

# FINAL EXAM ANSWER SHEET

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Indiana Real Estate License Number: \_\_\_\_\_

**\*\* See instructions on the inside cover page to submit your exams and pay for your course.**

## *Managing Brokers: Avoid the Top Violations*

### FINAL EXAM

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## Correspondence Course Affidavit:

**By signing your name below, you hereby attest to the following:**

I understand that I must personally complete the entire course. My work in this course will be based solely on my own efforts, unassisted by any unauthorized individual or resource. I understand that receiving unauthorized assistance will invalidate my course credit. I understand I must spend the designated amount of time completing the course.

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(Signature)

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(Date)

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(Printed Name)

# Indiana Real Estate Brokers CONTINUING EDUCATION

## MANAGING BROKERS: AVOID THE TOP VIOLATIONS

PDH ACADEMY COURSE SPONSOR #CE21600004 | 4 CE HOURS

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*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).*

## INDIANA MANAGING BROKERS: AVOID THE TOP VIOLATIONS

Hello and welcome! I'm Jonathan Coles and I'll be your guide for this course: *Indiana Managing Brokers: Avoid the Top Violations*. We'll take a look at several of the Real Estate Commission Rules and Regulations as an overview. Later in the course, we'll discuss the top violations that licensees can get charged with from the Real Estate Commission. We'll discuss managing broker requirements and responsibilities, escrow and trust accounts, the top real estate violations, and go over a number of case studies that are related to the violations of licensees in Indiana. So, let's dive in and discuss all of these topics.



## MANAGING BROKER REQUIREMENTS AND RESPONSIBILITIES

### Indiana Law Prerequisites

Before we begin, it is important to remind you that all real estate professionals in Indiana are considered to be brokers. This is one of the few states (like Colorado) that has this classification. The only difference is that a firm must have a *Managing Broker* identified. This is the person who is legally responsible for the activities of all agents within a brokerage. The managing broker is responsible for handling and correcting situations that arise during a transaction, regardless of who created them. To keep it simple, think of an Indiana broker as a salesperson and a Managing Broker as “the person in charge.”

Most states, such as Pennsylvania, Virginia, Maryland, Washington DC, and New Jersey, have two different categories - salesperson and broker. In these states, there are some duties that salespeople *can't* do, that brokers *can*. One example from Virginia: When signing a listing, only the Virginia “Principal Broker” can sign it, not the salesperson.

As a quick review, here are the steps that must be completed per the Indiana Professional Licensing Agency to become a broker. Remember, a ninety-hour pre-licensing course must be successfully completed before taking and passing the licensing exam. When applying for your license you need to meet all the requirements below for a license:

Sec. 4.1. (a) To obtain a broker license, an individual must:

- (1) be at least eighteen (18) years of age before applying for a license and must not have a conviction for:
  - (A) an act that would constitute a ground for disciplinary sanction under IC 25-1-11;
  - (B) a crime that has a direct bearing on the individual's ability to practice competently; or
  - (C) a crime that indicates the individual has the propensity to endanger the public;
- (2) have a high school diploma or a general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18;
- (3) have successfully completed an approved broker course of study as prescribed in IC 25-34.1-5-5;
- (4) apply for a license by submitting the application fee prescribed by the commission and an application specifying:
  - (A) the name, address, and age of the applicant;
  - (B) the broker company with which the applicant intends to associate;
  - (C) the address of the broker company;
  - (D) proof of compliance with subdivisions (2) and (3); and
  - (E) any other information the commission requires;
- (5) pass a written examination prepared and administered by the commission or its duly appointed agent; and
- (6) within one (1) year after passing the commission examination, submit the license fee established by the commission under IC 25-1-8-2. If an individual applicant fails to file a timely license fee, the commission shall void the application and may not issue a license to that applicant unless that applicant again complies with the requirements of subdivisions (4) and (5) and this subdivision.

# THE INDIANA REAL ESTATE COMMISSION'S APPLICATION REQUIREMENTS FOR NEW BROKER LICENSEES

1. A completed application must be submitted to the Indiana Real Estate Commission.
2. If submitting an application online, Managing Brokers must submit a supplemental form. The form must be completed by the managing broker and uploaded by the applicant at the time of applying, in order for the license to be issued with an active status. This supplemental form can be obtained at the Indiana Real Estate Commission's website. This form is not needed for the paper application.
3. The application fee is \$60.00 and is non-refundable.
4. There are questions about criminal history and education. If the applicant responds with "Yes" to the criminal history/discipline questions or responds with "No" to the diploma question, the applicant should be prepared to explain fully in a statement that includes all details. For criminal history/discipline questions, this should include the violation, location, date, and disposition, and copies of court documents.
5. Name Change: A copy of official documentation indicating any legal name change, a copy of a marriage certificate, or divorce decree is acceptable if the applicant's name differs from that on any of the broker's documentation.
6. Applicants must provide a copy of the Course Completion Certificate received from the Broker Pre-Licensing course.
7. Applicants must submit the original Licensing Examination Score Report received from the licensing exam vendor after passing the licensing examination.
8. The applicant must provide verification of any registration/license/certification to practice any profession or occupation in another state or territory.
9. Broker or Broker Company Information: Applicants who wish to have their license issued in an active status will need to provide the names and license numbers of the Broker or Broker Company they will be working under. If this section is left blank, the applicant's license will be issued in unassigned status unless "inactive" is selected. Applicants with an unassigned status are required to complete continuing education (CE).

*\* Remember, the above requirements are for new broker licensees only. Those who are currently licensed in another state should contact the Indiana Real Estate Commission to inquire about reciprocity with their state of licensure. If approved for reciprocity, they will receive authorization to sit for the state law portion of the licensing examination. If their application is not accepted by reciprocity, they will be required to apply by examination.*

## OTHER RELEVANT LICENSING REQUIREMENTS

**The Fair Information Practice Act:** In compliance with Ind. Code 4-1-6, applicants must provide the requested information, or their application will not be processed. Applicants have the right to challenge, correct, or explain information maintained by the Indiana Real Estate Commission. The information provided will become public record. The applicant's examination scores and grade transcripts are confidential except in circumstances where their release is required by law, in which case the applicant will be notified.

**Mandatory Disclosure of U.S. Social Security Number:** The social security number is requested by the Indiana Real Estate Commission in accordance with Ind. Code 4-1-8-1 and 25-1-5- 11(a). Disclosure is mandatory, and this record cannot be processed without it. Failure to disclose the U.S. social security number will result in the denial of the application. Application fees are not refundable.

**Abandoned Applications:** If an applicant does not submit all requirements within one (1) year after the date on which the application is filed, the application for licensure is abandoned without any action of the Board. An application submitted after an abandoned application shall be treated as a new application.

You're probably thinking, "Why did we just discuss the procedure for getting a license? I've been licensed for ten, twenty, thirty years." It is important to remember and review the procedures for licensing. Several years ago, there was a major overhaul on licensing, so it is good to always have a refresher. Pennsylvania, for example, changed their salesperson pre-licensing from sixty hours to seventy five hours. Many brokers weren't aware of the change and were giving prospective agents incorrect information.

## SUMMARY

To summarize, an Indiana candidate needs to complete a ninety-hour course, be 18 years old, pass the licensing exam, and apply for a license. Remember, there are some additional caveats to these requirements. A new licensee needs to take and pass thirty hours of post licensing education within two years.

## REVIEW QUESTIONS:

- In Indiana, the only classification you can hold is a broker:**
    - True
    - False
    - There is Managing Broker and Broker
    - There is broker, associate broker, and salesperson
  - New Jersey, Virginia, and Pennsylvania have the following classification of licenses:**
    - Broker only
    - Salesperson only
    - Broker and salesperson
    - None of the above
- 

## MANAGING BROKER

This term is easily thrown around within the real estate world. In Indiana, there is a Managing Broker Designation. This is what makes you eligible to own and run a real estate firm or company in Indiana. Remember, the managing broker designation is the person that is the designated individual responsible to the Indiana Real Estate Commission for the licensees under them.

Depending upon the size of your firm, you may be an office managing broker. This is a person that oversees tasks and day to day operations of a firm. They may be called a managing broker, but please remember, they do not hold the Managing Broker Designation.

## MANAGING BROKER ELIGIBILITY

All licensees must be under the direct supervision of a broker that holds to Managing Broker Designation for the firm for the Indiana Real Estate Commission.

The first question to ask is am I eligible? Here is the short answer- maybe. In order to be a managing broker of a firm in Indiana, you need to do a few things. They are listed below:

- Become managing broker eligible. In order to be a managing broker, you need to complete a twenty four hour managing broker course and be a licensed broker for at least two years (or twenty four months). The easiest way to remember it is twenty four twice! (class and months)
- Apply to the commission for eligibility. Once you complete the twenty four hour course and have your license for twenty four months (two years), then you must send a form to the Indiana Real Estate Commission. Once they process it, you'll be a licensed managing broker.

If you want to start your own firm or company, you'll need to have a serious discussion with yourself and your inner circle on if this is the right move for you or them. If you decide this is for you, you'll need to do a few things:

- Register with SOS & IPLA.** You'll need to register your new company with the Secretary of State. Make sure that you reach out to your attorney and tax advisors when doing this. Please note, this is not tax or legal advice. We're simply going over the process. The second thing you'll need to do here is register with the Indiana Professional Licensing Authority. There will be forms that you need to fill out to register your new real estate firm with the State.
- Join your local REALTOR Association as a new member.** If you are a REALTOR member or want to be associated with the REALTOR Association, you will have to contact your local REALTOR Board. As of 2022, there are currently twenty five local REALTOR Associations in Indiana.
- Banking.** Another thing to think about is where you will do your banking. You'll need at least one general business banking account for your day-to-day operations of your business. The second bank account you'll need is your escrow/trust account. This is the separate account where you keep other people's money during a transaction according to Indiana Law 25-34.1-4-

5. Funds that go into this account include earnest money deposits, escrow funds, undispersed sales proceeds, etc.

4. **Insurance.** Errors and Omissions insurance is a must for any new company. It is not legally required in Indiana; it is highly recommended to protect you and your business.
5. **Your Brand.** This is where you can get creative and build your team. Design your own logo, build a website, order signs, etc. This is where you can be you! If you're a member of the REALTOR Association, make sure you follow the REALTOR logo guidelines.

LICENSE ISSUE DATE	30 HOUR POST-LICENSING COURSE REQUIREMENT	ANNUAL 12 HOUR CE REQUIREMENT DUE
July 1 2019 – June 30, 2020	Within two years of license issue date	July 1 2022 – June 30, 2023
July 1 2020 – June 30, 2021	Within two years of license issue date	July 1 2023 – June 30, 2024
July 1 2021 – June 30, 2022	Within two years of license issue date	July 1 2024 – June 30, 2025
July 1 2022 – June 30, 2023	Within two years of license issue date	July 1 2024 – June 30, 2026
July 1 2023 – June 30, 2024	Within two years of license issue date	July 1 2025 – June 30, 2027
July 1 2024 – June 30, 2025	Within two years of license issue date	July 1 2026 – June 30, 2028

### Do I have to live in Indiana to get licensed, sell real estate or be a managing broker?

Each managing broker shall be a resident of Indiana. There are exceptions. A nonresident may be a managing broker if none of the licensees associated with the managing broker's company are residents of Indiana.

(See Indiana Code 25-34.1-4-3).

## CONTINUING EDUCATION REQUIREMENTS

All licensees in Indiana must complete twelve hours of continuing education every year from July 1st to June 30th. Licensees are responsible for keeping their own records of continuing education themselves.

Remember that licenses need to be renewed every three years and expire on a date set by the licensing agency.

Brokers with the Managing Broker Designation must take four hours of managing broker courses as part of their yearly twelve-hour requirement. In short, it is twelve hours total with four being in Managing Broker course work. That's this class!

Continuing education and license renewal can be very tricky to read and hard to remember. Here is a helpful chart from MIBOR Realtor Association, representing central Indiana's REALTORS.

[https://www.mibor.com/membersinfo/continuing-education/?displaytype=Interior\\_MaroonFW](https://www.mibor.com/membersinfo/continuing-education/?displaytype=Interior_MaroonFW)

## RESPONSIBILITIES OF A MANAGING BROKER

Now that we know what a managing broker is and what education they must have, let's delve into their responsibilities. A person that holds a managing broker designation is a broker who has the responsibility to manage an office or agency, all aspects of operations, and the conduct and compliance of other agents in that office. Wow! That's a lot! Let's break it down a little.



A manager is work focused. They keep the business up and running. They manage the systems, processes, and people in the organization. They work on the short-term objectives of the company. Sometimes... most times, they look at the bottom line of the business and daily accounting. This includes the escrow or trust accounts. We'll talk more about that a little later in the course. Most managers are reactive as opposed to proactive. There are many times when an agent will do something unprofessional or legally questionable, such as misrepresentation or use of subagency. The manager's

main job is to stay on top of daily activities of all agents to keep the business operating in a legal, professional manner.

While we're talking about managers, let's talk about leaders for a minute. A leader is primarily people focused. Most leaders have followers, whereas managers have subordinates. Leaders are coaches, mentors, counselors, and other people that encourage and guide the talent of others. These leaders are mainly proactive versus reactive. There are many times in a small business, where the managing broker becomes the manager and leader.

There are many styles and behaviors that a manager must develop as they run their organization. According to the many real estate and general management books, the main management styles are dictatorial, autocratic, participatory, and laissez-faire.

**Dictatorial style** is the "I say, you do" style of management. Don't ask questions, don't make suggestions. Just do as the manager says. This is the manager that has absolute power and never delegates authority. This is one-sided management- the manager's side. Depending on the situation, this style is necessary. If an agent has done something wrong or needs to be disciplined, this is what needs to be done.

**Autocratic style** is a more benevolent and humanistic approach than the dictatorial style. The manager still dominates, but in a less threatening or intimidating manner. They look to the manager to "just tell them what to do." This is the type of style that a parent or teacher would take.

**Participatory style** is the most democratic style. Managers become facilitators and value their workforce as talent instead of subordinates. This is a style that taps into a manager's leadership skills and engages in teamwork. Other skills include brainstorming, problem solving, and decision making.

**Laissez-Faire style** is also known as non-management. The manager has little guidance and exercises little in the decision making process. Most times, this is when a manager fails to do their job. Managers lose popularity and fear making wrong decisions. Laissez-Faire style also breeds indifference in the workplace. Everyone does their own thing and no one is really part of the organization.

## Should I be Starting a Real Estate Firm NOW?

Before you want to become a Managing Broker of your own company (or another firm), it is important to analyze the business environment. You need to look at the Gross

Domestic Product (GDP), the health of the economy, inflation cycles, political factors, and sociological factors. All of these things go into the housing market and the stability of a business. One of the things that we as agents do a lot of is look at the price of homes and the possible clients that are going to be purchasing them. You can find a lot of additional information on the economy from the National Association of REALTORS (NAR), the Department of Housing and Urban Development (HUD), and other national sources.

## Licensing of an Organization

Just like the Managing Broker must have the designation of Managing Broker, the company must also have a license. In Indiana, there are many ways to do this depending on how the organization is set up.

Let's review the requirements for a broker's license

Sec. 4.1. (a) To obtain a broker license, an individual must:

- (1) be at least eighteen (18) years of age before applying for a license and must not have a conviction for:
  - (A) an act that would constitute a ground for disciplinary sanction under IC 25-1-11;
  - (B) a crime that has a direct bearing on the individual's ability to practice competently; or
  - (C) a crime that indicates the individual has the propensity to endanger the public;
- (2) have a high school diploma or a general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18;
- (3) have successfully completed an approved broker course of study as prescribed in IC 25-34.1-5-5;
- (4) apply for a license by submitting the application fee prescribed by the commission and an application specifying:
  - (A) the name, address, and age of the applicant;
  - (B) the broker company with which the applicant intends to associate;
  - (C) the address of the broker company;
  - (D) proof of compliance with subdivisions (2) and (3); and
  - (E) any other information the commission requires;

- (5) pass a written examination prepared and administered by the commission or its duly appointed agent; and
  - (6) within one (1) year after passing the commission examination, submit the license fee established by the commission under IC 25-1-8-2. If an individual applicant fails to file a timely license fee, the commission shall void the application and may not issue a license to that applicant unless that applicant again complies with the requirements of subdivisions (4) and (5) and this subdivision.
- (A) have as members only individuals who are licensed brokers; and
  - (B) have at least one (1) member who qualifies as a managing broker under IC 25-34.1-4-0.5 and IC 25-34.1-4-3;
- (2) if a manager-managed limited liability company, have a licensed broker who qualifies as a managing broker under IC 25-34.1-4-0.5 and IC 25-34.1-4-3;
  - (3) cause each employee of the limited liability company who acts as a broker to be licensed; and
  - (4) submit the license fee established by the commission under IC 25-1-8-2 and an application setting forth the information prescribed in subsection (a)(4), together with:
    - (A) if a member-managed company, the name and residence address of each member; or
    - (B) if a manager-managed company, the name and residence address of each manager, or of each officer if the company has officers.

If the real estate organization is partnership, here are the actions that must be taken in order to get the partnership licensed.

- (b) To obtain a broker license, a partnership must:
  - (1) have as partners only individuals who are licensed brokers;
  - (2) have at least one (1) partner who qualifies as a managing broker under IC 25-34.1-4-0.5 and IC 25-34.1-4-3;
  - (3) cause each employee of the partnership who acts as a broker to be licensed; and
  - (4) submit the license fee established by the commission under IC 25-1-8-2 and an application setting forth the name and residence address of each partner and the information prescribed in subsection (a)(4).

If the organization is a corporation, this is what needs to happen:

- (c) To obtain a broker license, a corporation must:
  - (1) have a licensed broker who qualifies as a managing broker under IC 25-34.1-4-0.5 and IC 25-34.1-4-3;
  - (2) cause each employee of the corporation who acts as a broker to be licensed; and
  - (3) submit the license fee established by the commission under IC 25-1-8-2, an application setting forth the name and residence address of each officer and the information prescribed in subsection (a)(4), a copy of the certificate of incorporation, and a certificate of good standing of the corporation issued by the secretary of state.
- (d) If the organization is a limited liability company, this is what is needed to obtain a broker license:
  - (1) if a member-managed limited liability company:

- (2) if a manager-managed limited liability company, have a licensed broker who qualifies as a managing broker under IC 25-34.1-4-0.5 and IC 25-34.1-4-3;
- (3) cause each employee of the limited liability company who acts as a broker to be licensed; and
- (4) submit the license fee established by the commission under IC 25-1-8-2 and an application setting forth the information prescribed in subsection (a)(4), together with:
  - (A) if a member-managed company, the name and residence address of each member; or
  - (B) if a manager-managed company, the name and residence address of each manager, or of each officer if the company has officers.

As you can see, **the individual and the company need to be licensed in the state of Indiana. The company license needs to be renewed just like a broker's license.** Here are the sections of the law that refer to the renewal of a license.

- (e) Licenses granted to partnerships, corporations, and limited liability companies are issued, expire, are renewed, and are effective on the same terms as licenses granted to individual brokers, except as provided in subsection (h), and except that expiration or revocation of the license of:
  - (1) any partner in a partnership or all individuals in a corporation satisfying subsection (c)(1); or
  - (2) a member in a member-managed limited liability company or all individuals in a manager-managed limited liability company satisfying subsection (d)(2);

terminates the license of that partnership, corporation, or limited liability company.
- (h) Subject to IC 25-1-2-6(e), if the holder of a license under this section fails to renew the license on or before the date specified by the licensing agency, the license may be reinstated by the commission if the holder of the license, not later than three (3) years after the expiration of the license, meets the requirements of IC 25-1-8-6(c).

- (i) If a license under this section has been expired for more than three (3) years, the license may be reinstated by the commission if the holder meets the requirements for reinstatement under IC 25-1-8-6(d).
- (j) A partnership, corporation, or limited liability company may be only a broker company, except as authorized in IC 23-1.5 and subject to section 4.5 of this chapter. An individual broker who associates with a broker company shall immediately notify the commission:
  - (1) of the name and business address of the broker company with which the individual broker is associating; and
  - (2) of any changes of the broker company with which the individual broker is associated that may occur.

Upon receiving notice under subdivision (1) or (2), the commission shall change the address of the individual broker on its records to that of the broker company.

## SUMMARY

While a lot of this section may seem like a review for most students, it is important to know what the procedures and requirements for licensing are, whether or not you need to live in Indiana, continuing education requirements, and the responsibilities and management styles of managing brokers. For those brokers who have been licensed for a long time, remember licensing changed in 2014. It is important to frequently review licensing procedures in order to advise new agents that you are going to be bringing into your firm.

## REVIEW QUESTIONS:

3. **In order to get the Managing Broker designation, how many hours of education do you need to take?**
    - A. 12
    - B. 24
    - C. 36
    - D. 48
  
  4. **Every year, Indiana brokers must take \_\_\_\_\_ hours of CE and a total of \_\_\_\_\_ hours every 3 years:**
    - A. 12, 12
    - B. 12, 24
    - C. 12, 36
    - D. 24, 36
  
  5. **This management style is most like the democratic style. Managers are facilitators:**
    - A. Dictatorial style
    - B. Autocratic style
    - C. Laissez-faire style
    - D. Participatory style
- 

## ESCROW OR TRUST ACCOUNTS

Every broker in Indiana is required to have an escrow or trust account. Escrow is the process whereby money and documents related to a real estate transaction are held by a broker or other escrow agent until all of the terms and obligations of the transaction have been met. Basically, the trust account is to hold other people's money until settlement. The trust or escrow account (the names are interchangeable) must be a demand account at a federally insured institution. A demand account means that the money must be accessible for free deposit and free withdrawal at any given time. These accounts must be set up by the Managing Broker. The escrow account must be separate from all of the other accounts that a broker has set up. The principal broker must be the trustee and owner of the account.

Examples of monies that are held in trust or escrow account are down payments, earnest money deposits, rental security deposits, rental payments collected on behalf of an owner, and monies that are advanced by buyers or sellers covering closing costs in a transaction. Let's talk about earnest money deposits in connection with a sale. Earnest money deposits, most times, are held by the listing broker and deposited as soon as possible after an offer has been accepted. The time limit to deposit the earnest money into the escrow account is set by state law. In Indiana, the time frame for deposit into the escrow account is two banking days of acceptance of the offer. Brokers must keep an accurate account of all monies deposited into the account, the date received, the amount received, and from whom it was received.



Brokers have a responsibility for looking out for other people's money. The two things that brokers need to look out for in this situation is comingling and conversion. Let's talk about comingling funds. Comingling funds is the mixing of personal and business funds with any money or funds in a trust account. Here's an example. A broker receives a ten thousand dollar (\$10,000) check as an earnest money deposit. The broker places it into their escrow account. The broker gets reimbursement from their phone company and puts it into the escrow account instead of their checking account. This is an example of comingling. Using the escrow for reimbursements or any other general deposits.

Conversion of funds is when a broker uses trust or escrow funds to pay for personal or company operating expenses. Let's say that there is one hundred thousand (\$100,000) in a broker's escrow account; remember, this is other people's money. The broker's general checking account as two hundred (\$200) dollars in it. The rent is due and the rent is two thousand (\$2,000) dollars. The broker decides that he has plenty of money in the escrow account and uses it to pay the rent. After his next settlement, he'll pay the money back into the escrow account. WRONG! He can't do this. It is an example of conversion.

Now, there are exceptions to the rule that don't fall into comingling or conversion. Let's say a broker has an

escrow account that charges a monthly fee, let's say ten dollars. This would be one hundred and twenty dollars a year for the maintenance of the escrow account. The broker is allowed to put the one hundred and twenty dollars into the escrow account so that the client's earnest money deposit money isn't used to service the account. Also, if the bank account is required to maintain a minimum balance in the account, then the broker is allowed to keep those funds in the escrow account.

The following is a section of law from the Indiana Code. As you can see, it is very short! There are some states where the escrow account laws and regulations are four to five pages long.

## IC 25-34.1-4-5 Trust Accounts

Sec. 5. (a) Each broker company:

- (1) shall keep in one (1) or more trust accounts (interest or noninterest bearing) all funds belonging to others that come into the possession of the broker company or of any broker whose license the broker company is holding; and
- (2) shall clearly identify any account containing those funds as a trust account.

The trust accounts shall contain all earnest money deposits, funds held for closing escrows, sale proceeds not yet disbursed, and all other funds belonging to others.

- (b) The broker company shall not use any trust account for the deposit of any personal funds or other business funds and shall keep a detailed record of the funds and any interest accrued in each trust account that identifies the amount of funds held for each beneficiary. Any interest earned shall be held for the beneficiary.

(c) Upon:

- (1) the death of the sole proprietor, in the case of a sole proprietorship broker company;
- (2) the termination of a broker company; or
- (3) the expiration, revocation, or suspension of a broker company's license;

the commission shall take custody of each trust account of the broker company and may appoint a successor trustee to protect and distribute the proceeds of that account.

As added by Acts 1979, P.L.248, SEC.1. Amended by P.L.255-1987, SEC.5; P.L.114-2010, SEC.22; P.L.127-2012, SEC.24; P.L.116-2015, SEC.10.

The following is the section of the Indiana Association of REALTORS Purchase Agreement. It goes over and clarifies exactly what is going to happen with the earnest money deposit.

*D. EARNEST MONEY:*

- 1. SUBMISSION: Buyer submits \$ \_\_\_\_\_ U.S. Dollars as earnest money which shall be applied to the purchase price at closing. If not submitted with Purchase Agreement, Earnest money shall be delivered to Escrow Agent within \_\_\_\_\_ hours \_\_\_\_\_ days after acceptance of offer to purchase. Escrow Agent to be: Listing Broker \_\_\_\_\_ Selling Broker \_\_\_\_\_ Other \_\_\_\_\_. Escrow agent shall, after acceptance of the Agreement and within two (2) banking days of receipt of the earnest money, deposit the earnest money into its escrow account and hold it until time of closing the transaction or termination of this Agreement. Earnest money shall be returned promptly to Buyer in the event this offer is not accepted. If Buyer fails to timely submit Earnest Money to Escrow Agent as agreed to above, Buyer agrees Seller may terminate this Agreement by serving a Notice of Termination to Buyer prior to Escrow Agent's receipt of the Earnest Money.*
- 2. DISBURSEMENT: Upon notification that Buyer or Seller intends not to perform, and if Escrow Agent is the Broker, then Broker holding the Earnest Money may release the Earnest Money as provided in this Agreement. If no provision is made in this Agreement, Broker may send to Buyer and Seller notice of the disbursement by certified mail of the intended payee of the Earnest Money as permitted in 876 IAC 8-2-2. If neither Buyer nor Seller enters into a mutual release or initiates litigation within sixty (60) days of the mailing date of the certified letter, Broker may release the Earnest Money to the party identified in the certified letter. If the Escrow Agent is the Broker, Broker shall be absolved from any responsibility to make payment to Seller or Buyer unless the parties enter into a Mutual Release or a Court issues an Order for payment, except as permitted in 876 IAC 8-2-2 (release of earnest money). Buyer and Seller agree to hold the Broker harmless from any liability, including attorney's fees and costs, for good faith disbursement of Earnest Money in accordance with this Agreement and licensing regulations.*

The underlined section above is a change that a lot of contracts have added. Pennsylvania and Virginia added similar language. We need to remember the demographics of our buyers. Many young buyers under the age of forty five don't have checks. They use apps

like Venmo, PayPal, and Cashapp. Many brokers and title companies are aware of this and have made changes to their procedures for these younger buyers. During the Covid-19 pandemic and into the fall of 2022, buyers were getting offers accepted, having a change of heart, and decided to back out of the contract. They were able to do this by losing their earnest money deposit. For some buyers, they were okay losing two thousand dollars to ten thousand dollars by not sending their escrow money deposit and having the seller terminate on them.

This is not just a local issue that we have to deal with. The National Association of REALTORS has also published articles about it. Below is an article from the National Association of REALTORS.

<https://www.nar.realtor/escrow-accounts-earnest-money>

## QUICK TAKEAWAYS ON EARNEST MONEY IN REAL ESTATE

The escrow process is designed to protect buyers and sellers during real estate transactions.



- Earnest money is a payment from the potential buyer to the seller to show good faith in their intent to complete a real estate transaction.
- If the buyer's offer is accepted, earnest money goes toward the down payment and closing costs. If the sale falls through, buyers may be able to get some of the earnest money back depending on the circumstances.
- Losing your earnest money is a hurdle in the homebuying process no homebuyer wants to face but following the ten rules provided by Endpoint (see below), as well as researching the topics on the rest of this page, should help put your earnest money deposit to good use!

- 10 Ways Earnest Money is **not** refundable:
  - Failing to Meet Deadlines
  - Getting Caught Up in a Bidding War
  - Agreeing to a Non-Refundable Earnest Money Deposit
  - Waiving Contingencies Prematurely
  - Failing to Do Due Diligence
  - Failing to Understand As-Is Buying
  - Voiding a Contract Without a Refund
  - Deciding the Home Isn't "The One"
  - Developing "FOMO" Over Another Home (Fear of Missing Out)
  - Bailing on a Transaction for Personal Reasons
    - Source: 10 Ways to Lose Your Earnest Money Deposit (link is external) (*Endpoint*, Apr. 14, 2022)
    - <https://endpointclosing.com/insights/lose-your-earnest-money-deposit>

The administration of escrow accounts can understandably be a confusing concept to first time homebuyers. According to *The Balance*, an escrow account is only used temporarily, and the escrow provider should be a disinterested third party. This provider has no preference about who ultimately receives the funds, their only interest is that the rules of escrow are properly followed. (Source: Types of Escrow Accounts (link is external), *The Balance*, January 30, 2022) (<https://www.thebalancemoney.com/four-types-of-escrow-accounts-keep-money-safe-4177307>)

To be more specific, escrow is a financial agreement in which a third-party controls payment between two transacting parties and only releases the funds involved when all of the terms of a given contract are met. "Escrow is most commonly used when purchasing a home, though can be used in any financial transaction where a third party is necessary. (Source: What is Escrow? (link is external), *The Balance*, December 14, 2021) (<https://www.thebalancemoney.com/what-is-escrow-315826>)

Earnest money refers to a payment made from a hopeful home buyer to the home seller to show. This payment is separate from the down payment, though it does usually get applied to the total down payment cost. Earnest money is placed in an escrow and is seen as a token of good faith from the buyer. It is often around 3% of the purchase price, or a rounded number like \$5,000.

Unfortunately, each step in closing on a home, including escrow, is an opportunity for fraud. In the era of wire transfers, closing information sent via email, and online

banking, you can never be too safe when depositing and/or transferring your money. If a fraudster convinces you to wire them money via a duplicate email address, there is often little you can do to get it back. Always confirm information and transfer deadlines with your bank, lender, and any other parties involved.

Though third parties are supposed to make the escrow process unbiased and safe, mishandling can occur. Unfortunately, large companies can make mistakes when distributing escrow, and dipping into company or customer funds is not an unheard-of crime in the real estate world.

## ESCROW LEGAL CASES FROM THE NATIONAL ASSOCIATION OF REALTORS

Most times when a transaction is terminated within the contingency periods, the earnest money deposit monies go back to the buyer. For example, the buyer has ten days to do a home inspection or void the contract; the deposit monies will be returned to the buyer. Most times, this is the same with the financing or mortgage contingency. If the buyer does not get the loan within a certain time frame or they are denied the loan, the earnest money deposit monies will go back to the buyer. So, what happens when there are no more contingencies (home inspection, financing, etc.)? Most times, the buyer forfeits the escrow money deposit monies to the Seller.



In this case, there are times when the listing agreement specifies that a certain portion should go to the listing brokerage. Pennsylvania has a paragraph in their listing that in the event that a buyer defaults and forfeits the earnest money deposit to the seller, then the seller and broker will split it at a designated percentage. This could be 50/50 or what ever is agreed upon when the broker takes the listing. Upon review of the Indiana Association of REALTORS Exclusive Right to Sell Listing Contract, there is no paragraph like this in the form. Not every brokerage uses the Indiana Association of REALTORS forms, so in the event that you see a paragraph like this, let's look at a legal case summary from the National Association of REALTORS in 2014 from a case in Maine.

## Maine

### Broker Entitled to Forfeited Earnest Money

Maine's highest court has examined whether a brokerage could retain half of a forfeited deposit from a potential buyer even when the brokerage had received a full commission from a later transaction. A bank listed a property it owned from sale with a real estate brokerage. The listing agreement included a forfeiture clause which provided that if any earnest money is forfeited by the buyer, it was to be equally divided (50%/50%) between the seller and the brokerage. In no event should the agency portion exceed the agreed upon commission contained in the listing agreement.

The brokerage found an interested buyer who signed a purchase agreement and made a 10% down payment. The brokerage held this in escrow. The purchase agreement stated that if the buyer defaulted, he/she would forfeit the deposit, and that the parties must mediate any disputes over forfeited earnest money.

The buyer then defaulted on the purchase agreement. Both the bank and the buyer requested the escrowed funds. The brokerage, as required in Maine, refused to release the money until it either received a court order or a written agreement between the bank and the buyer, permitting the release of funds. In the meantime, the brokerage secured a second buyer of the property. This buyer purchased it at full listing price and the brokerage received its commission.

Later that year, the initial buyer and the brokerage held a mediation over the disputed forfeited funds and reached an agreement. The written agreement was used by the brokerage for the release of the earnest money as specified in the agreement, and the buyer received the full amount they were owed, as per the agreement. The bank also received funds, but the brokerage retained half of what was supposed to go to the bank, as per the original listing agreement.

The bank sued the brokerage for the amount of escrow that the brokerage retained. The brokerage counter-sued the bank, alleging that the original listing agreement gave them a right to indemnification and attorney fees. The trial court entered judgment in favor of the bank, the brokerage appealed, and the case went to the Supreme Court of Maine. This court reversed the ruling in favor of the bank and sent the case back to trial court to enter judgment in favor of the brokerage, as well as to determine if the brokerage was entitled to its attorney fees.

The case bounced back and forth between court rulings and arguments and was very time-consuming and

complicated. Ultimately, it involved common factors that are involved in everyday real estate transactions: escrow accounts, earnest money deposits, signed listing agreements and commissions. It also is a prime example of how even the highest court in the state can sometimes find it difficult to litigate real estate transactions, and bring a case to a close. As you work in your business on a daily basis, what can you do to prevent this from happening at your firm?

## Virginia

In a case from Virginia, a licensee was reported to the Virginia Real Estate Board for not exercising ordinary care and maintenance of his escrow account. As a disclaimer, this case will show you major similarities and differences between Indiana and Virginia. For instance, it appears that the Virginia board deals more strictly with issues of escrow than does the Indiana board. However, we see similarities between Indiana and Virginia in terms of maintaining escrow accounts and keeping sufficient funds in an escrow account.

In this case, the real estate licensee was purchasing property from the seller. He was the registered agent and managing broker for the real estate brokerage which represented him as the purchaser. This brokerage is recognized by the Virginia State Corporation Commission as an LLC. The facts of the case are as follows:

- July 9, 2018: Broker enters into a contract with the seller for the purchase of property.
- July 29, 2018: The contract was ratified.
- August 16, 2018: Broker issued a check to the brokerage firm in the amount of \$500, as the Earnest Money Deposit (EMD) for the purchase of the property.
- August 17, 2018: The \$500 EMD was deposited into the escrow account for the brokerage firm.

According to Code of Virginia 135-20-180, when a contract is ratified, earnest money deposits and down payments received by the principal broker or supervising broker or the associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated.

The violation of this code occurred when the broker failed to deposit the EMD into the escrow account by the end of the fifth business banking day after the contract was ratified. The licensee failed to exercise proper care

in performing his duties. In a statement made to the Virginia board, the licensee wrote: “The contract called for a \$500 deposit to be paid within 5 days of acceptance. I completely forgot about the deposit and sent the contract to my attorney to prepare for closing.” The licensee’s poor memory regarding his ordinary legal responsibilities and duties resulted in a total cost of \$1,300. The Virginia board issued two fines: Fine 1 was for failure to exercise ordinary care (\$500); Fine 2 was for the disciplinary action and escrow account mismanagement (\$650). In addition, the licensee had to pay the board costs for investigating the matter and conducting the hearing (\$150).

While \$1300 may not seem like an exorbitant amount in fines, it is important to note that this is just one incident. Fines issued by state real estate boards can be much higher. Can your firm afford to pay thousands in fines, simply because a licensee “forgets” to perform their duties?

## **REVIEW QUESTIONS:**

6. **This is the mixing of personal and business funds with any money or funds in a trust account:**
    - A. Comingling
    - B. Conversion
    - C. Escrowing
    - D. Coagulating
  
  7. **An escrow or trust account must be held:**
    - A. In a federally insured institution
    - B. A private institution
    - C. Under their mattress
    - D. In a CD
- 

## **OLD CAR**

This wouldn’t be a real estate continuing education class without talking about our favorite acronym, OLD CAR. Obedience, loyalty, disclosure, confidentiality, accounting or accountability, and reasonable care and skill.

### **Obedience**

The duty of obedience is to act in good faith at all times, obeying the client’s lawful instructions. If the client wants you to do something unlawful or unethical, you should say no.

### **Loyalty**

Loyalty requires that the agent place the client’s interest above their own and all other interests. This is where conflict of interest can occur. For example, if an agent owns or is selling their own property, the agent needs to inform the buyer client that they are a licensed agent and are selling their own property.

### **Disclosure**

The agent has the duty of disclosure to their client. They must keep the client informed of all facts and information that might affect a transaction. This includes disclosing material facts and material defects that the agent knows or should have known. An agent is obligated to discover facts that a “reasonable person” would feel are important in choosing whether or not to purchase or sell a home. We’ll discuss disclosure a bit later when we talk about the National Association of REALTORS Code of Ethics.

### **Confidentiality**

This is what it sounds like- keeping the client’s personal information confidential. Let’s look at an example. If you are a listing agent and the older aged seller says to you, “let’s price it at \$650,000. You know, I really need to get to my grandkids in Florida quickly, so if I were to get \$595,000, I’d really take that.” Yes, you know the know the seller is motivated to sell and that the seller would take less. You can’t use this information to get the client a quick sale. Your objective is to get the seller the \$650,000.

The same thing can be used in the event of a buyer. If I buyer says, “I just won the Mega Millions Lottery, I can buy any house I want,” you can’t use that info when negotiating for the buyer.

### **Accountability or Accounting**

The agent must know and report the status of all funds/ documents received from the client. The refers to earnest deposit monies, rental deposit monies, signed contracts, and any other documents.

## **Reasonable Care and Skill**

Reasonable care and skill is the reasonable degree of competence that a client entrusts to an agent. The client expects the agent to have skills and expertise in real estate matters that are superior to an average, reasonable person. Reasonable care and skill is going to be different if you're a buyer's agent or a seller's agent. If you're turned into the State Real Estate Commission for any licensing violation, the easiest "add on charge" is lack of reasonable care and skill.

Make sure that you remember to always keep your duties of OLD CAR when representing your clients and running your business.

## **THE TOP REAL ESTATE VIOLATIONS**

As an instructor and licensed in four states (Pennsylvania, Maryland, Virginia, and Washington DC), I see a lot of different laws and disclosures. Now you're probably thinking - "Wow! That's a lot to remember! Well, yes, it is. There are some top violations that occur all over the country that instructors and Real Estate Commissions see over, and over, and over again. They can be broken down into multiple topics. Here are the top: disclosure, transaction notifications, safeguards to the public, felony notifications, unauthorized access to a home, and earnest money deposits. Since we just talked about a number of case studies that deal with earnest money deposits, we won't cover that in this section.

### **A. Disclosure**

Let's start with disclosure. Not only are we going to talk about seller disclosures, we're also going to talk about agency disclosures. One of the biggest complaints of the general public is "I didn't know that the agent represented (insert position here- buyer, seller, landlord, tenant." Let's look at some basic terms and definitions for agency relationships from the Indiana Code.



Agency relationship: relationship in which a licensee represents a client in a real estate transaction. This can be found in IC 25-34.1-10-0.5

Broker: means an individual or entity issued a broker's real estate license by the Indiana real estate commission. This can be found in IC 25-34.1-10-1.

Client: means a person who has entered into an agency relationship with a licensee. This can be found in IC 25-34.1-10-5.

Customer: means a person who is provided services in the ordinary course of business by a licensee but who is not a client. This can be found in IC 25-34.1-10-6.

In-House Agency Relationship: means an agency relationship involving two (2) or more clients who are represented by different licensees within the same broker company. This can be found in IC 25-34.1-10-6.5.

Limited Agent: means a licensee who, with the written and informed consent of all parties to a real estate transaction, represents both the seller and buyer or both the landlord and tenant and whose duties and responsibilities to a client. This can be found in IC 25-34.1-10-7. In most situations, this is what is called dual agency. Limited agent is a great way to describe this because the agent is limited in what they can do. They can't exercise their duties of OLD CAR with their clients. We'll talk more about this next.

Every broker has their own policies and procedures for their offices. Let's talk about listings. I'm sure no managing broker would allow an agent to sell a property without a listing agreement. Managing brokers- this is where you should be shaking your head yes! The listing agreement creates an agency relationship with the client. Also remember, the listing agreement is between the broker and the seller, NOT the agent and the seller. So, this listing agreement or listing agency relationship comes with certain duties including the disclosure of information. Let's take a look into the Indiana Code at 25-34.1-10-10 and see exactly what it says below.

### **IC 25-34.1-10-10 Licensee Representing Seller or Landlord; Duties; Disclosure of Information**

Sec. 10. (a) A licensee representing a seller or landlord has the following duties and obligations:

- (1) To fulfill the terms of the agency relationship made with the seller or landlord.
- (2) To disclose the nature of the agency relationship

with the seller or landlord, and redefine and disclose if the relationship changes.

- (3) To promote the interests of the seller or landlord by:
- (A) seeking a price or lease rate and contract terms satisfactory to the seller or landlord; however, the licensee is not obligated to seek additional offers to purchase or lease after an offer to purchase or lease has been accepted by the seller or landlord, unless otherwise agreed between the parties;
  - (B) presenting all offers to purchase or lease to and from the seller or landlord immediately upon receipt of the offers regardless of whether an offer to purchase or lease has been accepted, unless otherwise directed by the seller or landlord;
  - (C) disclosing to the seller or landlord adverse material facts or risks actually known by the licensee concerning the real estate transaction;
  - (D) advising the seller or landlord to obtain expert advice concerning material matters that are beyond the licensee's expertise;
  - (E) timely accounting for all money and property received from the seller or landlord;
  - (F) exercising reasonable care and skill; and
  - (G) complying with the requirements of this chapter and all applicable federal, state, and local laws, rules, and regulations, including fair housing and civil rights statutes, rules, and regulations.
- (b) A licensee representing a seller or landlord may not disclose the following without the informed written consent of the seller or landlord:
- (1) That a seller or landlord will accept less than the listed price or lease rate for the property or other contract concessions.
  - (2) What motivates the seller to sell or landlord to lease the property.
  - (3) Any material or confidential information about the seller or landlord unless the disclosure is required by law or where failure to disclose would constitute fraud or dishonest dealing.
- (c) A licensee representing a seller or landlord owes no duties or obligations to the buyer or tenant except that a licensee shall treat all prospective buyers or tenants honestly and shall not knowingly give them false information.
- (d) A licensee shall disclose to a prospective buyer

or tenant adverse material facts or risks actually known by the licensee concerning the physical condition of the property and facts required by statute or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the property by the buyer or tenant. A licensee representing a seller or landlord owes no duty to conduct an independent inspection of the property for the buyer or tenant or to verify the accuracy of any statement, written or oral, made by the seller, the landlord, or an independent inspector. This subsection does not limit the obligation of a prospective buyer or tenant to obtain an independent inspection of the physical condition of the property. A cause of action does not arise against a licensee for disclosing information in compliance with this section.

- (e) A licensee representing a seller or landlord may:
- (1) show alternative properties not owned by the seller or landlord to a prospective buyer or tenant and may list competing properties for sale or lease without breaching any duty or obligation to the seller or landlord; and
  - (2) provide to a buyer or tenant services in the ordinary course of a real estate transaction and any similar services that do not violate the terms of the agency relationship made with the seller or landlord.

As you read though that section of law it talks about fulfilling the terms of the agency relationship. This is what we call its purpose. For example, the seller hired you to sell their home, you've gotten them to settlement successfully, and you've been paid! Remember that after settlement the buyer and the seller are "free clients." Think about adding them to your client relationship management system so that you can frequently follow up with them. I once had a client that said they'd never forget me for doing such a great job! A few years later, they listed their home for sale with another agent because they forgot about me. In the same token, I forgot about them.

The duties outlined in the law also discuss disclosure of information in section B, lines 1-3. We can't disclose that a seller will take less, what motivates them to move, or any material or confidential information about the seller unless it is required by law or where it would constitute fraud or dishonest dealing. Let's be real here for a moment. Every buyer wants to know why the seller is moving. Make sure you have this discussion with the seller and let them know that buyers will ask why they are selling the home.

Disclosure also comes into play with the promoting the best interest of the seller or landlord. You can see from the Indiana Code above that they list seven ways to promote the interest of the seller or landlord. Let's break them down a bit:

- (A) Seeking a price or lease rate and contract terms satisfactory to the seller or landlord; however, the licensee is not obligated to seek additional offers to purchase or lease after an offer to purchase or lease has been accepted by the seller or landlord, unless otherwise agreed between the parties;

**Discussion:** This is the most important one and that's why it is first on the list. It is best practice to let the seller or landlord that sets the price for the property. This way, they can't say "well, my agent said this is the price." As brokers, it is our job to guide the seller on what price to list their home at via a Comparative Market Analysis or CMA. This also goes back to the National Association of REALTORS Code of Ethics. Let's talk about Standard of Practice 1-3: REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value. Even the Code of Ethics tells us that we can't deliberately mislead the owner. We must be able to guide our client to the proper price and then try to get them that price --- or whatever price is satisfactory to them.

- (B) Presenting all offers to purchase or lease to and from the seller or landlord immediately upon receipt of the offers regardless of whether an offer to purchase or lease has been accepted, unless otherwise directed by the seller or landlord;

**Discussion:** This section is taken directly from the Code of Ethics in Standards of Practice 1-6 and 1-7. This goes back to our duties as an agent, remember OLD CAR. We need to be accountable and timely in our delivery of documents. Here is some of the wording from the Code of Ethics:

Standard of Practice 1-6: REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. (Adopted 1/93, Amended 1/95)

Standard of Practice 1-7: When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented.

REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. (Amended 1/20)

- (C) Disclosing to the seller or landlord adverse material facts or risks actually known by the licensee concerning the real estate transaction;

**Discussion:** This section is taken pretty much directly from the Code of Ethics Standard of Practice 2-1: REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. (Amended 1/96)

- (D) Advising the seller or landlord to obtain expert advice concerning material matters that are beyond the licensee's expertise;

**Discussion:** Again, this section of law mimics the Code of Ethics Standard of Practice 2-1: REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. (Amended 1/96). Remember, if you don't know something, it is okay to say I don't know. It is better to do the research and get it back to your client.

- (E) Timely accounting for all money and property received from the seller or landlord;

**Discussion:** This is part of your duties as an agent: OLD CAR. We've talked a lot about accounting, earnest money deposits, and escrow accounts earlier in the course.

- (F) Exercising reasonable care and skill; and

**Discussion:** Again, this falls back on your duties as an agent: OLD CAR.

As you can see, there are a lot of disclosures and duties that we owe to sellers. Let's briefly talk about the disclosures and duties that we owe to buyers. These can be found in licensing law at IC 25-34.1-10-11.

## **IC 25-34.1-10-11 Licensee Representing Buyer or Tenant; Duties; Disclosure of Information**

Sec. 11. (a) A licensee representing a buyer or tenant has the following duties and obligations:

- (1) To fulfill the terms of the agency relationship made with the buyer or tenant.
- (2) To disclose the nature of the agency relationship with the buyer or tenant, and redefine and disclose if the relationship changes.
- (3) To promote the interests of the buyer or tenant by:
  - (A) seeking a property with a price or lease rate and contract terms satisfactory to the buyer or tenant; however, the licensee is not obligated to locate other properties to purchase or lease while the buyer is under contract to buy property or while the tenant is under contract to lease property, unless otherwise agreed between the parties;
  - (B) presenting all offers to purchase and lease to and from the buyer or tenant immediately upon receipt of an offer regardless of whether the buyer is already under contract to buy or the tenant is under contract to lease property, unless otherwise directed by the buyer or tenant;
  - (C) disclosing to the buyer or tenant adverse material facts or risks actually known by the licensee concerning the real estate transaction;
  - (D) advising the buyer or tenant to obtain expert advice concerning material matters that are beyond the licensee's expertise;
  - (E) timely accounting for all money and property received from the buyer or tenant;
  - (F) exercising reasonable care and skill; and
  - (G) complying with the requirements of this chapter and all applicable federal, state, and local laws, rules, and regulations, including fair housing and civil rights statutes, rules, and regulations.
- (b) A licensee representing a buyer or tenant shall not disclose the following without the informed consent, in writing, of the buyer or tenant:
  - (1) That a buyer or tenant will pay more than the offered purchase price or offered lease rate for the property or other contract concessions.
  - (2) What motivates the buyer to buy or tenant to lease the property.

- (3) Any material or confidential information about the buyer or tenant unless this disclosure is required by law or where failure to disclose would constitute fraud or dishonest dealing.
- (c) A licensee representing a buyer or tenant owes no duties or obligations to the seller or landlord except that a licensee shall treat all prospective sellers or landlords honestly and not knowingly give them false information.
- (d) A licensee representing a buyer or tenant owes no duty to conduct an independent investigation of the buyer's or tenant's financial ability to perform for the benefit of the seller or landlord or to verify the accuracy of any statement, written or oral, made by the buyer, the tenant, or a third party.
- (e) A licensee representing a buyer or tenant may:
  - (1) show properties in which the buyer or tenant is interested to other prospective buyers or tenants and may show competing buyers or tenants the same property or assist other buyers or tenants in purchasing or leasing a particular property without breaching any duty or obligation to the buyer or tenant; and
  - (2) provide to a seller or landlord services in the ordinary course of a real estate transaction and any similar services that do not violate the terms of the agency relationship made with the buyer or tenant.

As you can see from reading these, they are very similar to the disclosures and duties that we owe to sellers. One thing that agents frequently forget to do is have a buyer agency agreement signed. This protects the buyer, the agent, and the brokerage. The client knows that they are agreeing to representation and may owe money to the brokerage. The next section of disclosure is "limited agency" or as it is more commonly known, dual agency.

Dual agency is a slippery slope and many people profess to know with it is, but don't handle it properly. When being a limited agent (or dual agent as we'll continue to call it), we can't properly represent either party one hundred percent. Let's look at the licensing law of the Indiana Code 25-34.1-10-12.

## **IC 25-34.1-10-12 Licensee Acting as Limited Agent**

Sec. 12. (a) A licensee may act as a limited agent only with the written consent of all parties to a real estate transaction. The written consent is presumed to have

been given and all parties are considered informed for any party who signs a writing or writings at the time of entering into an agency relationship with the licensee that contains the following:

- (1) A description of the real estate transaction or types of real estate transactions in which the licensee will serve as a limited agent.
- (2) A statement that in serving as a limited agent, the licensee represents parties whose interests are different or even adverse.
- (3) A statement that a limited agent shall not disclose the following without the informed consent, in writing, of the parties to the real estate transaction:
  - (A) Any material or confidential information, except adverse material facts or risks actually known by the licensee concerning the physical condition of the property and facts required by statute, rule, or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the property by the parties.
  - (B) That a buyer or tenant will pay more than the offered purchase price or offered lease rate for the property.
  - (C) That a seller or landlord will accept less than the listed price or lease rate for the property.
  - (D) What motivates a party to buy, sell, or lease the property.
  - (E) Other terms that would create a contractual advantage for one (1) party over another party.
- (4) A statement that there will be no imputation of knowledge or information between any party and the limited agent or among licensees.
- (5) A statement that a party does not have to consent to the limited agency.
- (6) A statement that the consent of each party has been given voluntarily and that any limited agency disclosure has been read and understood.
  - (b) A licensee acting as a limited agent may disclose and provide to both the seller and buyer property information, including listed and sold properties available through a multiple listing service or other information source.
  - (c) A cause of action does not arise against a licensee for disclosing or failing to disclose information in compliance with this section, and the limited agent does not terminate the limited agency relationship by making a required disclosure.

Notice that in section (a), it states that written consent is presumed to have been given and all parties are considered informed for any party who signs a writing or writings at the time of entering into an agency relationship. So remember, you need the written consent of all parties and then you need to discuss what you can and can not do. You can see these things in lines 1-6. Let's take a quick step back and give a scenario.

Lisa Listing Agent lists a beautiful property! It has three beds, three baths, three acres, and everything that a buyer can want. She is hosting an open house and a buyer walks in. The buyer looks around and loves the home. The buyer says to Lisa, "it is just everything that I've dreamed of in a home. I want to make an offer!" Lisa then goes back to her office after the open house and writes up an offer for the buyer. Lisa quickly discusses that she represents the seller and she can also represent the buyer. The buyer is unsure and quickly says okay. From there, Lisa writes up the offer, buyer signs it, she presents it to the seller who quickly signs it, and we're under contract! Woohoo! Well, not so fast. Let's go back to writing up the offer. The buyer says "well, what do you think we should offer." Lisa says, "well, it is listed at \$550,000, but I think the sellers are a little high on the price. What do you think about \$535,000." The buyer said okay. Lisa didn't just pick \$535,000 out of thin air, she knew the sellers were anxious to sell because they were moving to Florida to be closer to their grandchildren. When Lisa took the offer to the seller, the seller quickly signed. Did Lisa properly represent the seller? If you said yes, you may be wrong. If you said no, then you're right! Lisa put the needs of her buyer before the needs of the seller. She should have been trying to get the \$550,000 that the seller was looking for in a price. When she suggested price of \$535,000, she was putting the needs of the buyer ahead of the seller. As you can see, this is just the tip of the iceberg as far as problems with being a limited agent or a dual agent. As a managing broker, do you allow your agents to practice as a limited agent or a dual agent? Why or why not? One thing to think about as a managing broker- does your errors and omissions insurance allow you to practice limited agent or dual agency? Most times when agents are sued or litigation is brought on them, it is because of limited agent or dual agency. One of the aggrieved parties says that they weren't properly represented.

## B. Transaction Notices

Another one of the top violations that are brought to the Commission is about transaction notices and misrepresentation. As a broker, it is imperative that you look out for your client's needs. Not only do you need to make sure that you represent your clients' interests, but you must inform all principals to the transaction of

any material changes – this includes the party that you do not represent. This includes informing the parties if the earnest money deposit is not deposited in a timely manner.



Let's talk about the Sales Contract. Most of the time it is filled out by the buyer agent and then sent to the listing agent. The listing agent via the seller may submit a counter offer on the same form, then the buyer signs it. As the buyer agent and the listing agent, make sure that everything is initialed. Sometimes, there are three or four counter offers. When the contract gets too messy, please create a clean one. As a compliance broker for one of my firms, I see lots of contracts that I can't figure out the price or terms! If I can't figure it out, how is the lender, underwriter, and title company supposed to figure out what the terms of the contract are supposed to be! We've already talked a lot about earnest money deposits earlier in the course. Remember, if an earnest money deposit isn't turned into whoever is holding it, the other party needs to know about it. It is a term of the contract!

### C. Safeguarding the Public

The public thinks that agents don't do a whole lot of work, it is an easy job, they walk through pretty houses, and get paid a whole lot of money. I know all of you are laughing in your heads. It is our duty as licensees to safeguard the interests of the public during a transaction and through our education. Let's talk about documents in our brokerages. Every Managing Broker probably has a checklist of everything that needs to be in a transaction file before the agent can get paid. If it is not there, the agent doesn't get paid. Some agents think that Managing Brokers do this for fun; as we know, we do not. As Managing Brokers, we need to report to the Real Estate Commission and the Real Estate Commission can come and audit our files. So, it is imperative that we submit documents to our brokers in a timely manner. This includes earnest money deposits and we discussed multiple times throughout this course!

I had an agent push back on one of the check lists that we have set up for the Under Contract folder in our document management system. One of the items is "Confirmation of Escrow Money Deposit." This is in Northern Virginia. Most firms in Northern Virginia do not hold the escrow money deposit; it is sent directly to the title company that the buyer is going to be using. This agent complained that he didn't want to confirm that it was sent from the buyer and he didn't want to check with the title company that they received it. Most times, the listing agent is checking with the title company that they received the funds. When I am the listing agent, I check the number of days and that they funds are received. If not, the seller has a chance to terminate the transaction. Brokers- what procedures and practices do you have in place in your offices that will help you to avoid issues and possibly fines?

If you have ever written a class or curriculum for the Real Estate Commission, you'll know that there is a section of the course submission that is called safeguarding or protecting the public. As a course is written, it needs to have a reach that will protect the public. It needs to contain something that will help an agent to learn from laws, case studies, and application of those items to put the public's needs first.

### D. Felony Notification

Every state has a section in the law about the denial, revocation, or suspension of a license if there is a conviction of a crime. Indiana is no different. This can be found in IC 25-1-1.1-1 and read below.

#### **IC 25-1-1.1-1 Denial, Revocation, or Suspension of License or Certificate of Registration; Conviction of Crime**

Sec. 1. (a) Except as provided under sections 2 through 5 of this chapter, a license or certificate of registration that an individual is required by law to hold to engage in a business, profession, or occupation may not be denied, revoked, or suspended because the applicant or holder has been convicted of an offense. The acts from which the applicant's or holder's conviction resulted may, however, be considered as to whether the applicant or holder should be entrusted to serve the public in a specific capacity.

- (b) An individual licensed or certified under this title shall, not later than ninety (90) days after the entry of an order or judgment, notify the board in writing of any misdemeanor or felony criminal conviction, except traffic related misdemeanors other than operating a motor vehicle under the

influence of a drug or alcohol. A certified copy of the order or judgment with a letter of explanation must be submitted to the board along with the written notice.



As you can see from the law, you need to let the Indiana Real Estate Commission know that you are guilty of a crime no later than ninety days after the order or judgment. Depending upon the severity of the crime, they can suspend your license, revoke your license, or deny the renewal of your license. Upon received a license, the Indiana Real Estate Commission will also do a background check. If you have had been guilty of something in the past, it is best to disclose it up front and let them know.

## E. Unauthorized Access to a Home

This violation is one of the top ones. With the dawn of Ring doorbells, home security systems, and home monitoring, it is easy for a seller to know who is in their home and when someone is in their home. It is the Indiana Association of REALTORS Exclusive Right to Sell listing agreement to market the property and provide access to it for showings, inspections, etc. Paragraph J talk about lockbox, key authorization, and use. There are a lot of good warnings in this paragraph that talk about safeguarding valuables, holding the broker harmless for loss and damage, and whether or not they can install a lockbox. For most properties, they are easy to show to a client so a lockbox is installed. Most agents have been though a house and can identify key elements such as a furnace, electrical panel, etc. Most agents don't want the seller at the home during the showings, because as we know, sellers say the darndest things! Depending on where you live in the state or your local REALTOR association, there may be an electronic lock box agreement. These are the safest for a seller because only members with lock box access can open them. Most are opened via Bluetooth with an app on your phone.

Other agents are "old school" and use a combination lock box. This is where the problem comes into play. Once an agent knows the combination to the box, they can access it at any time or give the combination to anyone! Don't think this doesn't happen. A seller had a vacant home

but still had their internet set up with security cameras, video doorbell, and other equipment. Betty the buyer agent had set up a showing for the property. At the time of the showing, the sellers received a notification that there was movement at the house so they tapped into the system. They saw what looked like a man open up the lockbox and go into the home. About thirty minutes later, he returned the key to the lockbox and departed. The sellers thought this was strange and called their agent- Lisa listing agent. She confirmed that Betty had shown it. Lisa listing agent calls Betty buyer agent and Betty said "Oh, I knew it was vacant so I just sent my buyer, Frank, to look though the property." Lisa turned Betty into the local Association of REALTORS. They found Betty guilty of Violation Standard of Practice 1-16 which reads: REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. (Adopted 1/12). She was also guilty on Standard of Practice 3-9 which reads: REALTORS® shall not provide access to listed property on terms other than those established by the owner or seller. (Adopted 1/10, Amended 1/23).

So before you go giving out codes to buyers to just go show themselves, think to yourself: *is this a violation of the Code of Ethics and/or licensing law?*

The same thing goes for taking pictures in a home. If you're not the listing agent, it is not your listing to market. Through the listing agreement, the seller has given the listing agent permission to produce pictures, media, etc. in order to market the house. You can not take pictures inside, outside, or post them to your social media accounts. This constitutes marketing a listing that isn't yours. While we're on the topic, the same goes for clients. If a buyer posts pictures of a seller's home and makes the comment "I can't wait to buy this!" it is going to be tough for the buyer's agent to negotiate a lower price. Remember, buyers say the darndest things!

## SUMMARY

As you can see, there are some pretty hefty violations that we just discussed. From disclosure of who you represent, transaction notices, earnest money deposits, safeguarding the public, felony and criminal notices to the Real Estate Commission, and unauthorized access to a home are all very serious and give agents a bad name. There are always a few bad apples that ruin the entire bunch. This is where I like to remind you that we are a self policing community. If you see something that isn't right, say something to the agent first. If they don't respond or take you seriously, then you may have to have a discussion with your broker or the local REALTOR association. Don't feel bad for turning them in.

## REVIEW QUESTIONS:

8. **This duty requires that the agent place the client's interest above their own and all other interests:**
- A. Obedience
  - B. Loyalty
  - C. Reasonable care and skill
  - D. Accountability
9. **This is when a broker represents both the buyer and seller in a transaction:**
- A. Limited agent
  - B. Dual agent
  - C. Transaction licensee
  - D. A and B
10. **When acting as a dual agent, you need to have the following:**
- A. Written consent
  - B. Informed consent
  - C. In writing
  - D. All of the above
- 

## CASE STUDIES RELATING TO THE TOP VIOLATIONS

Below, you'll find actual cases from Indiana that focus on the violations that we discussed above.

### 1. Licensee H vs. Indiana Real Estate Commission

The Indiana Real Estate Commission issued a complaint against licensee H. The case involved the attempted purchase of property and failure to return the earnest money deposit due to a failed transaction.

The facts of the case are as follows:

- December 16, 2006: Purchaser writes a check to the brokerage firm as earnest money for an offer to purchase 35 acres of property.

- January 5, 2007: Licensee formally writes up the offer and it is accepted by the seller.
- February 2, 2007: An additional purchaser is added to the purchase agreement, along with the original purchaser.
- February 2007: Three attempts are made to secure financing. Two are denied and one contained a conditional approval with terms that exceeded those written in the Purchase Agreement.
- July 27, 2007: Purchasers and licensee signed a Mutual Release, but the Seller refused to sign.
- August 10, 2007: Attorney for the purchasers writes a letter to the Seller, demanding the release of the earnest money. This demand was based on the inability of the purchasers to secure financing, which made it impossible for them to fulfill the contract.
- August 17, 2007: Licensee's attorney issues a statement, citing that the Purchase Agreement was void once the buyers were unable to secure financing within 30 days after acceptance of the Purchase Agreement. Also, the statement declared that the earnest money should be distributed under these circumstances.
- At the time that the Indiana Real Estate Commission has issued the complaint and hearing against the licensee, no court order has been filed and no litigation has been initiated by either party. The licensee has not initiated the release of the earnest money to the purchasers, as allowed by the Indiana code.

The Indiana Real Estate Commission issued two counts against the licensee:

- Count I: The licensee's conduct is a violation of Indiana Code 25-1-11-5(a)(4)(B) – The licensee failed to stay abreast of current professional theory or practice by violating 876 IAC 1-1-23. The latter code states when licensee H was notified that the buyers were unable to perform due to the inability to secure financing, the licensee failed to initiate the release of the earnest money by notifying all parties at their last known address, by certified mail, that the earnest money was to be distributed. The only reason the licensee would not do this was if all parties enter into a mutual release or one or more of the parties initiate litigation within sixty days of the mailing date of the certified letter. Since neither of these circumstances occurred, the licensee violated the Indiana code.
- Count II: The licensee's conduct is a violation of Indiana Code 25-1-11-5(a)(4)(B) – The licensee

failed to stay abreast of current professional theory or practice by violating Indiana code 25034.1-10-11. The latter code states that the licensee failed to execute care on behalf of the client in the execution of the Purchase Agreement, by not providing for the possibility that the buyers could not obtain financing to purchase the property, and also by not initiating the release of the earnest money, as required by the Indiana Code.

As a result of the findings, the licensee was sanctioned, had to pay all costs incurred in the prosecution of this case, and was responsible for any and all other relief the Real Estate Commission found justifiable, as per Indiana Code 25-1-11-12.

## **2. Licensee K vs. Indiana Real Estate Commission**

The Indiana Real Estate Commission issued a complaint against licensee K. The case involved the attempted purchase of a home and its property, where Licensee K represented the buyers, and the falsification of information on the Purchase Agreement.

The facts of the case are as follows:

- August 23, 2008: Buyers offered the sellers \$253,570 for the purchase of the house and property. The only caveat was that the sellers would pay \$5000 for the relocation of the laundry room.
- August 24, 2008: Sellers created a counteroffer stating that although they would accept the buyer's purchase price, they would not pay the \$5000 for the relocation of the laundry room. The buyers accepted this counteroffer.
- September 23, 2008: Licensee K is contacted by the buyer's mortgage broker. The mortgage broker informs Licensee K that in order for the loan to move ahead, he needed new numbers on the Purchase Agreement. Instead of creating a new Purchase Agreement and having the Sellers to sign it, Licensee K changed the numbers in the Purchase Agreement, cut their signatures from the original agreement, and pasted them to the new agreement, without the Sellers' permission.
- That same day, the real estate professional representing the Sellers had a conversation with the mortgage broker, and during the conversation, the professional realized that the mortgage broker had a different version of the Purchase Agreement. The Sellers' representative brought this to the attention of the Sellers.

- Later on September 23, 2008, the Sellers wrote a new offer, where they initialed each page, and asked the Buyers to do the same. This new agreement had a purchase price of \$249,470.

The Indiana Real Estate Commission issued three counts against the licensee:

- Count I: Licensee's conduct constitutes a violation of Indiana Code 25-1-11-5(a)(1)(B) in that the licensee has engaged in material deception in the 632018-1 course of professional services or activities. This occurred when the licensee rewrote the Purchase agreement and copied and pasted the Sellers signatures from the original agreement, instead of getting the Sellers to sign a new one.
- Count II: Licensee's violated Indiana Code 25-1-11-5(a)(4)(B) in that the licensee continued to practice even though she has become unfit to practice due to her failure to keep abreast of current professional theory or practice by violating Indiana Code 25-34.1-10-1(c). The latter code states that the licensee failed to treat the Sellers honestly and not knowingly give them false information when she copied and pasted their signatures from the original Purchase Agreement to the new agreement.
- Count III: The conduct of the licensee violates Indiana Code 25-1-11-5(a)(4)(B) because the licensee has continued to practice although she has become unfit to practice due to her failure to keep abreast of current professional theory or practice by violating Indiana Code 25-34.1-10-11(a)(3)(F), when licensee failed to exercise reasonable care and skill by not having the Sellers sign the new Purchase Agreement.

As a result of the findings, the licensee was sanctioned, had to pay all costs incurred in the prosecution of this case, and was responsible for any and all other relief the Real Estate Commission found justifiable, as per Indiana Code 25-1-11-12.

## **3. Licensee L vs. Indiana Real Estate Commission**

The Indiana Real Estate Commission issued a complaint against licensee L. The case involved the attempted sale of a home and accompanying lot. The licensee represented the seller, and a listing agreement was signed by both parties. However, the licensee failed to fulfill the terms of the agreement, and ultimately the terms of the agency relationship.

The facts of the case are as follows:

- September 27, 1999: Seller enters into a listing agreement with the licensee to sell a home and an accompanying lot. The home was on 0.97 acres and was to be marketed at \$127,000. The lot was 1 acre and was to be marketed at \$10,000. The licensee also agreed to provide the seller with weekly progress updates.
- The picture of the home was to be included in the newspaper listing. However, the licensee failed to include the picture of the home in the newspaper. In addition, the licensee incorrectly described the home and listed only 2 baths and neither a stove nor an oven. In reality, the home had 2.5 baths and both a stove and an oven. The licensee also incorrectly marketed the home and lot as one property, and not two separate pieces of property.
- Regarding communication with the seller, the licensee failed to provide the weekly updates, as stated in the listing agreement. The licensee also represented to the seller that approximately 3-5 showings were taking place per week but was unable to provide the seller with any details regarding the showings.
- A couple of days after the listing agreement was signed on September 27, Prospective Buyer 1 made an offer for the property. But because the licensee failed to immediately inform the seller about the offer, Prospective Buyer 1 withdrew their offer.
- October 2, 1999: Prospective Buyer 2 submitted an offer to purchase the home and lot as one parcel, for \$110,000.
- October 2, 1999: Upon receiving this offer, the seller made a counteroffer of \$127,000. The seller stipulated that any counteroffer was to be made by October 6, 1999. The licensee does not contact the seller with a counteroffer.
- November 24, 1999: The seller engages another real estate professional, and they meet the licensee at his office for a meeting. While reviewing the file, the seller learns that Prospective Buyer 2 had made a counteroffer of \$115,000 approximately 50 days prior to the meeting (on or around October 5, 1999). The licensee had never communicated to the seller for formal acceptance or rejection.
- Licensee agreed to type up Prospective Buyer 2's counter offer and fax it to the seller after the conclusion of the meeting on November 24, 1999. But the licensee never did this.

The Indiana Real Estate Commission issued two counts against the licensee:

- Count I: Because the licensee failed to market the property and to keep the seller informed, as per the terms of the listing agreement, the Commission found that the licensee violated Indiana Code 2-34.1-10-10, which states: "A licensee representing a seller or landlord has the following duties and obligations:
  - To fulfill the terms of the agency relationship made with the seller or landlord
  - To promote the interests of the seller or landlord by
  - Exercising reasonable care and skill."

The licensee was also found to have violated 876 IAC 1-1-40, which states: "Listing or offering real property for sale, exchange, option, rent or lease without the written consent of, or on any terms other than those authorized by, the owner or the owner's authorized agent."

- Count II: Because the licensee failed to immediately communicate the offer made by Prospective Buyer 1 and the counteroffer of Prospective Buyer 2 for his formal acceptance or rejection, the licensee violated Indiana Code 25-34.1-10-10, which states: "A licensee representing a seller or landlord has the following duties and obligations:
  - To promote the interests of the seller or landlord by
  - Presenting all offers to purchase or lease to and from the seller and landlord immediately upon receipt of the offers regardless of whether an offer to purchase or lease has been accepted, unless otherwise directed by the seller or landlord."

In addition, the licensee was found to be in violation of:

- 876 IAC 1-1-23, which states: "Any and all written offers to purchase or authorization to purchase shall be communicated for the seller for his or her formal acceptance or rejection immediately upon receipt of such offer, and such offers or authorizations shall be made in quadruplicate, one (1) copy to the prospective purchasers at the time of signing, one (1) copy for the principal broker's files, one (1) copy to the sellers, and one (1) copy to be returned to the purchasers after acceptance or rejection."

- 876 IAC 1-1-40, which states: “Incompetent practice of real estate includes the following: failing to account for and remit funds or documents belonging to others that come into the licensee’s possession.”

As a result of the findings, the licensee was subject to various methods of sanctioning, including but not limited to, permanent revocation of the licensee’s license and a civil penalty for not more than \$1,000 for each violation. The Indiana Real Estate Commission was entitled to impose such sanctions, as per Indiana Code 25-1-11-12.

## COURSE CONCLUSION

We’ve finally reached the end of the course! I hope you have gotten some takeaways from the course materials. We’ve taken a look at a lot the Real Estate Commission Rules and Regulations as an overview. Later in the course, we discussed the top violations that licensees can get charged with from the Real Estate Commission. We discussed managing broker requirements and responsibilities, escrow and trust accounts, the top real estate violations, and go over a number of case studies that related to the violations of licensees in Indiana. Hopefully, you have gotten some ideas for your brokerage and to protect you in the future.

**REVIEW QUESTIONS ANSWER KEY:**

1. In Indiana, the only classification you can hold is a broker:  
a. True  
b. False  
c. There is Managing Broker and Broker  
d. There is Broker, Associate Broker, and Salesperson
2. New Jersey, Virginia, and Pennsylvania have the following classification of licenses:  
a. Broker only  
b. Salesperson only  
c. Broker and Salesperson  
d. None of the above
3. In order to get the Managing Broker designation, how many hours of education do you need to take?  
a. 12  
b. 24  
c. 36  
d. 48
4. Every year, Indiana brokers must take \_\_\_\_\_ hours of CE and a total of \_\_\_\_\_ hours every 3 years:  
a. 12, 12  
b. 12, 24  
c. 12, 36  
d. 24, 36
5. This management style is most like the democratic style. Managers are facilitators:  
a. Dictatorial style  
b. Autocratic style  
c. Laissez-faire style  
d. Participatory style

6. This is the mixing of personal and business funds with any money or funds in a trust account:  
a. Comingling  
b. Conversion  
c. Escrowing  
d. Coagulating
7. An escrow or trust account must be held:  
a. In a federally insured institution  
b. A private institution  
c. Under their mattress  
d. In a CD
8. This duty requires that the agent place the client's interest above their own and all other interests:  
a. Obedience  
b. Loyalty  
c. Reasonable care and skill  
d. Accountability
9. This is when a broker represents both the buyer and seller in a transaction:  
a. Limited agent  
b. Dual agent  
c. Transaction licensee  
d. A and B
10. When acting as a dual agent, you need to have the following:  
a. Written consent  
b. Informed consent  
c. In writing  
d. All of the above

## **FINAL EXAM:**

1. **After passing the licensing exam, how long do you have to apply for the license?**
  - A. One year
  - B. Two years
  - C. Three years
  - D. Four years
  
2. **New licensees need to take \_\_\_\_\_ of pre-licensing education.**
  - A. 60 hours
  - B. 75 hours
  - C. 90 hours
  - D. 120 hours
  
3. **This is a special designation for brokers in Indiana.**
  - A. Principal Broker
  - B. Broker of Record
  - C. Broker in Charge
  - D. Managing Broker Designation
  
4. **In Indiana, this designation makes you the main point of contact with the Real Estate Commission.**
  - A. Principal Broker
  - B. Broker of Record
  - C. Broker in Charge
  - D. Managing Broker Designation
  
5. **How many months must you have your license before you can earn the Managing Broker designation?**
  - A. 12
  - B. 24
  - C. 36
  - D. 48
  
6. **As of 2022, how many local REALTOR associations are in Indiana?**
  - A. 20
  - B. 25
  - C. 30
  - D. 35
  
7. **In order to have the managing broker designation, you need to be a resident of Indiana.**
  - A. True
  - B. False
  - C. True with exceptions
  - D. You can not be a non-resident managing broker designation.
  
8. **A manager has a \_\_\_\_\_ focus.**
  - A. People
  - B. Work
  - C. Operations
  - D. Leadership
  
9. **A leader has a \_\_\_\_\_ focus.**
  - A. People
  - B. Work
  - C. Operations
  - D. Leadership
  
10. **There are 4 management styles. They include:**
  - A. Dictatorial style
  - B. Autocratic style
  - C. Laissez-faire style
  - D. All of the above

11. **“I say, you do” is this type of management style.**
- A. Dictatorial style
  - B. Autocratic style
  - C. Laissez-faire style
  - D. Participatory style
12. **This management style is more benevolent and humanistic approach than the dictatorial style**
- A. Dictatorial style
  - B. Autocratic style
  - C. Laissez-faire style
  - D. Participatory style
13. **This management style is also known as non-management.**
- A. Dictatorial style
  - B. Autocratic style
  - C. Laissez-faire style
  - D. Participatory style
14. **What resources should you look to when determining if you should open your own company?**
- A. GDP
  - B. Inflation cycles
  - C. Health of the economy
  - D. All of the above
15. **In Indiana, the broker company must be licensed.**
- A. True
  - B. False
  - C. Only some times
  - D. Only Corporations need to be licensed
16. **To obtain a broker license, an individual must:**
- A. Be at least 21
  - B. Have a high school diploma or its equivalent
  - C. Take the licensing exam
  - D. Apply for a license within 2 years
17. **Companies also need to be licensed in Indiana. All of the follow need to be licensed**
- A. Partnerships
  - B. Corporations
  - C. Limited liability companies
  - D. All of the above
18. **Escrow accounts are there to:**
- A. Run a broker’s business
  - B. Hold other people’s money in a transaction
  - C. Provide funds for settlement
  - D. Hold the broker’s investment in their company
19. **This is when a broker uses trust or escrow funds to pay for personal or company operating expenses.**
- A. Comingling
  - B. Conversion
  - C. Escrowing
  - D. Coagulating
20. **Trust accounts in Indiana can be:**
- A. Interest bearing
  - B. Non-interest bearing
  - C. All of the above
  - D. None of the above

21. **In order for a broker to disperse funds from an escrow account,**
- A. The property goes through settlement
  - B. The broker has written instruction from the buyer and seller
  - C. There is a mutual agreement release
  - D. All of the above
22. **All of the following are takeaways from the NAR article about Earnest Money Deposits.**
- A. Earnest money is a payment from the potential buyer to the seller to show good faith in their intent to complete a real estate transaction
  - B. If the buyer's offer is accepted, earnest money goes to the seller to pay costs
  - C. Losing your earnest money is never a hurdle in the homebuying process no homebuyer wants to face
  - D. Buyers can never get some of the earnest money back
23. **Brokers can possibly get money from the earnest money deposit depending on the listing agreement.**
- A. True
  - B. False
  - C. The money belongs to the buyer
  - D. The agent is owed the money
24. **It is important as a licensee to exercise ordinary care with a real estate transaction**
- A. Always
  - B. Only when they are under contract
  - C. Never
  - D. Only in a purchase transaction
25. **A way to remember the duties of a licensee is the acronym**
- A. NEW CAR
  - B. SLO CAR
  - C. OLD CAR
  - D. FAST CAR
26. **With this skill, an agent must keep the client informed of all facts and information that might affect a transaction**
- A. Disclosure
  - B. Obedience
  - C. Confidentiality
  - D. Loyalty
27. **This is the reasonable degree of competence that a client entrusts to an agent.**
- A. Disclosure
  - B. Obedience
  - C. Reasonable Care and Skill
  - D. Loyalty
28. **This is an individual or entity issued a broker's real estate license by the Indiana real estate commission**
- A. Agent
  - B. Salesperson
  - C. Broker
  - D. Customer
29. **This entity is a person who is provided services in the ordinary course of business by a licensee but who is not a client**
- A. Client
  - B. Customer
  - C. Broker
  - D. Licensee
30. **As a listing agent, it is important to seek the price or lease rate and contract terms satisfactory to the seller or landlord.**
- A. Only when the seller says you can look for less
  - B. Only when you receive an offer
  - C. It could be a violation of the Code of Ethics if you mislead the seller to the value
  - D. Never

31. **Exercising reasonable care and skill is part of:**
- A. OLD CAR
  - B. NEW CAR
  - C. SLO CAR
  - D. FRESH CORN
32. **Dual agency can be detrimental and to**
- A. The buyer
  - B. The seller
  - C. The agent
  - D. A and B
33. **It is important to keep all parties informed of the status of the transaction, even if it is not your client.**
- A. True
  - B. False
  - C. You only need to talk to your client
  - D. You can't talk to the other party's client
34. **In the event you have a felony or other conviction, you:**
- A. Don't need to notify the Commission
  - B. Notify the Commission after ninety days
  - C. Notify the Commission within ninety days
  - D. Talk to your broker and get their advice
35. **When you're busy and the home is vacant,**
- A. It is okay to give the buyer the lockbox combo
  - B. Get another agent to show the house for you
  - C. Call the seller and let him show it
  - D. Just let the buyer walk around the property without permission
36. **Agents can use these to help access a home**
- A. Combo lock box
  - B. Key under the mat
  - C. Electronic lock box
  - D. A and C
37. **It is \_\_\_\_\_ to take pictures in a home you're showing**
- A. Always OK
  - B. Never OK
  - C. OK only when the buyer agent says so
  - D. Only when you don't post it on social media
38. **In the Licensee H case, the violation involved**
- A. Earnest money deposit
  - B. Transaction notices
  - C. Disclosure
  - D. Unauthorized access
39. **In the Licensee K case, the violation involved**
- A. Earnest money deposit
  - B. Transaction notices
  - C. Exercising reasonable care and skill
  - D. Unauthorized access
40. **In the Licensee L case, the violation involved**
- A. Did not properly represent the seller
  - B. Transaction notices
  - C. Disclosure
  - D. Unauthorized access





# PDH Real Estate

*Thank you for choosing PDH Academy Real Estate to meet your continuing education needs!*

**We are a leading provider of real estate education. You may be wondering “What’s the next step in getting my hours submitted to the Indiana Real Estate Commission?”**

**Here’s some important information for licensees completing their continuing education hours:**

- **PDH Academy will report your continuing education hours to the Indiana Real Estate Commission.**
- **Certificates of completion should be maintained for your records. The Indiana Real Estate Commission can request documentation of your continuing education hours at any time.**
- **For more information on renewing a real estate license in Indiana, please visit the Indiana Real Estate Commission’s website:  
<https://www.in.gov/pla/professions/real-estate-home/>**

**Also, don’t forget to complete your evaluation of the course(s).**

*We look forward to hearing from you!*

## Course Evaluation Form

### Managing Brokers: Avoid the Top Violations

Name: \_\_\_\_\_

Completion Date: \_\_\_\_\_

- On a scale of 1 to 5 (1 being low and 5 being high) rate your instructor on the following:

Demonstrated knowledge of course content	1 2 3 4 5
Inspired interest in subject matter	1 2 3 4 5
Encouraged feedback on course content	1 2 3 4 5
Provided substantial resource material to support topic	1 2 3 4 5
Instructor's support of student	1 2 3 4 5

- On a scale of 1 to 5 (1 being low and 5 being high) rate the content & materials on the following:

Content was relevant; helped me to learn the subject matter	1 2 3 4 5
Supplementary course materials (case studies, articles, charts/graphs, etc.) were valuable	1 2 3 4 5
Review questions/final exam accurately measured what I learned	1 2 3 4 5
Content provided clear course objectives and expectations	1 2 3 4 5

*continued on next page*

**Course Evaluation Form**  
**Managing Brokers: Avoid the Top Violations**

Name: \_\_\_\_\_

Completion Date: \_\_\_\_\_

- On a scale of 1 to 5 (1 being low and 5 being high) rate the course delivery method on the following:

Technology support needed/received while taking this course	1	2	3	4	5
Ease of use with course access, links, etc.	1	2	3	4	5
Satisfaction with the self-paced structure	1	2	3	4	5

**Please answer the following questions:**

**How was the orientation session accomplished:** \_\_\_\_\_  
\_\_\_\_\_

**Who answered your questions regarding course content:** \_\_\_\_\_  
\_\_\_\_\_

**Were they able to sufficiently help you? If not, please explain:** \_\_\_\_\_  
\_\_\_\_\_

**What suggestions do you have to improve this program:** \_\_\_\_\_  
\_\_\_\_\_