

ADMINISTRATIVE RULES OF THE VERMONT REAL ESTATE COMMISSION

Effective: December 1, 2015

Part 1 General Information

1.1 The Commission's Purpose

The Vermont Real Estate Commission ("Commission") is responsible for enforcing Vermont's real estate licensing laws. The purpose of the Commission is to protect the public health, safety and welfare. The Commission does this by, among other things, setting standards for issuing licenses and registrations, licensing and registering only qualified applicants, approving education and continuing education courses and regulating license and registration holders and their practices.

1.2 Business Address

Vermont Real Estate Commission
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402

These rules and more information about the Commission and its requirements and procedures are available at www.sec.state.vt.us/professional-regulation or by contacting the office.

1.3 Commission Members

The Commission is composed of seven members, including three licensed brokers, one licensed salesperson, one attorney, and two public members. The Governor appoints each member, 26 V.S.A. § 2251.

1.4 Regular, Special and Emergency Meetings

The Commission usually meets monthly. The chair or two of the members may call a special or emergency meeting. A majority of the Commission constitutes a quorum for all meetings. No formal action at any meeting is valid unless a majority of those present and voting concur. Meeting dates and locations can be obtained from the Commission's website at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

1.5 Laws That Govern the Commission

(a) The Commission is created by law, Title 26, V.S.A., Chapter 41, which establishes its responsibilities for setting standards, issuing licenses and regulating the profession. In addition, the Commission is subject to several other state laws such as the Administrative Procedure Act (Title 3, V.S.A., Chapter 25), the “Law of Professional Regulation” (Title 3, V.S.A., Sections 121-131), the “Right to Know Law” (Title 1, V.S.A., Sections 311-314), and the “Access to Public Records Law” (Title 1, V.S.A., Sections 315-320). These laws spell out the rights of applicants, licensees, and members of the public.

(b) The Vermont Statutes Annotated contain the complete text of these laws. They can usually be found in any Town Clerk’s office or public library. The Vermont Statutes Online are also available at legislature.vermont.gov. The Commission’s statutes and rules may be accessed through the Commission’s website at sec.state.vt.us/professional-regulation/profession/real-estate-commission.

1.6 Rules

(a) The Commission is authorized to make these rules under Title 26, V.S.A., Section 2252. These rules are approved by the Vermont Legislative Committee on Administrative Rules and have the effect of law and govern the Commission’s proceedings. Rules are made following the Administrative Procedure Act (“APA”). The Office of Professional Regulation (“OPR”) helps the Commission to comply with the Act. Rules are reviewed and revised periodically.

(b) Legislative changes from time to time may create inconsistencies between statutes and administrative rules. When rules and statutes conflict, the statutes govern.

1.7 Making and Resolving Complaints

(a) Any person may make a complaint against a broker or salesperson by contacting OPR or obtaining a copy of the complaint form from the Commission’s website at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

(b) The Commission follows the current investigation and disciplinary procedure adopted from time to time by OPR, except where the Commission’s published procedures provide otherwise. Copies of the procedure, complaint forms, and more information about the complaint process may be found at www.sec.state.vt.us/professional-regulation.

1.8 Definitions

As used in these rules:

- (a) “Advertising” includes print ads of any type, internet, email, or electronic media, stationery, business cards, individual “For Sale” signs and other audio, visual or print

depictions or notices of real estate offered for sale or brokerage services.

- (b) “Broker in Charge” means the individual broker responsible for a single office.
- (c) “Broker Prelicensing Course” means a course of instruction to become a broker, at least 40 hours long, which has been approved by the Commission.
- (d) “Brokerage Services” means those activities requiring a license, specifically listed in 26 V.S.A. §2211(a)(4).
- (e) “Brokerage Firm” means a business entity which is engaged in brokerage services.
- (f) “Buyer” includes a person who buys, offers to buy, intends to buy, or is interested in buying real estate.
- (g) “Client” means the person(s) with whom a brokerage firm and its licensees, or designated licensees, has an agency relationship related to the negotiation, sale, purchase, or exchange of an interest in real estate. Licensees owe a fiduciary duty to their clients.
- (h) “Continuing Education” means instruction approved by the Commission.
- (i) “Designated Agency” means the practice by which one or more licensees affiliated with a brokerage firm is appointed to act as an agent of the brokerage firm’s buyer or seller client. Designated Agents owe the client the duties of a fiduciary.
- (j) “Exclusive Agency Marketing Agreement” means a seller service agreement which expressly reserves to the owner the right to sell or market the property himself or herself without liability to the brokerage firm for a commission or fee, and which grants the brokerage firm the right to market the property, but which prohibits the owner from listing the property with any other brokerage firm for the term of the agreement.
- (k) “Exclusive Buyer Agency Agreement” means a buyer service agreement by which a buyer engages a single brokerage firm to provide brokerage services, and by which the buyer agrees not to obtain services from any other broker, but which expressly reserves to the buyer the right to purchase property himself or herself without liability to the brokerage firm for a commission or fee.
- (l) “Exclusive Right to Market Agreement” means a seller service agreement which grants to the brokerage firm the exclusive right to market the property, and which recognizes a liability on the part of the owner for a commission or fee to the brokerage firm, even if the property is sold by the owner.
- (m) “Exclusive Right to Represent Buyer Agreement” means a buyer service agreement

which grants to the brokerage firm the exclusive right to act on behalf of the buyer in a real estate purchase, and which recognizes a liability on the part of the buyer for a commission or fee to the brokerage firm, even if a property is purchased without assistance by the brokerage firm.

(n) “Fiduciary Duty” means the duty to act for the benefit of the client in all matters relating to the agency relationship. A fiduciary must put the interest of the client ahead of the interests of the agent and any third party. Fiduciaries must disclose all material facts the fiduciary learns about the transaction, must disclose any knowledge gained from other parties to the client’s transaction, must protect the client’s confidences and act with reasonable care, loyalty, and obedience toward the client. Unless otherwise agreed, the duty to protect a client’s confidences continues after the brokerage service agreement expires or is otherwise terminated.

(o) “Licensee” means a person holding any license issued by the Commission.

(p) “Material Fact” means a fact that might cause a buyer or seller to make a different decision with regards to entering into or remaining in a contract or affect the price paid or received for real property.

(q) “Net Listing” means a brokerage service agreement in which, at some point, the benefit of negotiating a higher price for the seller or a lower price for the buyer accrues only to the agent or brokerage firm and not to the client. Net listing is a prohibited practice. See Rule 4.8(e).

(r) “Non-Designated Agency” means the practice by which all licensees affiliated with a brokerage firm act as the agent of the brokerage firm’s clients. All licensees affiliated with the brokerage firm owe the client the duties of a fiduciary.

(s) “Nonexclusive” or “Open” with respect to a seller service agreement means a seller service agreement which expressly reserves to the owner the right to list the property with other brokerage firms or to sell the property himself or herself. It shall also mean a buyer service agreement that allows the buyer to obtain brokerage services from other brokerage firms or purchase a property himself or herself.

(t) “OPR” means the Office of Professional Regulation.

(u) “Principal Broker” means the individual broker responsible for the brokerage firm and all associated branch offices.

(v) “Salesperson Prelicensing Course” means a course of instruction to become a salesperson, at least 40 hours long, which has been approved by the Commission.

(w) “Salesperson Post-Licensure Education” means a course of instruction, which has been approved by the Commission, which satisfies, or counts toward satisfying, the hours of required education after obtaining an initial salesperson license.

(x) “Seller” includes a person who sells, offers to sell, intends to sell, or is interested in selling real estate.

(y) “Supervising Licensee” in a designated agency firm means a licensee of the brokerage firm who is selected by the brokerage firm’s principal broker or broker in charge to act in a supervisory capacity for different licensees within the brokerage firm whose clients wish to participate in the same transaction. This individual shall not be a licensee who represents one of the clients in the transaction.

(z) “Vicariously Responsible” means accountability of a principal broker or broker in charge for unprofessional conduct by a licensee.

(aa) “V.S.A.” means Vermont Statutes Annotated.

Part 2 Information for Applicants

2.1 Need for a License

(a) A person shall not engage in the business of a real estate broker or salesperson without a license. Broker and salesperson services are defined by statute. See 26 V.S.A. §2211(a)(4) & (5).

(b) Examples of activities that require a license include: These activities, and others, require a license when a person engages in them for others, for a fee or other compensation, as a continuing course of conduct. This list is not exclusive.

(1) listing, offering, attempting or agreeing to list real estate or any interest therein for sale or exchange;

(2) selling, exchanging or purchasing real estate or any interest therein;

(3) offering to sell, exchange or purchase real estate or any interest therein;

(4) negotiating, offering, attempting or agreeing to negotiate, the sale, exchange or purchase of real estate or any interest therein;

(5) buying, selling, offering to buy or sell, or otherwise dealing in options on real estate or any interest therein;

(6) advertising or holding oneself out as being engaged in the business of buying, selling or exchanging real estate or any interest therein; or

(7) assisting or directing in the procuring of prospects, calculated to result in the sale or exchange of real estate or any interest therein; however, a non-licensed employee of a licensee shall be allowed to respond to inquiries from members of the public, so long as the employee makes it clear that he or she is not licensed and that any information provided should be confirmed by a licensed person.

(c) Examples of activities which do not require a license include:

(1) offering property for lease; and

(2) offering mobile homes or businesses for sale or lease, without also offering real property. See 26 V.S.A. §2211(b).

2.2 Where to Get an Application

Applications for a license or registration can be found at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission or by contacting:

Vermont Real Estate Commission
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402.

2.3 Types of Licenses and Registrations

(a) The Commission issues the following licenses:

(1) Broker;

(2) Salesperson; and

(3) Temporary Broker (26 V.S.A. §2299).

(b) The Commission issues the following registrations:

(1) Brokerage firm; and

(2) Branch office.

(c) Every licensee must be associated with a single registered brokerage firm, except that a

broker who also holds a temporary license under 26 V.S.A. §2299 may be associated with a second firm.

2.4 How to Become Licensed as a Salesperson

A license as a salesperson shall be granted to a person who satisfies all of the following:

- (a) is at least 18 years old;
- (b) has completed the salesperson prelicensing course;
- (c) has passed the national and state examinations required by the Commission within the two years immediately preceding application;
- (d) has been employed by or become associated with a brokerage firm and that firm's principal broker;
- (e) is not precluded from licensure pursuant to 3 V.S.A. §129a; and
- (f) meets other requirements mandated by law.

The Commission may waive all or a part of the national examination requirement for a salesperson if the applicant is a real estate salesperson regulated under the laws of another jurisdiction, is licensed and in good standing to practice in that jurisdiction, and in the opinion of the Commission, the other jurisdiction's licensure requirements are substantially equal to Vermont's. All applicants are required to complete the Vermont examination.

2.5 How to Become Licensed as a Real Estate Broker

A license as a broker shall be granted to a person who satisfies all of the following:

- (a) has completed the broker prelicensing course;
- (b) has passed the national and state examinations as required by the Commission, within the two years immediately preceding application;
- (c) has gained at least two years experience as a licensed salesperson, including at least eight separate and unrelated closed transactions among buyers and sellers bearing no familial or contemporaneous business relation to the applicant.

The Commission may waive all or a part of the national examination requirement and experience requirement for brokers if the applicant is a real estate broker regulated under the laws of another jurisdiction, and is licensed and in good standing to practice in that jurisdiction, and in the

opinion of the Commission, the other jurisdiction's licensure requirements are substantially equal to Vermont's. All applicants must complete the Vermont examination.

2.6 How to Register Real Estate Brokerage Firms

To obtain a brokerage firm or branch office registration a person must file a written application and must:

- (a) designate a principal broker for the main office and a broker in charge for each branch office;
- (b) register the firm with the Corporations Division of the Office of the Secretary of State, if required by law; and
- (c) specifically designate the brokerage firm name under which the firm will conduct business, register licensees, and advertise.

2.7 Examinations

All examinations for real estate broker's licenses and for salesperson's licenses are administered through OPR and information is available through the Commission's website at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission. A candidate who fails one part of the exam may retake that part within the next six months. After six months or two failures, the candidate must retake the full exam.

2.8 Display of Licenses for Brokers and Salespersons

A license issued by the Commission must be conspicuously displayed in the office where the licensee is associated.

2.9 Applicant's Right to a Written Decision and Personal Appearance

The Commission will notify applicants in writing of all decisions concerning the granting or denial of a license or registration. If a license or registration is denied, the applicant will be given specific reasons and informed of the right to request a review and personal appearance before the Commission before the decision becomes final.

2.10 Applicant's Right to Appeal

If the applicant is not satisfied with the Commission's final decision, the applicant may appeal within 30 days of the Commission's decision, to an appellate officer, by filing a notice of appeal with the Office of Professional Regulation, 89 Main Street, 3rd Floor, Montpelier, Vermont 05620-3402 Attention: Appeal. The appellate process is governed by 3 V.S.A. § 130a.

Part 3 Information for Licensed Brokers and Salespersons

3.1 Renewing a License or Registration

(a) Licenses and registrations renew on a fixed biennial schedule and must be renewed before they expire. The expiration date is stated on the license or registration. Before the expiration date, OPR will provide notification for renewal to the licensee's electronic mail address of record; however, failure to receive such notice shall not excuse any licensee from the obligation to maintain continuous licensure. Evidence of having completed the required hours of continuing and/or post-licensure education must be provided with license renewal applications. Prior to expiration, a licensee may request that the license be placed in an inactive status by paying the fee to transfer the license to inactive status. No continuing education is needed to become inactive. Unless a licensee requests to be placed on inactive status prior to expiration, the license shall be designated as "expired."

(b) When the license of a principal broker ceases to be active for any reason, all licensees associated with that brokerage firm shall lose authority to transact business in the firm's name.

(c) When the license of a broker in charge ceases to be active for any reason, all licensees associated with that branch office shall lose authority to transact business in the brokerage firm's name.

3.2 Reinstating an Expired or Inactive License or Registration

(a) A license that has been expired for less than five years may be reinstated by the licensee by paying the renewal fee and late renewal penalty, and providing proof of the required hours of continuing and/or post-licensure education taken within the previous 24 months.

(b) A licensee who requested the license be inactive, and reactivates during the same renewal period, may be reinstated by paying the reinstatement fee, renewal fee, and providing proof of the required hours of continuing and/or post-licensure education taken within the previous 24 months. A licensee who does not request reactivation during the same renewal period may not renew under this section and must qualify under 3.2(a).

(c) A brokerage firm whose registration has expired because it was not renewed by the expiration date may be reinstated by paying the renewal fee and late renewal penalty. When the registration of the brokerage firm is not renewed prior to expiration, all licensees associated with that brokerage firm shall lose authority to transact business in the brokerage firm's name.

3.3 Requests for Declaratory Rulings

(a) Requests for declaratory rulings as to the applicability of any statutory provisions or any rule or order of the Commission may be sent to the Commission office. Requests must be in writing,

and must show the existence of a real controversy, not just a hypothetical question. A declaratory ruling is binding upon the parties to the ruling and the Commission. The requests will be considered pursuant to the Administrative Procedure Act, 3 V.S.A. Chapter 25 and the Administrative Rules of the Office of Professional Regulation. The Commission may call witnesses in addition to those presented by the parties.

(b) In the absence of a real controversy, the Commission may, in its discretion, elect to issue a non-binding advisory opinion, or may decline to address the question presented. An advisory opinion is not binding on the requestor, other licensees, or the Commission.

3.4 Change of Name or Address

(a) A principal broker or broker in charge must notify OPR in writing within 30 days of any change in name, address, phone number or email address of the brokerage firm or any licensee associated with that brokerage firm.

(b) Each licensee shall notify OPR in writing within 30 days of any change of the licensee's principal business location, phone number or email.

3.5 Modifications of Conditions and Reinstating a Suspended License

The Commission may set forth a specific process in a disciplinary order for modification of that order or for reinstatement after suspension. A licensee who receives a warning, reprimand, suspension, or condition to continued practice, shall specifically refer to the Commission's order for the process for modification of that order or reinstatement after suspension.

Part 4 Conduct of Licensees

4.1 Offices and Branch Offices

(a) A principal broker shall be in charge of a brokerage firm. The principal broker must maintain his or her place of business at the brokerage firm's main office. The principal broker must notify the Commission of the brokerage firm's main office location.

(b) A brokerage firm which desires more than one office shall register a branch office. A branch office shall use the same name as the main office and shall designate a broker in charge. The broker in charge of a branch office must maintain his or her place of business at the branch office.

(c) The firm's licensees must have a primary place of business at one of the brokerage firm's locations but may work out of any of the brokerage firm's offices.

(d) A principal broker or broker in charge may not serve as principal broker or broker in charge

for more than one office or brokerage firm at any one time, except that a broker who also holds a temporary license under 26 V.S.A. §2299 may be associated with a second brokerage firm.

4.2 Broker Supervision

- (a) A principal broker may be vicariously responsible for the professional conduct of licensees and employees of the brokerage firm, including all branches; a broker in charge may be vicariously responsible for the professional conduct of all licensees and employees of the branch office.
- (b) Licensees must work under the supervision and training of the principal broker or broker in charge.
- (c) In a Designated Agency Firm, a principal broker or broker in charge who is the designated licensee for a client has the opportunity to create a conflict of interest if their client enters into a transaction with another client of the brokerage firm. In these instances, the principal broker or broker in charge must delegate their supervisory responsibilities, for the other licensee in the transaction, to a qualified supervising licensee.

4.3 Brokerage Firms Practicing Non-Designated Agency

- (a) All brokerage firms that are not under an election to practice Designated Agency are governed by this Rule as practicing Non-Designated Agency (see Rule 1.8 (r)). Any such brokerage firm shall be known as a Non-Designated Agency Firm and disclosure of this status shall be included in seller and buyer service agreements as required under Rule 4.8(c).
- (b) A Non-Designated Agency Firm is the agent of each client of the firm and on its behalf all licensees of the firm represent all clients of the firm pursuant to written agreements for brokerage services (see Rule 4.8). The firm and all its licensees owe the client the duties of a fiduciary (see Rule 1.8 (n)).
- (c) A Non-Designated Agency Firm and all its licensees shall:
 - (1) take ordinary and necessary care to protect all client confidences from disclosure to third parties, except disclosure may occur pursuant to authorization of all clients affected thereby;
 - (2) until closing, submit all offers to or from the client, with or without a deposit, whether oral or written, whether above or below the listed price; and
 - (3) if true, disclose the fact that the brokerage firm provides brokerage services to both buyers and sellers in the market. The disclosure shall be part of any seller or buyer service agreement executed on behalf of the brokerage firm.

(d) A Non-Designated Agency Firm and all its licensees shall not:

(1) practice dual or limited agency, acting as agent for both a buyer and seller in the same transaction. The firm may act as an agent for one party in a transaction where the other party is an unrepresented customer;

(2) practice Designated Agency; or

(3) provide or offer to provide services as an Intermediary, a Transactional Broker, a Facilitator or any other form of representation not involving an agency relationship for which fiduciary duties are owed. This provision does not preclude the right to make referrals as provided in Rule 4.13.

(e) A Non-Designated Agency Firm may retain and compensate another brokerage firm to assist it in providing services to its clients without thereby creating an agency relationship between the client and the other firm. This practice shall be known as broker agency and the relationship shall be governed by the provisions of Rule 4.11.

(f) A Non-Designated Agency Firm shall terminate the seller service agreement prior to a licensee associated with the brokerage firm entering into negotiations on his or her own behalf to purchase a property listed by the brokerage firm. In addition, the brokerage firm shall provide an opportunity for the client to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the client and the licensee. Prior to entering into negotiations for the sale of property owned by a licensee of the Non-Designated Agency Firm to a buyer under a buyer service agreement with the brokerage firm, the brokerage firm must terminate the buyer service agreement to provide the client an opportunity to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the client and the licensee. In these instances, a Non-Designated Agency Firm cannot advance the interests of the client and provide undivided loyalty while negotiating with a licensee associated with the brokerage firm. The client may elect to remain an unrepresented customer of the Non-Designated Agency Firm, and not seek outside representation, if the client provides informed written consent. A Non-Designated Agency Firm and its associated licensees must show affirmatively that they acted in good faith in the transaction.

4.4 Brokerage Firms Practicing Designated Agency

(a) If a brokerage firm has more than two licensees, the brokerage firm may elect to practice Designated Agency (see Rule 1.8 (i)). Any such brokerage firm shall be known as a Designated Agency Firm and disclosure of this status shall be included in seller and buyer service agreements as required under Rule 4.8(c).

(b) A Designated Agency Firm shall delegate to its individual licensees all brokerage firm

agency and fiduciary responsibilities for specific clients of the firm pursuant to written agreements for brokerage services (see Rule 4.8). Delegations may be made to a single licensee or to multiple licensees associated with the brokerage firm. The licensee(s) so delegated shall be known as designated agent(s). Only the designated agent(s) owe the client the duties of a fiduciary (see Rule 1.8 (n)).

(c) A Designated Agency Firm shall at all times ensure that there is a supervising licensee within the firm to provide guidance to the designated agent(s) in the event of a conflict where the principal broker and/or broker in charge is acting as a designated agent for one of the parties to the transaction (e.g. “in-house transaction”).

(d) A Designated Agency Firm and the designated agent(s) with respect to a specific client shall:

(1) obtain written consent of the client to the appointment of the initial and any subsequent designated agent(s) at the time the seller or buyer service agreement is executed or amended;

(2) take ordinary and necessary care to protect all client confidences from disclosure to third parties, except disclosure may occur pursuant to authorization of all clients affected thereby;

(3) take ordinary and necessary care to protect all client confidences from disclosure to other licensees of the firm who are not designated agents for the client, except disclosure may occur pursuant to authorization of all clients affected thereby;

(4) until closing, submit all offers to or from the client, with or without a deposit, whether oral or written, whether above or below the listed price; and

(5) if true, disclose the fact that the firm provides brokerage services to both buyers and sellers in the market. The disclosure shall be part of any seller or buyer service agreement executed on behalf of the firm.

(e) A Designated Agency Firm and its designated agent(s) for a particular client shall not:

(1) practice dual or limited agency by acting as agent for both a buyer and seller in the same transaction. The designated agent(s) may act as an agent for one party in a transaction where the other party is an unrepresented customer;

(2) practice Non-Designated Agency;

(3) provide or offer to provide services as an Intermediary, a Transactional Broker, a Facilitator or any other form of representation not involving an agency relationship for

which fiduciary duties are owed. This provision does not preclude the right to make referrals as provided in Rule 4.13.

(f) A Designated Agency Firm may retain and compensate another brokerage firm to assist it in providing services to its clients without thereby creating an agency relationship between the client and the other firm. This practice shall be known as broker agency and the relationship shall be governed by the provisions of Rule 4.11.

(g) A Designated Agency Firm may permit one of its licensees with a customer who may be interested in buying from or selling to a client of the firm to practice broker agency with the designated agent(s) of the client. No written cooperation agreement is required. In such case the licensee with a customer owes the designated agent(s), but not the firm's client, the duties of a fiduciary.

(h) All confidential information of the seller or buyer client may not go beyond the designated agent(s) or the supervising licensee, except with the client's prior authorization. A designated agent may reveal confidential information of a client to the extent reasonably necessary to obtain proper guidance from the supervisor in charge of such agent, as long as that supervisor is not acting as an agent for another party in a transaction with the client. The supervisor shall protect from further disclosure any confidential information received in a supervisory capacity. All seller and buyer service agreements shall contain clear language that notifies the client that this can occur.

(i) When a designated agent is appointed, information known to or acquired by the designated agent shall not be imputed to the brokerage firm or to other licensees within the same brokerage firm.

(j) The principal broker and broker in charge shall remain vicariously responsible for breach of duty in his or her supervisory capacity as provided in Rule 4.2, however, they do not by virtue thereof become dual agents.

(k) A Designated Agency Firm shall terminate the seller service agreement prior to a designated agent associated with the brokerage firm entering into negotiations on his or her own behalf to purchase a property in which he/she is a designated agent for the property listed by the brokerage firm. In addition, the brokerage firm shall provide an opportunity for the client to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the client and the licensee. Prior to entering into negotiations for the sale of property owned by a licensee of the brokerage firm who is the designated agent of the buyer under a buyer service agreement with the brokerage firm, the Designated Agency Firm must terminate the buyer service agreement. In addition, the brokerage firm shall provide an opportunity for the client to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the client and the licensee. In these instances, a Designated Agency Firm cannot advance the interests of the client and provide

undivided loyalty while negotiating with a licensee associated with the brokerage firm. The client may elect to remain an unrepresented customer of the brokerage firm, and not seek outside representation, if the client provides informed written consent. A Designated Agency Firm and its associated licensees must show affirmatively that they acted in good faith in the transaction.

4.5 Duty to Customers and the Public

(a) A licensee working for a brokerage firm employed by a seller or seller's agent must fully and promptly disclose to a prospective buyer all material facts within the licensee's knowledge concerning the property being sold. This obligation continues until the sale is closed or has been cancelled. Some examples of material facts (See Rule 1.8(p)) include, but are not limited to, the following:

(1) a defect that could significantly diminish the value of the land, structures, or structural components such as the roof, wiring, plumbing, heating system, water system, or sewage disposal system;

(2) a limitation in the deed that could substantially impair the marketability or use of the property and thereby diminish its value;

(3) a recognized or generally accepted hazard to the health or safety of a buyer or occupant of the property; or

(4) facts a licensee reasonably believes may directly impact the future use or value of the property.

(b) If the client refuses to consent to disclosure after being informed that the licensee considers disclosure to be necessary, then the licensee must withdraw from the agency relationship.

(c) A licensee, before showing real property, must disclose any known significant limitations on the seller's ability to convey a fee simple interest in the property, such as options, rights of first refusal, or being subject to prior closings.

(d) A licensee buying or selling on his or her own account shall disclose the existence of his or her real estate license and that the property under consideration belongs to the licensee or will be purchased for the licensee's use. These disclosures are to be made on initial contact with the seller, buyer, or their representatives.

(e) A licensee shall comply with all federal, state and local requirements related to the marketing, transfer or development of real estate.

4.6 Duty to Provide Mandatory Consumer Disclosure

- (a) At the time of first contact with a member of the public who expresses an interest in buying or selling real property, a licensee shall give an oral or written disclosure informing the person that there is no confidentiality between the licensee and the person until and unless there is a signed brokerage service agreement.
- (b) A brokerage firm, and its licensees, shall provide to any unrepresented person with whom a licensee of the brokerage firm has substantial contact, including via electronic communication, a true copy of the most recent consumer disclosure form adopted by vote of the Commission. The disclosure shall occur at the first reasonable opportunity, and it must occur before:
- (1) entering into a brokerage service agreement; or
 - (2) showing a property.
- (c) If it has been more than twelve (12) months since the consumer disclosure form was given, a new consumer disclosure form must be given.
- (d) The current consumer disclosure form adopted by the Commission can be accessed through the Commission's website at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.
- (e) For purposes of this rule, an unrepresented person means any person who:
- (1) is under a brokerage service agreement for representation, but is not at the time in the presence of their agent; or
 - (2) is not under contract with a brokerage firm for representation.
- (f) If the person required to receive the written disclosure form does not sign the form, the licensee shall:
- (1) note that information on the form;
 - (2) sign and date the form; and
 - (3) provide a copy of that form to the person.
- (g) The licensee's signature in 4.6(f)(2) above shall constitute a certification by the licensee that the form was provided to the person with the recommendation to read the disclosure.
- (h) The disclosure form is not required for unrepresented persons in the following instances:
- (1) for an open house where the host brokerage firm conspicuously displays a poster

containing a replica of the disclosure form, with copies available on request;

(2) for any Vermont broker or salesperson licensee; or

(3) for any customer of a cooperating firm brought to a principal firm pursuant to a cooperation agreement between brokerage firms (see Rule 4.11) when that customer has already received the disclosure form from the cooperating firm.

4.7 Trust Accounts

(a) Every brokerage firm shall maintain a pooled interest-bearing trust account in a bank or other regulated financial institution licensed in Vermont, so long as the firm holds the funds of others in the course of its real estate business, and shall establish individual interest-bearing trust accounts as needed to comply with these rules. Interest on the pooled trust account shall be remitted as provided by 26 V.S.A. §2214.

(b) All deposits in the possession of a brokerage firm to be held as an escrow agent under a Purchase and Sale Agreement shall be deposited in the firm's trust or escrow account not later than five (5) banking days after the Purchase and Sale Agreement is executed by both seller and buyer. Any licensee affiliated or associated with that brokerage firm is required to utilize the brokerage firm's accounts in the discharge of his or her responsibility under this rule and under 26 V.S.A. §2214. Unless otherwise agreed to in writing, all deposits held by any licensee shall be placed in the account of the brokerage firm with which the seller has a seller service agreement, or, if there is no listing broker, in the account of the buyer's brokerage firm. No earnings of the accounts shall be made available to the brokerage firm or any associated licensee.

(c) If a deposit is reasonably expected to earn more than \$100, it shall be transferred to or placed in an individual interest-bearing trust account, if requested by the person making the deposit, specifying the Social Security account number or taxpayer identification number of the person who paid the money or is entitled to receive the interest. A deposit which is not reasonably expected to earn more than \$100 shall be placed in the brokerage firm's pooled trust account.

(d) Disputed deposits--When the brokerage firm learns of a dispute concerning the proper party to receive a deposit held in a trust account, the broker shall notify the parties, in writing, that the deposit will remain in the trust account until (1) the parties to the disputed deposit give written authority to the broker to disburse the funds, or (2) a court of competent jurisdiction determines the proper party entitled to the proceeds of the disputed deposit.

(e) Augmented deposit--When a person making a deposit increases the amount of the deposit for any reason, it shall be deposited in the firm's trust account not later than five (5) banking days after receipt thereof. If the recalculated interest is reasonably expected to exceed \$100, the brokerage firm shall transfer the principal amount of the total deposit to an individual interest bearing trust account, if requested by the person making the deposit.

(f) When a payment is made out of an individual interest bearing trust account to the person entitled to it, any interest accrued on that account shall be paid out simultaneously to that person or to such other person designated in the contract.

(g) The brokerage firm shall keep accurate records of all deposits held by it. Such records shall include:

- (1) the name(s) from whom the money was received and to whom it was disbursed;
- (2) the amount of each deposit;
- (3) the amount of each disbursement;
- (4) the date each amount was received, the date disbursed and the amount of any interest earned on an individual interest bearing trust account; and
- (5) all contracts, documents and other records related to a trust account and all its activity, including copies of all related brokerage service agreements, deposit receipts, withdrawal receipts and sales agreements.

(h) The responsibility for the account and all transactions concerning the account remains with the principal broker or broker in charge.

(i) A brokerage firm may deposit its own funds in the account to cover bank service charges or meet a minimum balance to avoid bank service charges. Check printing charges, wire transfer charges, overdraft charges, and other charges for specialized services are a business expense of the brokerage firm. Ordinary bank service charges may be offset against the interest in the account, but the brokerage firm shall not permit the principal amount of the trust funds to be depleted.

4.8 Agreements for Brokerage Services

(a) Before rendering any brokerage services, a brokerage firm must have:

- (1) a written seller service agreement; or
- (2) a written buyer service agreement; or
- (3) a written cooperation agreement between brokerage firms.

(b) Agreements for brokerage services shall contain a specific expiration date not to exceed one (1) year from the effective date of the agreement. A brokerage service agreement shall not

contain any provision for automatic extension or renewal. All information in a brokerage service agreement shall be current as of the date signed, and shall be current as of the date of the most recent extension or renewal. Any limitation on the scope of services to be provided shall not compromise any of the duties required under Rules 4.3, 4.5 and/or 4.6.

(c) All seller and buyer service agreements shall contain clear language that states whether the firm is a Designated or Non-Designated Agency Firm. If the firm elects to practice designated agency, the designated agent(s) must be named in the seller or buyer service agreement. Any changes to the designated agent(s) shall be in writing and approved by the client. Brokerage service agreements must contain a provision indicating that a designated agent may reveal confidential information of the client to the extent reasonably necessary to obtain proper guidance from any supervising licensee in charge of such agent, as long as that supervising licensee is not acting as an agent for another party in a transaction with the client. The supervising licensee shall protect from further disclosure any such confidential information received in a supervisory capacity.

(d) Copies of all agreements for brokerage services shall be given to all parties to the agreements at the time of execution, or as soon as possible thereafter.

(e) Use of a net listing or any variation is prohibited.

4.9 Seller Service Agreements

(a) Each type of seller service agreement shall be on a separate form and identified with only one of the titles below in boldface type at the top of the agreement:

**NONEXCLUSIVE (Open) AGENCY MARKETING AGREEMENT;
EXCLUSIVE AGENCY MARKETING AGREEMENT; or
EXCLUSIVE RIGHT TO MARKET AGREEMENT**

(b) A seller service agreement shall contain:

- (1) a clear description of the property and its location;
- (2) the price, terms and conditions upon which the brokerage firm has authorization to market the property;
- (3) the specific brokerage services the firm will provide, including any limitation on services;
- (4) the agreement date, specific expiration date and the effective date if different from the agreement date;

- (5) a provision for avoiding dual agency and other conflicts with respect to the brokerage firm's buyer service agreements, including the requirements of subsection 4.3(e) and 4.4 applicable to representation of sellers;
- (6) a statement of the amount of transaction fee or other compensation to be paid the brokerage firm, the method of computation and the person who will pay it;
- (7) the signatures of all owners or their authorized agents and a licensee associated with the brokerage firm;
- (8) a clear description of whether, and how, cooperating brokerage firms will be compensated; and
- (9) a clear description of whether, and how, a brokerage firm representing the buyer will be compensated.

(c) A seller service agreement may contain a clause which provides for compensation following expiration or termination when:

- (1) a purchase and sale agreement is signed, a closing held, or the property is otherwise conveyed, within a specified number of months following the expiration or termination date of the seller service agreement, but not to exceed twelve months;
- (2) the brokerage firm, during the term of the seller service agreement, was procuring cause of the sale;
- (3) the brokerage firm provided the name of the purchaser to the seller in writing not later than 10 days after the expiration or termination date of the seller service agreement; and
- (4) the property has not been listed with another brokerage firm under a valid, exclusive right to market agreement with terms and conditions similar to those contained in the expired or terminated seller service agreement.

(d) No other provision for compensation following expiration or termination is authorized.

4.10 Buyer Service Agreements

(a) Each type of buyer service agreement shall be on a separate form and identified with only one of the titles below in boldface type at the top of the agreement:

NONEXCLUSIVE (Open) BUYER AGENCY AGREEMENT;
EXCLUSIVE BUYER AGENCY AGREEMENT; or

EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT

(b) A buyer service agreement shall contain:

- (1) the agreement date, specific expiration date, and the effective date if different from the agreement date;
- (2) all terms of the agency authorized;
- (3) a description of the services that the brokerage firm will perform under the agreement, including any limitations on services;
- (4) a provision for avoiding dual agency and other conflicts with respect to the brokerage firm's seller service agreements, including the requirements of subsection 4.3(e) and 4.4 applicable to representation of buyers;
- (5) a statement of the amount of transaction fee or other compensation to be paid the brokerage firm, the method of computation and the person who will pay it;
- (6) the signatures of all parties to the buyer service agreement and a licensee associated with the brokerage firm; and
- (7) a clear description of whether, and how, cooperating agents will be compensated.

(c) A buyer service agreement may contain a clause which provides for compensation following expiration or termination when:

- (1) a purchase and sale agreement is signed, a closing held, or a property is otherwise purchased, within a specified number of months following the expiration or termination date of the buyer service agreement, but not to exceed twelve months;
- (2) the brokerage firm, during the term of the buyer service agreement, was procuring cause of the purchase;
- (3) the brokerage firm provided the name of the seller and identification of the property to the buyer in writing not later than 10 days after the expiration or termination date of the buyer service agreement; and
- (4) the buyer has not retained another brokerage firm under a valid exclusive right to represent buyer agreement with terms and conditions similar to those contained in the expired or terminated buyer service agreement.

(d) No other provision for compensation following expiration or termination is authorized.

4.11 Cooperation Agreements between Brokerage Firms

- (a) A cooperation agreement between brokerage firms shall contain:
 - (1) identification of the brokerage firm acting as principal and the brokerage firm acting as agent;
 - (2) the agreement date and a provision for termination, however it need not have a specific expiration date;
 - (3) a description of the services which the cooperating firm will perform under the agreement, including any limitation on services;
 - (4) a statement of the amount of transaction fee or other compensation to be paid the brokerage firm and the method of computation;
 - (5) a provision for avoiding dual agency conflicts with respect to each brokerage firm's other brokerage service agreements; and
 - (6) signatures of each party.
- (b) The cooperating firm under a cooperation agreement is the agent of the principal's firm, and not the agent of the buyer or seller for whom the principal is working.
- (c) A principal firm under a cooperation agreement shall not reveal any confidences of a client to a cooperating firm.
- (d) A cooperating firm which has accepted an offer of broker agency with respect to a particular property must notify the principal firm before representing a buyer with respect to the same property.
- (e) Participation agreements in multiple listing services are an acceptable broker cooperation agreement for creating an agency relationship between brokerage firms.
- (f) In a designated agency firm, when a licensee is representing a client and another licensee of the brokerage firm has a customer interested in participating in a transaction with the client, the licensee with the customer is a broker agent for the first agent. No cooperation agreement is required in this scenario.

4.12 Advertising

- (a) Every real estate advertisement shall conspicuously display the brokerage firm's registered

name. This is the name that appears on the brokerage firm's registration issued by OPR. The brokerage firm's registered name shall be the most prominent and largest identifier. This means the brokerage firm's registered name shall be larger than items such as the agent's name, phone number, team name and web address.

(b) When property in which a licensee has an ownership interest is marketed, all advertisements shall disclose the fact that said owner is a Vermont licensee.

(c) Signs used in advertising must comply with Vermont state and municipal sign laws, including but not limited to the following:

(1) a "for sale" sign, or multiple signs on the same premises taken together, shall not have an area of more than six (6) square feet, including panel, frame and riders (See also 10 V.S.A. §493(2));

(2) signs attached to "for sale" signs which state "sold," "sale pending," "sale under contract," or similar messages shall not be permitted (See also 10 V.S.A. §493(2));

(3) a "for sale" sign may only be erected and maintained on the same premises that is for sale and may not be erected or maintained off-premise (See also 10 V.S.A. §493); and

(4) a "for sale" sign may not be erected and maintained along a highway and visible from the highway which is located upon a tree, or painted or drawn upon a rock or other natural feature (See also 10 V.S.A. §495(a)(5)).

(d) Advertisements of properties listed by another brokerage firm shall also conspicuously display that listing brokerage firm's registered name and listing agent's name.

4.13 Compensation

(a) A licensee shall not pay or otherwise compensate an unlicensed person, either directly or indirectly, for the performance of brokerage services. This section shall not prohibit a licensee from reducing or sharing a portion of a commission otherwise owed to the licensee in the transaction, to the benefit of the seller or buyer, so long as it is not compensation for the performance of brokerage services.

(b) A referral fee may be paid or received for referring a prospect to another brokerage firm licensed in Vermont or another jurisdiction. A referral fee agreement must be in writing. A referral does not create an agency relationship. A licensee making a referral is not a sub-agent. A licensee from another jurisdiction may observe, but not perform, brokerage services in Vermont.

(c) A brokerage firm may only receive the compensation provided in: (1) a written brokerage

service agreement signed by the brokerage firm and its client; or (2) an agency agreement with a brokerage firm that has a written agreement described in (1). A brokerage firm shall not collect any compensation for brokerage services except as provided by these rules.

(d) The brokerage firm representing a seller may compensate a brokerage firm representing a buyer out of the brokerage fee without thereby creating an agency relationship. The brokerage firm representing a buyer may compensate a brokerage firm representing a seller out of the brokerage fee without thereby creating an agency relationship. Consent of the client is not required in either case.

4.14 Records

(a) A brokerage firm shall maintain for at least seven years at its usual place of business all records (paper or electronic) of brokerage services provided and they shall be available to the Commission and its agents during regular business hours.

(b) The principal broker, broker in charge, or a designee must cooperate in good faith with the Commission's agent during any inspection, and the principal broker, broker in charge, or a designee may remain present during any inspection. The Commission's agent may not be denied access to the records if the principal broker, broker in charge, or a designee is not present.

4.15 Timely Response to Commission Inquiry

As soon as reasonably practicable or within 30 days, whichever is sooner, a licensee shall respond in good faith when contacted regarding any matter related to the regulation of the licensee's profession by the Commission, or the Office of Professional Regulation acting on behalf of the Commission.

Part 5 Education

5.1 Initial Salesperson and Broker Education

All applicants for a salesperson or broker license must complete the salesperson or broker prelicensing course, which will consist of at least forty hours of instruction approved by the Commission. A list of approved courses can be found at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

5.2 Continuing Education for Renewals

(a) Salespersons renewing for the first time must provide evidence of having completed the required hours of post-licensure education, approved by the Commission, within ninety (90) days of obtaining their initial salesperson's license. A real estate salesperson regulated under the laws of another jurisdiction, licensed and in good standing to practice in that jurisdiction, and

who has been licensed for at least twenty-four months in that jurisdiction, is not required to complete the required post-licensure education.

(b) Salespersons or brokers applying for renewal of licenses must complete the required hours of continuing education during the two-year period immediately preceding renewal. Four hours of the instruction required of brokers and salespersons must be in a subject designated by the Commission for that licensing period. The courses taken must be approved by the Commission as continuing education courses. A list of approved continuing education courses can be found at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

(c) Any person may seek individual approval of a course by petitioning the Commission no later than 90 days before licensing renewal.

(d) The Commission may appoint an education committee to advise the Commission on standards for approval of courses and the application of those standards.

5.3 Compliance Audits

(a) The Commission will conduct continuing education audits of randomly selected licensees and licensees whose licenses are conditioned. The Commission may also audit late renewing licensees and licensees who in any of the preceding 2 renewal cycles were initially found to have not met continuing education renewal requirements.

(b) If an audit shows that the licensee has not acquired the required hours of acceptable continuing education, the Commission will inform that licensee. The licensee may be given an opportunity to develop and complete a plan to correct the deficiencies. An opportunity to correct continuing education deficiencies, however, does not preclude disciplinary action against the licensee for unprofessional conduct during the renewal process, including fraudulent or deceptive procurement of a license.

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