

# NHAR Sample Policy Manual

## NHAR DISCLAIMER

Dear Member,

1. The attached sample policies and guidelines were created by NHAR to help your Firm create practical policies for your agents. It is intended to serve as a manual for independent contractors and not employees. NHAR makes no representations as to whether the adoption of the policies, forms, and guidelines is appropriate and legal for every Firm or broker. It is exclusively designed for brokers or Firms operating in New Hampshire.
2. Inclusion of any or all of the items in this Sample Manual does not ensure total compliance with all applicable legal requirements. This Sample Manual and the attached forms and guidelines are intended only to facilitate the process of drafting your Firm's individualized policies for your agents. The final draft of your office policies and procedures manual should be reviewed by legal counsel before it is approved and/or adopted by your Firm.
3. Please remember that this is a living document that must be revised from time to time. We suggest that you update your office policies on a regular basis, preferably annually, to reflect changes in the law and real estate practices, and to ensure that the manual reflects the way that you really want business to be conducted in your Firm.
4. For purposes of this manual, the word "Firm" means all real estate brokerage businesses, whether organized as a sole proprietorship, limited liability company or corporation.

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## Outline of Recommended Policies

1. Welcome Statement – This is an optional statement often placed at the beginning of an office manual. It is recommended that it is written by the broker. If your Firm has a mission statement and/or summary of your core values, then it is a good idea to insert it into the manual. The Welcome Page may be a good place to insert it.
2. A Word About these Policies – This policy is highly recommended as it informs agents that the manual does not establish a contract and does not create any benefits.
3. Fair Housing Policy – This policy is highly recommended.
4. Harassment Policy – Title VII and RSA 354-a (NH’s Law Against Discrimination) prohibit covered employers from discriminating against employees in the workplace. These well-known laws are only available as protection for employees, and they do not provide relief for independent contractors or other non-employees in the workplace. However, there are many reasons why brokers may want to include such a policy in the agent manual. First, these laws require employers to prevent the harassment of employees from non-employees. Therefore, it is recommended that employers communicate their rules on discrimination to any individual who is frequently present in the workplace. This policy would accomplish that goal. Second -- although not clearly established in the case law -- it is possible that agents could establish a common law claim against a broker based on the broker’s alleged tolerance of discrimination in the workplace (e.g., intentional interference with contractual relationships, etc.). Accordingly, it is always helpful to be able to present a written policy against such a practice. The risk is that the harassment policy may be used to create a “contractual” right to be protected from discrimination. However, if the manual contains a clear statement, such as in #2 above, that the policies are not intended to create any express or implied contractual rights for agents, and that they are instead merely intended as guidelines, then it is unlikely that a court would create such a remedy. This form in particular needs to be customized to identify the appropriate persons to report claims.
5. Legal Compliance – Compliance with License Law and REALTOR® Code of Ethics – This policy is to reinforce compliance with the principal sources of regulation.
6. RESPA Compliance – Real Estate Settlement Procedures Act (“RESPA”) Compliance – This policy is necessary so agents abide by federal law.
7. Antitrust – This policy is a useful reminder for agents not to act in concert or boycott others.
8. Lead Paint Disclosure Form – This area has received significant regulatory attention recently so it is important to emphasize proper compliance.
9. Property Disclosure Obligations – This policy serves a risk management function to remind agents how best to protect themselves, their clients, and the Firm.
10. Agency Disclosure – This reminds agents to disclose their role at the outset.
11. Agency – This section includes provisions for traditional, seller only, buyer only, designated agency, and agency – another relationship brokerage models. You should select the one (1) appropriate model for your Firm.
12. Telephone, Fax and Electronic Mail Solicitation – Do-Not-Call Policy – This policy is designed to achieve compliance with federal law.
13. Advertising – This policy reinforces the specific legal requirements governing real estate advertising.

14. Social Networking and Blog Postings – This policy is recommended for all workplaces. Because of the strict and comprehensive rules governing fair housing, and REALTOR® advertising, we recommend that this policy also contain instructions for agents on what information must be included on any posts that pertain to broker-related business.
15. Escrow Account Policy – This policy is highly recommended to establish a uniform practice.
16. Forms – This policy reminds agents to use NHAR forms, or forms authorized by this Firm; you may not improperly modify forms.
17. Personal Assistants – A policy governing personal assistants retained by agents is highly recommended. This policy should make it clear that these assistants are the employees of the agent, and not the broker. The policy should also make it clear that the agent is responsible for all aspects of compensation and workers' compensation.
18. Confidentiality Policy – This policy is recommended because brokers and agents are required under state law to maintain certain information confidential.
19. Conflicts of Interest – This policy reminds agents what is required of them if they have a conflict.
20. Cooperation with Other Agents – This policy reminds agents of the Article 3 REALTOR® Code of Ethics requirements.
21. Vacations and Other Absences – This policy may be tailored to your specific workplace. However, there should be communication about how pending business matters will be handled when the agent is absent.
22. Safe Driving – This policy is recommended because of all of the business conducted in cars and all of the recent media attention on “distracted drivers.” You should edit the policy to reflect whether or not you require agents to list you as an additional insured on auto insurance policies. Your insurance agent can help you with this decision.
23. Alcohol and Drugs – This is always a good policy to have so that everyone knows the rules.
24. Safety – Pursuant to state law, employers with 5 or more employees must have a safety committee and employers with 10 or more employees must have a written program and submit a summary statement form every other year with the Department of Labor. If your workplace must comply with these state laws, then it is advisable that you also insert into the policy additional language that provides: “The Safety Committee has responsibility for implementing, administering, monitoring and evaluating the safety program and our written safety manual. Its success depends on the alertness and personal commitment of all.”
25. Smoking Policy – The Indoor Smoking Act requires employers to develop a written smoking policy and disseminate it to employees and others who routinely use the workspace. This manual is a good place to inform agents about the policy.
26. Use of Firm-Owned Property, including Computers and Other Communications Equipment – If agents will have access to your computers, then it is recommended that you adopt a policy regarding their use, and advise agents of your right to monitor these systems. This policy should be customized to your specific practices.
27. Conflict Resolution and Reporting Requirements – This policy reminds agents to seek out the broker to help resolve disputes.
28. Termination of Affiliation – Agents should be instructed about their obligation to return Firm property upon termination.

29. Policy Options

30. Receipt and Acknowledgment of Office Policies and Procedures Manual –This form is recommended so as to establish proof that the broker provided a copy of the manual to each agent.

## WELCOME STATEMENT

WELCOME!

On behalf of everyone at \_\_\_\_\_, I welcome you and wish you every success here!

We hope that your experience here will be challenging, enjoyable and rewarding. If you have any questions or concerns at any point, please do not hesitate to ask. Again, welcome!

Sincerely,

President and/or other Firm representative

## **A WORD ABOUT THESE OFFICE POLICIES**

The purpose of this manual is to establish a uniform system of daily conduct by and between us when dealing with each other, other members of the company, our clients, and members of the public. You are responsible to read and review this manual and to comply with its policies and procedures. If you have any questions, please ask the principal or managing broker.

When you review these office policies, please keep in mind that they should be regarded as guidelines only, which in a business like ours will require changing from time to time. The principal or managing broker retains the right to make decisions involving policy changes as needed in order to conduct its work in a manner that is beneficial to its employees, customers and the Firm. This office policy manual replaces any and all prior handbooks, policies, procedures and practices of the Firm. Certain items in this manual apply only to agents and do not apply to Firm employees.

The principal broker has an independent contractor relationship with its agents. Agents are not employees of the Firm, and are not entitled to any employee benefits. However, agents must abide by the office policies and must strictly adhere to the professional and ethical standards in the most current version of the National Association of REALTORS® Code of Ethics. Failure to comply with Firm policies or procedures or the REALTORS® Code of Ethics may result in the end of the contractual relationship.

**Nothing in these office policies is intended to alter or amend the terms and conditions of the Independent Contractor Agreement. In particular, nothing in these office policies is intended to alter the right of either party to terminate the independent contractor agreement, with or without cause, with advance notice to principal or managing broker as set forth in the Independent Contractor Agreement. Neither the policies contained in this manual, nor any other written or verbal communication by the principal or managing broker, are intended to create a contract of employment or a warranty of benefits. The policies contained herein may be added to, deleted or changed by the Firm in its sole discretion, except that principal or managing broker will not modify the policy regarding the parties' independent contractor relationship in any case. No officer, employee, or other representative of the Firm is authorized to enter into an agreement – express or implied – with any agent for employment.**

## **FAIR HOUSING**

This Firm has zero tolerance for violations of the Fair Housing laws and prohibits any client, customer, agent or employee from discriminating in the provision of any of the company's services on the basis of age, sex, race, color, religion, physical or mental disability, familial status, marital status, national origin, genetic information, sexual orientation or any other protected category.

Prohibited practices may include, but are not limited to the following behaviors:

1. Refusing to show, sell or rent based on a person being a member of a protected class.
2. Different treatment/disparate treatment to persons of a protected class.
3. Steering or guiding potential homebuyers to selected areas based on where you think they need to live.
4. Discriminatory advertising that "expresses" a preference for buyers of a particular protected category.
5. Harassment (i.e., coercion, intimidation, threats, or interference with a person's fair housing rights or because a party is abiding by fair housing law).
6. Applying more burdensome criteria to applicants of protected classes.
7. Blockbusting which is defined as any illegal, discriminatory practice whereby an agent induces a property owner to list his or her property by representing that the neighborhood may change as a result of race, color, sex, religion, sexual orientation, marital status, national origin, genetic information, disability or any other protected category.

Any violation of fair housing laws or this policy must be reported to the principal or managing broker immediately. Independent contractors are prohibited from engaging in any conduct in violation of this policy and are subject to removal from their duties or activities with the Firm for violations of this policy.

## **HARASSMENT POLICY**

### **Introduction**

It is the policy of the Firm that all employees, customers and clients be free of discrimination and harassment on the basis of an individual's race, color, sex, pregnancy, sexual orientation, national origin, genetic information, religion, marital status, veteran status, physical or mental disability, age or any other protected category under federal or state law. The Firm will not tolerate sexual or other unlawful discrimination or harassment in the workplace or in other settings in which employees, customers and clients may find themselves in connection with their employment or agent-related business. The Firm also will not tolerate any retaliation against anyone complaining of harassment or anyone who has cooperated in an investigation of harassment in accordance with this policy.

The Firm takes allegations of violations of this policy seriously, and will respond promptly to complaints of harassment. Where we determine that inappropriate conduct has occurred, the Firm will act promptly to eliminate the conduct and take any necessary corrective action, including disciplinary action where appropriate.

While this policy sets forth our goals of promoting a workplace that is free of unlawful harassment, the policy is not designed or intended to limit the principal or managing broker's authority to discipline or take other remedial action for any workplace conduct that we deem unacceptable, regardless of whether the conduct satisfies the legal definition of harassment. Agents are prohibited from engaging in any conduct in violation of this policy and are subject to removal from their duties or activities with the Firm for violations of this policy.

### **Definition of Sexual Harassment**

We believe that all of our employees, customers and clients have the right to a work and business environment free from all forms of unlawful discrimination and harassment. The Firm will not tolerate the harassment of any employee, customer, client or other covered third party on any legally protected basis, including sex. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, physical, and nonphysical conduct of a sexual nature when:

- Submission to such conduct is made explicitly or implicitly a term or condition of employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's performance at work, or creates an intimidating, hostile, or offensive work environment.

Under this definition, direct or implied requests by someone in a supervisory position for sexual favors in exchange for actual or promised job benefits such as favorable performance reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The legal definition of sexual harassment is broad and, in addition to the above examples, other unwelcome sexually oriented conduct, whether it is intended or not, that has the effect of creating a workplace that is hostile, offensive, intimidating, or humiliating to male or female employees, customers and clients may also constitute sexual harassment. Sexual harassment also includes non-sexual comments and conduct that are directed at an individual because of his or her gender or otherwise motivated by gender discrimination.

### Examples of Prohibited Conduct

The Firm will not tolerate unlawful harassment of any employee or client or customer by anyone employed or affiliated by the Firm at any level. The Firm specifically prohibits harassment for any discriminatory reason. Derogatory racial, ethnic, religious, age, sexual orientation, sexual or other inappropriate remarks, slurs, or jokes will not be tolerated.

Each employee and agent must exercise his or her own good judgment to avoid engaging in conduct that may be perceived by others as harassment. Forms of prohibited harassment include, but are not limited to:

- Verbal: sexual innuendoes, epithets based on legally protected categories, derogatory slurs, off-color jokes, unwelcome sexual advances, threats, suggestive or insulting sounds, sexual jokes, written or oral references to sexual conduct, gossip or discussion about one's sex life, comments about an individual's body, comments about an individual's activity;
- Visual/Non-Verbal: derogatory or sexually suggestive posters, cartoons or drawings; suggestive objects or pictures; email messages with sexual references or other references to protected categories; viewing inappropriate internet sites; graphic commentaries; leering; or obscene gestures;
- Physical: unwanted physical contact including touching, brushing up against someone; interference with an individual's normal work movement; assault; and
- Retaliation: making or threatening reprisals as a result of a negative response to harassment.

### Scope of Prohibitions

Harassment includes a wide range of behaviors, from the actual coercion of sexual relations to unwelcome offensive comments, jokes, innuendoes and other inappropriate statements and unwelcome emphasizing of an individual's legally protected characteristics. It is not possible to list all of the additional circumstances and behaviors that may constitute harassment. However, the descriptions provided in this policy serve as some examples of conduct that, if unwelcome, may constitute harassment depending on the circumstances, including the severity of the conduct and its pervasiveness.

This policy prohibits all of the activities discussed above, by all employees and agents of the Firm, regardless of the position within the Firm. Harassment by clients, customers or other non-employees, including agents from other firms, who are on company premises or who come in contact with Firm employees is also prohibited.

### Consequences for Violating this Policy.

Harassment may be indirect or even unintentional. Violations of this policy, whether intended or not, will not be permitted. If it is determined that one of our employees or agents has engaged in inappropriate conduct, we will take such action as is appropriate under the circumstances. Such action may range from counseling to immediate termination of employment, affiliation or contract, and may include other forms of disciplinary action, as we deem appropriate under the circumstances.

### Retaliation is Prohibited

All employees and agents should take special note that, as stated above, retaliation against an individual who has complained about harassment under this policy or participated in an investigation of harassment will not be tolerated, and will be treated as another form of harassment in accordance with this policy. All incidents of retaliation must be immediately reported in accordance with the reporting procedure described below.

### Reporting Procedure for Discrimination and Harassment

If you observe unlawful discrimination or harassment, you must follow this reporting procedure to notify us of the problem so that we can promptly and thoroughly investigate this matter and take appropriate action. Do not allow an inappropriate situation to continue by not reporting it, regardless of who is creating the problem. No employee or agent of the Firm is exempt from its policies prohibiting harassment or discrimination.

- Any concerns should be immediately reported to the principal or managing broker.
- We will investigate reported incidents promptly and in a fair and discreet manner.
- All complaints will be considered confidential, and disclosure will be limited to those with a need to know in order to investigate the complaint and/or take corrective action.
- The investigation will include a private interview with the person filing the complaint and, where appropriate, the witnesses. We will also conduct a private interview with the person alleged to have committed harassment. In circumstances where it is appropriate to do so, we will inform the person who filed the complaint and the person alleged to have committed the conduct of the results of the investigation.

If we determine that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct and, where appropriate, to impose disciplinary action, up to and including immediate termination of employment, affiliation or contract. The Firm will also take other corrective or remedial actions, when appropriate.

We encourage reporting of complaints so that we may appropriately address and correct any problems. An employee or agent who participates in good faith in any investigation under this policy has the Firm's assurance that it will not tolerate any retaliation against him or her as a

result of bringing the complaint or otherwise participating in the process. All employees and agents are expected to be truthful, forthcoming, and cooperative in connection with a complaint investigation.

## **LEGAL COMPLIANCE**

In addition to any obligations set forth in this Manual, you are required to comply with all federal and New Hampshire laws, including but not limited to RESPA and RSA Chapter 331-A (the Licensing Statute), all regulations, rules and orders from the New Hampshire Real Estate Commission and the current REALTOR® Code of Ethics. If you have any questions or concerns, you should promptly consult your principal or managing broker.

Agents are responsible for maintaining strict compliance with license law for all of the states in which they are operating. Examples of compliance include, but are not limited to: meeting ongoing education requirements, maintaining license renewal, and having a working knowledge of all regulations and staying abreast of changes to the current rules and regulations which can be obtained from the licensing authority of each state through their respective websites. Agents may be required to participate in special training workshops or meetings to fully understand the specific duties of new regulations or changes in license law.

## RESPA COMPLIANCE

As an agent affiliated with this Firm you are required to comply fully with the Real Estate Settlement Procedures Act (“RESPA”) at all times.

Generally speaking, RESPA prohibits kickbacks, referral fees, receiving unearned fees or receiving a “thing of value” for the referral of business related to a real estate transaction. RESPA also prohibits the splitting of any settlement charge except for paying for actual services rendered at fair market value. In addition to being an anti-kickback act, RESPA is a disclosure act as well. This does not mean, however, that a kickback or unearned fee that is disclosed is legal. A RESPA violation can occur whenever there is a thing of value that is to be given in exchange for a settlement service referral. The agreement can be implied from the circumstances or from historical patterns and practices. Thus, an oral agreement to provide a referral fee to a settlement provider is a violation of RESPA just as a written agreement to do so would be. As a member of this Firm you are not permitted to accept any form of an incentive from any person affiliated with any settlement service. This would include the settlement service provider agreeing to pay costs that you normally would incur as part of your brokerage activities. Likewise, you cannot provide any gifts, bonuses or incentives to any settlement service providers as well.

It is particularly important to contact your principal or managing broker if you have, or are considering having, any affiliated business arrangements, as such arrangements raise particular issues with respect to RESPA compliance.

If you ever are in doubt or have a question regarding whether proposed conduct might violate RESPA, you are required to immediately contact your principal or managing broker to discuss this issue.

## ANTITRUST

The Firm will not tolerate any conduct that would expose it to potential antitrust liability. Agents must participate in antitrust education to fully understand the principles of antitrust law. Courses are often available at your Board of REALTORS®.

This manual is no substitute for proper antitrust education. However, to give you a basic guideline of the key issues normally affecting real estate agents with respect to antitrust law, the following information is provided. The two main areas where real estate brokerage activities may impact antitrust law are in the area of price or commission fixing and boycotts. Antitrust law precludes agents from agreeing to fix their prices which would have the purpose or effect of eliminating or restricting competition. This means that two or more real estate firms may not agree on what commission rate they will charge each other. Such conduct would be a per se violation of the antitrust laws. This rule applies to principal and managing brokers as well as salespeople. In particular, salespeople must avoid any actions which would suggest or imply a desire to fix prices. Similarly, agents may not agree to fix commission splits for the same reason. A firm must unilaterally and independently select what their cooperative compensation policies shall be. Antitrust law also restricts the ability to reach agreement relative to the other terms or conditions of the brokerage agreements with customers. For example, it would be problematic to reach an agreement with other competitors as to a standard length of time for a listing or buyer representation agreement.

The other aspect of antitrust law that impacts real estate brokerage activities is the prohibition on group boycotts. Group boycotting is typically a per se violation of antitrust laws. This concept refers to a concerted refusal to deal with a particular party. An example of such conduct would be an agreement among brokerage firms not to deal with a brokerage firm employing a different business model.

The National Association of REALTORS® provides extensive information and guidance on antitrust law and you are encouraged to use the [realtor.org](http://realtor.org) website for additional information to assist you in remaining in compliance with the antitrust laws.

The following are general principles that should be adhered to:

- Commission rates to be based upon the cost of services provided, the value of the services to clients, and competitive market conditions. Commission rates are not determined by agreement with, or recommendation or suggestion from, any person not a party to a listing agreement.
- Salesperson affiliated with the Firm shall not participate in any discussion concerning the commission rates charged by the Firm with any person affiliated with, or employed by, any other real estate Firm.
- When soliciting a listing, or negotiating a listing agreement, no salesperson affiliated with the Firm shall make any reference to a “prevailing” commission in the community, the

“going rate”, or any other words or phrases which may suggest that commission rates are uniform or “standard” in the market area.

- The amount of cooperative compensation, or “commission split”, offered by the Firm to cooperating brokers to be determined by the level of service you can expect a cooperating office to perform, and the amount of compensation necessary to induce cooperation under prevailing market conditions. Commission splits are established unilaterally by the Firm, and are not intended, and may not be used, to induce or compel any other real estate Firm in the marketing area to raise or lower the commission they charge to their client.
- When a salesperson is unsure about the proper way to respond to the concerns of an actual or potential client or customer, or whenever a salesperson has been present during an authorized discussion of fees or commission, he/she should contact the principal broker or sales manager immediately. If necessary, the broker or manager to consult the Firm’s attorney.

## **LEAD PAINT DISCLOSURE FORM**

If you are involved in a potential sale or lease of a residential property built prior to 1978, it is a requirement that the Disclosure of Information on Lead Based Paint and/or Lead Based Paint Hazards form needs to be fully completed by all parties to the transaction. This form needs to be completed prior to an offer being accepted on the property unless the buyer has the unconditional right to withdraw the offer upon receipt and review of the Lead Paint Disclosure form. The current forms are on the NHAR website and you should only use those forms.

Additionally, you should only use the form if the property was built prior to 1978 or has components in the existing structure that were built and existing in the structure prior to 1978. An example of this would be a building that was substantially rehabilitated but that contained certain components that predated 1978. The federal government takes the position that it is a violation of federal law to have the form executed for properties that are newer than 1978.

The form needs to be completely filled out by the buyer and seller. Regardless of whether you are on the buyer's side or a seller's side of the transaction, it is your responsibility as real estate agents to ensure full compliance with the completion of the disclosure form. All the boxes need to be checked, including the box where the purchaser indicated it has received copies of all information listed above, even if no actual information has been provided by the seller because the seller does not have any reports or records. The seller, the purchaser and the agents also need to initial, sign and date the form.

This form must be kept in the transaction files and fully completed. If you have any questions or concerns about how to complete the form or whether the form is applicable, please contact your principal or managing broker immediately. Penalties for non-compliance can be severe, so strict compliance with these requirements is mandatory.

Federal law requires contractors that disturb lead-based paint must be certified and follow specific work practices to prevent lead contamination.

## **PROPERTY DISCLOSURE OBLIGATIONS**

In addition to meeting the NH Rea 701:02-05 required disclosure as set forth by the NH Real Estate Commission, this Firm's policy is to disclose the maximum amount of information possible to the respective parties to a potential real estate transaction, consistent with our obligations to fully and diligently represent our clients. New Hampshire law requires that we disclose all **known** defects concerning the property about which we are actually aware. New Hampshire law does not impose upon agents a duty to investigate issues. However, you may not be willfully blind to a potential problem on the property. If you have a doubt or concern about whether information should be disclosed to the other side, you should speak with your principal or managing broker to obtain guidance on the issue.

The Firm's policy is that information about the property should be disclosed, by the seller on the Seller Disclosure form. The **seller, not you**, needs to fully complete the Seller Disclosure form. If there are blanks or gaps, counsel the seller to put down all material information about the property or mark the item as "unknown". If a seller does not wish to complete the Seller Disclosure form, immediately inform your principal or managing broker who will then decide whether you will be allowed to continue listing the property. If new information comes to light later during the listing period, purchase negotiations, or while a sale may be pending, it is the Firm's policy to have the seller update the Seller Disclosure form and create a new amended Seller Disclosure form. Do not make verbal disclosures yourself or suggest that you are the source of information about the property. You must specifically identify the source of the information so that the recipient of the information understands that you are relaying the information only.

If you are aware of conditions surrounding the property but not actually on the property itself that you believe reasonably might influence a buyer's decision to purchase the property, contact your principal or managing broker to discuss whether that information should be disclosed to a prospective purchaser. Again, the Firm's policy is to err on the side of disclosure as that policy best protects you, this Firm and its clients.

## AGENCY DISCLOSURE

Pursuant to New Hampshire Real Estate Commission regulations, you are required as part of any real estate transaction to provide your customer with a copy of the current New Hampshire Real Estate Commission approved Brokerage Relationship Disclosure form (“Disclosure Form”). The current Disclosure Form is available from NHAR. Please check the website periodically as this Disclosure Form is updated from time to time.

The New Hampshire Real Estate Commission requires that this Disclosure Form be provided to the consumer **at the first business meeting**. You should err on the side of caution in determining whether the meeting you are having with the consumer constitutes the first business meeting. If you have any doubt, you should provide the Disclosure Form to the consumer. If you are meeting in person, have the consumer execute the Disclosure Form, keep the signed original, and give the consumer a copy. If you are speaking with a person via phone, then you should set up a procedure to fax or email the Disclosure Form to the consumer and receive a copy of the signed Disclosure Form back. You should also ask the consumer to send you the original for your records. Likewise, if you are discussing a real estate transaction with a potential client via email, you should send that consumer a fax or .pdf copy of the Disclosure Form, ask them to complete it and send you a signed copy back electronically along with the original via mail. You should make sure the consumer retains a signed copy as well.

Please explain the Disclosure Form to the consumer before they sign it. This serves two purposes. First, the consumer will understand the options available. Second, this will allow you to explain the advantages to the consumer of choosing client level services. An executed original of the Disclosure Form must be retained in file for at least three years. 3 years is required by NHREC regulation, but 7 years is recommended for defense of civil liability claims.

## AGENCY – TRADITIONAL

This Firm practices the traditional model of agency. This means that we represent buyers and sellers and will act, when appropriate and properly consented to, as dual agents. You are authorized as a member of this Firm to act as a **buyer's agent, seller's agent, facilitator or dual agent**. You are not allowed to enter into another relationship with a consumer without the terms of the other relationship being identified and approved by the principal or managing broker.

You must use NHAR's standard Representation Agreements or forms authorized by the Firm. You are not authorized to modify any of the terms of the standard forms or Firm forms without the consent in advance of the principal or managing broker.

Remember, as part of your **first business meeting** with the consumer, you must provide the consumer with the New Hampshire Real Estate Commission approved Brokerage Relationship Disclosure form. When in doubt, err on the side of caution and have the form completed as per the guidance suggested in the Agency Disclosure section of this manual.

In order for the consumer to become a client, you must execute the appropriate Representation Agreement to indicate that they have hired you as their agent.

As a New Hampshire REALTOR®, you are obligated to abide by the REALTOR® Code of Ethics. You also owe the Firm's clients the duties of: loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting. Simply put, this means that you should at all times use your best efforts and skills as a trained REALTOR® to achieve the best possible result for your client, given your client's circumstances.

This Firm also authorizes you to act as a dual agent. However, to do so, you must strictly comply with all the requirements of New Hampshire law. At the outset, this means that the consent to dual agency box needs to be checked on the Listing or Buyer Representation Agreement. Additionally, once it becomes clear that there is a specific situation giving rise to the possibility of a dual agency transaction, you must make sure that both Firm clients sign the Consent to Dual Agency form. This form needs to be completely filled out and include the names of both parties, the date and the specific property address. This form must be filled out as soon as possible and in any event **before** a written offer to purchase the property is submitted. You are not authorized to have your client sign blank Consent to Dual Agency forms in advance before a specific transaction is contemplated. Your client may only sign the form once it is fully completed and presented to him.

If, for whatever reason, one or both of the parties to the potential dual agency transaction refuses to sign the specific consent form, then you need to report this fact to your principal or managing broker immediately. In addition, you and the other dual agent will then need to disengage from this transaction and if the clients wish to pursue this transaction further, they will both need to retain new agents from outside the Firm to do so. As part of our customer service role, you will help facilitate that transition so that it is as smooth as possible.

Remember, that once you are in a dual agency situation, you must act with strict neutrality towards both clients. You can perform administrative functions, but you are no longer to advise or counsel your client with respect to specific strategies or tactics because you must not favor one party over the other.

The law does allow a single agent to represent both parties to a transaction at the same time. The same consent procedure as outlined above is applicable and must be followed. However, this is a very difficult position for an agent to be in as a practical matter and creates significant potential liability concerns. Therefore, it is the Firm's policy that an agent is not allowed to act as a single agent acting in dual agency without the express consent in advance from the principal or managing broker. The Firm's policy is that even in a dual agency transaction it is usually better for each party to have a different agent as the contact person.

Regardless of the agency relationship you undertake on behalf of a client, you are obligated by law to preserve the confidential information you receive from a party. You are only authorized to release such information with the consent of the party who provided the information, if the information is made public from a source other than yourself or if disclosure is required to defend yourself against a claim of wrongful conduct. Before releasing any information that could be considered confidential, you are instructed to contact the principal or managing broker to ensure that disclosure is appropriate.

As part of your representation, you need to provide your client with original signed documents. Retained copies of all documents related to the transaction must be maintained in a transaction file at the office. This requirement includes all marketing materials, offers (even if rejected), drafts, addenda, disclosure statements, public records about the property, inspection reports, lead paint disclosure form (if applicable), purchase and sale agreements, all correspondence or notes concerning the transaction, a copy of the HUD-1, and escrow account records. You need to ensure that your email communications are saved on the Firm's server or, if you use a personal account, copies are saved in the appropriate transaction files at the office. You are not allowed to keep original copies of documents or files at home. These records must be kept at least three years. 3 years is required by NHREC regulation, but 7 years is recommended for defense of civil liability claims.

## AGENCY – SELLER REPRESENTATION ONLY

This Firm's policy is to only represent sellers in real estate transactions. If you are contacted by a buyer who desires representation, you should refer that buyer to another agency that conducts buyer representation. If you have any questions about to whom you should refer the potential buyer representation, please contact your principal or managing broker for assistance.

Because this Firm only does seller representation, do not have your clients check the box for dual agency on the listing agreement. This Firm will not practice dual agency under any circumstances. As a seller's agent you owe, by law, to your client the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting. Simply put, this means that you should at all times use your best efforts and skills as a trained REALTOR® to achieve the best possible result for your client given your client's circumstances.

Please remember that as part of your duties, you are required to have your client complete the Real Estate Commission Brokerage Disclosure form at the first business meeting. When in doubt err on the side of caution and have the form completed as per the guidance suggested in the Agency Disclosure section of this manual. Then you and your client need to complete together the appropriate Listing Agreement, as set forth on the NHAR forms, or forms authorized by this Firm. Do not modify the terms of the NHAR Listing Agreement, or forms authorized by this Firm, without the express consent in advance of the principal or managing broker.

As part of your relationship, you owe the client the duty of confidentiality with respect to information they have provided. You are only authorized to release confidential information if the seller consents to you doing so, the information is released by a source other than yourself, or if you are required to disclose the information to protect yourself against a claim for wrongdoing. If you encounter a circumstance where there is a potential need to disclose what could be considered confidential information, you need to contact your principal or managing broker and obtain their approval before doing so.

As part of your representation, you need to provide your client with original signed documents. Copies of all documents related to the transaction must be maintained in a transaction file at the office. This requirement includes all marketing materials, offers (even if rejected), drafts, addenda, disclosure statements, public records about the property, inspection reports, lead paint disclosure form (if applicable), purchase and sale agreements, all correspondence or notes concerning the transaction, a copy of the HUD-1, and escrow account records. You need to ensure that your email communications are saved on the Firm's server or, if you use a personal account, copies are saved in the appropriate transaction files at the office. You are not allowed to keep original copies of documents or files at home. These records must be kept at least three years. 3 years is required by NHREC regulation, but 7 years is recommended for defense of civil liability claims.

## **AGENCY – BUYER REPRESENTATION ONLY**

This Firm's policy is to only represent buyers in real estate transactions. If you are contacted by a seller who desires representation, you should refer that seller to another agency that handles seller representation. If you have any questions about to whom you should refer the potential seller representation, please contact your principal or managing broker for assistance.

Because this Firm only does buyer representation, do not have your clients check the box for dual agency on the Buyer Agency Agreement. This Firm will not practice dual agency under any circumstances.

As a buyer's agent you owe by law to your client the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting. Simply put, this means that you should at all times use your best efforts and skills as a trained REALTOR® to achieve the best possible result for your client given your client's circumstances.

Please remember that as part of your duties, you are required to have your client complete the Real Estate Commission Brokerage Disclosure form at the first business meeting. When in doubt, err on the side of caution and have the form completed as per the guidance suggested in the Agency Disclosure section of this manual. Then you and your client need to complete together the appropriate NHAR Buyer Representation Agreement, or forms authorized by this Firm. Do not modify the terms of the NHAR Buyer Representation Agreement, or forms authorized by this Firm, without the express consent in advance of the principal or managing broker.

As part of your relationship you owe your buyer client the duty of confidentiality with respect to information they have provided. You are only authorized to release confidential information if the buyer consents to you doing so, the information is released by a source other than yourself or if you are required to disclose the information to protect yourself against a claim for wrongdoing. If you encounter a circumstance where there is a potential need to disclose what could be considered confidential information, you need to contact your principal or managing broker and obtain their approval before doing so.

As part of your representation, you need to provide your client with original signed documents. Copies of all documents related to the transaction must be maintained in a transaction file at the office. This requirement includes all marketing materials, offers (even if rejected), drafts, addenda, disclosure statements, public records about the property, inspection reports, lead paint disclosure form (if applicable), purchase and sale agreements, all correspondence or notes concerning the transaction, a copy of the HUD-1, and escrow account records. You need to ensure that your email communications are saved on the Firm's server or, if you use a personal account, copies are saved in the appropriate transaction files at the office. You are not allowed to keep original copies of documents or files at home. These records must be kept at least three years. 3 years is required by NHREC regulation, but 7 years is recommended for defense of civil liability claims.

## AGENCY – FACILITATOR

Pursuant to New Hampshire license law, a Firm may enter into a facilitator relationship with a party. As a facilitator, you do not owe fiduciary duties to either party to the transaction. You are assisting one party but you are not representing either party in the transaction. You still have the same statutory obligations to disclose material conditions affecting the property about which you have actual knowledge. However, unless another agreement is reached with the party you are presenting, you have no obligation or duty to keep any information you receive from either party confidential. You are also not required by license law to enter into a contractual relationship. However, it is the policy of this Firm that you will enter into a formal written contractual relationship if you intend to act as a facilitator. As a facilitator, your assistance will be limited to performing ministerial acts on behalf of the parties to assist them in completing the transaction. You need to be very careful to ensure that the client does not consider you to be his or her agent. You must use NHAR standard representation agreement relative to facilitation. You are not authorized to modify any of the terms of the standard forms or Firm forms without the advance consent of the principal or managing broker. As part of your **first business meeting** with the consumer you must also provide the consumer with the current approved New Hampshire Real Estate Commission Brokerage Relationship Disclosure Form.

## DESIGNATED AGENCY

This Firm practices designated agency. This means that we represent buyers and sellers but will do so under a designated agency format and not the traditional model of agency. As a practical matter, this means that, except in two limited situations, by appointing designated agents the Firm and its agents will not act in a dual agency capacity. In designated agency, the appointing agent, if he or she appoints both agents for a transaction, shall be considered a dual agent and must remain neutral. Additionally, if a single agent is the designated agent for both parties to a transaction, then that single agent will be a dual agent and must comply with all dual agency requirements.

Because of how we operate, you are required to use the specified designated agency listing and buyer representation agreements available from NHAR or Firm approved forms. You are not allowed to modify listing agreement or buyer representation agreement forms without the consent in advance of the principal or managing broker

Remember, as well, that as part of your first business meeting with a potential client you must provide the potential client with the New Hampshire Real Estate Commission approved Brokerage Relationship Disclosure form. When in doubt, err on the side of caution and have the form completed as per the guidance suggested in the Agency Disclosure section of this manual.

The NH Real Estate Commission has ruled that substitutions of designated agents shall not be made without informed written consent of the party being represented.

The client must execute the appropriate Listing Agreement or Buyer Representation Agreement form as provided by NHAR, or forms authorized by this Firm, to confirm that you have been hired as their agent.

The Representation Agreement will need to identify you and one other agent as the designated agents for the specific client. It is the Firm's policy that each specific client will have two designated agents identified in the Representation Agreement. This allows for full coverage in a situation where a designated agent may be on vacation or unavailable to deal with a client's questions or needs.

This requirement is necessary because, as a firm practicing designated agency, none of the other agents in the Firm owe a fiduciary duty to or responsibility to that client. The only individuals that do are the specific agents designated on the Representation Agreement and the appointing agent, the principal broker and/or the managing broker who maintains supervisory responsibility.

The NH Real Estate Commission has determined that when a designated agent is appointed, information known or acquired by the designated agent shall not be imputed to the appointing agent or to other licensees within the same Firm.

As a designated agent, you have a duty of confidentiality. You must take steps to ensure that any information you obtain or receive from your client is not shared with any other member of the

Firm except the principal or managing broker. You need to instruct the potential client that they should only relay information directly to you or the other specific designated agent and no one else. Your client should not leave messages in a general mailbox or send faxes to a main number.

The principal or managing broker will maintain restricted transaction specific files segregated by party and will limit access to those files to only those agents who are the designated agents for the particular client. As an agent, you are not permitted to access any client's file unless you are the designated agent for that party. You also need to take steps to avoid obtaining otherwise confidential information.

As designated agents, even if there is another designated agent working with another party in the same transaction, you each owe the full fiduciary duties to your clients of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting. Simply put, this means you should at all times use your best efforts and skills as a REALTOR® to achieve the best possible result for your specific client, given your client's circumstances, regardless of whether another designated agent in the Firm is representing the other party.

As part of your relationship you owe your specific client the duty of confidentiality with respect to information they have provided. You are only authorized to release confidential information if the buyer consents to your doing so, the information is released by a source other than yourself, or if you are required to disclose the information to protect yourself against a claim for wrongdoing. If you encounter a circumstance where there is a potential need to disclose what could be considered confidential information, you need to contact your principal or managing broker and obtain their approval before doing so.

You have a duty to provide your client with original signed documents. Copies of all documents related to the transaction must be maintained in a transaction file at the office. These files will be maintained by the principal or managing broker to ensure confidentiality within the office. This requirement includes all marketing materials, offers (even if rejected), drafts, addenda, disclosure statements, public records about the property, inspection reports, lead paint disclosure form (if applicable), purchase and sale agreements, all correspondence or notes concerning the transaction, a copy of the HUD-1, and escrow account records. You need to ensure that your email communications are saved on the Firm's server or, if you use a personal account, copies are saved in the appropriate transaction files at the office. You are not allowed to keep original copies of documents or files at home. These records must be kept at least three years. 3 years is required by NHREC regulation, but 7 years is recommended for defense of civil liability claims.

## **AGENCY – ANOTHER RELATIONSHIP**

New Hampshire license law allows you to create Another Relationship with a client if it is spelled out in writing and does not otherwise violate other aspects of license law or regulations promulgated by the New Hampshire Real Estate Commission.

You are not allowed to enter into Another Relationship with a client without the terms of that other relationship being approved by the principal or managing broker in advance.

## **TELEPHONE, FAX AND ELECTRONIC MAIL SOLICITATION**

The Telephone Consumer Protection Act Do-Not-Call provision became effective May 11, 2003. Subsequent amendments extend its powers to unsolicited faxes, mobile wireless devices and commercial e-mail. The restrictions apply to the marketing activities of real estate agents for both interstate and intrastate solicitations and advertisements.

All agents who are sending unsolicited faxes or emails are responsible for screening their prospects against the office Do-Not-Call list. Agents who contact an individual who requests not to receive future communications must record the name, telephone number called and date and time of the call. This information must be immediately reported to the principal or managing broker for inclusion in the office specific Do-Not-Call list.

Because of the Federal Do-Not-Call requirements, you are not authorized to contact a prospective client by telephone unless: (1) that prospective client has contacted the Firm within the last three months and you are returning the call; (2) you or someone else in the Firm has had a signed representation agreement with that person within the last eighteen (18) months; (3) a FSBO sign includes their telephone number and does not say “no agents”; or (4) you are calling based on information from a referral source and the referral source has obtained permission for you to call. If none of those exceptions apply, you are not to contact a consumer by telephone without the advance consent of the principal or managing broker and without reviewing a current copy of the Do-Not-Call List. The Do-Not-Call List should not be more than fourteen (14) days old. If at any time, a person asks you to end a call with them, please do so politely and immediately. Never call before 8:00 a.m. or after 9:00 p.m. (consider the time zone).

Similarly, with respect to email solicitations, you must comply with the Can Spam requirements set forth by the Federal Trade Commission. The emails must contain your return email address and the postal address of the Firm. The email must also contain a conspicuous notice that the recipients may opt out or decline to receive any future messages and you must have in place an ability to track and remove recipients from the message group for at least thirty days after you have sent out the mail. Finally, you must have a clear, conspicuous notice that the message is an advertisement or solicitation.

Finally, do not send unsolicited facsimile solicitations.

Because of these rules, you are not allowed to send out any bulk electronic mail or fax solicitations without reviewing the content first with the principal or managing broker.

### **Suggested Opt-out Language for Fax Transmissions**

**While facsimiles are sent to expedite communication for your benefit, you have the right to request that no additional documents be sent to any designated facsimile machine in the future. Our failure to promptly comply with an appropriate request is unlawful. If you chose to opt-out from receiving further facsimile communications from us, please call ( insert your Toll Free Number here) or send an e-mail to: \_\_\_\_\_@\_\_\_\_\_.com at any hour during any day of the week.**

## ADVERTISING

The term “*media*” is interpreted to mean **any** form of promotion, including but not limited to print, electronic, billboard, signs, the internet, social networking, and or any other form of display.

All advertisements and collateral marketing materials must include the name of the Firm and its logo with correct PMS colors, conspicuously, and either the principal broker or agent’s name. Additionally, if an agent uses a personal number, it must be identified as such, and the number for the Firm must also be prominently displayed and specifically identified.

## **SOCIAL NETWORKING AND BLOG POSTINGS**

Postings on social networking sites such as, but not limited to, Twitter, Facebook, LinkedIn and MySpace, as well as on blogs has become increasingly common. The Firm prohibits agents from any such postings, viewing or in any way participating in such sites while using any of the resources or equipment of the company. The Firm's internet resources are only to be used in accordance with the office rules and policies on confidentiality, harassment, use of the internet and use of office equipment.

The Firm neither encourages nor discourages any of its agents from posting on social networking sites or blogging using their own equipment. However, agents should be aware that these postings are public; even if access to them is restricted they may be forwarded out of the restricted group by those who have rightful access, and live on virtually forever. And, even if a posting is taken down it never truly disappears but rather continues to exist somewhere in cyberspace. As a result, agents need to be mindful that internet postings (whether images or comments), even though done on your own time and using personal equipment, can cause damage to not only your own reputation and interests but also the reputation and interests of the Firm, employees of the Firm, the principal broker, clients, and the public we service.

Should you choose to blog or participate in any social networking site on your own time, using your own resources and equipment, you are required to follow these guidelines:

1. You must never disclose any confidential information of the Firm or any information whatsoever about our employees or clients.
2. Your postings must not violate any laws or policies of the Firm, including but not limited to harassment, or confidentiality of Firm employees or clients.
3. Your postings must comply with the REALTOR® Code of Ethics and the statutes and regulations governing advertising by real estate licensees. In particular, current license law requires you to comply with all advertising requirements when you post information on such sites. This means that posts must include all the information required to be provided when you produce traditional advertising.
4. Your postings should be respectful to the company, Firm employees, clients, and competitors.
5. For non-real estate transactions, you need to ensure that the views, opinions, ideas or information you express are yours and are not in any way attributable to the company.

Agents should report violations of this policy to the principal broker or managing broker. It is the responsibility of all agents and employees to help the Firm ensure compliance with the policy. Violation of any aspect of this policy is subject to disciplinary action, up to and including termination of the agency relationship, regardless of whether such conduct occurred away from work or on non-work time.

## ESCROW ACCOUNT POLICY

**Escrow Funds will not be held in interest bearing accounts unless both parties have agreed in writing and tax ID numbers have been provided. Funds held by the Firm will be released only at the time of closing or as otherwise agreed in writing by the respective parties to the transaction, or by court order.**

All agents are required to promptly deliver to the office managing broker any funds they receive that are to be placed in the Firm's escrow account. At no time should it take more than twenty-four hours for the escrow funds to be delivered to the office for depositing into the Firm's escrow account. If the check does not clear, the managing broker or office manager must immediately advise the agent of this fact and the agent must immediately contact the Firm's client and address the situation appropriately.

If a transaction falls through or a dispute arises over a transaction and one party requests the deposit funds, the agent is not authorized to agree to release the funds absent the express permission of the managing or principal broker. If there is a dispute, the Firm cannot take sides. Instead, the Firm will advise the parties to the transaction that they both need to reach an agreement in writing as to how the escrow deposit should be allocated. Failing that, the Firm will advise the parties involved in the transaction that the Firm will file an interpleader action with the Court to allow the Court to determine who is entitled to the deposit.

## **FORMS**

Unless the Firm provides you with specific forms for use in your practice, you are to utilize the forms that exist in the forms library prepared by the New Hampshire Association of REALTOR®s. If you have any questions about the appropriate use of a form, you should contact the principal or managing broker for clarification or submit an inquiry to the Legal Resource Line. As an agent, you are authorized to fill in the blanks in the spaces on the NHAR forms where factual information is requested. However, at no time are you authorized to delete any portion of the standard typed language or add additional language to the standard typed language. Such action could be construed as the unauthorized practice of law. NHAR maintains a clause library that you should consult for language for typical situations. You are not authorized to modify these clauses either. If you must create a special addendum, it should be written in simple language as dictated by the customer or client. Again, such action could be construed as the unauthorized practice of law. If you have concerns about what you propose to add to a form, please consult with your managing or principal broker.

## **PERSONAL ASSISTANTS**

**The Firm will allow agents to take on the services of an unlicensed or licensed personal assistant only with written consent by the principal or managing broker, which must include consensus as to cost implications, use of office space and resources. Agents will be responsible for the supervision of their personal assistants with respect to all compliance issues including the Firm's policies and procedures.**

If you choose to employ a personal assistant, you, as an independent contractor, are permitted to do so but you must adhere strictly to the guidance published by the New Hampshire Real Estate Commission regarding what activities may be undertaken by an unlicensed or licensed personal assistant. The guidance is available on the Commission's website. Unless the Firm enters into an independent contractor or employment agreement with your personal assistant, the Firm shall have no obligations to and shall provide no benefits to the personal assistant. In keeping with NH license law, a licensed personal assistant will be required to hang their license with the Firm and if the compensation agreement for the licensed personal assistant is based on commissions, they must be paid directly by the Firm. Additionally, the Firm requires a licensed personal assistant to maintain membership in good standing with a Board of REALTORS®.

You are required to have a written agreement with your personal assistant that expresses the nature of the relationship and each party's duties and responsibilities. The Firm shall be given a copy of the agreement for its approval and records prior to its effective date.

To the extent the law requires Workers Compensation insurance for the assistant; it shall be your sole responsibility to provide it. Agents should discuss this situation with a Workers Compensation insurance representative, and/or check out the New Hampshire Department of Labor, Worker's Compensation website found at [www.labor.state.nh.us](http://www.labor.state.nh.us).

## **CONFIDENTIALITY POLICY**

All agents are expected to use extreme caution to ensure that Firm confidential information and the confidential information of our clients remains confidential, and does not become available to anyone inside or outside of the Firm who is not entitled to know it.

### **Definition of Confidential Information**

Due to the nature of our business, agents have access to a broad range of confidential information that must be protected. By way of example and not limitation, confidential information includes:

- Non-public information about our clients, including motivation and all financial information.
- Our marketing plans and strategies;
- Our costs, funding, and the methods we use to determine the price of listings, etc.;
- Our internal initiatives, strategies, processes, and methods; and
- Confidential information which agents may obtain concerning our employees, including personnel files, personnel evaluations, and the like.

### **General Restrictions**

Confidential information may not be used or disclosed by agents unless such use or disclosure is required by their job responsibilities on behalf of the Firm. Confidential information as described in this policy is the exclusive property of the Firm with all proprietary rights and under no circumstances whatsoever shall agents have any rights to use, disclose, or publish to others such confidential information during or after their affiliation with the Firm.

### **Maintain Confidentiality at All Times and Take Precautions in Public Spaces**

To maintain all confidential information in strict confidence, all agents must avoid:

- Discussing confidential information with anyone other than those who have an authorized, legitimate need to know to carry out their job responsibilities;
- Disclosing confidential information to unauthorized Firm personnel.
- Discussing specific transactions, or any other confidential information in a public place where you may be overheard. Be sure to lower your voice or move to a private area when speaking on a cell phone for business and similarly being mindful so that business conversations cannot be overheard in restaurants, etc.
- Talking unnecessarily about confidential information anywhere, including in your own office or home.

### **Physically Maintain Confidential Information in a Manner Designed to Preserve Confidentiality**

Information must be maintained in the office (and elsewhere, if you are permitted to bring work home or to other locations) in a manner to protect confidentiality.

- Desks, credenzas, and other workspaces should be cleared at the end of each day. Anything remaining on the desk that contains confidential information should be in a folder or envelope or otherwise similarly protected from view.
- You may remove from our filing system only the client files currently being worked on at your workspace. All other files should be continually maintained in a secure

- location.
- Agents may not take transaction files home or otherwise out of the office without specific prior authorization from the principal or managing broker.
  - If you are permitted to travel with confidential information, whether bringing the information home or on business travel, be mindful at all times about protecting the information. Do not leave confidential documents face up or otherwise in view in your vehicle. Keep sensitive information in a briefcase, closed folder, or use similar means to protect it. Keep your vehicle locked when you are not in it. Keep your briefcase, folders, personal digital assistants, etc. with you at all times when traveling. Do not leave anything containing confidential information unattended. Be careful to preserve confidentiality if you choose to create or review confidential documents while traveling. It is very easy for other passengers to view your work, so make good decisions about whether you should take documents out on a plane, train, etc., and whether you should work on your laptop in such public settings. Similarly, if working at home, keep any confidential information in your home office or other private setting, and not in view of your family members or visitors to your home.

### **Confidential Information In Electronic Form Must Also be Protected**

Steps must also be taken to maintain confidentiality when sending or receiving information electronically, and when storing information on the computer.

When sending e-mail messages concerning confidential and/or proprietary information, agents must exercise significant caution. Questions regarding what level of security is needed for particular information to be sent or received over email should be directed to the principal or managing broker.

Agents must also exercise caution in saving information while working on their computers. For example, confidential or proprietary information should be stored on our network, which provides safeguards for protecting information, and should not be stored on a local hard drive, desk top, disk, or portable drive. Highly confidential information may need to be password protected or other measures may need to be taken to safeguard it from unauthorized internal or external access.

Reasonable precautions must also be taken in regards to the physical security of the broker's information technology that may contain confidential information. Disks, drives, and other devices containing sensitive information should be contained in a locked drawer wherever possible. Computers should be turned off when not in use for an extended period of time or when an agent is out of his/her office. Agents are also encouraged to use screen savers so that any sensitive information that is displayed on an agent's screen will be covered if the agent is away from his/her desk. Screen savers provide an additional safeguard and are not intended to replace the expectation that agents minimize or close documents containing sensitive information when they walk away from their computers.

### **Visitor Access Must Also be Limited to Avoid Providing Access to Confidential Information**

To protect confidentiality and avoid access to confidential information that could be viewed or overheard in our offices, visitors, including agent's families and friends, should visit in the reception/lobby areas or in conference rooms and not in individual offices or workspaces. All visitors should enter the offices at the reception/lobby areas and sign in at the reception desk.

**Procedures Upon Separation from Agency Relationship to Protect Confidential Information**

Upon separation from affiliation with the Firm, agents must deliver to the Broker any and all confidential information in their possession, including all copies of all available forms. All confidential information must be returned regardless of whether the information was made or compiled by the agent or furnished to the agent during his or her affiliation.

An exit interview process should be implemented to insure compliance with return of confidential information.

## **CONFLICTS OF INTEREST**

If you or a family member have a personal interest in either selling or purchasing a property, you must disclose this interest in writing to all parties involved in the transaction. All parties to the transaction must acknowledge in writing the existence of this interest **prior** to any offer being made. Forms to disclose your interest are available from NHAR.

For any other potential conflict of interest, you are required to bring the issue to the immediate attention of your principal or managing broker.

## COOPERATION WITH OTHER AGENTS

**Cooperation will be offered to all licensed brokers and their agents. Compensation will be determined by the principal or managing broker and published in the MLS and disclosed to the seller client.**

All agents are required to comply with Article 3 of the REALTOR® Code of Ethics and, in particular, the Standards of Practice set forth in Article 3. This means that you should cooperate with other agents unless cooperation is not in the best interest of your client. If the seller client rejects cooperation with, and compensation to, other brokers, their rejection must be in writing.

The Firm's policy is that no change in compensation or agreement to change cooperative compensation may be negotiated or entered into by an agent without the prior consent of the principal or managing broker.

To the extent you encounter any issues with respect to cooperation between agents, please bring the issue to the immediate attention of the principal or managing broker so that the principal or managing broker can help resolve the situation.

## **VACATIONS AND OTHER ABSENCES**

As an independent contractor, you are entitled to schedule vacations and other time away from work without prior approval. However, you must advise the principal or managing broker in writing regarding your plans for time away from work and how your pending transactions and other professional obligations will be handled in your absence.

## **SAFE DRIVING**

NH has strict laws regarding “Distracted Driving” which specifically includes but is not limited to; texting, use of cell phones, i-pods and other devices. The Firm recommends that you use your cell phone only when your car is stopped safely on the side of the road.

You are expected to keep your automobile in a clean, properly maintained, and safe operating condition at all times. Remember: You are responsible for damage or injury caused while driving. The Firm recommends that in addition to your primary insurance coverage in minimum amounts of \$250,000/\$500,000, that you obtain excess liability coverage to be written over the underlying policy.

It is your obligation to drive in a safe, responsible and alert manner. This is especially true if you have clients in your car.

Please consult with your principal or managing broker regarding policy relative to transportation of children or pets.

## **ALCOHOL AND DRUGS**

Possession, use, sale or being under the influence of alcohol or drugs on Firm premises or while conducting Firm business is prohibited.

## **SAFETY**

To assist in providing a safe and healthy working environment for employees, agents, customers and visitors, the Firm has established a workplace safety program. The Firm provides information to agents about workplace safety and health issues through regular internal communication such as meetings, bulletin board postings, memos or other written communication. Some of the best safety improvement ideas come from individuals in the workplace. Those with ideas, concerns, or suggestions for improved safety in the workplace are encouraged to raise them with the principal or managing broker. Reports and concerns about safety in the Firm's workplace may be made anonymously. All reports can be made without fear of reprisal.

Each agent is expected to obey safety rules and to exercise caution in all work activities. Agents must immediately report any unsafe condition to the appropriate supervisor. Agents who violate safety standards, who cause hazardous or dangerous situations, or who fail to report, or where appropriate, remedy such situation, may be subject to termination of the contractual relationship.

In the case of accidents that result in injury, regardless of how insignificant the injury may appear, agents should immediately notify the principal or managing Broker.

In addition, agents are encouraged to obtain a copy of safety recommendations and guidelines as published by NAR from their local board for prudent practices while showing properties.

## **SMOKING POLICY**

Smoking poses a health risk to both smokers and nonsmokers. This policy is designed to foster the health and safety of all employees, agents, clients and others in the Firm's workplace. The success of this policy will depend upon the thoughtfulness, consideration and cooperation of both smokers and nonsmokers. Each agent is responsible for adhering to this policy.

All Firm employees, agents, customers and visitors are expected to comply with the smoking regulations detailed in this policy to maintain a non-smoking work environment in compliance with state laws.

Smoking is only permitted in the designated outside smoking areas. Smokers are responsible for ensuring that the smoking designated area is left clean and orderly.

Smoking is prohibited inside all company buildings, and client or customer properties. If employees or brokers use personal vehicles to conduct business, no smoking is permitted inside the vehicle while on Firm-related business.

An agent who sees a violation of this policy may advise the smoker of the Firm's smoking policy. If the smoking continues, the agent should inform the principal or managing broker who will then be responsible for discussing the situation with the violator. Further violations should be referred to principal or managing broker. Violations of this policy may lead to disciplinary action up to and including termination of the agency relationship.

## **USE OF FIRM-OWNED PROPERTY, INCLUDING COMPUTERS AND OTHER COMMUNICATIONS EQUIPMENT**

### **E-mail, Voicemail, Internet and Computer Network, Software, and Hardware:**

Voicemail, Internet, E-mail and all other computer and communications resources (all collectively referred to in this policy as "IT resources") are business tools, provided to you at significant cost to the Firm. Thus, the expectation is that you will use the IT resources for business-related purposes and not for personal purposes unless specifically authorized by the broker. Some examples of business related purposes include, but are not limited to: communicating with clients and researching information for the benefit of the Firm. The Firm requires that you conduct yourself honestly and appropriately on the Internet and in using other IT resources and respect copyrights, software licensing rules, property rights and privacy of others, just as you would in any other business dealing. To be absolutely clear, all existing Firm office policies and governing laws and regulations apply to your conduct in using all IT resources, especially (but not exclusively) those that deal with intellectual property resources, sexual and other harassment, data security and confidentiality. Also, the systems as provided to you are Firm property. The messages sent, retrieved, deleted and/or stored via the company systems are at all times the property of the Firm.

**All agents should be aware that the Firm has the right, but not the obligation, to monitor all agents' use of any Firm resources. For this reason, agents cannot and should not expect privacy in their use of Firm IT resources, and should instead expect that their e-mail messages, voicemail messages, computer and Internet use, and other use of the Firm's IT resources is not confidential and may be monitored/reviewed.**

### **Inappropriate Use of IT Equipment:**

Inappropriate use of the IT resources is prohibited and subject to termination of the agency relationship. Examples of inappropriate use include, but are not limited to, the following:

- The creation, display, viewing, or sending of any kind of sexually explicit image or document on any Firm system is a violation of our policy on sexual harassment. In addition, sexually explicit material may not be stored, distributed, edited, or recorded using the Firm's network, voicemail or computing resources.
- The use of Firm e-mail, voicemail, the Internet, or other IT resources for personal gain, political, religious, or charitable campaigning, soliciting for non-Firm outside organizations or commercial ventures, selling Internet or other carrier access time, unless authorized by the principal or managing broker.
- The creation and/or forwarding of any disruptive or potentially offensive messages and/or pictures which may cause offense to any person or group, including those protected by the Firm's harassment policy.
- Frequenting websites on the Internet unrelated to your agent responsibilities and/or Firm business.
- Having or using network passwords on the Firm's computer which are not known to the Firm.

The ultimate responsibility for assuring correct use of the Firm e-mail and Internet systems and other IT resources belongs with every user.

### **Unauthorized Access:**

Unauthorized access of Firm IT resources is prohibited. Agents are not permitted to use a code, access a file, or retrieve any stored communication unless authorized to do so or unless they have received prior clearance from an authorized Firm representative. Firm computers and information technology is for business use by Firm personnel and authorized agents. Non-employees may not use Firm IT resources without permission from the principal or managing broker.

Use of a Firm employee's or agent's account, user name, or password, or accessing another's files without their consent (by anyone other than authorized representatives of the principal or managing broker) is strictly prohibited. Obtaining, or trying to obtain, other users' passwords, or using programs that compromise security in any way is prohibited.

Passwords are required for many of the applications of Firm information technology, and users may be required to change passwords periodically for security purposes. All passcodes and passwords are the property of the Firm. No agent may use a passcode, password, or voice mail access code that has not been issued to that agent by the Firm or that is unknown to the Firm. Users of the Firm's computers, network, and other IT resources must take reasonable precautions to prevent unauthorized access to Firm IT resources. Passwords should not be divulged to unauthorized persons, and should not be written down or sent over the Internet, Intranet, e-mail, dial-up modem, or any other communication line.

### **Snooping:**

Probing or "snooping" into Firm information technology is prohibited. Accessing Firm files or any other files on the network or the system that you did not create is prohibited unless you have prior authorization from your manager or another appropriate management representative. Observations of probing or "snooping" should be reported to the IT Department.

### **Sabotage:**

Destruction, theft, alteration, or any other form of sabotage of Firm information technology and/or IT resources, including, but not limited to, computers, programs, networks, web-sites, files, and data is prohibited and will be investigated and prosecuted to the fullest extent of the law.

### **Hacking:**

Hacking, the breaking into and corrupting of information technology, is prohibited. Hacking into third party computer systems using Firm IT resources is prohibited, and may be reported to the local authorities. Vulnerability in Firm IT resources should be reported to the principal or managing broker.

## **Viruses:**

Use of virus, worm, or Trojan horse programs is prohibited. If a virus, worm or Trojan horse is identified, it should be immediately reported to the principal or managing broker.

## **Confidential Information:**

All Firm data and information (including customer information) is considered confidential unless the Firm has granted permission for a user to use it. Specific examples of confidential information includes, but is not limited to, personnel and payroll records of present or past employees, information concerning transactions with clients, financial records of the company, records of purchases from vendors and suppliers, and any other information regarding the business affairs or operating practices or procedures of the company. Accessing or attempting to access confidential data is strictly prohibited.

Confidential information should be used only for its intended purpose. Agents' responsibility for confidentiality continues outside of work, therefore agents should use special care when using home computers and other portable devices.

When sending **e-mail messages** concerning confidential and/or proprietary information, agents are expected to exercise significant caution because of the ability of others to "crack" the system. Questions regarding what level of security is needed for particular information should be directed to the principal or managing broker.

## **Safeguarding The Physical Security Of Communications System:**

Reasonable precautions should be taken in regards to the physical security of Firm IT resources. Disks, drives, and other devices containing sensitive information should be contained in a locked drawer, wherever possible. Computers should be turned off when not in use for an extended period or when an agent is out of his/her office.

All software installed on workstations, whether for business or personal use, must be approved by the principal or managing broker. In no way should personal computer hardware (thumb drives, MP3 players, etal) be installed at the Firm unless authorized by the principal or managing broker.

Agents should not install Firm software on home computers without the prior approval of the principal or managing broker.

Agents are not allowed to introduce to the Firm network, Internet, computers, or other IT resources media from any external sources, including, but not limited to, CDs, disks, zip drives, personal digital assistants (including, but not limited to, BlackBerries and palm pilots), USB portable drives, and other removable drive devices. Agents also may not copy, transmit, or otherwise remove any information from our network, Internet, computers, or other IT resources to CDs, disks, zip drives, personal digital assistants, USB portable drives, or other removable drive devices without prior authorization from the principal or managing broker.

Agents may not download anything from the Internet to the Firm's computer without prior authorization. This includes, but is not limited to, screensavers, music, e-mail stationary, and other images.

**Copyright Infringement/Unauthorized Copying:**

The Firm strictly prohibits the illegal duplication of software. Copyright laws are clear. The copyright holder is given certain exclusive rights, including the right to make and distribute copies. Title 17 of the U.S. Code states that "it is illegal to make or distribute copies of copyrighted material without authorization" (Section 106). The only exception is the users' right to make a backup copy for archival purposes (Section 117).

Even the users of unlawful copies suffer from their own illegal actions. They receive no documentation, no customer support and no information about product updates. According to the U.S. Copyright Law, illegal reproduction of software can be subject to civil damages and criminal penalties.

## **CONFLICT RESOLUTION AND REPORTING REQUIREMENTS**

The chief method by which conflicts inside and outside the Firm will be resolved is through the principal or managing broker. As an agent affiliated with the Firm, you must promptly report any issue or dispute that may arise. These disputes include, but are not limited to the following:

- Any discrimination or other violations of federal or state fair housing laws that you observe.
- Any verbal or written complaints that you receive from a party to a transaction in which you are involved.
- Receipt of a Subpoena or legal process involving your conduct as a real estate agent.
- Any automobile accidents or other personal injuries that you experience or observe while you are working in your professional capacity.
- Any communications from the New Hampshire Real Estate Commission concerning your conduct.
- Failure of an escrow check to clear.
- Any disputes between you and other agents regardless of whether those agents work for this Firm or another firm.
- Any harassment that you experience or observe either within the office or outside the office in the course of your professional capacity.
- Any conduct that you perceive creates a hostile, intimidating or offensive work environment.

This is not an exhaustive list and there could be other issues or problems that arise during the course of your affiliation with this Firm. When in doubt, please bring the matter to the immediate attention of the principal broker or managing broker.

## **TERMINATION OF AFFILIATION**

In the event that you or the Firm decides to end your association, you will be expected to immediately turn in all Firm property, including signs, office policy manuals, equipment, reference material, office keys, and other proprietary material, transactional files, records and information pertaining to listings, offers, negotiations, purchase and sales agreements or other contracts, as well as any other office files. Upon termination of affiliation or demand from the broker, you shall also immediately surrender and return all computer or other information systems relating material in your possession or control. You should meet with the principal or managing broker for the final separation process, summary review of open transactions, credits and expenses and reassignment of active clients.

The principal or managing broker's supervisory responsibility shall terminate upon the returning of the agent's license to the real estate commission.

Any listing or buyer representation agreements that were entered into while an agent of the Firm shall remain the property of the Firm unless other terms are agreed to in your separation agreement.

## **POLICY OPTIONS**

You may wish to customize your Office Policy. Possible areas that may be considered follow:

- Additional Insurance on Vehicle
- Attendance at Business Meetings
- Broker Provided Office Supplies
- Checking In/Out
- Disclosure of Relationships with Service Providers
- Dress Code
- Expired and Withdrawn Listings
- Floor Time
- How to Handle Office Equipment
- How to Handle Walk-Ins
- Insurance on Agent's Personal Items
- Lock Box Use
- Obligating the Firm
- Office Administrator Duties
- Office Hours
- Power of Attorney for Clients
- Professional Membership
- Property Previews (Caravans)
- Referral Fees
- Requirements for Listing File
- Showing Protocol

**RECEIPT AND ACKNOWLEDGMENT OF OFFICE  
POLICIES AND PROCEDURES MANUAL**

This Manual is an important document intended to help you become acquainted with the Firm. This Manual will serve as a guide; it is not the final word in all cases. Individual circumstances may call for individual attention.

Please read the following statements and sign below to indicate your receipt and acknowledgment of the Manual.

- I have received a copy and understand that it is my obligation to read the Office Policies and Procedures Manual. I understand that the policies described in the Manual are subject to change at the Firm's sole discretion at any time. It will be my responsibility to update my personal copy as additions or revisions are provided to me. I understand that this Manual supersedes and replaces all other previous manuals and personnel policies for the Firm.
- I understand that I am an independent contractor, subject to an express written contract and that I am not an employee of the Firm. My association with the Firm may be terminated at any time for any reason not prohibited by law, with written notice by me or the principal or managing broker.
- I am aware that this Manual does not create an express or implied contract for any rights or benefits, and that the Manual is intended as a set of guidelines only. I will consult with the principal or managing broker regarding any questions I may have regarding any of the Firm's policies.
- I am aware that during the course of my affiliation with the Firm, confidential information may be made available to me. I understand that this confidential information must not be given out or used outside of the Firm with non-Firm employees or agents, except as required by law or in accordance with the governing rules of ethics.
- I understand that my signature below indicates that I have read and understand the above statements and have received a copy of the Office Policies and Procedures Manual.

\_\_\_\_\_  
Agent's Name (**please print**)

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

\_\_\_\_\_  
Agent's Signature