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# Model Brokerage Policies and Procedures

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 TEXAS ASSOCIATION OF REALTORS<sup>®</sup>

January 2015

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# PREFACE

The objective of Texas Association of REALTORS® Model Brokerage Policies and Procedures is to provide Texas Brokers with written policies and procedures as required by the Texas Real Estate Commission (TREC). Each chapter will contain policies comprising the general principles which will guide a Broker in his or her management of daily affairs. Each chapter will also contain procedures, or methods, to further comply with those policies.

Much of the policies and procedures contained within are derived from TREC rules—rules which must be complied with by Texas real estate licensees. Some of the policies or procedures, however, are derived from other sources, such as state and federal laws, and the National Association of REALTORS® (NAR) Code of Ethics.

**The inclusion of certain provisions of the NAR Code of Ethics in these materials is not intended to heighten the duty of care for a Texas real estate licensee.** Unlike Texas real estate licensees who are not REALTORS®, members of the Texas Association of REALTORS® (TAR) hold themselves to the ethical ideals set forth in the NAR Code of Ethics.

It is not the intention of the Texas Association of REALTORS® that these materials be all-encompassing. Brokers should take care to ensure that all relevant rules or laws affecting real estate or their business are complied with by all Sales Associates and non-licensed employees of the Broker. **A Broker may attach additional policies or procedures, as long as those policies or procedures are not in conflict with the minimum standards of TREC or legal requirements.** Additionally, all REALTORS® must comply with all Articles and Standards of Practice under the NAR Code of Ethics.

## DISCLAIMER AND LIMITATION OF USE

These materials are sold or furnished with the understanding that the authors and publishers are not engaged in the rendering of legal, employment, accounting, tax, business formation, real estate registration, risk management, or other professional advice through these materials. Questions relevant to the specific professional needs of the user should be addressed to licensed professionals competent in the area in which the need or question arises.

The Texas Association of REALTORS<sup>®</sup> specifically disclaims any liability, loss, or risk, personal or otherwise, incurred as a consequence, directly or indirectly, of the use and application of any of the materials. These materials give an overview of certain professional issues. None of the materials provided should be considered to be the last word governing any particular situation. The materials are intended to be general in nature. Furthermore, these materials do not act as a substitute for errors-and-omissions insurance. The Texas Association of REALTORS<sup>®</sup> strongly encourages members to maintain E & O insurance.

**You should obtain the advice of competent legal, employment, accounting, tax, business formation, real estate registration, risk management, and other professionals before you take any action or make any decision concerning any issue addressed by the model brokerage policies and procedures. Any printed or electronic material including but not limited to forms, policies, appendices, exhibits, or reference materials are merely models or samples. You may need to consider facts outside the model that are unique to your business, professional or personal circumstances before you adopt or modify any model policy or procedure, negotiate or execute any form or other document. Please seek the advice of competent counsel before negotiating or executing any such document.**

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# DEFINITIONS

The following terms are used in this manual:

**Agent:** a Broker or a Salesperson acting on behalf of a Principal.

**Broker:** a person or entity holding a real estate broker license issued by TREC.

**Principal:** a person or entity who has authorized an Agent to act on his/her behalf.

**Sales Associate:** a Salesperson or Broker who works for the Sponsoring Broker as an independent contractor or employee.

**Salesperson:** a person holding a real estate salesperson license issued by TREC.

**Sponsoring Broker:** the Broker responsible for all brokerage activities of his or her firm.

**TREC:** Texas Real Estate Commission.



# **NOTICE TO SALES ASSOCIATES**

**ANY OF A SALES ASSOCIATE'S ACTIONS THAT VIOLATE THE PROVISIONS OF THIS POLICIES AND PROCEDURES MANUAL ARE UNAUTHORIZED AND OUTSIDE THE AUTHORITY OF THE SPONSORING BROKER – SALES ASSOCIATE RELATIONSHIP. ALL EXPENSE OR LOSS ARISING OUT OF A SALES ASSOCIATE'S ACTS SHALL BE BORN SOLELY BY THE SALES ASSOCIATE. ALL EXPENSE OR LOSS SUFFERED BY SPONSORING BROKER AS A RESULT OF A SALES ASSOCIATE'S ACTS SHALL BE REIMBURSED BY THE SALES ASSOCIATE. ANY WAIVER OF THIS PROVISION BY THE SPONSORING BROKER WITH RESPECT TO ANY ACTIONS WILL NOT BE CONSTRUED AS A WAIVER WITH RESPECT TO ANY OTHER ACTION**

# 1

## ADVERTISING AND MARKETING

### ADVERTISING AND MARKETING POLICY

#### 1.1.1. DEFINITION

The term "Advertising" includes all written or oral statements or communications made by or on behalf of a Broker or Salesperson which induces or attempts to induce a member of the public to use the services of the licensed real estate agent or a service provider. Advertising includes, but is not limited to, publications, radio and television broadcasts, all electronic media including email messages, text messages, social-networking websites and the Internet, business stationery, business cards, signs and billboards.

#### 1.1.2. EXCLUSIONS

Advertising does not include: (i) communication from a Broker or Salesperson to a member of the public after the member of the public agrees to receive the service of the Broker or Salesperson, or (ii) listings or other real estate information available to the public on a licensee's website, extranet or similar site that is behind a firewall or similar filtering software which requires a password or registration to access that information.

#### 1.1.3. PROHIBITIONS

Sales Associate is prohibited from the following:

- (a) Advertising in a way that is materially inaccurate or misrepresents the property, terms, values, services, or policies;
- (b) Advertising a property subject to an exclusive listing agreement without the permission of the listing Broker and without disclosing the name of the listing Broker unless the listing Broker has expressly agreed to waive disclosure;
- (c) Failing to remove an advertisement about a listed property within ten (10) days after closing or termination of a listing agreement, unless the status is included in the advertisement;
- (d) Identifying the Salesperson as a Broker in advertising;
- (e) Advertising a property in a manner that creates a reasonable likelihood of confusion regarding the permitted use of the property; or

- (f) Advertising in a way that indicates a limitation or preference based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

#### **1.1.4. REQUIREMENTS**

All advertising must comply with the following:

- (a) The Texas Real Estate License Act;
- (b) TREC Rules, including, but not limited to Rule 535.154;
- (c) The Real Estate Settlement Procedures Act (RESPA);
- (d) The Truth in Lending Act (TILA);
- (e) The Fair Housing Act;
- (f) The Americans with Disabilities Act;
- (g) Municipal ordinances regulating signs or billboards;
- (h) Credit and third-party financing or lending requirements; and
- (i) The National Association of REALTORS<sup>®</sup> Code of Ethics including, but not limited to, Article 12.

#### **1.1.5 TRADEMARKS AND LOGOS**

This brokerage has purchased or otherwise has the right to use the following marks, logos, slogans or other intellectual property:

- (a) REALTOR<sup>®</sup>;
- (b) Intellectual property authorized for Broker's use by a local affiliate of the Texas Association of REALTORS<sup>®</sup> as detailed on an attachment to this manual;
- (c) Intellectual property authorized for Broker's use by a franchisor as detailed on an attachment to this manual; and/or
- (d) Other intellectual property authorized for Broker's use as detailed on an attachment to this manual.

No mark, logo, slogan or other intellectual property or practice other than as described above may be displayed or otherwise used without the written consent of Sponsoring Broker. Use of any mark, logo, slogan or other intellectual property or practice described above must be in compliance with any applicable license or agreement regulating such use.

#### **1.1.6. SPONSORING BROKER'S ASSUMED NAMES**

Sponsoring Broker must register assumed names with TREC prior to use. Assumed names must also be filed with the appropriate governmental office:

- (a) If Sponsoring Broker is a business entity, the assumed name must also be filed with the Texas Secretary of State and with the clerk of the Texas county in which the business entity has its principal office.
- (b) If Sponsoring Broker is an individual or sole proprietorship, the assumed name must be filed with the clerk of every Texas county in which Sponsoring Broker does business.

#### **1.1.7. SALES ASSOCIATE'S ASSUMED NAMES**

Sales Associate must submit assumed names to Sponsoring Broker for approval prior to use. Team names and other names that are not the name of the individual Sales Associate are assumed names that must be submitted. Sales Associate may not use assumed names unless Broker registers the Sales Associate's assumed names with TREC. Additionally, Sales Associate may not use assumed names until Sales Associate also files the assumed names with the appropriate governmental office.

## ADVERTISING AND MARKETING **PROCEDURE**

### **1.2.1. PREAPPROVAL REQUIRED**

Sales Associates must submit all advertising to Sponsoring Broker and receive written approval from Sponsoring Broker prior to publication or communication of the advertising. If advertising a specific property, the property owner's written consent to the terms and conditions of advertising must be submitted to Sponsoring Broker before publishing any advertising.

### **1.2.2. ADVERTISING REQUIREMENTS**

All advertising must comply with the following:

- (a) All advertising must clearly and conspicuously identify the Sponsoring Broker.
  - (i) All advertising must clearly and conspicuously display the name of Sponsoring Broker, or the assumed name of Sponsoring Broker, if the assumed name is registered with TREC.
  - (ii) The Sponsoring Broker's name must be no smaller than fifty percent (50%) of the size of the largest item of contact information.
  - (iii) If Sponsoring Broker's name or assumed name included in advertising includes a Salesperson's name, the advertisement must include a name of Sponsoring Broker that does not include the Salesperson's name (either Sponsoring Broker's name or an assumed name of Sponsoring Broker).
  - (iv) Advertising may not, in any way, imply that a Salesperson is responsible for the operation of a real estate brokerage business.
- (b) All advertising must identify the advertiser as "agent," "broker" or "REALTOR<sup>®</sup>" to identify the advertiser as a real estate agent.
- (c) Advertising may not, in any way, cause a member of the public to believe that a person not authorized to conduct real estate brokerage activity is personally engaged in real estate brokerage.
- (d) Advertising may not include any Sales Associate's team name, nickname, business entity name or other assumed name prior to receiving written approval from Sponsoring Broker.
- (e) Sales Associate's use of assumed names must comply with the following:
  - (i) Assumed names must be properly registered with TREC.

- (ii) Sales Associates must determine the requirements for filing their assumed names with all applicable governmental entities and comply with those requirements (e.g. Secretary of State and County Clerks).
  - (a) Assumed names of individuals and sole proprietorships must be filed with the clerk of each Texas County in which Sales Associate does business.
  - (b) Assumed names of business entities must be filed with the Texas Secretary of State and with the clerk of the Texas County in which the business entity has its principal office.
- (f) Sales Associates must properly form their business entities in accordance with Texas law and operate the business entity in accordance with Texas law including, but not limited to, the timely filing of franchise tax returns with the Texas Comptroller of Public Accounts.
- (g) No terms may be advertised other than those authorized by the property owner.
- (h) Each page of all Internet, electronic bulletin board or similar displays must comply with advertising requirements.
- (i) All electronic marketing or solicitation (including, but not limited to, email, fax and telephone) is regulated by federal and state laws as well as TREC rules. Each Sales Associate must comply fully with all applicable laws and rules.
- (j) An advertisement placed where it is likely to attract the attention of passing motorists or pedestrians must clearly and conspicuously identify the person publishing the advertisement as “agent,” “broker” or “REALTOR®.” Signs placed on or providing directions to real property are not subject to this requirement, but are subject to all other requirements.
- (k) Any offer to rebate a portion of a commission in an advertisement must disclose that payment of the rebate is subject to the consent of the party represented.
- (l) Recommendations or promotions in an advertisement of services of other real estate-service providers must disclose that Broker or Salesperson may receive compensation from the service provider, if compensation will be received.
- (m) Statements of rankings of service providers in an advertisement must disclose the objective criteria upon which the ranking is based.
- (n) Reference in an advertisement to a Salesperson offering, sponsoring or conducting TREC-approved courses is permitted only if the Salesperson is approved by TREC to offer such courses.

### **1.2.3. REVIEW BEFORE SUBMISSION**

Sales Associates will carefully prepare and review all proposed advertising to ensure compliance with the ADVERTISING REQUIREMENTS detailed in 1.2.2 before submitting the proposed advertising to Sponsoring Broker for review.

### **1.2.4. ADVERTISING CONTRACT APPROVAL REQUIRED**

Sales Associates must submit all contracts and agreements for any type of advertising or advertising products (including, but not limited to, web design, web hosting, graphic-arts design, printing and sign fabrication) to Sponsoring Broker and receive written approval from Sponsoring Broker prior to entering into the contract or agreement.

### **1.2.5. CHANGES**

No changes may be made to any advertising unless the proposed changes are submitted to and approved by Sponsoring Broker in the same manner as described above for the initial submission.

### **1.2.6. OTHER BROKERS' LISTINGS**

Sales Associate must provide to Sponsoring Broker written consent from the Broker holding the listing of property Sales Associate wishes to advertise.

### **1.2.7. JOINT ADVERTISING**

Joint advertising with others must comply with all of the requirements in this chapter.

### **1.2.8. FAX POLICY**

Sales Associates will comply with Sponsoring Broker's fax policy. Sponsoring Broker has adopted the Texas Association of REALTORS® Model Policy concerning solicitations sent by fax as Sponsoring Broker's fax policy unless a different fax policy has been adopted by Sponsoring Broker.

### **1.2.9. EMAIL**

Sales Associates will comply with Sponsoring Broker's email policy. Sponsoring Broker has adopted the Texas Association of REALTORS® Model Policy concerning solicitations sent by email as Sponsoring Broker's email policy unless a different email policy has been adopted by Sponsoring Broker.

### **1.2.10. COLD CALLING POLICY**

Sales Associates will comply with Sponsoring Broker's cold calling policy. Sponsoring Broker has adopted the Texas Association of REALTORS® Model Policy concerning cold calling as Sponsoring Broker's cold call policy unless a different cold calling policy has been adopted by Sponsoring Broker.

### **1.2.11. INTERNET POLICY**

Sales Associates will comply with Sponsoring Broker's internet policy. Sponsoring Broker has adopted the Texas Association of REALTORS® Model Policy as Sponsoring Broker's internet policy unless a different internet policy has been adopted by Sponsoring Broker.



## 2

# WORK AGREEMENTS AND COMPENSATION

## WORK AGREEMENTS AND COMPENSATION POLICY

### 2.1.1. WORK AGREEMENTS

#### (a) **INDEPENDENT CONTRACTOR AGREEMENTS**

The relationship between Sponsoring Broker and Sales Associates will be governed by the following Texas Association of REALTORS® forms: (i) *Independent Contractor Agreement for Sales Associate (TAR 2301)*, and (ii) *Statement of Understanding (TAR 2302)*; or other written agreements approved by Sponsoring Broker.

#### (b) **UNLICENSED EMPLOYEE AGREEMENTS**

Sponsoring Broker as employer, or Sales Associate as employer, and the unlicensed employee will sign an agreement that includes all of the following at a minimum:

- (i) Description of duties the unlicensed employee has been hired to perform;
- (ii) Description of acts the unlicensed employee is forbidden to perform or may perform only under the direct supervision of a Broker or Salesperson;
- (iii) Terms of compensation, hourly, salaried or other;
- (iv) Confirmation of the employment relationship as being an employment at will;
- (v) Recital of any employee benefits including, but not limited to, leave, group benefit programs, profit sharing, bonus or similar special compensation and reference to any employer policies, manuals or handbooks detailing those benefits; and
- (vi) Any sample timekeeping or payroll form to be completed by the employee showing hours and days worked, overtime, leave or other information upon which compensation is calculated.

(c) **LICENSED EMPLOYEE AGREEMENTS**

Employees who are Brokers or Salespersons, but who will not be performing the functions of a Broker or Salesperson, will sign an agreement that includes all of the following at a minimum:

- (i) Description of duties the employee has been hired to perform;
- (ii) Description of acts the employee is forbidden to perform, or may perform only under the direct supervision of another even if the employee is a Broker or Salesperson;
- (iii) Terms of compensation, hourly, salaried or other;
- (iv) Confirmation of the employment relationship as being an employment at will;
- (v) Recital of any employee benefits including, but not limited to, leave, group benefit programs, profit sharing, bonus or similar special compensation and reference to any employer policies or handbooks detailing those benefits; and
- (vi) Any sample timekeeping or payroll form to be completed by the employee showing hours and days worked, overtime, leave or other information upon which compensation is calculated.

**2.1.2. COMPENSATION**

Any and all compensation paid to Sales Associate must comply with all applicable laws, including, but not limited to, the Texas Real Estate License Act, TREC rules and the Real Estate Settlement Procedures Act (RESPA).

## WORK AGREEMENTS AND COMPENSATION **PROCEDURE**

### **2.2.1. WORK AGREEMENTS**

(a) **INDEPENDENT CONTRACTORS**

Prior to commencing work, each independent contractor Sales Associate will sign the Texas Association of REALTORS<sup>®</sup> *Independent Contractor Agreement for Sales Associate (TAR 2301)* or other similar agreement approved by Sponsoring Broker.

(b) **ANNUAL CONFIRMATION FOR INDEPENDENT CONTRACTORS**

Sales Associates will execute a *Statement of Understanding (TAR 2302)* or other similar document approved by Sponsoring Broker each year to confirm the relationship with Sponsoring Broker.

(c) **UNLICENSED AND LICENSED EMPLOYEE AGREEMENTS**

Prior to commencing work, each unlicensed or licensed employee will sign an employment agreement.

### **2.2.2. COMPENSATION**

(a) **RECEIPT OF COMMISSION**

All compensation received or earned by Sales Associates for performing licensed activities must be paid directly to Sponsoring Broker unless Sponsoring Broker has authorized, in writing, an alternative method of payment.

Should Sales Associates expect to receive any compensation from anyone, other than the party represented, Sales Associates must disclose this in writing and obtain written consent from the party represented to receive such compensation. Sales Associates must provide Sponsoring Broker a written copy of such disclosure and consent. If a party Sales Associate does not represent agrees to pay a service provider in the transaction, the Sales Associate must also obtain written consent from that party to accept any compensation from the service provider. Sales Associates must also provide Sponsoring Broker a written copy of such consent.

(b) **PAYMENT OF COMMISSION**

All compensation earned by Sales Associates will be paid by Sponsoring Broker directly to the Sales Associate unless otherwise agreed upon in writing. Sponsoring Broker will pay compensation to Sales Associate's entity only if Sales

Associate provides evidence of entity being properly licensed with TREC.

**(c) SHARING COMMISSIONS**

Requests to share compensation must be submitted to Sponsoring Broker in writing and include an explanation detailing the purpose of the compensation sharing. A Sales Associate must also obtain the consent of a client if any part of the Sales Associate's compensation is shared with another party to the client's real estate transaction.

**(d) DISCLOSURE OF FEES FROM RESIDENTIAL SERVICE COMPANIES**

Sales Associates will use TREC Form RSC-1 to disclose fees paid by residential service companies to a Sales Associate for advertising or other services.

# 3

## ESTABLISHING COMPETENCY

### ESTABLISHING COMPETENCY

#### **POLICY**

##### **3.1.1. AUTHORIZATION TO ACT**

Sales Associate is authorized to act on behalf of Sponsoring Broker only in areas in which Sponsoring Broker, in writing, has designated Sales Associate as competent to act.

##### **3.1.2. DESIGNATIONS AT SPONSORING BROKER'S DISCRETION**

The decision to authorize a Sales Associate as competent to act is solely at the discretion of Sponsoring Broker and may be changed or altered by Sponsoring Broker at any time.

##### **3.1.3. MAINTENANCE OF REQUIRED LICENSES AND CERTIFICATIONS**

Sales Associates will ensure that their licenses, certifications or other qualifications, that are necessary to act in all areas in which Sponsoring Broker has authorized them to act, remain active, current and in good standing.

##### **3.1.4. REQUIRED EDUCATION REQUIREMENTS**

Sales Associates will complete all continuing education requirements in a timely manner.

##### **3.1.5. ADDITIONAL LICENSES, CERTIFICATIONS AND EDUCATION**

Requirements for a Sales Associate to obtain additional licenses, certifications and additional education instruction are solely at the discretion of Sponsoring Broker.

##### **3.1.6. COMPLIANCE WITH CODE OF ETHICS**

Sales Associate will comply with the National Association of REALTORS® Code of Ethics with regard to competency including, but not limited to, Article 11.

## ESTABLISHING COMPETENCY **PROCEDURE**

### **3.2.1. AUTHORIZATION AGREEMENT**

Sponsoring Broker and each Sales Associate will sign and date an Agreement:

- (a) Detailing all areas in which Sales Associate is authorized to act;
- (b) Describing in detail the licenses, certifications, and other qualifications Sponsoring Broker requires Sales Associate to maintain to continue to qualify as competent in any area; and
- (c) Detailing the additional education instruction Sponsoring Broker requires Sales Associate to complete to continue to be competent in any area.

The written agreement may state areas of practice in which Sponsoring Broker has elected not to practice or to prohibit Sales Associates from practicing, and may be amended to expand or delete additional areas in which a Sales Associate is authorized to practice.

### **3.2.2. MAINTENANCE OF REQUIRED LICENSES AND CERTIFICATION**

Sales Associate will maintain the licenses, certifications and other qualifications required by Sponsoring Broker.

- (a) Sponsoring Broker will regularly confirm that each Sales Associate maintains the licenses, certifications and other qualifications designated in the agreement.
- (b) Sales Associates will provide Sponsoring Broker with documentation showing: (i) the timely renewal of all licenses and certifications, (ii) the completion of continuing education classes, and (iii) the completion of additional education instruction required by Sponsoring Broker.

### **3.2.3. REQUEST TO CHANGE AUTHORITY TO ACT**

Sales Associate may request Sponsoring Broker to consider expanding Sales Associate's areas of competency and authorization. Upon such request, Sponsoring Broker will inform Sales Associate of the additional licenses, training, certifications and education Sponsoring Broker requires of Sales Associate to achieve such additional competency and authorization.

### **3.2.4. CHANGE IN AUTHORITY TO ACT**

If Sponsoring Broker elects to change or alter Sales Associate's authority to act, Sponsoring Broker will immediately notify Sales Associate in writing.

### **3.2.5. NOTIFICATION OF TREC CHANGES**

Sponsoring Broker will give each Sales Associate notice of any changes to the Texas Real Estate Licensing Act, TREC rules or TREC promulgated contract forms before the effective date of the changes.

### **3.2.6. FORWARDING OF TREC NOTICES**

Sponsoring Broker will forward to each Sales Associate any mail or other correspondence from TREC received by Sponsoring Broker concerning Sales Associate within ten (10) calendar days after receipt.

# 4

## RECORDS MANAGEMENT

### RECORDS MANAGEMENT POLICY

#### 4.1.1. RECORDS DEFINED

Sponsoring Broker will maintain the following (the "Records"):

- (a) Disclosures;
- (b) Compensation agreements (including listing agreements, buyer representation agreements and other written commission and compensation agreements);
- (c) Work files;
- (d) Contracts and related addenda;
- (e) Receipts and disbursements of compensation for services;
- (f) Property management contracts;
- (g) Appraisals, broker price opinions and comparative market analyses;
- (h) Agreements between Sponsoring Broker and Sales Associates, including independent contractor and employment agreements; and
- (i) Delegations of authority from Sponsoring Broker to other persons.

#### 4.1.2. DURATION OF MAINTENANCE

Sponsoring Broker will maintain the Records in an easily accessible format for at least four years from the: (i) date of closing, (ii) termination of the contract, or (iii) end of a real estate transaction. Sponsoring Broker may elect to maintain the Records for a longer period.

#### 4.1.3. DISASTER PLAN COMPLIANCE

Sponsoring Broker will maintain all Records in accordance with a written disaster recovery plan that has been approved by Sponsoring Broker.

#### 4.1.4. OWNERSHIP OF RECORDS

All Records created or maintained during the relationship between Sponsoring Broker and a Sales Associate are the property of Sponsoring Broker.



#### **4.1.5. PRIVACY POLICY**

Sales Associate will comply with Sponsoring Broker's privacy policy. Sponsoring Broker has adopted the Texas Association of REALTORS<sup>®</sup> Model Privacy Policy as Sponsoring Broker's privacy policy unless a different privacy policy has been provided by Sponsoring Broker.

#### **4.1.6. CONFIDENTIALITY OF RECORDS**

A client's personal information including, but not limited to, any personal identification information (e.g., social security number, driver's license number, birth date), and financial information (e.g., bank account information, credit card number) is considered confidential. Sponsoring Broker will continue to maintain such information with the same level of privacy and confidentiality after termination of the relationship between Sponsoring Broker and Sales Associate that was required while Sales Associate was associated with Sponsoring Broker.

## RECORDS MANAGEMENT **PROCEDURE**

### **4.2.1. COSTS OF CREATION AND DELIVERY**

Each Sales Associate is responsible for the payment of any expenses or costs incurred in connection with the creation and delivery of the Records relating to Sales Associate's activities.

### **4.2.2. DELIVERY TO SPONSORING BROKER**

Sales Associates will deliver to Sponsoring Broker any Records created or executed by Sales Associate within one business day after creation or execution.

### **4.2.3. PROTECTION OF PERSONAL INFORMATION**

A client's personal information including, but not limited to, any personal identification information (e.g., social security number, driver's license number, birth date), and financial information (e.g., bank account information, credit card number) may not be disclosed to third parties unless approved in writing by Sponsoring Broker.

### **4.2.4. VERIFICATION UPON TERMINATION**

Upon termination of the relationship between Sponsoring Broker and a Sales Associate, Sales Associate will verify that Sponsoring Broker has copies of all Records in Sales Associate's possession.

# 5

## TRUST ACCOUNTS

### TRUST ACCOUNTS POLICY

#### 5.1.1. DEFINITION

A trust account is an account managed by one party for the benefit of another in a banking institution authorized to do business in Texas. Trust money means client's money, earnest money, rent, unearned fees, security deposits, or any money held on behalf of another person.

#### 5.1.2. ACCOUNT MAINTENANCE

Only Sponsoring Broker is authorized to maintain a trust account. Any trust money held by a Sales Associate must be deposited in Sponsoring Broker's trust account. Money may be transferred or withdrawn from Sponsoring Broker's trust account only by Sponsoring Broker or Sales Associates authorized, in writing, by Sponsoring Broker.

#### 5.1.3. INSURED ACCOUNTS

Sponsoring Broker may maintain multiple trust accounts. All trust accounts will be maintained at an institution providing deposit insurance (e.g., FDIC, NCUA).

#### 5.1.4. NO COMMINGLING

No money other than trust money may be maintained in Sponsoring Broker's trust account. Sponsoring Broker may deposit into the trust account a reasonable amount intended to pay account service fees if a detailed record of the deposit and payment of such fees is maintained.

#### 5.1.5. CONVERSION TO COMMISSION

Trust money that is converted into a commission upon the occurrence of an event must be transferred out of the trust account no later than the 30th day after the date of the event.

#### 5.1.6. DISBURSEMENT OF TRUST MONEY

Upon written demand of any or all Principals, Sponsoring Broker or Sales Associate with written authority from Sponsoring Broker must properly disburse trust money held by Sponsoring Broker in accordance with the agreement under which the trust money was received not later than the 30<sup>th</sup> day after the date the demand is made. If by a subsequent written agreement, all parties to a real estate transaction authorize the Sponsoring Broker maintaining trust money to disburse the trust money in a manner not in accordance with the agreement under which the money was received, the

Sponsoring Broker must pay the trust money to the party or parties entitled to the money under the subsequent written agreement not later than the 30th day after the date the Sponsoring Broker receives the subsequent written agreement. If the Sponsoring Broker cannot reasonably determine to which party or parties the trust money should be disbursed, Sponsoring Broker may pay the money into the registry of a court, interplead the parties and seek an order from the court for proper disbursement.

#### **5.1.7. RECORDS MAINTENANCE**

Records of each deposit, withdrawal and other activities in Sponsoring Broker's trust account must be maintained for at least four years from the date the document is received or created.

## TRUST ACCOUNTS **PROCEDURE**

### **5.2.1. ACTIONS AUTHORIZED**

Only Sponsoring Broker or Sales Associates with written authority from Sponsoring Broker may withdraw or transfer money from any trust account.

### **5.2.2. PROMPT DEPOSIT**

Trust money that comes into the possession of Sponsoring Broker or Sales Associate must be promptly: (i) deposited in Sponsoring Broker's trust account, or (ii) deposited with an escrow agent authorized in Texas in accordance with the agreement of the principals of the transaction. Trust money required to be deposited in Sponsoring Broker's trust account must be deposited no later than the close of business of the second (2nd) working day after the date of receipt of the funds by Sales Associate or Sponsoring Broker.

### **5.2.3. NOTIFICATION OF DISBURSEMENT**

Each time any disbursement of trust money occurs, Sponsoring Broker will notify all parties in writing.

### **5.2.4. RECONCILIATION**

Each individual client and third-party trust account balance will be reconciled monthly.

# 6

## FIDUCIARY DUTY OF AGENTS

### FIDUCIARY DUTY OF AGENTS POLICY

#### 6.1.1. DUTIES

In a principal-agent relationship, the Principal is owed the highest level of fiduciary duty by the Agent. This duty includes the following:

- (a) Trust;
- (b) Confidential treatment of information;
- (c) Honest business dealings;
- (d) The highest duty of performance;
- (e) Loyalty;
- (f) Reasonable care in all matters of representation; and
- (g) Proper accounting for all monies and other things of value.

#### 6.1.2. RELATIONSHIPS

Brokers and Salespersons may: (i) represent Principals, and (ii) assist others with whom no agency relationship exists. Sales Associates must provide all parties with a clear explanation of their relationship as being one of the following:

- (a) A client, being represented as a principal by the agent;
- (b) A customer, with no agency relationship, but receiving assistance;
- (c) An unrepresented party, with no agency relationship and receiving no assistance; or
- (d) A party represented by a Broker other than Sponsoring Broker.

#### 6.1.3. DISCLOSURE OF STATUS AS SALESPERSON OR BROKER

Sales Associate must disclose his or her status as a Salesperson or Broker in writing, either before entering into any sales contract or lease or within the sales or lease contract itself, when engaging in a real estate transaction on behalf of:

- (a) Sales Associate;
- (b) A business entity in which Sales Associate is more than a 10% owner;
- (c) A trust for which Sales Associate acts as trustee or is a beneficiary; or

- (d) Sales Associate's spouse, parent or child, including situations in which they may be a beneficiary of a trust.

Sales Associate will also comply with the National Association of REALTORS® Code of Ethics requirements regarding disclosure of interest including, but not limited to, Articles 4 and 5.

#### **6.1.4. INTERMEDIARY RELATIONSHIPS OPTIONAL**

Sponsoring Broker has no obligation to agree to enter into an intermediary relationship. However, without an intermediary relationship, Principals on both sides of the transaction may not be jointly represented. An intermediary relationship is the only method available to jointly represent Principals on both sides of the transaction.

#### **6.1.5. AUTHORIZATION OF INTERMEDIARY RELATIONSHIPS**

Sales Associates will consult with Sponsoring Broker to determine if an intermediary relationship will be permitted in connection with any given transaction.

#### **6.1.6. LIMITATION OF INTERMEDIARY ACTIONS**

Sponsoring Broker's and all Sales Associates' actions are limited as an intermediary.

- (a) Intermediaries may not disclose:
  - (i) That the seller will accept a price less than the asking price, unless the disclosure is authorized in writing by the seller;
  - (ii) That the buyer will pay a price greater than the price submitted in a written offer, unless the disclosure is authorized in writing by the buyer; or
  - (iii) Any confidential information of either the buyer or the seller unless: (i) authorized by the buyer or the seller in writing, (ii) required by law, (iii) required by the Texas Real Estate License Act, (iv) required by a court order, or (v) the information materially relates to the condition of the property;
- (b) Intermediaries may not treat either party dishonestly or violate the Texas Real Estate License Act.

#### **6.1.7. APPOINTMENTS TO EXPAND INTERMEDIARY RELATIONSHIP**

Sponsoring Broker may elect to expand the intermediary relationship by appointing separate Sales Associates to offer opinions and advice to each of the parties. In the event Sponsoring Broker makes the appointments, written notice of the appointments and the identity of the specific Sales Associates must be given to the parties.

#### **6.1.8. INTERMEDIARY WITHOUT APPOINTMENTS**

If no appointments are made, Sponsoring Broker and all Sales Associates remain as

intermediary. However, no opinions or advice may be provided to any party.

**6.1.9. CONFIDENTIALITY REQUIRED**

All Sales Associates must maintain all confidential information of all parties. Only the appointed Sales Associate may offer opinions and advice to the party to whom appointed.



## FIDUCIARY DUTY OF AGENTS PROCEDURE

### 6.2.1. VERIFICATION OF NO EXISTING REPRESENTATION

Before representing a party, Sales Associate must determine that the party is not currently represented. A Sales Associate may not interfere in any way with an existing exclusive agency relationship, or suggest to the party how to terminate the relationship.

### 6.2.2. EXPLAIN AGENCY CONCEPTS

As soon as an agency relationship between a Principal and an Agent appears likely to exist, the Agent will inform the Principal of the following:

- (a) The agency relationship will be a *special agency*. The Agent cannot bind the Principal. The Principal will be required to approve, in writing, all materials terms and conditions of any transaction documents;
- (b) The terms and conditions under which the agent expects to receive compensation;
- (c) The date and, if relevant, the time when the agency relationship begins;
- (d) The authority Agent is granted including, but not be limited to:
  - (i) The creation and use of marketing, advertising or other promotional displays related to the property and its owner; and
  - (ii) Access to the property for the Agent and others, including Brokers, Salespersons, inspectors and the public;
- (e) The terms and conditions under which confidential information may and should be disclosed to others;
- (f) The efforts the Agent will use to market or locate a property;
- (g) The duties of the Agent to disclose information that might affect a buyer's or seller's decision; and
- (h) The duties of accounting for monies or other things of value by the Agent.

Sales Associate will comply with the National Association of REALTORS<sup>®</sup> Code of Ethics requirements regarding the necessity of written agreements including, but not limited to, Article 9.

### 6.2.3. DISCLOSURE OF REPRESENTATION

Sales Associates must disclose who they represent at the first contact with another party, or with a Broker or Salesperson who represents a different party (including at open houses). The disclosure of representation may be made orally or in writing. If the disclosure is made orally, it must be confirmed in writing in the contract or lease or other

written document not later than the time of execution of the contract or lease.

#### **6.2.4. INFORMATION ABOUT BROKERAGE SERVICES**

At the first substantive dialogue between a Sales Associate and a person relating to a specific property, Sales Associate must present to the person the TREC *Information About Brokerage Services* disclosure form (IABS) and explain the IABS to the party.

- (a) A substantive dialogue is defined as a meeting or written communication, excluding conversations at an open house. A substantive dialogue can occur when communicating by email, texting or other electronic communication.
- (b) The Sales Associate must document, in writing, the nature of the relationship with the person and attempt to obtain his or her signature on the IABS form. In the event the person refuses to sign the IABS, Sales Associate will note the refusal in writing, preferably on a copy of the IABS form.

#### **6.2.5. PRESENTATION OF OFFERS**

Sales Associates will present all offers received to buy, sell, lease or rent property as quickly as possible to the client, and will present subsequent offers after the client has accepted an offer, unless the client has agreed otherwise in writing.

#### **6.2.6. BROKER PRICE OPINIONS**

In the process of negotiating a listing, Sales Associates will prepare a broker price opinion or comparative market analysis on the property to provide to the client. Before providing to the client, Sales Associate will submit the broker price opinion or comparative market analysis to Sponsoring Broker for approval. The broker price opinion or comparative market analysis must include the following written statement: “THIS IS A BROKER PRICE OPINION OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL OR OPINION OF VALUE. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.”

#### **6.2.7. DISCLOSURE TO PRINCIPALS**

Agents will convey to their Principals all known information that would affect the Principal’s decision on whether to make or not make, accept or reject offers, and all other significant information applicable to the transaction.

#### **6.2.8. DISCLOSURE TO BUYERS**

Sales Associates will disclose, in writing, any known significant defect to the property to a potential buyer that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase the property.

#### **6.2.9. DECISIONS TO TERMINATE REPRESENTATION**

Sales Associates must consult with Sponsoring Broker in response to a Principal's request or Sales Associate's desire to terminate an agency relationship. Sponsoring Broker's decision will control with respect to any action to be taken, including any demand for compensation or reimbursement owed by the Principal.

#### **6.2.10. ACTIONS UPON TERMINATION OF REPRESENTATION**

Upon the termination of the agency relationship with the client, Sales Associate must immediately cease acting as the client's representative and comply with the following:

- (a) Cease all advertising about the property within ten (10) days;
- (b) Remove all signs from the property;
- (c) Remove all MLS listings concerning the property;
- (d) Remove all information about the property from websites controlled by Sales Agent or Sponsoring Broker; and
- (e) Cease publication of all other communication in any form about the property.

#### **6.2.11. CONSENT FOR INTERMEDIARY RELATIONSHIP**

Before representing both parties to a transaction, both parties must be Principals, and written permission must be obtained from both Principals. In order to obtain written consent, Sales Associates will provide the appropriate listing agreement or buyer/tenant representation agreement to the respective parties and will obtain the appropriate signatures. Both parties to a transaction may be represented only as an intermediary. Without the consent of both parties, only the initial client may be represented.

#### **6.2.12. APPOINTMENTS TO EXPAND INTERMEDIARY RELATIONSHIP**

In the event Sponsoring Broker makes appointments of Sales Associates to communicate with and carry out instructions of the Principals in an intermediary relationship, notice of the appointments and the identity of the specific Sales Associates must be given to the Principals, using the Texas Association of REALTORS® *Intermediary Relationship Notification* form (TAR 1401).