

OFFICE POLICY MANUAL

for

MODUS REAL ESTATE

January 30, 2015

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**Office Policy Manual
For
MODUS Real Estate
Brokerage Firm**

General. Below is the text of the Office Policy Manual ("Manual") for **Skyler Moore** and **MODUS Real Estate** ("Brokerage Firm") addressing the policies of Brokerage Firm and the Employing Broker and the independent contractors/licensees (each a "Licensee") working under them. Unless the context requires otherwise, whenever used in this Manual, the term "Broker" shall refer to the Employing Broker and a Managing Broker, if Brokerage Firm or the Employing Broker has designated such a Managing Broker.

1. TYPICAL REAL ESTATE TRANSACTIONS

- a. Review of Contracts.** Licensee shall turn in all contracts and associated documents to Broker in a timely manner as Broker may specify from time to time. Licensee shall bring to the attention of Broker any item that Licensee believes requires immediate or additional scrutiny. Broker will review all contracts and associated documents in a timely manner.

Licensee will attempt to correct any deficiencies Broker finds in a timely fashion. If a Licensee is unable to correct such deficiency in the time frame specified by Broker, the Licensee shall promptly report such failure to Broker. Licensee will provide all documents requested by Broker to the office file during contract period and at time of closing.

At the time of closing, Licensee will prepare a summary closing data sheet containing appropriate information for transaction reporting purposes, assure that all necessary documents are in the file and leave those documents in the office file indefinitely. No commission check will be issued to Licensee until all necessary items have been placed in the office file.

The office file is the property of Brokerage Firm. Only the Licensee(s) involved in a particular transaction, the Employing Broker or Managing Broker should look at any pending or closed file. If a Licensee requires something from the file, Licensee may make a copy of that document and return the original to the file.

b. Earnest Money Deposits

- i. Intake of Earnest Money.** Colorado Real Estate Commission Rules, currently Rule E-1, require that Earnest Money be deposited within five (5) business days following receipt. All Licensees shall abide by this Rule.

- ii. **Clear indication of the “Type” of Earnest Money.** Licensee shall ensure that the Earnest Money indicated in the contract; ie. cash, check, wire transfer or note (Colorado Real Estate Commission approved forms only unless drafted by buyer or their attorney) is in fact what is delivered. Any deviation shall be reported to Seller so that the Seller can make an informed decision about how to respond to the deviation. Licensee shall encourage Earnest Money checks to be made payable to either the Brokerage Firm (if the Brokerage Firm is the listing company), the listing office, or a title company designated by the listing office.
- iii. **Faxed Earnest Money.** Only original checks shall be deposited. In the event a contract is accompanied by a fax of the Earnest Money, licensee shall so inform the Seller so that the Seller can make an informed decision about how best to cope with something less than an original Earnest Money check. (For example, the Seller can respond by a Counter identifying a date certain by which the actual Earnest Money must be tendered.)
- iv. **Electronic Payments.** Until notified by the Brokerage Firm, we do not accept funds in any form other than indicated above.
- v. **Late Deposit.** If the Earnest Money is deposited late, the Licensee must provide Broker with a letter from the seller stating that the seller is aware the Earnest Money was deposited late and stating that the seller has not been damaged by the late deposit. Licensee will not receive a commission check until this has been done. If a particular file is reviewed by the Commission and the deposit was found to have been deposited late, the Commission may impose a fine which Licensee shall pay.
- vi. **Release of Earnest Money – No Dispute.** For the return of Earnest Money when there is no dispute, Licensee shall release the Earnest Money by completing either the Earnest Money Release form (Colorado Real Estate Commission Optional form) or an Amend/Extend (Colorado Real Estate Commission) form. In either event the Licensee shall verify that the form states:
 - (1) The contract is terminated; and
 - (2) To whom the Earnest Money shall be paid.
- vii. **Release of Earnest Money – Dispute.** In the event that a buyer and seller disagree about the disbursement of Earnest Money, then the Licensee or Broker will attempt to assist in resolving the disagreement. If an agreement cannot be reached, Broker may explain to all parties concerned how the monies can be interpleaded to the court. Brokerage Firm may interplead the Earnest Money into the registry of the court at the time Broker determines it is appropriate for Brokerage Firm to do so. Licensee

is not authorized to release earnest money in dispute to anyone without the prior written consent of Broker nor to waive the 50% provided in the listing contract as being owed to Brokerage Firm.

- viii. Earnest Money for Closing.** It is the duty of the Licensee to notify Broker in a timely manner in advance of an upcoming closing so that the earnest money check can be ready for the Licensee prior to closing. Broker requests that this notification be at least five (5) business days in advance, but under no circumstances less than twenty-four (24) hours prior to closing.
- ix. Receipts for Earnest Money.** The Licensee shall provide documentation, including confirmation of electronic or telephonic transfers, of all deposits and disbursements of Earnest Money funds any time such funds are tendered to others in the course of a transaction. Such documentation may be in written or electronic form.
- c. Back-up Contracts.** Caution should be exercised to ensure that there are not two executed and enforceable contracts outstanding simultaneously. Any back-up contract must have a clause making the seller's obligations under the back-up contract conditional upon the termination of the prior contract.

 - i. Listing Broker.** When the Licensee acting as the Designated Broker is the Listing Broker, Buyer #2 shall know about Buyer #1 but only such details as the Seller shall authorize. All clauses indicating a “backup” contract shall be approved by the Seller, Seller’s attorney, or shall be from one of the Brokerage Firm’s approved backup contingencies drafted by the attorney for the Brokerage Firm. On a case-by-case basis, the designated Listing Broker and the Seller shall determine whether it is in the Seller’s best interest to inform Buyer #1 about the existence of Buyer #2.
 - ii. Selling Broker.** When the Licensee acting as the Designated Broker is the Selling Broker representing one of the two competing buyers, all information that is known by the Designated Broker about the competing contracts or the competing buyer shall be given to the buyer whom that Licensee is assisting.
- d. Attendance at Closing.** The Licensee must attend the closing personally or have Broker or another Licensee attend for Licensee. Licensee must review all closing documents relating to Brokerage Firm's clients or customers to verify accuracy.
- e. Closed File Procedures.** When turning in the closed file, Licensee shall verify that all necessary closing documents and instructions are properly and fully executed and that they are in the file. The Licensee is responsible for preparing a summary closing data sheet and assuring that all necessary items are in the file. The Brokerage Firm may utilize a closing checklist that may vary from time-to-

time and transaction-to-transaction as appropriate. If such a checklist is utilized, Licensee shall complete the checklist for all closed files. No commission check will be issued to the Licensee until all necessary items are in the office file.

- f. **Internal Audits of Files.** From time-to-time, the Brokerage Firm will conduct random audits of closed files to identify potential problems and monitor compliance with Firm policies and procedures. Based on the results of these audits, the Firm may modify its policies with the intent of improving compliance.

2. FINANCING

a. New Loans – Conventional and FHA/VA

- i. **Lender Selection.** Licensee shall keep the interests of the buyer and seller in mind when assisting in the selection of a prospective lender in an attempt to obtain a lender that is capable of providing a loan commitment in a timely manner and funding the ultimate loan.
- ii. **Loan Fraud.** Licensee will ensure that: the real entire deal, including all pre-contract and post contract or closing agreements, is reflected in the Contract (no side agreements or paid outside of closing items) that goes to the lender, and are accurately reflected on the HUD 1.
- iii. **FHA.** Licensee will ensure that all FHA “flipping” rules are adhered to.
- iv. **Mortgage Business.** Licensee shall not participate in any of the loan origination fees or otherwise without the written approval of the Broker. Any potential conflict of interest or other controlled business relationship (spouse, child, close associate is the lender) shall be disclosed to the buyer and seller immediately.

b. Other Loans/Financing

- i. **Non-qualifying Assumptions, etc.** Licensee will advise the seller to seek legal counsel about exploring the benefits and practicalities of these options. Licensee will not participate or draft a contract that proposes a **non-qualifying assumption, wrap around, lease option or installment land contract** without first consulting with Broker and obtaining Broker’s consent. These transactions will require attorney approval and must be undertaken only with full and total disclosure. They are discouraged in general by the Brokerage Firm.

In assumption transactions where a Licensee has a brokerage relationship with the seller and the seller is not released from liability by the transaction, Licensee shall inform the seller of the following:

- (1) That the seller continues to remain liable on the assumed loan and loses control of the collateral for the loan (e.g. the real estate sold) after the sale to the buyer;
- (2) That the seller's creditworthiness could be damaged by a default on the loan by the buyer or a successor of the buyer;
- (3) That there may be alternatives to the seller continuing to remain liable on the loan, including:
 - (a) the seller only accepting a buyer who can obtain new financing;
 - (b) obtaining releases of liability from both the lender holding the loan and any entity guaranteeing the financing; or
 - (c) the seller carrying an all-inclusive note secured by an all-inclusive deed of trust or other financing secured by the property, to give the seller the ability to foreclose on the property in the event of a default on the first deed of trust.

- ii. **Owner Financing.** In situations where the parties contemplate owner financing, the Brokerage Firm follows the position of the Colorado Division of Real Estate as currently expressed in Section 4.7 of the Contract to Buy and Sell Real Estate:

§4.7 Seller or Private Financing.

WARNING: Unless the transaction is exempt, federal and state laws impose licensing, other requirements and restrictions on sellers and private financiers. Contract provisions on financing and financing documents, unless exempt, should be prepared by a licensed Colorado attorney or licensed mortgage loan originator. Brokers should not prepare or advise the parties on the specifics of financing, including whether or not a party is exempt from the law.

- iii. **The best practice in such situations is to get an attorney involved to help the seller set the terms of such financing.** Licensees are encouraged to develop a list of one or more attorneys and/or mortgage loan originators to which to refer principals who seek seller carry financing.

3. GUARANTEED SALES

- a. **Guaranteed Sales.** Licensees shall not guarantee buy-outs without the prior written consent of Broker, which consent may be given or withheld in Broker's sole and absolute discretion. If Broker approves a guaranteed buy-out, then Licensee shall prepare the contract and close the transaction consistently with then applicable Colorado real estate license law, including but not limited to then applicable Real Estate Commission Rules regarding such transactions and the use of the then current Real Estate Commission-approved form of "Licensee Buy Out

Addendum to Contract to Buy and Sell Real Estate.” (See also Licensee Purchases below)

- b. Investor Purchases.** Licensees should not guarantee price appreciation. Investing in real estate is highly speculative. Licensees should avoid violating any securities laws.
- 4. BROKERAGE RELATIONSHIPS.** Broker's policy on identifying brokerage relationships offered to the public is addressed in a separate agency or brokerage relationships policy on file with Broker.
- 5. PROCEDURES FOR DESIGNATING LICENSEES.** Broker's procedures for designation of Licensees who are to work with a seller, landlord, buyer or tenant, individually or in teams, are addressed in a separate agency or brokerage relationships policy on file with Broker.
- 6. LICENSEE'S PURCHASE AND SALE OF PROPERTY**
 - a. Purchasing Company Listings.**
 - i. Property Where Buyer Is Not Seller's Designated Broker.** Licensees may purchase properties listed by the Brokerage Firm where the purchasing Licensee is not the seller's designated broker. If the Employing Broker is the buyer, then the Employing Broker shall address the conflict on a case-by-case basis.
 - ii. Property Where Buyer Is Seller's Designated Broker.** In general, the Brokerage Firm discourages Licensees from purchasing properties in which the Licensee is the Seller's Designated Broker. The potential conflict of switching the Client relationship to a relationship in which the Licensee and Seller are both principals presents conflicts of interest. Licensees are encouraged to either make the “buy or not to buy for their own account” decision before they attempt to list a potential seller's property. Exceptions to the general rule identified in the preceding sentence can be made on a case-by-case basis only by the Employing Broker, in writing, and only if Licensee complies with the Real Estate Commission's position on use of “Licensee Buy-Out Addendum.”
 - iii.** In addition, such offers to purchase shall be written on Colorado Real Estate Commission approved forms only and shall contain a clause that reads substantially as follows:

“Buyer is a licensed Colorado real estate broker purchasing for his/her own account with the expectation of making a profit. Buyer/Licensee may possess superior knowledge as to price, the market and terms. Seller is advised to have the property appraised

and to contact an attorney prior to accepting this offer. Buyer/Licensee is not acting on behalf of seller and seller shall be deemed a customer for this transaction.”

Licensee shall notify Broker in advance of the submission of any such offer and shall utilize Brokerage Firm in connection with any such transaction. Licensee shall refer to the separate agency or brokerage relationships policy on file with Broker for the policy regarding the brokerage relationship to be established in connection therewith.

- b. Licensee Sales.** When a Licensee sells a property in which the licensee has an ownership interest and:
- i.** The Licensee expects to receive a commission from the sale; or
 - ii.** The property is listed in a multiple listing service of which the Brokerage Firm or the Employing Broker is a member; or
 - iii.** The Licensee uses any resources of the Brokerage Firm which resources shall include, but not be limited to, the fax machine, letterhead or staff of the Brokerage Firm,

then the Licensee must list the Property with the Brokerage Firm. When so doing, Licensees are encouraged to list the Property with the Employing Broker and designate the Employing Broker as the designated broker so that Licensee shall be treated as a principal and have no brokerage relationship with a buyer of the listed property. **When a contract is formed, the seller shall include a provision in the contract which states that the seller has a Colorado real estate license and is selling the property for his or her own account.**

7. LICENSE RENEWALS, TRANSFERS AND RESPONSIBILITY FOR CONTINUING EDUCATION

- a. Transfer to Brokerage Firm.** When a Licensee transfers to Brokerage Firm, Licensee shall abide by this Manual and the Brokerage Firm's Independent Contractor Agreement. Broker and the transferring Licensee shall jointly and severally have responsibility for completing the proper transfer of the license. Licensee shall work as an independent contractor and agent of Brokerage Firm and will, prior to actively engaging in any real estate activities, sign Brokerage Firm's independent contractor agreement.
- b. Renewal of License.** When a Licensee's real estate license is renewed, Licensee will sign a letter and present it to Broker guaranteeing that all necessary continuing education courses have been taken in accordance with the requirements of the Colorado Real Estate Commission. Proof of this may be required by the Commission. Licensee agrees to provide such proof if requested

by either the Commission or Broker. Regardless of such letter or proof, Licensee shall be responsible for monitoring the renewal of Licensee's licenses and, between Broker and Licensee, Broker shall bear no responsibility for Licensee's failure to meet these requirements. Should Licensee fail to take and pass the necessary continuing education classes, Licensee understands that Licensee shall no longer be allowed to practice real estate in the State of Colorado and must cease and desist immediately. Licensee shall immediately inform Broker if Licensee becomes aware of a transfer or renewal deficiency. Brokerage Firm is not responsible to provide courses that are approved for continuing education credit.

- c. **Transfer of License from Brokerage Firm.** When a Licensee transfers Licensee's license from Brokerage Firm to another brokerage, Licensee shall first notify Broker, then immediately notify the Colorado Real Estate Commission that Licensee no longer works under Brokerage Firm and Broker shall no longer be responsible for the actions of the Licensee. Further, Licensee shall halt all real estate activity in the name of Brokerage Firm. Licensee shall assist Broker in notification of all members of the public with whom the Licensee is working or whom the Licensee represents in oral or written form. Unless agreed elsewhere to the contrary, all listings, buyer or seller, are and remain the property of the Broker who shall designate a replacement licensee to complete the brokerage relationship.

- 8. **DELEGATION OF AUTHORITY AND SUPERVISION.** Broker shall delegate authority as Broker deems it reasonable to do so on a case-by-case basis. Broker may withhold a delegation of authority at Broker's sole and absolute discretion. Licensee may initially draft and have parties execute contracts, listing agreements and other documents as addressed in the typical real estate transaction section discussed herein. Employing Broker shall not contract with Licensee so as to circumvent the requirement that the Broker supervise employed Licensees. Notwithstanding any delegation of authority, Broker shall supervise Licensee as follows:

- a. **Experienced Licensees.** Broker shall reasonably supervise experienced licensees having **two years or more** of experience by:
 - i. Maintaining this office policy describing the duties and responsibilities of Licensee. A copy of the written policy shall:
 - (1) be given to, read and signed by each Licensee; and
 - (2) be available for inspection, upon request, by any authorized representative of the Real Estate Commission.
 - ii. Reviewing all executed contracts to ensure competent preparation.
 - iii. Reviewing transaction files to ensure that required documents exist.

- iv. Nothing in this section shall prohibit Employing Broker from delegating supervisory authority to other experienced Licensees.
 - (1) Employed Licensees who accept supervisory authority from Employing Broker shall bear responsibility with Employing Broker for ensuring compliance with the Commission statutes and rules by all supervised Licensees.
 - (2) Any such delegation of authority shall be in writing and signed by the Licensee to whom such authority is delegated. A copy of such delegation shall be maintained by Employing Broker for inspection, upon request, by any authorized Real Estate Commission representative.
 - v. Employing Broker shall not contract with Licensee so as to circumvent the requirement that the Broker supervise employed Licensees.
- b. Less Experienced Licensees.** In addition to the foregoing requirements of Paragraph A of this section, Employing Broker shall provide a high level of supervision for Licensees having less than two years of experience by:
- i. Providing specific training in office policies and procedures;
 - ii. Being reasonably available for consultation;
 - iii. Providing assistance in preparing contracts;
 - iv. Monitoring transactions from contracting to closing;
 - v. Reviewing documents in preparation for closing; and
 - vi. Ensuring that Employing Broker or an experienced Licensee attends closings or is available for assistance.
 - vii. Nothing in this section shall prohibit Employing Broker from delegating supervisory authority to other experienced Licensees.
 - (1) Employed Licensees who accept supervisory authority from Employing Broker shall bear responsibility with Employing Broker for ensuring compliance with the Commission statutes and rules by all supervised Licensees.
 - (2) Any such delegation of authority shall be in writing and signed by the Licensee to whom such authority is delegated. A copy of such delegation shall be maintained by Employing Broker for

inspection, upon request, by any authorized Real Estate Commission representative.

9. PROPERTY MANAGEMENT – BUSINESS OPPORTUNITIES. No Licensee shall participate in or handle the rental and/or management of residential or commercial real estate or participate in the sale of a business opportunity other than property which the Licensee owns, without the prior written consent of Broker, which consent may be given or withheld in the sole and absolute discretion of Broker. Licensee shall notify Broker in advance of any management activities for properties in which the Broker has an ownership interest. Broker's approval of one Licensee for property management or sales of business opportunities, shall not serve as a precedent for any other Licensee to participate in property management or sales of business opportunities. Decisions of Broker shall be final. Any property management services of a Licensee shall be conducted and performed in accordance with the then applicable Property Management and Leases section of the Colorado Real Estate Manual, any then applicable Rules and Policy Statements of the Colorado Real Estate Commission and all then applicable requirements of Colorado real estate license law.

10. PROPERTY LISTING PROCEDURES, INCLUDING RELEASE OF LISTINGS

- a.** New Listing. When obtaining a new listing, Licensees shall:
- i.** Reliance on information. Where possible, avoid reliance upon information supplied by any previous offering brochure, County Assessor, MLS information, or other documents. Such sources may be incorrect. All Licensees shall include a disclaimer substantially similar to the following on brochures or other printed promotional information: "The information contained herein is provided without the intention that any buyer rely upon it. The information was gathered from preliminary inspections of the property and the current actual knowledge of the owner. It is subject to change without notice and must be verified independently by buyers. Listing Broker takes no responsibility for its accuracy."
 - ii.** Obtain a Seller Property Disclosure, filled out and signed by seller, unless seller elects not to provide such Disclosure and Broker agrees that the listing may be accepted without such Disclosure.
 - iii.** Comply with any then applicable Rule and/or Position Statement of the Colorado Real Estate Commission regarding square footage or the verification thereof.
 - iv.** Avoid quoting lot size, acreage, fence lines, etc., without having documentation to prove quotes.
 - v.** Comply with Colorado's brokerage relationship statute.

- vi. Have seller sign appropriate listing contract.
- b. **Release of Listings:**
 - i. When releasing a listing which has expired, Licensee shall do so by marking the original listing agreement “expired,” signing and dating it.
 - ii. In the event that an owner of a property requests a release of listing before it has terminated, Licensee shall consult with Broker. Broker shall resolve any such requests on a case-by-case basis.
- c. **Termination of Listing Contracts:** When the Brokerage Firm agrees to terminate a Listing Contract prior to expiration of the Contract, such termination of Listing Contracts between the Brokerage Firm and the Client must be done in writing. A request by a Client to terminate a Listing Contract prior to expiration does not obligate Brokerage Firm to terminate the contract.

11. TRAINING

- a. **Dissemination of Information.** Broker may have sales meetings and listing tours as determined by Broker. Licensees are encouraged to communicate to Broker any perceived need for staff meetings on a regular or special basis. Broker may use a variety of approaches (i.e., sales meetings, personal conferences, written memorandums, etc.) to disseminate items of potential interest to Licensees. This could include, but not be limited to:
 - i. Marketing listings, matching properties and prospects
 - ii. Changes in Real Estate Commission Rules and Regulations
 - iii. Changes within NAR, CAR, or the local Board of REALTORS®
 - iv. Changes or additions to this Manual
 - v. Bringing in speakers
 - vi. Presenting new ideas on ways to do business
 - vii. Sharing of "War Stories" or local events
- b. **Staff Meetings.** Broker shall call staff meetings from time to time as Broker deems appropriate.

- 12. **USE OF PERSONAL ASSISTANTS.** Licensees should utilize Personal Assistants consistently with the Colorado Real Estate Commission’s most recent position statement on use of Personal Assistants.

- a. Access to Our Listings. The Brokerage Firm does not knowingly permit unlicensed persons from other brokerage firms to provide access to Company listings. The Brokerage Firm generally does not permit unlicensed persons employed by the Brokerage Firm to provide access to Brokerage Firm listings, although the Employing Broker or Managing Broker may make exceptions on a case-by-case basis.
- b. Access to the Listings of Other Brokerage Firms. The Brokerage Firm does not permit unlicensed persons to provide access to other companies' listings.

13. FAIR HOUSING. Broker and all Licensees shall comply with all applicable fair housing laws. Licensees shall continue to educate themselves to remain knowledgeable about the current state of fair housing laws. Without limiting the generality of the preceding, the Brokerage Firm shall not discriminate on the basis of race, color, creed, religion, gender, national origin, ancestry, physical or mental handicap or disability, marital status, familial status, sexual orientation, or gender identity. In addition, certain municipalities have other potential protected classes that must be considered, including but not limited to military status, age, political orientation and family responsibility.

If Licensees encounter illegal discrimination by clients or others, the Licensee shall so inform Broker. The Broker and the Licensee will address each situation on a case-by-case basis.

14. DO NOT CALL

- a. **No cold calling.**
 - i. **General Rule.** No Licensee, employee of Brokerage Firm, employee of a Licensee, or anyone acting on their behalf (a "Caller" in this section) shall initiate any telephone solicitation (subject only to the limited exceptions below). Telephone solicitation means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, made to any person. Examples of telephone solicitation are calls soliciting seller listings, buyer listings, and tenant listings.
 - ii. **Exceptions.** In spite of the foregoing general prohibition against telephone solicitation, Licensees, their employees, and employees of Brokerage Firm may initiate telephone solicitations as follows:
 - (1) To any person with whom Brokerage Firm has an **established business relationship**. An **established business relationship** means either of the following:

- (a) The consumer, within the eighteen (18) months immediately preceding the date of the telephone call, has engaged Brokerage Firm for some services. For example, a call can be made to a seller client within the eighteen month period after the expiration of a listing or the closing on the sale of that seller's property. A call can be made to a buyer client within the eighteen month period after the expiration of a buyer listing or after the buyer closes on a purchase.
- (b) The consumer, within the three (3) months immediately preceding the date of the telephone call, has made an inquiry or application for services from Brokerage Firm. Examples would be a buyer who registered with a Licensee at an open house which the Licensee was conducting for a seller, or a buyer who registered for a seminar offered by the Licensee.

Even if there is an established business relationship, the exception for established business relationships shall not apply to any consumer who has expressly terminated the relationship or otherwise asked not to be called by the caller or Brokerage Firm.

- (2) The person making the call has a **personal relationship** with the recipient of the call. **A personal relationship means** any family member, friend, or acquaintance of the person actually making the call.
- (3) The person making the call has obtained the consumer's prior express invitation or permission for the call. Such permission must be evidenced by a signed, written agreement between the consumer and caller which states that the consumer agrees to be contacted by the caller and includes the telephone number(s) to which calls may be made.

- b. Establishing and Maintaining Brokerage Firm-Specific Do Not Call List.** If a caller telephones an individual who requests not to receive future telephone calls, the caller will e-mail the name of the person called, the telephone number called, the date and time of the call to the Employing Broker or, if the Employing Broker has delegated the supervisory duties of Brokerage Firm to a Managing Broker, then the e-mail will be made to the Managing Broker. The Employing Broker, or the Managing Broker if there is a managing broker, will maintain the Brokerage Firm-specific Do Not Call List. Within three (3) business days of receiving a new caller who wishes to be on the Brokerage Firm-specific Do Not Call List, the person responsible for the Brokerage Firm-specific Do Not Call List will add such individual's name and number to the list. The Brokerage Firm-specific Do Not

Call List will be provided by the person responsible for the List to Brokerage Firm Licensees as new names are added to the list.

- c. **Training.** Licensees, their employees, and other employees of the Company will be trained in the procedures above as they are trained on other matters relating to this Manual.
 - d. **Accessing the National Do Not Call Database.** Except for the three exceptions identified in subparagraph a.ii. above in this section, Brokerage Firm does not permit general cold calling or phone solicitation. Therefore, there is no need for Licensees, their employees, or employees of Brokerage Firm to access the national or state Do Not Call database.
 - e. **Improper Use of Do Not Call.** Licensees, their employees, and other employees of Brokerage Firm shall not use the Do Not Call registry for any purpose whatsoever. Without limiting the generality of the foregoing, they shall not use the Do Not Call registry to identify persons to call.
 - f. **Specific Examples.**
 - i. Unless the recipient of the call fits one of the three exceptions identified in subparagraph a.ii. above in this section, callers may not call expired listings to solicit sellers. Callers may call expired listings if the caller has a bona fide buyer interested in purchasing the expired listing.
 - ii. Unless the recipient of the call fits one of the three exceptions identified in subparagraph a.ii. above in this section, callers may not call For Sale By Owner sellers to solicit listings. Callers may contact FSBO sellers if they have a bona fide buyer interested in the purchase of the property.
15. **ANTI MONEY LAUNDERING.** The USA Patriot Act of 2001 requires that all “financial institutions” must establish anti-money laundering programs. The term “financial institutions” includes “persons involved in real estate closings and settlements.” As of the drafting of this policy, persons involved in real estate closings and settlements have, for the most part, been temporarily exempted from the requirement to establish an anti-money laundering program. However, real estate brokers remain subject to existing reporting requirements for transactions in cash or currency exceeding \$10,000.00.

One frequent step in the chain of laundering money is to deposit currency (such as U.S. dollars) into the banking system. The following are two examples by which money launderers might attempt to launder money through a real estate broker:

Example A. An apparent buyer might use cash as earnest money. The apparent buyer would have the broker deposit the cash earnest money in the broker’s trust account. The buyer would later use a contingency to terminate the contract, and in the normal course of

events would receive a check back for the refund of the earnest money, there by receiving funds back which have been entered into the banking system.

Example B. A buyer might use cash as earnest money, and later use cash for the buyer's down payment at closing. After closing, the buyer completes a cash-out refinance (often with inflated home values and an artificially high loan balance) taking the equity out of the property through funds which are now part of the banking system.

A money launderer might attempt to sanitize more than \$10,000 (in Example A) and \$20,000 (in Example B) by using a series of installment payments of cash. In either example, the earnest money might be \$30,000, ten thousand submitted with the offer, another \$10,000 due after the offer is accepted by the seller, and another \$10,000 due after the expiration of the buyer's due diligence contingency. With the second example, the seller might carry financing requiring monthly payments from the buyer of \$10,000. A year later, using combinations of the schemes above, the buyer closes on a cash out refinance and takes \$160,000 out of the property.

Money laundering schemes can also be done in combination with other loan fraud schemes (see section on Loan Fraud below in this Manual).

In light of the foregoing, Brokerage Firm and licensees:

- a. Shall not accept tenders of cash in excess of \$10,000 and shall report offers of such tenders to the Broker.
- b. Shall not break up deposits of tendered cash. For example, if a buyer attempts to tender \$15,000 to Brokerage Firm as an earnest money deposit, Brokerage Firm shall not break up the tender into two installments to be deposited separately.
- c. Shall report any transactions to Broker in which the buyer has done both of the following: (a) tendered more than \$10,000 in cash to Broker or Brokerage Firm prior to closing; and (b) terminates the contract pre-closing so that the buyer is entitled to receive more than \$10,000 through a check or wire.
- d. Licensees shall be generally aware of, and on the look out for, transactions which fit the examples above. Licensees shall report such transactions to Broker.

16. LOAN FRAUD

- a. **Exaggerating the Purchase Price.** Lenders generally make real estate-secured loans based upon two considerations, the credit worthiness of the borrower and the value of the collateral. Lenders estimate the value of the collateral by: (a) having the property appraised and (b) examining the price the buyer is willing to pay. Appraising is not an exact science. Appraisers make mistakes. Lenders consider the purchase contract because buyers don't intentionally pay more for a property than it is worth, unless there is some value coming back to the buyer inducing the buyer to pay an inflated price. Any

time value is coming back to a buyer out of a transaction, the lender has a right to know so that the lender can decide whether the rebate should be treated as a price concession.

For example, consider a buyer who has entered into a contract to purchase a property for \$600,000. After learning of a roof problem, the seller agrees to pay the buyer \$30,000 in exchange for the buyer taking the condition of the property at closing subject to the roof defect. An examination of two of the many ways of handling this situation is instructive:

- i. Price Reduction.** In the “Price Reduction Scenario,” the seller and buyer reduced the price by \$30,000 to \$570,000. The buyer is purchasing the property with an 80% loan-to-value mortgage. The loan will be for \$456,000 and the buyer will need to bring approximately \$114,000 to close.
- ii. Rebate.** In the “Rebate Scenario” the price is kept at \$600,000, but the seller rebates \$30,000 to the buyer. The lender does not treat the rebate as a price concession, either because the lender is not aware of the rebate, or because the lender has simply chosen not to treat it as a price concession. Under this rebate scenario, the buyer borrows \$480,000 with an 80% loan. While the buyer brings \$120,000 to closing, the buyer receives a rebate of \$30,000 from the seller so that the buyer’s net out-of-pocket cash is only \$90,000, \$24,000 less than under the Price Reduction Scenario.

In both cases, the buyer has paid \$570,000 for the property. In the Price Reduction Scenario the buyer has put up more cash, but benefits by having a lower mortgage. In the Rebate Scenario, the buyer has paid less cash and has a higher mortgage. Because cash is precious, many buyers will prefer the Rebate Scenario. For some buyers it is not a matter of preference. They don’t have the \$24,000 and have no choice but to try the Rebate Scenario or not purchase the property. Aware that many lenders will treat the \$30,000 rebate as a price concession, participants in the deal sometimes hide the rebate from the mortgage investor who funds the loan. Since it is well known that an under the table rebate of \$30,000 to the buyer post-closing is an illegal “kickback,” more subtle schemes have evolved in an attempt to make the kickback seem less fraudulent. Consider the following two examples:

- i. Hidden rebate.** The mortgage broker nominally charges the borrower \$30,000 in points and fees. The seller agrees to pay for those loan charges and this payment is disclosed to the mortgage investor. However, unbeknownst to the mortgage investor, the mortgage broker then rebates the \$30,000 to the buyer.
- ii. Unpaid second mortgage.** Another example is that instead of bringing \$120,000 in cash to the closing, the seller agrees to accept \$90,000 in cash and carry a second mortgage for \$30,000. The seller-carry second deed of trust is disclosed to the lender, but there is a side agreement that the second mortgage will never be paid.

- b. Loan Fraud Defined.** Loan fraud requires a misrepresentation with the intent to mislead. Both the hidden rebate and the unpaid second mortgage are loan fraud because they mislead the mortgage investor about the true nature of the deal. Further, C.R.S. §18-5-208 (2002) provides:

Dual contracts to induce loan

It is a class 3 misdemeanor for any person to knowingly make, issue, deliver, or receive dual contracts for the purchase or sale of real property. The term "dual contracts", either written or oral, means two separate contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price, and is used, or intended to be used, to induce persons to make a loan or loan commitment on such real property in reliance upon the stated inflated value.

The undisclosed dual contract in the hidden rebate example is the contract for the mortgage broker to rebate money to the buyer. The undisclosed dual contract in the unpaid second mortgage example is the agreement to ignore the second mortgage.

A lender who is aware of the \$30,000 rebate may choose not to treat it as a price concession and make the loan based upon a \$600,000 valuation. If the \$30,000 rebate is memorialized in a contract amendment provided to the lender, and the lender chooses to make the loan based upon a \$600,000 valuation, there is no fraud.

- c. Prohibition and Other Examples.** Licensees shall not engage in loan fraud. If Licensees suspect that they are being asked to participate in loan fraud, the Licensee shall consult with Broker and together the Licensee and Broker shall evaluate and address the situation on a case-by-case basis. In addition to loan fraud which exaggerates the purchase price, other examples of loan fraud include, but are not limited to:
- i.** Bogus "Gift" letters
 - ii.** False owner occupancy claims
 - iii.** Undisclosed changes in financial circumstances post loan application, pre-closing
 - iv.** Phony appraisals
 - v.** False leases suggesting that a unit is rented to a tenant.

17. **FHA TRANSACTIONS.** FHA borrowers must invest their own money when purchasing a property. While there may be some exceptions, **the money may not come from the seller, a real estate broker, or lender.** Licensees shall not contribute or otherwise subsidize any portion of a buyer's down payment, with or without disclosure to the buyer's lender, for an FHA loan.
18. **SECURITY OF PROPERTY FOR SALE.** Whether a Licensee is acting as a listing broker or a selling broker, Licensee may provide property access to persons who don't own the property, such as buyers, appraisers, and selling brokers. When Licensees provide access to a property through licensees who are not part of Brokerage Firm, Licensees may rely upon the licensees to adequately secure the Property. However, when a Licensee provides access to any other persons, the Licensee shall use the same skill and care that Licensee would use in securing that Licensee's own home to secure subject Property.
19. **SEXUAL AND OTHER UNLAWFUL HARASSMENT.** Employing Broker and Brokerage Firm are committed to providing a work environment that is free of discrimination and unlawful harassment. Actions, words, jokes, or comments based on an individual's sex, race, ethnicity, age, religion, sexual orientation, gender identity, or any other legally protected characteristic will not be tolerated. As an example, unwanted sexual advances (both overt and subtle) is a form of misconduct that is demeaning to another person, undermines the integrity of the employment or other relationship, and is strictly prohibited. "Harassment" means words or conduct which unreasonably interferes with an individual's work performance, or otherwise creates an intimidating, hostile or offensive working environment.

Any Licensee, employee of a Licensee, or employee of Brokerage Firm, who wants to report an incident of sexual or other unlawful harassment from another Licensee, another employee of a Licensee, another employee of Brokerage Firm, or from a client of Brokerage Firm should promptly report the matter to the Employing Broker who will handle the matter in a timely and confidential manner. Among other things, the Employing Broker will investigate the report as necessary, on a case-by-case basis. If the Employing Broker is unavailable or the reporting individual believes it would be inappropriate to contact that person, the reporting individual should immediately contact the Managing Broker, if Broker has designated a Managing Broker other than the Employing Broker, or Broker's general counsel in lieu thereof, who will investigate the matter in the same fashion as prescribed for the Employing Broker above. Reporting individuals can raise concerns and make reports without fear of reprisal. The report does not have to be in writing. It is helpful if details of dates, times, places and witnesses, if any, to the harassment can be provided.

Sexual harassment does not include occasional compliments, unless the recipient of the compliments has requested that the giver of the compliments not make such compliments. It is not contrary to the policy of Brokerage Firm for persons employed or affiliated with Brokerage Firm to date, except in circumstances where one of such

persons reports directly or indirectly to the other such person. No dating is permitted in such circumstances. The Employing Broker will, however, consider requests from affected persons to transfer them to other open positions with Brokerage Firm for which they are qualified so that such persons are not in the same reporting lines.

Any Licensee or other person engaging in sexual or other unlawful harassment will be subject to disciplinary action, up to and including termination of their relationship with Brokerage Firm.

- 20. SAFETY AND PREMISES SECURITY MEASURES.** Brokerage Firm has zero tolerance for violence. Any Licensee, employee of a Licensee, or employee of Brokerage Firm who is violent, or who threatens to be violent, in Brokerage Firm's offices or on the job, whether toward any client, coworker, Licensee, Broker or other Brokerage Firm official or representative or member of the public, will be subject to discipline, up to and including immediate termination of their relationship with Brokerage Firm. If you are attacked or threatened with violence, or see someone else being attacked or threatened, you should take appropriate steps: to protect yourself and others; to avoid causing more violence; and to notify emergency personnel (e.g., call 911 for fire, police or ambulance help) and Broker.

Safety of Brokerage Firm's Licensees, their employees, and employees of Brokerage Firm, is of the utmost importance to Brokerage Firm. Any Licensee, employee of a Licensee, or employee of Brokerage Firm should immediately inform Broker about any accident or unsafe or hazardous working condition. Brokerage Firm, the building's managers, or certain insurance carriers, may provide separate safety policies or training, for example regarding fire safety, exiting the building in an emergency, or accident prevention and reporting. Licensees, their employees, and employees of Brokerage Firm shall comply with any separate safety policy Brokerage Firm may issue or implement and participate in all safety training Brokerage Firm provides or approves.

Before leaving Brokerage Firm's premises, each person should turn off all equipment and power sources used by him or her, make sure that his or her windows, if any, are securely closed, and, if leaving after business hours, make sure that the door through which he or she departs is closed and locked behind him or her.

The measures outlined in the remaining provisions of this section are intended to help assure that Brokerage Firm's are accessible only to Licensees, their employees, Brokerage Firm employees, clients, and other persons who have a legitimate reason to be in Brokerage Firm's offices, such as delivery service personnel or vendors.

Receptionists should permit only authorized persons past the waiting or reception area. Any Licensee, employee of a Licensee, or employee of Brokerage Firm who is receiving a client, vendor, delivery person or other invited guest should meet that person in the waiting area and walk with that person to the his or her office, work area or other appropriate area. Guests should be with a Licensee, employee of a Licensee or employee of Brokerage Firm at all times and should not be left alone or allowed to wander through

Brokerage Firm's offices by themselves. All Licensees, employees of Licensees and employees of Brokerage Firm should feel free to ask anyone they see whom they do not recognize as a Licensee or employee and who is not with another Licensee or employee if that persons needs assistance and whom he or she is there to see. Licensees, employees of Licensees and employees of Brokerage Firm should also promptly let the Broker know if anyone is in Brokerage Firm's offices who is not a Licensee, employee of a Licensee, employee of Brokerage Firm, or authorized guest.

21. HANDLING OF CONFIDENTIAL INFORMATION

a. Confidential information. The following information is confidential between a Licensee and his or her Client:

- i. The seller or landlord is willing to accept less;
- ii. The buyer or tenant is willing to pay more;
- iii. Information regarding motivating factors for the Client;
- iv. Information that a Client will agree to other financing terms;
- v. Material information about a Client not required by law to be disclosed;
- vi. Facts or suspicions which may psychologically impact or stigmatize a Client's property;
- vii. All information required to be kept confidential pursuant to sections 12-61-804(2), 12-61-805(2) and 12-61-807(3), C.R.S.

Examples of confidential information are the Client's relocation, divorce, or pending foreclosure. Confidential information does not include information which a Licensee is required to disclose by law. Confidential information does not include information which the Client authorizes a Designated Broker to disclose. For example, as a means of attracting offers, the seller may wish to inform the market that the seller is motivated.

b. Inadvertent disclosure. In general, individual designated brokers should handle communication within the office in a way which is mindful of the potential that other Licensees in the office may represent buyers and sellers who have an interest adverse to Clients of the individual designated broker. Prior to designated brokerage, it was common for brokers to share the motivations of the buyer or seller during office sales meetings, for example. Under designated brokerage, the law specifically prohibits the sharing of confidential information, unless the Client has authorized such disclosure. Situations where inadvertent disclosure of confidential information may occur include, but are not limited to:

- i. Sales meetings or marketing sessions,
 - ii. Shared fax or copy machines,
 - iii. Shared computer networks, printers, and file directories,
 - iv. In-office mailboxes,
 - v. Handwritten telephone messages,
 - vi. Phone conversations or meetings with clients,
 - vii. Conversations with affiliated business providers,
 - viii. Production boards,
 - ix. Social functions.
- c. **Disclosure within Brokerage Firm.** Designated Brokers shall not disclose such confidential information to other Licensees in the Brokerage Firm. Licensees in the Brokerage Firm shall not seek out such confidential information from designated brokers or from any Brokerage Firm file.
- d. **Separate files. Each Client shall have a separate file maintained by the Client's designated broker on behalf of the Employing Broker.** Access to the file is restricted to the Designated Broker and the Employing Broker. No one else shall have access to, or view that file without the prior approval of the Employing Broker. In addition, a Designated Broker working with the seller may maintain a file, devoid of confidential information, for the listed property which will be available to any Licensee within the Brokerage Firm.
- e. **Communication with clients.** Designated Brokers shall inform Clients that other Licensees in the Brokerage Firm may be working with the other side of the transaction so that Clients should direct all communication (letters, fax, e-mail) which is sent to the Brokerage Firm to the Client's designated broker.
- f. **Review of client communication.** Licensees, other than the Employing Broker, shall not review communication from Clients which is not directed to that Licensee. Designated Brokers may reveal confidential information to the Employing Broker without changing or extending the designated brokerage relationship beyond the Designated Broker.
- g. **Broker status on learning confidential information.** Any Licensee who learns of confidential information of a Client of the Brokerage Firm shall be considered a Designated Broker for that Client. In the event of an In-Company Transaction

between such a Client and another Client of the Licensee, then both Clients shall be informed that his or her Designated Broker is working as a transaction-broker.

- 22. FILE LOCATION - DECENTRALIZED.** Licensees shall maintain files for each client it serves on behalf of Broker and the Brokerage Firm. The physical file, its contents and information related thereto shall be property of the Company. The term “file” as it is used in this section shall include, but not be limited to, paper/physical files, electronic files, or both of them.

In light of designated brokerage, a Licensee in Brokerage Firm may have a brokerage relationship with a Client who has an interest adverse to another client of the Brokerage Firm. A Licensee shall not provide access to any file he or she maintains to other licensees of the Brokerage Firm without first reviewing the file to determine whether any confidences of the subject client will be revealed to the licensee receiving the file.

- 23. COMPUTER SYSTEMS.** To the extent that information is stored digitally, the Brokerage Firm will take reasonable precautions to provide security for such data (including, but not limited to, the use of passwords and other security measures as appropriate). For electronic information stored locally, the Brokerage Firm will ensure that it has a reasonable process in place to ensure that such data is backed up regularly. For information stored remotely or in the cloud, the Brokerage Firm will verify that vendors associated with this remote storage have adequate procedures in place for the backup of such data.

24. GENERAL

- a. Non-Compliance.** Without limiting any specific remedy provisions in the body of this Manual, the failure of Licensee to comply with any of the policies herein may be considered by Brokerage Firm and Broker, in Broker's sole and absolute discretion, as cause for terminating Licensee's independent contractor relationship with Brokerage Firm. Additionally, no commission check will be issued to Licensee for any transaction until all procedures have been complied with and until any prior defaults have been cured.
- b. Compliance with License Law.** If any policy contained herein conflicts with Colorado law, then Colorado law shall supersede the conflicting policy or policies. In addition to any requirement stated in this Manual, Licensee shall abide by Colorado license law.

Licensee

Date