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CALIFORNIA ASSOCIATION OF REALTORS®

# **Office Policy Manual**

Revised 04/2017

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## **1. About the Company**

### **1.1 In General**

The Company is licensed by the Department of Real Estate and doing business as Graff Real Estate (hereinafter referred to as the “Company” or “Broker”).

## **2. Office Policy Manual**

### **2.1 General Purpose**

The purposes of this policy and procedure manual (the “Manual”) are 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.

### **2.2 Responsibilities**

You are responsible to work in accordance with Company policies and procedures. Your failure to comply with the policies and procedures within this manual may result in your termination from this Company.

### **2.3 Changes in Manual**

This Policy manual may be changed from time to time by the Company. Changes can be made at any time and will be distributed periodically through the Company's website and all member e-mail list. The policies available on-line at any time represent the Company's current Policy Manual.

### **2.4 Exclusions from the Manual**

This Manual applies only to salespersons (sometimes referred to herein as “associate-licensees”), and does not apply to Company staff employees.

### **2.5 Conflict with Salesperson/Broker Independent Contractor Agreement**

The provisions in this Manual are NOT intended in any way to create any contractual obligations with respect to your employment. In the event a policy in this Manual conflicts with your Broker/Associate-Licensee Independent Contractor Agreement, the terms of this Manual shall prevail.

## **3. Independent Contractor Relationship**

### **3.1 Independent Contractor Status**

You have signed an Independent Contractor Agreement with the Company and are associated with this Company as an Independent Contractor. You shall not be treated as an employee for local, state, and federal tax law purposes. You are under the control of the Company only as to the result of your work. The Company has no right to control the means by which sales or leases are accomplished. You are considered to be an Independent Contractor for tax purposes and will receive an Internal Revenue Service Form 1099-MISC at the end of each calendar year. The Company will NOT withhold taxes or Social Security from your compensation. Payment of taxes and Social Security

contributions are your responsibility. You are also considered an Independent Contractor for purposes of Unemployment Insurance. The Company will provide Workers' Compensation insurance for the Broker's own benefit.

### **3.2 At-Will Status**

You are associated with the Company for an unspecified term on an at-will basis. Except as otherwise expressly agreed in writing with the Company, either party may terminate your association at any time, with or without cause, and with or without advance notice.

## **4. General Office Procedures**

### **4.1 CalBRE License and Requirements**

You are required to maintain a valid California real estate broker or salesperson license in good standing while associated with this Company. If your license expires, is suspended, or revoked, you may not engage in any activities on behalf of the Company for which a real estate license is required. The Broker may designate another Company salesperson to handle your prospects, listings and transactions during any time your license lapses, and allocate such reasonable compensation to that salesperson for work performed.

The Company is charged by California law to review, supervise and manage the activity of all salespersons. The Broker may rely on management and staff support to perform this function. You are expected to cooperate with Broker's assistants in the handling of files, documents and procedures in accordance with this Manual and California law.

It is your responsibility to keep current on changes in industry practices and to take advantage of available education and training programs to maintain your professionalism and your ability to properly represent your clients. It is also your responsibility to obtain all Continuing Education courses so as to renew your license in a timely manner.

### **4.2 Company Business Hours**

Direct Broker's support is available Monday through Friday 9am-5pm.

### **4.3 Business Cards, Signs**

You may choose to order Company business cards, marketing materials, and signs through the Company or provide such business materials yourself. If you do choose to provide your own signs, marketing materials and business cards, you must follow the rules provided in this Manual under "Advertising" in Section 8. Additionally, you are responsible for providing all supplies, business cards, marketing materials and signs at your own cost.

NOTE: Certain municipalities, housing developments and Homeowners' Associations have strict guidelines, rules, and ordinances regarding the size and placement of signs. You must determine whether or not the Company's sign and its placement will conform to these requirements *before* installation. You are responsible to remove any signage immediately upon the expiration of the listing expires or closing of the sale.

#### **4.4 Professional Conduct**

You are expected to be familiar with and comply with the National Association of REALTORS® Code of Ethics and Standards of Practice.

#### **4.5 Working Place**

The Broker does not provide an office space for our agents. As an independent contractor, you may choose to work from your home, own office, vehicle or any other locations of your choice. However, remember that the Broker is required to supervise your activity. Be sure that all files and documents that you work on are in safe place and can be presented to Broker within twenty-four (24) hours. You must be reachable by phone, fax, email and/or regular mail and respond to voicemails within a maximum of twenty-four (24) hours. Lastly, you must to provide the Broker with your current home or office address.

#### **4.6 Alcohol and Drugs**

To help ensure a safe, healthy and productive work environment and to ensure efficient operations, the Company has a policy of maintaining a workplace free of drugs and alcohol. Possession, use, offer for sale, or being under the influence of alcohol or illegal drugs, on or off company premises, while conducting Company business is strictly prohibited. Please use good judgment and never drink and drive.

#### **4.7 Professional Associations**

##### **(a) Multiple Listing Service**

The Company is a member of many local Multiple Listing Services (“MLS”). The full list of associations/MLS where Company maintains membership is available on the Company’s website. As an associate-licensee with this Company, you can join the MLS as well.

As an MLS member, you are required to be familiar with, and adhere to, the rules and regulations of the MLS. A copy of those rules and regulations are on file in the Company’s office or available through the MLS website. If you fail to comply with those rules and regulations, or fail to pay your MLS bill when due, you and/or the Company may be fined, suspended or expelled, and your listings may be removed from the MLS. You will be responsible for payment of any and all fines levied against you or the Company resulting from your noncompliance with MLS rules. Furthermore, your noncompliance may result in your termination from Company.

##### **(b) National, California and Local Associations of REALTORS®**

While it is not required, you may maintain a current membership in the National (NAR), California (CAR) and Local Associations of REALTORS® at your own expense.

#### **4.8 Fees and Commissions**

Pursuant to California Business and Professions Code Section 10138, all fees and commissions must be made payable to the Broker. You will be paid out of the fees and commissions earned by you, and for which you are the procuring cause, based on the terms mentioned in your Independent Contractor Agreement.

#### **4.9 Tax Reporting**

At the end of each calendar year or as soon thereafter as possible, the Company will provide you with an Internal Revenue Service Form 1099-MISC setting forth compensation paid to you. Your income earned and expenses incurred have significant tax consequences. Therefore, you are encouraged to get competent independent tax advice and keep accurate records of earnings and expenses.

#### **4.10 Deductions**

All expenses of any kind incurred by you with the Company, or incurred by the Company on your behalf, including unpaid draws and advances, expenses for advertising, supplies, signs, etc., or any such expenses that you have agreed to pay the Company but have not paid in accordance with Company policy, will be deducted from the next commission payments due to you.

#### **4.11 Trust Fund Handling**

As a regular part of the real estate business, you will receive funds on behalf and for the benefit of others, i.e. "trust funds." The Department of Real Estate Reference Book defines trust funds as "*money or other things of value that are received by a Broker or salesperson on behalf of a principal or any other person, and which are held for the benefit of others in the performance of any acts for which a real estate license is required.*" The most common types of funds are earnest money deposits. Improper trust fund handling may lead to civil, criminal and Department of Real Estate action against you and the Company. Remember, you are handling someone else's money.

According to the California Business and Professions Code Section 10145 and the Real Estate Commissioner's Regulation 2832, you are required to deposit trust funds into a neutral escrow depository or into a trust account maintained by the Broker no later than three (3) business days after receipt of the funds, unless specifically authorized to hold the funds uncashed.

When representing a buyer, you must ensure that earnest money deposits are made payable directly to escrow and reported to Broker. IT IS ILLEGAL AND IMPERMISSIBLE TO RECEIVE FUNDS IN YOUR PERSONAL NAME OR TO ACCEPT CASH PAYMENTS FROM CLIENTS.

#### **4.12 Identity Theft; Confidentiality**

Identity theft and maintaining client privacy are growing concerns. Therefore, it is essential that you treat all files containing names, addresses, phone numbers, social security numbers, credit card information or any other personally identifiable information

with the utmost care and confidentiality. You must ensure that any files in your possession containing such information be kept in a secure location and are disposed of properly.

#### **4.13 Safe Driving**

Because you have agreed to use your own personal automobile for business purposes, you are expected to keep your automobile in a clean, properly maintained, and safe operating condition at all times. Remember, you are responsible for any damage or injury caused while driving. You have to maintain valid auto insurance.

#### **4.14 Personal Transactions**

You may buy or sell your own real estate. You are not allowed to perform dual transaction (representing buyer and seller) on agent own property (AOP) transaction. Please see Addendum to your Independent Contractor Agreement for more information on fees associated with personal transactions.

You must disclose in writing that you are a real estate licensee whenever you buy or sell property in which you have an ownership interest, you have a special relationship with a buyer, or where there is a possibility that you could acquire a direct or indirect financial or legal interest in the property.

#### **4.15 Vacations**

As an Independent Contractor, you are entitled to schedule vacations. However, if there you are working on any pending transactions, please first advise the Broker of your vacation schedule and how any pending business will be handled in your absence.

#### **4.16 Anti-Trust Guidelines**

Do not engage in any verbal or written conversations with agents or brokers with other companies regarding:

- (a) the setting of commissions, charges or other fees to the public;
- (b) boycotting or not doing business with a particular competitor; or
- (c) the setting of rates or percentages of shared commission compensation to cooperating brokers.

#### **4.17 Transaction Coordination**

Our company provides a Transaction Coordination (“TC”) service. There is no requirement to use our TC service, but if you are not using our TC, you will be responsible for ensuring that the transaction file is completed and complies with all Company requirements.

#### **4.18 Risk Management Fee**

Each year, the Company shall separately establish and publish the amount per transaction to be paid by all salespersons, as a Risk Management Fee. This fee will be used by the Company to offset the costs of the Errors & Omissions insurance, settlements, judgments, legal fees and costs of claims and litigation, and other risk management costs. This Risk

Management Fee shall be deducted by the Broker from each associate-licensee's earned gross commission.

Please see Addendum to your Independent Contractor Agreement for more information on current Risk Management Fee.

## **5. Handling Clients**

### **5.1 Confidential Information**

Treat all client information as confidential. You have a fiduciary duty to your clients and must never use any information learned during the course of your representation of your clients in any manner adverse to their interests or for your own advantage.

### **5.2 Fair Housing**

The Company is committed to fair employment and housing and complying with all applicable local, state and federal fair housing laws. To that end, we do not discriminate or tolerate harassment or discrimination on the basis of any protected classification, including, but not limited to race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental or physical disability, medical condition, genetic information, age, pregnancy, familial status or military status.

### **5.3 Agency Relationships and Duties**

#### **(a) Recognized Forms of Agency**

The Company generally recognizes two forms of agency:

- Single Agency (Seller's Agent exclusively or Buyer's Agent exclusively); and
- Dual Agency (when same broker represents buyer and seller in same time)

If the Company has the listing, we represent the seller only, unless you or another associate-licensee working for the Company also brings in the buyer, in which case the office represents both the buyer and the seller and is a dual agent.

If the Company is working with the buyer and does not have a listing agreement with the seller, we represent the buyer exclusively.

Remember, the agency relationship is created through the Broker. If you have listed the property and another associate-licensee from this Company brings an offer from a buyer, a dual agency will be created.



**(b) Fiduciary Duties and Standards of Conduct**

When you represent a principal in a transaction you have a fiduciary duty to that person. This means you have a duty of utmost care, integrity, honesty and loyalty in dealings with that principal. In addition, a listing agent owes the buyer, and a buyer's agent owes the seller the following duties:

- Honesty;
- Good faith and fair dealing;
- Disclosure of known facts materially affecting the value or desirability of the property that are not within the diligent attention or observation of the parties; and
- The exercise of reasonable care, diligence and skill in performance of your duties.

**(c) Agency Disclosure Requirements**

You must provide a statutory disclosure form entitled "Disclosure Regarding Real Estate Agency Relationships" (California Association of REALTORS® Form AD or similar form) in every applicable transaction.

If you represent the seller, you must provide the disclosure form to the seller BEFORE entering into the listing agreement. Inform the seller of the Company's policy regarding agency as set forth above. If you represent the buyer, the law requires that you must provide the buyer with an agency disclosure as soon as practicable BEFORE executing an offer to purchase. When you present an offer and the Broker is not the listing agent, you must also provide a new agency disclosure to the seller as soon as practicable BEFORE presenting an offer. Delivery of the disclosure to the listing agent is generally sufficient.

**5.4 Taking Listings**

California law requires that a compensation agreement be in writing and signed by the party to be charged in order to be enforceable. If someone signs on behalf of another, there must be written evidence of the authority to act on behalf of that person, such as a power of attorney or letter of administration.

If the property is in escrow, make sure the listing does not expire before close of escrow. Get all modifications or extensions in writing.

All listings shall be taken in the name of the Broker, which reserves the right to reassign the listing upon request of the seller or if the listing has not been handled properly.

**5.5 Negotiating Commissions**

The commissions paid by the principal are negotiable. You will receive 100% commission minus the Company charges for services, if any, a Risk-Management fee and a flat transaction fee per closed transaction. The Company reserves the right to set any

fees when it is necessary. Please see Addendum to your Independent Contractor Agreement for more information on broker fees.

## **5.6 Conducting Open Houses**

Open houses are a great way to expose your listing for sale and to meet prospective buyers. Plan your open houses in advance and be sure they are advertised. In order to ensure a successful open house, follow these guidelines:

- Prepare and provide sufficient property flyers and information about you and the Company.
- Prepare and provide a list of comparable sales and properties for sale in the immediate area of the open house.
- Suggest that the sellers not be present and that they lock away all valuables that could be targets of theft.
- Place your A-Frames in strategic, but permissible, locations.
- Open the house, turn on the lights, and make the house look fresh and inviting.
- Have a sign-in sheet.
- Greet visitors in a friendly manner.
- Be aware of your personal safety. Let someone know where you are and have a plan if a visitor starts to make you feel uncomfortable or threatened.
- Accompany the visitors throughout the property, especially in furnished properties.
- When the open house is over, close up the home, making sure that all doors and windows are locked.

## **5.7 Showing Properties**

Whenever possible, preview a property before showing it to prospective buyers. If you are familiar with the property, you will be more effective when showing it to your client. Also, you may find that despite contrary representations, the property really is not suitable after all. Your time and your client's and the seller's time are valuable; don't waste it.

Follow these guidelines in showing properties:

- Whenever possible, call the listing agent to alert the seller before showing.
- Give the seller reasonable time to make the property ready for you and your client.
- Listing agents should give the seller an estimated time frame within which you expect to arrive. Be prompt. If you will be considerably late, call the seller.
- If you have not heard from the seller before arriving, or if you are using the lockbox, go to the door first without your client.
- If the seller is home, explain the situation and ask for access. Remember, be respectful.

- When using a lockbox, always ring the doorbell or knock loudly several times and allow time to respond.
- Enter the property first and verify no one is there.
- Open curtains and turn on lights as necessary.
- Allow sufficient time for your clients to view each room and the property. Be mindful to look for any potential "red flags" about the property. (Disclosure)
- Do not leave your clients unattended in or on the property. You do not want to be blamed if any items are missing from the property later.
- When you are finished, leave your business card inside the property in a conspicuous place, and return the property to its original state (turn off appropriate lights, reset any alarms and lock the doors).
- If for some reason you don't show the property, call the listing agent as soon as possible to cancel.

## **5.8 Drafting and Negotiating Contracts**

- (a) When preparing an offer to purchase on a purchase agreement form, or completing an addendum or counter-offer form:
- Fill in all blanks or place a line through them.
  - Review any written sentences or paragraphs to see if they can be clearly understood by someone who is not familiar with the discussions you may have had with your client.
  - Review this document in light of all prior offer terms, addenda and/or counter-offers to make sure that there are no ambiguities or conflicts between the various terms.
  - Review the document to be sure it reflects your client's wishes prior to asking them to sign.
- (b) Remember, as a listing agent, you must present all offers to the seller, even if the property is in escrow, unless the seller has given you written instructions to the contrary. Upon receiving the offer, review it thoroughly for completeness, accuracy and clarity. Pay close attention to time limits set out in the offer, especially the time within which the seller must respond. Make an appointment as soon as possible to present the offer.
- (c) As with all contracts, you must obtain all parties' signatures. If a party signs on behalf of another, you must have evidence of that person's authority to do so in writing. If you must present an offer missing a signature, you must disclose this fact to the seller or listing agent. Be sure to condition the offer on obtaining any missing signatures.
- (d) If your client receives a counter-offer, be sure the terms are clear and complete. Be sure to review it against the original offer to purchase and all previous counter-offers. Act expeditiously to present the counter-offer for consideration, signature and timely delivery to the other agent.

## **5.9 Referral Fees**

The Real Estate Settlement Procedures Act (RESPA) prohibits the payment of cash or anything of value from one settlement provider to another settlement provider (real estate agent, lender, title company, etc.). One exception is between real estate brokers for the referral of clients, in which case referral fees may be paid or received.

## **6. Maintaining Files**

### **6.1 In General**

Your files constitute a record of every action taken relative to your dealings with your client on a listing or sale transaction. You must retain copies of all listings, deposit receipts, cancelled checks, trust records, and other documents executed by you or obtained by you in connection with any real estate transaction, whether or not the sale is consummated. You must maintain a neat and orderly file on every listing and sale on which you work.

All files are considered the property of the Company and are to remain either in your possession or uploaded to appropriate transaction file on the Company website. All executed documents shall be uploaded to transaction file in 48 hours and remain with the Company for storage. All files shall be held in storage a minimum of three (3) years in accordance with real estate law after which time they may be destroyed in accordance with the Company's document storage policy.

### **6.2 Broker Review**

You must submit all required documents, as indicated on a transaction documents checklist, to the Broker or its designee within forty-eight (48) hours after receipt by you. The Broker may review the document for completeness and accuracy at any time and will do final file review when the file is in "Submit for Review" or "Request for Cancel" status.

### **6.3 File Requirements**

- (a) Transaction file requirements are sent via email when a new transaction is reported.
- (b) Be sure all documents contain signatures of all parties required to sign and dated correctly.
- (c) If you are unsure how to maintain a proper file, please seek help from the Company's Transaction Coordinator.

### **6.4 Get It In Writing**

As a general rule, all agreements must be in writing. In fact, if you don't have a written agreement with the principal, you may not receive your commission. If you discuss anything with any party or another broker or agent, always confirm your discussions and

understanding with a written follow-up to that party. Never sign anything on behalf of your client, another agent, broker or anyone else.

#### **6.5 Do Not Use Outdated Forms**

Be sure to always use current forms. Keep your online forms database (such as WINForms®) up to date with the most current forms.

### **7. Personal Assistants or Employees**

#### **7.1 In General**

Generally, as your volume of business increases, you may find hiring a personal assistant helpful. In hiring a personal assistant or employee, you will become an employer and thus will have numerous responsibilities in that employer-employee relationship. Interviewing, hiring and contracting with the assistant will be solely up to you. You agree that any assistant or employee you hire will be required to understand and abide by this Manual.

Any compensation due to the assistant or employee shall be arranged between you and your assistant or employee, and will be your sole responsibility, not the Broker's.

#### **7.2 Unlicensed Assistant**

Any unlicensed personal assistants or employees of yours may not engage in any activity which requires a real estate license. Furthermore, the Company shall never be obligated to pay your personal assistant.

#### **7.3 Salesperson – Personal Assistant/Employee Contract**

You are required to have a written agreement with your personal assistant or employee that expresses the nature of the relationship and each party's duties and responsibilities. This agreement shall be subject to the Broker's review and approval.

#### **7.4 Workers' Compensation**

No Workers' Compensation insurance will be provided by the Company for assistants or employees hired by agents. Agents who hire assistants shall be responsible for providing Workers' Compensation insurance, as required by law.

### **8. Advertising Guidelines**

#### **8.1 In General**

All advertising must be approved by the Company before your use or placement in public.

When advertising for the purchase, sale or lease of property, or otherwise, the advertising material must be in the name of the Broker or include the terms "Broker," "agent," "licensee" or "REALTOR®."

## **8.2 Legal and Ethical Considerations in Advertising**

As an associate-licensee, you have both a legal and ethical obligation to be honest and truthful when advertising property or services.

All advertising must comply with all state and federal advertising requirements as well as the NAR Code of Ethics and Standards of Practice. Any false or misleading advertisements will be immediately withdrawn by the Company. You may be held liable for fraud, intentional misrepresentation, or negligent misrepresentation if you make material false statements or material omissions in an advertisement. Additionally, you may face disciplinary action from the CalBRE.

## **8.3 Company Name and Logos**

The Company's name and/or logo must be included in all advertisements. Additionally, all advertisements must conform to the Company's graphic standards regarding the style, color and uses of the name and logo. These standards are available for your reference on the Company's website.

## **8.4 REALTOR® Trademark**

The use of the name REALTOR® must be used in compliance with the National Association of REALTORS® guidelines governing the use of that name and mark. Those guidelines may be found online at: [www.realtor.org](http://www.realtor.org).

## **8.5 Telephone: Do-Not-Call Compliance**

You are required to comply with the do-not-call laws which generally prohibit “telephone solicitations” to residential and cell phone numbers registered on the National Do-Not-Call Registry.

- (a) You may not call anyone at their home or cell phone number if listed on the above-mentioned registry unless an exemption applies. Exemptions include written permission or an established business relationship in the past eighteen (18) months.
- (b) Cold Calling: You are encouraged to explore cold calling as a method of business promotion, but you must comply with the do-not-call rules, as well as other cold calling requirements as follows:
  1. You may not call a residence before 8:00 AM or after 9:00 PM.
  2. You must provide the party you are calling with your identity and telephone number where you may be contacted.
  3. You may not call any emergency lines, health care facilities, radio common carrier services (cellular or paging services) or any service for which the called party will be charged for the call.
- (c) It is your responsibility to adhere to this policy. You will be solely responsible for any violation, including any fines, penalties, damages recovered, settlements or attorney's fees and costs.

## **8.6 Fax Advertising**

There are state and federal laws prohibiting faxing to recipients with unsolicited commercial advertisements or solicitations. Exemptions include prior permission or an established business relationship.

## **8.7 Fair Housing**

The Company is committed to equal opportunity and fair housing in all of its advertising. Be aware that the selective use of words, phrases, symbols, visual aids and media in the advertising of real estate may indicate preferences held by the advertiser and lead to allegations of discriminatory housing practices. Words in a real estate advertisement which indicate a particular race, color, religion, sex, handicap, familial status or national origin may be considered violations of the Federal Fair Housing Act and may not be used in any Company advertisements.

# **9. Policy Against Harassment**

## **9.1 Company Policy**

It is the policy of the Company that its employees, associates and visitors be free of harassment. Harassment is damaging to morale, serves no legitimate business purpose, is unlawful, and exposes the Company to significant legal liability. The Company will neither tolerate nor condone behavior that is likely to undermine the dignity of self-esteem or an individual or create an intimidating, hostile or offensive environment.

## **9.2 Enforcement**

If you believe that you have been the subject of harassment, please bring your complaint to the attention of the Broker as soon as possible after the incident. The Broker may request a written complaint to set forth in detail the basis for your complaint.

The Company will immediately undertake an effective, thorough and objective investigation of the allegations. If the Company determines that harassment or other prohibited conduct has occurred, effective remedial action will be taken in accordance with the circumstances involved. Any associate-licensee determined by the Company to be responsible for harassment or other prohibited conduct will be subject to appropriate disciplinary action, up to, and including termination.

# **10. Litigation and Handling of Claims**

## **10.1 In General**

You are required to:

- (a) Promptly notify the Broker of any claim or potential claim made against you and/or the Company, including any demand received by you for money or services alleging a negligent act or omission, any notification of the commencement of a lawsuit, arbitration or mediation process, or any written or

verbal notice or threat that anyone intends to hold you or the Company responsible for any alleged wrongdoing.

- (b) Cooperate with the Company in the defense of a claim.
- (c) Promptly pay to the Company any amounts due hereunder upon notice to you from the Company.

## **10.2 Legal Defense**

When a claim or demand is made, or a lawsuit or other action is filed, against either you or the Company by a third party which alleges any breach of any duty, error or omission, or negligence in the performance of "Professional Services," as that term is defined in the Company's Errors & Omissions Policy of Insurance, for activities covered by the Insurance Policy, then the Company shall defend the claim, and the cost of such defense shall be allocated as set forth herein.

The Company has the right to make all decisions concerning the defense of the claim, including choice of counsel. In the event you object to any decision made by the Company, you may obtain your own attorney at your own expense. However, you shall not be relieved from the obligation to pay your portion of the cost of the claim as set forth herein.

## **10.3 Allocation of Costs of Defense**

- (a) Except as provided below, the cost of defense of the claim, or to defend or protect against any potential or possible claim where the Company or you are not involved as a party, including attorney's fees, and the cost of any settlement or a judgment (collectively the "Costs of Defense"), shall be allocated between the Company and you in the same percentages as per your Independent Contractor Agreement or prospective transaction that led to the claim, whether or not the transaction actually closed.
- (b) You shall be responsible for all Costs of Defense if you fail to follow any law, regulation or Company policy as set forth in this Manual, and that failure results in a judgment or other final adjudication based on that failure.
- (c) You shall be solely responsible, and shall reimburse the Company, for all of the Company's Costs of Defense if a judgment or other final adjudication on any claims adverse to you or the Company:
  1. Establishes that dishonest, fraudulent, criminal, or malicious acts, errors or omissions were committed; or
  2. Results in a finding of intentional tort, slander, defamation or any conduct which leads to the imposition of punitive, exemplary or multiple damages, or fines or penalties; or
  3. Establishes discrimination on the basis of race, creed, religion, ethnic background, national origin, age, sex, handicap, familial status, physical disability, sexual preference, or any other protected classification; or



4. Results in a finding of pollution or any wrongful act in connection with any such pollution, including the discharge release or escape of any hazardous materials as defined in the Insurance Policy; or
5. Results in a finding of any liability for claims for damage to property, death or injury to persons arising out of the use, removal or exposure to goods or products, in any form, composed in whole or in part of lead, asbestos or asbestos related materials.

#### **10.4 Disputes During Escrow**

If a dispute arises during an escrow between the seller, buyer or the cooperating broker and the Company:

- (a) Which cannot be resolved by negotiations between the parties and the agent(s) involved; and
- (b) The Company determines that it is in the best interest of the Company to resolve the matter during escrow rather than risk a potential claim or litigation after close of escrow;

then the Broker has the right to negotiate a resolution of the dispute which may involve a reduction in the commission to be received, or a credit given to one of the parties. In that event, and regardless of actual Company or agent liability or responsibility in the dispute, the associate-licensees and the Company will participate in the commission reduction or credit on a pro rata basis.

#### **10.5 Agent-Owned Property**

Any property in which you have, or will acquire, an ownership, financial or legal interest, is considered "Agent-Owned Property." The Company's E&O Insurance Policy governs coverage of the sale or purchase of any Agent-Owned Property. In any sale or purchase of Agent-Owned Property is not covered by the E&O Insurance Policy, you shall be solely responsible for costs of defense, settlement or judgment on any claim, suit or action of any nature arising therefore.

In the event you are selling or purchasing Agent-Owned Property, you must:

- (a) Notify the Broker in advance;
- (b) Obtain, in advance, Broker's approval of all marketing material and disclosure documents, any purchase contract provisions prior to their execution, and any correspondence or other writings that pertain to the purchase or sale;
- (c) Not represent buyers or prospective buyers in the sale of Agent's Own Property;
- (d) Notify the Broker immediately in the event that any of the Company's agents writes an offer on your property.

### **11. Dispute Resolution**

#### **11.1 Intra-Office Dispute Resolution**

All disputes involving you and another associate of the Company shall be promptly reported to the Broker. The Broker, or designated members of the management team, will attempt to resolve the dispute through informal mediation in which all affected salespersons are expected to participate.

You agree that all disputes which cannot be resolved by informal mediation shall be resolved by binding arbitration with the local Association of REALTORS® in accordance with the bylaws and rules then in effect.

### **11.2 Third Party Disputes**

You are required to immediately notify your Broker of any dispute or claim involving you, another associate of this Company, the Company itself, and a third party, including brokers and associates of other brokerages. The Company will make all reasonable efforts to resolve the dispute informally. Any such resolution will be binding on the agents involved in the dispute or claim.

## **12. Termination**

### **12.1 Grounds for Termination**

Your association with the Company can be terminated by either you or the Company, at any time, with or without cause.

### **12.2 Associate's Compensation on Termination**

If your association with the Company is terminated while you have any pending listings or transactions which require further work normally rendered by you, the Broker will make arrangements for another salesperson in the Company to perform the remaining work. The associate-licensee performing the work shall be reasonably compensated for completing work on the pending listings or transactions, and such reasonable compensation shall be deducted from your share of the commission. Except for such offset, you shall receive the compensation due as specified in your Independent Contractor Agreement.

### **12.3 Listings Upon Termination**

Listings are the property of the Company, and will remain the property of the Company even upon your termination. Within twenty-four (24) hours of termination by either party, you must provide your manager with a list of all active and all pending transactions in which, if completed, you will be entitled to compensation from the Company in accordance with the terms of your Independent Contractor Agreement or other written agreement.