial Protection Bureau. This was when the industry moved from the use of the old HUD-1 settlement statements to Closing Statements. Part of the requirement under Dodd-Frank is that all the participants to a real estate transaction disclose their license numbers: managing brokers should be aware that if a consumer has a complaint about the transaction, Dodd-Frank’s requirement that everyone’s license numbers are disclosed means the consumer can sue everyone in sight.

Dodd-Frank also requires that most of the costs on the Closing Disclosure cannot be changed without a 3-day notice to the borrower. Theoretically, this means that if an item is discovered on a final walk-through, and there needs to be an exchange of cash, or a purchase price reduction, to remedy the problem, closing is postponed for 3 days until the borrower has 3 days’ notice of the change. In reality, many buyers and sellers are choosing to resolve this without notifying the title company of this.

Dodd-Frank also governs the use of Broker Price Opinions (BPOs). Under Dodd-Frank, BPOs can be used for portfolio evaluation, removal of private mortgage insurance (PMI), pre-foreclosure, for a lender to make a decision regarding a short sale, but BPOs may **not** be used for origination of a mortgage. Most state laws also limit the use of BPOs, and

generally speaking, they may not be used for divorces, estate settlement, nursing homes, and tax appeals. Indiana allows for the preparation of BPOs, as well as comparative market analysis (CMA).

### **Fair Housing**

Fair Housing laws exist at all levels of government. State and local governments can add to federal laws, but not take away from them. The first Fair Housing law in the United States was the 1866 law, which prohibited racial discrimination. There are no exceptions to the 1866 law, so complaints filed under this law go directly to federal court.

HUD, in February of 2021, released a memo expanding the definition of sex to include sexual orientation and gender identity.

<https://www.us-hc.com/blogs/huds-new-prohibition-on-sexual-orientation-and-gender-identity-discrimination/>

Many states also amended their definition of sex to include these categories. Some states (including Indiana), and some local governments, had already added additional protected classes which mentioned these categories.

Brokers need to know that testers are utilized to discover if real estate professionals are violating Fair Housing laws. As mentioned earlier in the course, the Newsday story, which can be found at the link below, is a great training tool.

<https://projects.newsday.com/long-island/real-estate-investigation-videos/>

### **Lead Disclosure**

The lead disclosure is a federal law. Real estate agents are required to give prospective buyers and tenants, for properties built before 1978, the “Protect Your Family from Lead in Your Home” brochure from the EPA. This law is sometimes referred to as the ‘lead paint law’, although lead can be present in pipes, and even in drinking water not carried in lead pipes. A link to the most current version of this brochure is here:

<https://www.epa.gov/sites/default/files/2020-04/documents/lead-in-your-home-portrait-color-2020-508.pdf>

### **Environmental Laws**

There are many environmental laws at the federal level, state and local level. Minimally, brokers should check public websites, especially the EPA sites, to see if the property they are listing is on or near an identified waste site.

## State Laws

State laws govern license law for agents, which is probably the most important set of laws and rules for licensees. However, seller disclosure laws, banking laws, and other laws overlap into real estate. We've already discussed some of the more significant laws which affect real estate licensees. The areas where most licensees get into trouble, across the country, are often in these categories:

- Failure to provide required notices of agency relationships to consumers
- Failure to put all documents, and amendments to documents, in writing, and furnish a copy to the consumer
- Misrepresentation and fraud
- Failure to advise the consumer about the transaction

## Agency Disclosure

States require agency disclosure in different ways. Licensees should be particularly aware that consumers may come from other states, where agency laws are different.

NAR, in their guidelines, states that agency disclosure must be: "timely, meaningful, and given before the consumer has harmed his/her negotiating position." This is why the agent should take great pains to explain agency law in their state, and what they can and cannot do.

Consumers have a right to know:

- What agency relationships are allowed in your state
- Which of those relationships your company practices
- Whether or not the agent is already representing another client in the same transaction
- What the consumer's options are if they are seeking exclusive representation

For example, some states, such as Indiana, have outlawed subagency; others still have it as a legal practice. In reality, even in states where subagency is legal, it is almost never practiced. The advent of buyer agency, designated agency, and limited agency and/or transaction licensee practice has effectively ended subagency on a practical level. To truly practice subagency, a listing broker would have to be comfortable sharing all the seller's confidential information with a cooperating broker, under the assumption that broker would also be representing the seller. In reality, the cooperating broker generally has a relationship with the buyer, and doesn't know the seller at all.

Indiana law also specifically cites in-house agency, which does not require informed consent from the parties, but does require the agents take strict care to protect the client's confidential information from other agents in the company.

Other permitted relationships in Indiana are:

- Single agency
- Limited agency
- No agency

Indiana law (I.C. 25-34.1-10-9.5) provides that 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. Compensation is not required for the agency relationship to exist, nor does it create an agency relationship.

Generally speaking, managing brokers cannot recover a fee from a consumer unless there is a written agreement where the consumer agrees to pay the fee. Although no one intends to work without compensation, what often happens in real estate is that agents get careless about creating written agency agreements—most often with buyers. Agents across the country seem to be good about not taking open (non-exclusive) listings. Many managing brokers use an exclusive-right-to-sell listing agreement, which entitles the managing broker to a commission regardless of who sells the property. However, buyer agents sometimes rely on buyers being "loyal" and will often show them many houses, only to be vastly disappointed when that buyer buys a "For Sale by Owner" (FSBO), or purchases a listing from another licensee. This is a hard lesson, but many agents only have to have this happen once before they start using written contracts with their buyer clients.

## Putting Things in Writing

Attorneys who handle Legal Hotline calls from agents, with whom I have conferred, all cite the failure to put things in writing as a big problem. This is not generally the original offer or contract. Where things get messy is when counter-offers are made, followed by counter-counter-offers; an amendment is made as result of a home inspection, or an appraisal; and putting things in writing falls through the cracks. ***All changes to a contract need to be in writing, initialed and dated.*** Without a date, someone reviewing the contract later cannot establish a timeline of what happened when. *Verbal agreements are not enforceable under the Statute of Frauds.*

One of the most common instances can occur like this: the buyer has come back to the house, to measure, or look at something again. The agent is present, but one of the buyers talks alone with one of the sellers. That seller agrees to leave

an item of personal property with the house—a dryer, a lawn mower, whatever. It was not included in the original agreement of sale. Fast forward to closing day: the agent accompanies the buyers on a walk-through. One of them says: “Where’s the dryer (lawn mower)? The seller said they would leave it.” The agent reviews the contract. No mention of the item, nor is there any addendum. Agents need to remind buyers anything **not in writing** is unenforceable. I have fielded many questions from agents over the years that contain the lament: “But everyone knew they were going to...”

### **Seller Property Disclosure**

Again, this varies considerably from state to state. We’ve already discussed the basics. In most states, including Indiana, there is a requirement for an agent to disclose a material defect of which they have knowledge if it is not otherwise disclosed. An example would be an agent who lists a property, and the seller is in one of the categories generally excused from filling out the disclosure: trustees, executors, those who have acquired a property through foreclosure, etc. However, the agent visits the property and discovered there is standing water in the basement. The best practice is for the agent to disclose what he/she knows, factually and succinctly, and put it in public comments in the MLS. Example: “On December 27, 2XXX, I visited the property, and the basement had approximately 6” of standing water in it.” They should not speculate on the cause (“we had a heavy rain the night before,” or “the electricity is off, so the sump pump isn’t working”), nor say anything else that is speculative: “This is probably a chronic problem.” Failure of an agent to disclose a known material defect would be considered fraud.

The other requirement most states have, including Indiana, is the requirement for the seller to amend the Seller Property Disclosure if they discover previously unknown defects. An example is radon. The seller may state that they have no knowledge of radon, because they have never tested the house for radon. Subsequently, a buyer enters into a contract, and has inspections, including a radon inspection done. The radon level is above acceptable standards. The Seller Property Disclosure should be amended. Even if the seller mitigates the radon, they should amend the disclosure to state what the level was, how it was mitigated, and what the results were after mitigation.

Brokers need to recognize that certain categories of information may be specifically excluded under license law. The most common of these are reports that the house is haunted, or that a violent death occurred there. Indiana law specifies that sellers need not disclose whether the property is “psychologically affected.” This includes factors such as if someone died on the property, or if someone had or died from a disease related to HIV on the property. They are also not required to disclose if the property was the site of

a felony, activity by a criminal organization, discharge of a firearm during official duties, and illegal manufacture or distribution of a controlled substance, **with the exception of meth labs**. That said, brokers must also be aware that, when they or their clients directly questioned about any of these occurrences, they can’t intentionally misrepresent the facts in their responses.

### **Confidential Information**

Despite the fact that felonies, murders, suicides, and similar events are not a required disclosure, agents need to remember that anything in the public domain is not, by definition, confidential. So, if in a widely publicized local case, two owners were murdered in a home invasion, the broker should consult with the seller about disclosing this, even though it is not required. The simple reason is that for some buyers, this is a deal breaker. If the buyer finds out before closing, they may rescind the sale and argue that they should have been told. If the seller agrees to disclosure, then the buyers cannot argue they didn’t know about the event. Also, because this information is in the public domain, the broker should explain to the seller that if they are asked a direct question, e.g. “Is this the house where the murders took place?” they will answer that honestly. For buyers concerned about past events, they can Google the property address or check with sites such as [www.diedinhouse.com](http://www.diedinhouse.com)

### **Failure to Advise Consumers about the Transaction**

Under the duty of care, agents are responsible for advising consumers, whether they are clients or customers, about what they need to do to get the transaction to closing and to comply with the Agreement of Sale. “Time is of the essence” is the backbone of real estate contracts. Everything in the contract has a time frame: time frame for the buyer to make a loan application (if they need a loan), time frame for loan approval, time frame for the buyer to have a home inspection completed, time frame for the buyer to respond to the seller with the results of any inspections, and any request to abate price, or request a repair, time frame for the seller to respond to the buyer’s requests, time frame to close the transaction. This sounds reasonable, and basic, and yet, on a daily basis, buyers and sellers miss deadlines for responses because their agents did not stay on top of things.

To take a specific and potentially painful example: many sales contracts have as a default that if a buyer fails to furnish the seller with the inspection report and any requests for price abatement or repairs in the specified time frame, the buyer is obligated to buy the house “as is.”

## **Wrap-Up**

A company is only as good or as bad as the people working in it. It is the responsibility of the managing broker to find the best possible brokers and staff, train them, and ensure that everyone is aware of the requirements of their individual positions as well as the company's needs as a whole. It's a job that is always ongoing and never truly done—but close attention to and review of the basics can help ensure you do it well.

# Brokerage Management Policies

## Review Questions

- 1. Per Indiana law, managing brokers are individual brokers whom the commission holds responsible for the actions of:**
  - a. Licensees who are in their county
  - b. Licensees who are in their city
  - c. Licensees who are affiliated with the broker company
  - d. Licensees with lapsed licenses
- 2. A well written job description will contain:**
  - a. Every possible situation that might arise
  - b. Simply a list of what the person does
  - c. An overview of the company, and how this job fits into the big picture
  - d. Flowery language to make the job sound enticing
- 3. With respect to in-house broker disputes, which of the following could be applicable?**
  - a. An office policy with basic rules about contact with the client
  - b. Mediation between the brokers, with either the managing broker or the local association
  - c. A clear direction that brokers may not litigate against each other
  - d. All of the above
- 4. Which of the following presents a challenge for managing brokers?**
  - a. Many brokers work in the office all the time, which means the managing broker must be there 24/7
  - b. Many brokers work from home, which makes it more difficult for the managing broker to supervise them
  - c. Being an independent contractor means that the broker can interpret license law however they like
  - d. Brokers are by nature lazy and secretive
- 5. The retention period in Indiana is:**
  - a. Set by each managing broker
  - b. 2 years
  - c. 3 years
  - d. 5 years
- 6. An investigator, upon a complaint by a buyer, conducts an investigation at the managing broker's office. The buyer's complaint was that they never received a copy of a required seller property disclosure. The file is found, and there is no evidence in the file that the buyer got the disclosure. There is an unsigned copy in the file, and state law requires the buyer to sign it. What will probably happen?**
  - a. The investigator will conclude that if there is an unsigned copy in the file, the buyer probably took a copy with him and just forgot
  - b. The investigator will take the broker's word for it that she remembers having the buyer sign it, and she thinks she just misplaced it
  - c. The lack of the signed document in the file is an indication to the investigator that the form was never provided
  - d. The investigator will drop the matter
- 7. Which of the following would not be an allowable entity for a managing broker's escrow account?**
  - a. A federally insured savings and loan
  - b. A federally insured bank
  - c. A federally insured credit union
  - d. A money market fund
- 8. Good funds are best described as:**
  - a. Personal checks from a buyer you know
  - b. Any check over \$500
  - c. Funds that are immediately available for disbursement
  - d. All funds are good funds

**9. Which of the following is correct about subagency?**

- a. It is legal in all states
- b. It is illegal in Indiana
- c. In states where it is legal, it is widely practiced
- d. It's the preferred agency relationship

**10. A broker goes to list a property where several murders, which were highly publicized, occurred within the past 2 years. The seller requests that the broker keep the murders confidential, as that information is not required on the Seller Property Disclosure. The best reply is:**

- a. "Of course. Mum's the word."
- b. "Aren't you afraid the neighbors will tell?"
- c. "If I'm asked directly about this, I will just ignore the question."
- d. "I understand this is sensitive. However, anything in the public domain is not confidential. If I am asked a direct question, I must answer it honestly."

