



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
REAL ESTATE COMMISSION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

Janet T. Mills
Governor

Anne L. Head
Commissioner

**Public Board Meeting
November 21, 2024
AGENDA**

Location: 76 Northern Ave. Gardiner, ME 04345

Room: Central Conference Room

Information regarding virtual attendance to this meeting will be posted on the Board's website at:

<https://www.maine.gov/pfr/professionallicensing/professions/real-estate-commission/home/board-meeting-information>

Time: 9:00 a.m.

Contact: Shara Chesley, (207) 624-8521
Shara.Chesley@maine.gov

- I. CALL TO ORDER**
- II. AGENDA MODIFICATIONS AND APPROVAL**
- III. MINUTES REVIEW AND APPROVAL**
Review and approval of September 19, 2024, minutes.
- IV. ADJUDICATORY HEARING**
2024-REC-20299 Director vs. Karen R. Darling
- V. PROPOSED DISMISSALS**
2021-REC-17891
- VI. PROPOSED CONSENT AGREEMENTS**
2024-REC-20376
2024-REC-20379
- VII. RULE REVIEW**
Chapter 300: GENERAL INFORMATION
Chapter 340: COMPLAINTS AND INVESTIGATIONS
Chapter 350: ADJUDICATORY HEARINGS
Chapter 360: PREREQUISITES TO LICENSURE BY INDIVIDUALS
Chapter 370: CONTINUING EDUCATION
Chapter 390: LICENSING PROCEDURES AND REQUIREMENTS
Chapter 400: AGENCY/DESIGNATED BROKER RESPONSIBILITIES
Chapter 410: MINIMUM STANDARDS OF PRACTICE

Potential to vote to initiate APA Rulemaking.

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76 NORTHERN AVE GARDINER, ME 04345

VIII. DIRECTOR'S REPORT

Qualifying Education Proctor Discussion

IX. PUBLIC COMMENT

Under this item, the Commission will offer an opportunity to members of the public in attendance to comment on any public matter under the jurisdiction of the Commission. While the Commission members cannot take action on any issues presented, the Commission will listen to comments and may ask staff to place the issue on a subsequent agenda. At the discretion of the Chair, a time limit on comments may be set.

X. MEETING SCHEDULE

Next meeting scheduled for December 19, 2024.

XI. ADJOURNMENT

**Minutes of the Maine Real Estate Commission Meeting
September 19, 2024**

| | |
|-------------------------------|------------------------------------|
| <u>MEMBERS PRESENT</u> | <u>STAFF PRESENT</u> |
| Edie Fontaine, Chair | Catherine Pendergast, Director |
| Leanne Nichols, Vice Chair | Jeffrey Hill, Deputy Director |
| Forrest C. Peterson | Lisa Wilson, AAG |
| Jane B. Towle | Shara Chesley, Office Specialist I |
| | |
| | |
| <u>MEMBERS ABSENT</u> | |
| Charles Brawn | |
| | |

Location: 76 Northern Ave Gardiner, ME

Start: 9:00 a.m.

Adjourn: 9:28 a.m.

I. CALL TO ORDER

The meeting was opened by Chair Fontaine at 9:00 a.m.

II. AGENDA MODIFICATIONS

A motion was made by Nichols and seconded by Towle to add dismissals 2021-REC-17782 and 2021-REC-17858 to the agenda. Unanimous.

III. MINUTES REVIEW AND APPROVAL

A motion was made by Fontaine and seconded by Nichols to approve the minutes of the July 24, 2024, meeting. Unanimous.

IV. DECISION & ORDER

2024-REC-19739 Lalah Kargar. A motion was made by Fontaine and seconded by Towle to accept the Decision & Order as written. Unanimous.

V. PROPOSED DISMISSALS

A motion was made by Nichols and seconded by Fontaine to approve the dismissal of case numbers 2021-REC-17782; 2021-REC-17855; and 2021-REC-17858. Unanimous.

VI. CONSENT AGREEMENTS

A motion was made by Nichols and seconded by Towle to approve the proposed consent agreements for case numbers: 2024-REC-19894; 2024-REC-20228; 2024-REC-20259. Unanimous.

VII. DIRECTOR'S REPORT

The Director presented an application for consideration. A motion was made by Peterson and seconded by Nichols to direct staff to issue the license. Unanimous.

The Director provided an update on the *Reasonable Care and Diligence Core Course*. Twenty-nine people attended instructor training on August 29, 2024. The new Core Course is effective October 1, 2024.

VIII. PUBLIC COMMENT

None.

IX. MEETING SCHEDULE

The next meeting is currently scheduled for Thursday October 17, 2024.

X. ADJOURNMENT

A motion was made by Fontaine and seconded by Nichols to adjourn the meeting at 9:28 a.m. Unanimous.



Office of Professional & Occupational Regulation

Real Estate Commission
Catherine E. Pendergast, Director

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MEMORANDUM

To: Real Estate Commission Member
From: Catherine E. Pendergast, Director
Date: November 15, 2024
Subject: Rule Review

Following please find proposed rule changes for the following:

Chapter 300: GENERAL INFORMATION
Chapter 340: COMPLAINTS AND INVESTIGATIONS
Chapter 350: ADJUDICATORY HEARINGS
Chapter 360: PREREQUISITES TO LICENSURE BY INDIVIDUALS
Chapter 370: CONTINUING EDUCATION
Chapter 390: LICENSING PROCEDURES AND REQUIREMENTS
Chapter 400: AGENCY/DESIGNATED BROKER RESPONSIBILITIES
Chapter 410: MINIMUM STANDARDS OF PRACTICE

Department staff has reviewed the proposed rules and suggested additional changes. The most substantive changes are:

- Addition of Flood Disclosure in Chapter 410
- An application for a live delivery continuing education course may also seek approval for synchronous delivery of that program without a separate application. Only asynchronous delivery programs must be completed with a minimum grade of 85%.
- Addition of information regarding licensing requirements for individuals and agencies

Other changes have been made to address:

- Formatting
- Consistency (e.g. use of the word “course” and “program”).
- Deletion of sections that are covered in other sections of law (e.g. preservation of records for public inspection is covered by FOAA – Title 1 Chapter 13, Ex-Parte Communications).
- Moving sections to more logical locations to improve the flow of material

Many changes are highlighted in yellow to assist with identification of new material.

DRAFT – FOR DISCUSSION PURPOSES ONLY

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 300: ~~GENERAL INFORMATION~~ COMMISSION MEETINGS

SUMMARY: This rule establishes ~~standards~~ guidelines relating to ~~the conduct of meetings, and the format and content of agendas, and the election of a Chairperson to preside over Commission meetings, maintenance of records and filing of documents or fees.~~ the conduct of meetings, and the election of a Chairperson to preside over Commission meetings.

SECTION ~~Section~~ 1. Meetings

Meetings shall be called by the Chair~~person~~ man or a majority of the members whenever such meetings are deemed necessary for carrying out the business of the Commission, but the Commission shall not meet less than four (4) times a year.

SECTION ~~Section~~ 2. Meeting Notices

The Director shall be responsible for distributing meeting notices to the members and to others as required by statute or rule. Notices may also be provided to others deemed to have an interest in the business before the Commission.

SECTION ~~Section~~ 3. Meeting Agendas

1A. An agenda for meetings shall be prepared by the Director and shall include business requiring consideration or action by the members. The agenda shall also include all business items requested by the members provided such request is received by the Director at least seven (7) days in advance of the meeting.

2B. Business not included on the agenda may be considered following an affirmative vote of a majority of the members present.

Section 4. — Records

~~— The Director shall have custody of the Commission seal and shall maintain a record of all business conducted by the Commission. The Director shall preserve, subject to the provisions of 5 M.R.S.A. Chapter 6, all books, documents and papers entrusted to his the Director's care. Records shall be opened to public inspection subject to 1 M.R.S.A. Chapter 13. Delays in making records available for inspection may be occasioned by action necessary to preserve the security of records, to obtain legal advice, or to avoid disrupting regular business activities and for these reasons it is recommended that requests be submitted three (3) business days in advance of anticipated inspection.~~

~~Access to written communication with the Assistant Attorney General, criminal history records, materials relating to license examinations and other records may be restricted subject to 1 M.R.S.A. Chapter 13.~~

SECTION 54. Filing of Applications, Documents and Fees with the Commission

Whenever the statutes or rules specify filing with the Commission it shall be construed to mean the Director of the Commission. The Director shall be responsible for transmitting the information to the members if notice or action by the members is required. Timely filing with the Director shall be considered timely filing with the members.

SECTION 65. Election of the Chairperson

The Chairperson shall be elected annually by the members ~~at the first meeting in December of each year and shall take office on the following January 1st.~~ The Commission members may also elect a Vice Chairperson to preside over meetings in the absence of the Chairperson.

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 340: COMPLAINTS AND INVESTIGATIONS

SUMMARY: This rule establishes guidelines and procedures for filing complaints, conducting investigations and disposition of matters following investigations.

SECTIONSection 1. ~~Verified~~ Complaints

Pursuant to 32 M.R.S. § 13069(6), the Director may receive and process written complaints. A copy of a written ~~verified~~ complaint, ~~signed under oath~~, alleging activities in violation of Title 32, M.R.S.A. Chapter 114 of the Maine Revised Statutes, or concerning the qualifications of any Commission licensee, shall be sent ~~by regular mail and e-mail~~ to the last known ~~contact information address~~ of the ~~person-licensee~~ against whom the complaint is filed. A copy of the complaint will also be sent to and his the licensee's designated broker.

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~~The Commission~~ Director will ~~together with a~~ request ~~for for~~ the licensee provide a written response to the allegation(s) contained in the complaint.

~~The~~Any related investigation may also include such other inquiries as may be deemed appropriate in order to complete the processing of the complaint according to the provisions of 32 M.R.S.A. § 13067-A or § 13174.

SECTIONSection 2. Other Investigations

An investigation may be conducted based upon information other than a ~~verified-written~~ complaint if such information provides prima facie evidence of a violation of Title 32 M.R.S.A. Chapter 114 of the Maine Revised Statutes, or if the information raises a substantial question regarding the qualifications of any applicant or licensee.

SECTIONSection 3. Member Request for Investigation

A member of the Commission may file a complaint or request an investigation, but such complaint or request shall serve to disqualify the member from participating in a hearing or a consent agreement regarding consideration of the issue ~~complaint and/or investigation~~. ~~He~~ The member shall be prohibited from discussing the issue with other members, except as a witness or party, until after final agency-Commission action and the time for filing an appeal has lapsed or appeal rights have been exhausted.

SECTIONSection 4. Prohibited Communications

1. —The members shall avoid discussing, except with adequate notice and opportunity for all parties to participate, any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, until after final ~~agency~~ Commission action and the time for filing an appeal has lapsed or appeal ~~remedies~~ rights have been exhausted.

2. —This rule shall not be construed to limit:

A. ~~†~~The members at Commission meetings from discussion among themselves or with the attorney for the Commission. ~~These rules shall not be construed to limit~~

A.B. ~~e~~Communications regarding closed matters, investigations in general, inquiries regarding the status of a specific case, or other matters not relating to issues of fact or law concerning a specific case.

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 350: ADJUDICATORY HEARINGS

SUMMARY: This rule establishes policies, guidelines and procedures relating to adjudicatory proceedings which come before the Commission.

SECTION ~~Section~~ 1. Hearings in General

Commission hearings shall conform to the [Maine Administrative Procedures Act, Title 5, Chapter 375 of the Maine Revised Statutes](#) ~~5 M.R.S.A. Chapter 375~~.

SECTION ~~Section~~ 2. Duties and Responsibilities of the Chair ~~person~~ man

The Chair ~~person~~ man or an alternate designated by the Commission shall preside at a hearing in a manner affording consideration of fair play and compliance with the constitutional requirements of due process. The Chair ~~person or their alternate~~ man shall also have authority to:

- ~~A~~1. ~~Hold a conference for the simplification of issues~~ pre-hearing conferences;
- ~~B~~2. Issue subpoenas requested by the parties;
- ~~C~~3. Place witnesses under oath;
- ~~D~~4. Take action necessary to maintain order;
- ~~E~~5. Rule on motions and procedural questions arising during the hearing;
- ~~F~~6. Call recesses or adjourn the hearing; and
- ~~G~~7. Prescribe and enforce general rules of conduct and decorum.

SECTION ~~Section~~ 3. Role of Commission Members

The members collectively shall be responsible for reviewing evidence and hearing testimony and argument in order to:

- ~~A~~1. Determine whether or not the alleged conduct was supported by the evidence;

- ~~B2.~~ Determine whether or not the conduct was a violation of Title 32 M.R.S.A., Chapter 114 of the Maine Revised Statutes and/or related Commission rules;
- ~~C3.~~ Determine and impose appropriate sanctions; and
- ~~D4.~~ Determine whether or not to issue cease and desist orders, and to issue such orders.

~~Section 4.~~ Ex Parte Communications

~~— A member shall not discuss an issue of fact or law concerning a case or pending appeal which comes before the Commission, except with notice and opportunity for participation by all parties. This rule shall not be construed to limit a discussion that does not relate to the merits of a case, such as scheduling or procedural issues. A member shall not be limited from discussing a case at meetings with the attorney for the Commission.~~

~~Section 5.~~ Parties

~~— Parties in a Commission hearing, with the exception of the Director or the Director's designee and an intervenor, shall be limited to:~~

- ~~A. — The person against whom the allegation is made; or~~
- ~~B. — The person whose qualifications are in question.~~

~~SECTION~~Section 64. **Intervention**

An application for intervention in a Commission proceeding shall be filed, except for good cause shown, at least seven (7) days in advance of the scheduled hearing. Rulings by the Chair~~personman~~ shall be subject to the provisions of 5 M.R.S.A. § 9054.

~~SECTION~~Section 57. **Order of Proceedings**

The order of proceedings, unless modified by the Chair~~person~~ or alternate ~~man~~ designated to facilitate the hearing, shall be as follows:

- ~~A1.~~ The party bringing the action may offer an opening statement;
- ~~B2.~~ The party defending against the action may offer an opening statement;
- ~~C3.~~ The party presenting evidence in support of the action may offer ~~their~~his case;
- ~~D4.~~ The party defending against the action may cross examine each witness;
- ~~E5.~~ The party defending against the action may offer ~~their~~his case;

~~F6.~~ The party in support of the action may cross examine each witness; and

~~G7.~~ Each party may offer a closing statement ~~at the hearing or in writing within seven (7) business days following the hearing.~~

SECTION 86. Subpoenas

A party shall be entitled to the issuance of subpoenas in the name of the Commission subject to the provisions of 5 M.R.S. ~~A.~~ § 9060. Subpoenas shall be requested, except for good cause, at least ten (10) days in advance of a scheduled hearing. Subpoenaed witnesses shall be paid the same fees for attendance and travel as in civil cases before the courts. Fees shall be paid by the party requesting the subpoenas when the request is submitted.

SECTION 97. Appeals of Director's Decisions

The decision of the Director ~~to:~~

~~A. Deny a license or license renewal; or~~

~~B. Deny, suspend or revoke approval of a qualifying educational course or a continuing education course~~

may be appealed ~~for and set for a hearing before the Commission. in any of the following circumstances:~~

~~A. Denial of an examination for licensing; or,~~

~~B. Denial of a license or license renewal.~~

The request for an appeal ~~for a hearing before the Commission~~ shall be made in writing within thirty (30) days following the receipt of the decision of the Director.

Section SECTION 10. Notice of Hearings

Notice of a hearing shall be given to all parties at least ten (10) days prior to the date on which the hearing is to be held.

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 360: ~~PREREQUISITES TO~~ REQUIREMENTS FOR INDIVIDUAL LICENSURE OF INDIVIDUALS BY INDIVIDUALS APPROVAL OF QUALIFYING EDUCATION COURSES

Summary: This chapter establishes the ~~educational guidelines which must be met by individuals in order to qualify for licensure under Title 32, MRSA Chapter 114 of the Maine Revised Statutes~~ minimum requirements for pre-licensure courses.

SECTION 1. Policy Statement

~~The Commission shall encourage the development and delivery of high quality pre-licensure courses throughout the state. In an effort to heighten professionalism within the real estate industry, the Commission shall encourage degree granting institutions in the state to develop and deliver such courses.~~

SECTION 12. Definitions

1. **Qualifying Educational ~~Program~~ Course.** “Qualifying educational ~~program~~ ~~course~~” means a ~~program or course of study~~ ~~course~~ which meets one or more of the minimum competencies defined in the Commission-approved models entitled “The Sales Agent Course,” “The Associate Broker Course” or “The ~~Broker~~/Designated Broker Course.” These courses shall be ~~sponsored~~ provided by a degree-granting institution, a proprietary school or a public school adult education program that follows the Commission-established procedure for approval.
2. **~~Program Course~~ Sponsor Provider.** A “~~program course~~ ~~sponsor~~ provider” shall be defined as that individual, group of individuals, or organization responsible for the development, coordination, administration and delivery of a ~~course or program~~.
3. **Satisfactory Completion.** “Satisfactory completion” of a ~~course or program~~ shall mean having met all minimum requirements established by the ~~sponsor~~ program course provider for the ~~course or program~~ and having achieved a grade of at least 75%.

SECTION 32. Approval of a Qualifying Educational ~~Program~~ Course

1. Syllabus

The ~~program~~ ~~course~~ ~~sponsor~~ provider shall submit the course syllabus, on a form furnished by the ~~ed~~Director, setting forth how the course will meet ~~ing~~ the minimum

course competencies set for each course ~~as described in Section 53 of this chapter for each pre-licensure course~~ offered. The syllabus, at a minimum, must contain:

- A. Name, address, phone number of the ~~sponsor-program~~course provider;
- B. ~~Name, address, phone number of the instructor~~ Instructor qualifications, including a resumé, showing the ability and competence of the instructor to teach the curriculum;
- C. Course title;
- D. Course start and end dates;
- E. Class session times;
- F. Course text titles and publishers;
- G. A timed class session-by-session breakdown of the content and concepts to be covered, with quiz and test dates noted and an instructor manual (as applicable);
- H. Grading policy;
- I. Attendance policy; ~~and~~
- J. Final course examination and answer key; ~~and~~

~~K. A policy on cheating; and-~~

~~K.L. The Course application fee.~~

~~The course sponsor shall submit the syllabus and the filing fee to the director at least 30 days prior to the first class session. A syllabus received less than 30 days prior to the first class session will be assessed a late filing fee.~~

2. Reporting ~~Program Course~~ Changes

The ~~course-program~~ course sponsor-provider shall report any substantial change in a submitted or approved course syllabus to the ~~d~~Director. Changes must be approved prior to being offered in an approved course.

3. Syllabus Review

~~The director, within 30 days of receipt of a complete syllabus, shall notify the sponsor, in writing, of the approval or denial of the syllabus. The Director shall provide written notification to the provider of the approval or denial of the syllabus within thirty (30) days of receipt of a complete syllabus for a course provided in a live format, and within forty-five (45) days of receipt of a complete syllabus for a course provided in any format other than a live format.~~

~~4. Appeal of Denial to the Commission Director~~

~~A sponsor program provider who is aggrieved by denial of syllabus approval may request a hearing before the Commission to appeal the decision. Such a request shall be made in writing, and shall be submitted within thirty (30) days of receipt of the denial of the syllabus.~~

~~5.4. Distribution of Course Guidelines and Syllabus~~

At the first class session, the ~~sponsor program~~ course provider shall disseminate to students the course guidelines developed by the Commission and the syllabus.

~~6.5. Advance Notice to Course Participants~~

~~Program~~ Course Providers shall not advertise courses as approved, enroll students or conduct classes for which students expect to meet the course requirement for the purposes of obtaining a license prior to receiving written approval from the Director.

Upon commencement of the first class session of a pre-licensure ~~educational program~~ course, the instructor shall read and distribute to the students ~~one of the following statements: If the syllabus for the course has been approved, Statement #1 is to be read. If the syllabus for the course has not been submitted or the course has not received approval, Statement #2 is to be read.~~

~~Statement #1~~ — “The Maine Real Estate Commission is committed to quality real estate education. Toward this goal, the syllabus for this pre-licensure course has been reviewed and approved as meeting the guidelines established by the Commission. These guidelines and the syllabus have been distributed for your information. At the end of this course, you will be given an opportunity to critique this course and its delivery. The Commission welcomes your comments regarding your experience in this course.”

~~Statement #2~~ — “The Maine Real Estate Commission is committed to quality real estate education. To achieve this goal, the syllabus for each pre-licensure course must be submitted and approved before the course is promoted as meeting pre-licensure requirements. The syllabus for this course has not been approved. Unless and until it is approved, you may not assume that successful completion of this course will qualify you for licensure.”

~~7.6. Student Enrollment Report~~

The ~~course program sponsor~~ course provider shall be responsible for submitting a completed enrollment report, in a format approved by the ~~director~~ Director, within thirty (30) days of the completion of each pre-licensure course.

~~8.7. Evaluations Required~~

The ~~course~~program sponsor ~~course~~ provider shall distribute course evaluation forms to students for their critique of the learning experience. A summary of the student evaluations shall be submitted to the ~~d~~Director with the enrollment report.

9.8. Transcripts

The ~~course~~program sponsor ~~course~~ provider shall provide a course transcript to all students who demonstrate satisfactory completion ~~successfully completing of~~ the course. Such transcript shall, at a minimum, include the course title, student's name, final numerical grade, beginning and course completion date and be signed by the course ~~sponsor~~ provider. Electronic signatures are acceptable. Program Course Providers shall retain for a period of at least five (5) years a copy of the roster of students who were issued transcripts for a period of at least five (5) years and provide a copy to the Director upon request.

10. Disciplinary Action 109. Revocation or Suspension of the Approval of a Qualifying Education Course at Program

The dDirector may revoke or suspend their Approval of a pre-license courses a qualifying educational program course may be revoked or suspended for based upon for a violation of this chapter. The programcourse provider may appeal the Director's decision and request a hearing in accordance with Chapter 350, Section 7 of Commission rules. before the Commission to appeal the decision to revoke or suspend approval. Such a request shall be made in writing and submitted within thirty (30) days of receipt of notice of the revocation or suspension of approval. Refer to hearing procedure.

104. Prohibition Against Recruiting

The course ~~sponsor~~ provider shall not allow anyone to use the school's premises or classroom (including distance or virtual platforms) to recruit new affiliates for any real estate brokerage company.

112. Remedial Action for Issues Identified During Audit

The course provider shall, without delay, take action to address and correct any issues identified by the Director during staff audits of qualifying educational courses.

SECTION 43. Educational Requirements For Licensure

1. Real Estate Broker

A. An applicant who has been licensed as an associate broker affiliated with a real estate brokerage agency for two (2) years within the five (5) years immediately preceding the date of application must submit evidence of satisfactory completion of a qualifying educational program which covers the minimum competencies defined in the Commission approved model entitled "The Broker/Designated Broker Course." The application for licensure must be

submitted within one ~~(1)~~ year of completion of this qualifying educational program.

~~2. Associate Real Estate Broker~~

~~An applicant who has practiced as a real estate sales agent for two (2) years within the five (5) years immediately preceding the date of application must submit a course transcript confirming that the applicant successfully completed the qualifying educational program which covers the minimum competencies defined in the Commission approved model entitled “The Associate Broker Course” and a course completion certificate for a three hour continuing education program approved as meeting the core educational requirement.~~

~~3. Real Estate Sales Agent~~

~~As a prerequisite to examination, an applicant for a sales agent license must, within one year of completion of the course, submit a course transcript confirming that the applicant successfully completed a qualifying educational program which covers the minimum competencies defined in the Commission approved model entitled “The Sales Agent Course”. If the one year expiration of the course transcript occurs after March 16, 2020 and while testing sites are closed or have limited hours, then the applicant may apply for examination up to 180 days after examination testing sites are fully reopened.~~

SECTION 4. Commission Established Minimum Competencies

~~1. Generally~~

~~The Commission shall establish minimum competency requirements for all levels and types of licensure. Educational models and examinations shall be designed to satisfy these requirements.~~

~~2. Annual Review~~

~~The Commission, on an annual basis, shall review the minimum competencies required for all levels and types of licensure as required.~~

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 370: CONTINUING EDUCATION

SUMMARY: This rule sets forth the policy and guidelines for review and approval of programs continuing education courses and sets forth limitations on clock hours which will be accepted for credit toward continuing education requirements for license renewal.

SECTION 1. Policy Statement Generally

~~The Commission shall encourage the development and delivery of high quality real estate educational programs, and, in an effort to stimulate opportunity for professional growth of licensees, shall encourage development and delivery of programs at graduated levels of study.~~

In reviewing and approving a program course application, the Director shall consider:

1. Program Course content as it contributes to the ability of the licensee to serve and meet the needs of his clients and customers;
- B2. Program Course content as it assists a licensee to keep informed concerning real estate laws, regulations, and practices; and
- C3. Geographic availability to licensees.

SECTION 2. Definitions of Terms

- A1. Real Estate Continuing Educational Program Course. ~~Real estate eContinuing educational program course~~ shall be defined as a planned learning experience of at least ~~two (2)~~ one (1) hours of instruction time ~~excluding not including quizzes or exams~~, designed to promote development of knowledge, skills, and attitudes pertaining to real estate brokerage as that term is defined in Title 32, Chapter 114 of the Maine Revised Statutes.
- B2. Real Estate Continuing Education Program Course Sponsor Provider. A real estate continuing education program sponsor course provider shall be defined as that individual, group of individuals, or organization responsible for the development, coordination, administration and delivery of a real estate continuing education course program.

~~C3.~~ Real Estate Continuing Education Program Course Instructor. A real estate continuing education program course instructor shall be defined as an individual appointed to impart knowledge or information to licensees participating in a real estate continuing education course program.

~~D.~~ Distance Education. ~~A continuing education distance education course is a program whereby instruction does not take place in a traditional classroom setting but rather where teacher and student are apart and instruction takes place through other media. Distance education programs include but are not limited to those which are presented through interactive classrooms, computer conferencing, interactive computer, the internet and by written correspondence course.~~

4. Synchronous Distance Education

A real estate continuing education courses program offered via electronic means with real time visual and audio interaction between instructor and student, shall qualify as classroom education if the instructor or a proctor can continuously view all participating students on their monitor or other viewing device or screen, or otherwise demonstrate to the Commission's satisfaction the capability to track and record the presence and participation of students.

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5. Asynchronous Distance Education

A real estate continuing education program courses where the instructor and students engage with course content at different times and from different locations, must include a comprehensive examination to be completed by the licensee before a grade or credit may be awarded. A copy of the examination must accompany the application for program approval.

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~~E6.~~ Core Course Educational Requirement. ~~A core educational requirement~~ The core course shall be defined as a mandatory three (3) clock hour course which follows a includes all of the Commission approved components for a core course. The Commission-prescribed curriculum for this course may be obtained from the Director.

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~~SECTION 3.~~ Continuing Education Program Course Criteria

~~A1.~~ Subject Matter. Consistent with 32 M.R.S. ~~A~~ § 13197(2), the following real estate related topics shall be acceptable subject matter for real estate continuing educational programs courses:

~~1A.~~ Property valuation;

~~2B.~~ Construction;

~~3C.~~ Contract and agency law;

~~4D.~~ Financing and investments;

~~5E.~~ Land use, planning, zoning and other public limitations on ownership;

- 6F. Landlord-tenant relationships;
- 7G. License laws, rules and standards of professional practice;
- 8H. Taxation;
- 9I. Timeshares, condominiums and cooperatives;
- 10J. Staff supervision and training;
- 11K. Office management;
- 12L. Brokerage-related technologies;
- 13M. Diversity, Equity, Inclusion and Fair Housing; and
- 12N. Any additional topic which is approved by the Director.

~~B. Examination. Each asynchronous distance education course must include a comprehensive examination to be completed by the licensee before a grade or credit may be awarded. A copy of the examination must accompany the application for program approval.~~

2. Continuing Education Program Accepted Modes of Continuing Education Course Delivery

A. Live In-Person Classroom Education

A continuing education course may be presented in a live, in-person format.

B. Distance Education

A continuing education course may be presented through distance education, so long as it meets the following criteria:

(i) Synchronous Distance Education

Synchronous distance education shall qualify as classroom education may be approved if the instructor or a proctor can continuously view all participating students on their monitor or other viewing device or screen, or otherwise demonstrate to the Commission's satisfaction the capability to track and record the presence and participation of students.

B(ii) Asynchronous Distance Education

Asynchronous distance education may be approved if it includes ~~must include~~ a comprehensive examination to be completed by the licensee before a grade or credit may be awarded. A copy of the examination must accompany the application for ~~program~~ course approval.

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SECTION 4. Continuing Education Program Course Approval Administrative Procedure Applications

A1. Applications. An application for course approval as a real estate continuing education provider adopted by the Commission for program approval shall be furnished by the Director. An application for live in-person classroom delivery education may also be deemed as seeking seek approval to deliver the same course via synchronous distance education approval without submitting a separate application. This application shall at a minimum require the following information on the following:

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1A. Sponsor Name and contact information for the real estate continuing education provider;

B. The mode of delivery of the course;

2C. The qualifications of the real estate continuing education instructor to teach the curriculum, including a resumé; qualifications, including a resume, showing the ability and competence of the instructor to teach the curriculum;

3D. A description of the content and methodology of the programcourse;

4E. Length of program with aA timed outline and, as applicable, a copy of the instructor manual (as applicable);

5F. A statement of Learning objectives;

6G. Assessment of learning objectives;

7FH. A description of what participants need for successful completion of the programcourse; and- Requirement for completion.

I. Application fee.

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The completed application and the fee shall be submitted to the Director. Applications submitted after the first course session will be assessed a late filing fee.

B. Program Evaluation. A program evaluation shall be required and the results shall be made available to the Director upon request. An evaluation form may be obtained from the Director. A summary of student evaluations shall be submitted when an application for renewed approval is submitted.

C. Reporting Program Changes. A change in a submitted or approved program application shall be reported to the Director. A change in program content or instructor shall be reviewed and approved in advance of the scheduled program.

D2. Continuing Education Program Course Approval. The Director, within thirty (30) days of receipt of a completed application, shall notify the ~~sponsor~~ real estate continuing education provider, in writing, of the terms and duration of the approval, or the reasons for denial.

E3. Appeal of the Decision of the Director to "Deny Program Approval." A ~~sponsor real estate continuing education provider who is aggrieved by denial of program approval may request a hearing to appeal the decision. Such request shall be made in writing, and shall be submitted within thirty (30) days of receipt of denial of application.~~

4. Reporting Program Course Changes. A change in a submitted or approved real estate continuing education ~~program~~ course application shall be reported to the Director. A change in content or instructor shall be reviewed and evaluated in advance of the scheduled ~~program~~ course, and the Director's decision to approve or deny the change will be communicated in writing, ~~and is subject to the appeal rights set forth in Section 4, subsection 3 of this chapter.~~

SECTION 5. Program Course Completion, Evaluation and Renewal.

1. Program Course Completion. The ~~sponsor~~ real estate continuing education provider, following ~~program~~ course delivery, shall issue a certificate of course completion to each licensee successfully completing the course and prepare a roster of licensees successfully completing the course. The ~~sponsor~~ course provider shall retain the roster of licensees completing the course for a period of not less than ~~three (3)~~ four (4) years.

2. Evaluation. A ~~program~~ course evaluation shall be required, and the results shall be made available to the Director upon request. An evaluation form may be obtained from the Director. A summary of student evaluations shall be submitted when an application for renewed approval is submitted by a ~~real estate continuing education~~ course provider.

F. Program Completion. The ~~sponsor provider~~, following program delivery, shall issue a certificate of course completion to each licensee successfully completing the course and prepare a roster of licensees successfully completing the course. The ~~sponsor provider~~ shall retain the roster of licensees completing the course for a period of not less than ~~three (3)~~ four (4) years.

G3. Program Course Renewal Application. A ~~renewal~~ application adopted by the Commission for ~~program course renewal approval~~ shall be furnished by the Director. This renewal application shall require ~~information on~~ the following information:

~~4A.~~ ~~Sponsor~~ Name and contact information for the real estate continuing education ~~P~~provider;

B. The mode of delivery of the course;

~~2C.~~ Name and contact information for real estate continuing education ~~I~~instructor;

~~3D.~~ Length of program with ~~t~~Timed outline and instructor manual (if applicable);

~~4E.~~ Title of the continuing education ~~program~~course;

~~5F.~~ Program-Course approval number;

~~6G.~~ List of dates, times, and locations course was held;

~~7H.~~ List of future dates, times, and locations;

~~8I.~~ Statement by ~~sponsor~~ real estate continuing education provider on the extent to which the identified learning objectives were met;

~~9J.~~ Description of any changes implemented to ensure that the learning objectives will be met in the future; and

~~10K.~~ Summary of student evaluations; and-

L. The renewal ~~A~~application fee.

~~The completed application and the fee shall be submitted to the Director.~~

~~H4.~~ Approval Expiration. ~~Sponsors~~ Real estate continuing education Course ~~P~~providers who promote and conduct continuing education courses as approved once the course approval has expired; may be subject to suspension or revocation of approval of additional continuing education courses.

SECTION~~Section 56.~~ Program-Course Advertisement

~~Program-Course~~ providers shall not advertise courses as approved, enroll students or conduct classes for which students expect to receive continuing education credit prior to receiving written approval from the Director. An advertisement for ~~an educational program~~course shall include the following:

~~A1.~~ A course description sufficient to identify the subject matter to be covered;

~~B2.~~ Identification of the level of instruction real estate continuing education course provider;

~~C.~~ Identification of the method or format of instruction;

D. ~~A statement of program objectives; and~~

B3. Notice indicating the ~~program-course~~ has been approved by the Director for continuing education and the number of clock hours to be received upon satisfactory completion of the ~~programcourse~~.

~~SECTION 67.~~ Advance Notice to ~~Real Estate Continuing Education Program Course~~ Participants

Upon commencement of each ~~programcourse~~, participants shall be informed of the following:

"This ~~program-course~~ has been approved by the Director of the Real Estate Commission for (#) clock hours toward fulfillment of the educational requirements for renewal of a real estate license."

"The Commission is interested in the quality and delivery of ~~continuing education~~~~at~~ ~~programs-courses~~ which are offered to licensees and, therefore, welcomes and encourages comments regarding ~~program-course~~ subject matter and quality of the delivery of the ~~programcourse~~."

~~SECTION 78.~~ ~~Limitations on Obtaining~~ Clock Hours ~~Qualifying for License Renewal or~~ ~~Reactivation~~

A1. As a prerequisite of renewal of a license, applicants must complete twenty-one (21) clock hours of continuing education courses prior to the date of application. Three (3) of those clock hours must consist of the core course approved by the Commission, and the remaining eighteen (18) hours may consist of any combination of other approved continuing education courses that otherwise meet the criteria set forth in this chapter.

2. A licensee shall complete ~~a~~ a real estate continuing education~~at~~ ~~program-course~~ in its entirety in order to be eligible for continuing education approval.

B32. A licensee, for purposes of renewal or reactivation, shall use only those clock hours which were accumulated during the preceding two (2) years. Course completion certificates may only be submitted once for the purpose of a license renewal, immediately preceding such renewal or activation license term, or, in the case of license reactivation, in the two (2) years immediately preceding the application for reinstatement.

C43. An real estate continuing education~~n~~ instructor who teaches an approved ~~program course~~ shall may receive clock hour approval for that ~~program-course~~ only once per license-renewal period ~~term~~.

~~D54.~~ Licensees who wish to use an asynchronous continuing education distance education course to activate or renew a real estate license must complete the distance education course with a minimum grade of 85%.

~~SECTION~~Section 98. Approval of Individual Requests for Real Estate Continuing Education Programs~~Courses~~ without Pre-Approval

~~A. — An Educational Program in Which a Sponsor Provider Has Not Submitted An Application for Director Approval.~~ The Director shall consider, on an individual basis, a request by a licensee for approval of a program course for which the ~~sponsor provider~~ did not seek approval, but in which the licensee participated. Approval of such a request shall be subject to the program course meeting the standards and criteria required by the Director for other real estate continuing educational programs~~courses~~. The licensee shall be responsible for submitting to the ~~D~~director a completed program course application and fee.

~~B. — Research and Real Estate Related Projects.~~ A licensee may obtain continuing education clock hours, for real estate related research from which a report, article, or thesis results, or for participation in real estate related projects, provided that the director finds that the effort has enhanced the ability of the licensee to meet the needs of his clients and customers. The licensee shall be responsible for submitting documentation and the fee for individual review to the Director.

~~SECTION~~Section 109. Disciplinary Action~~Revocation or Suspension of the Approval of a Real Estate Continuing Education Program~~Course

~~Approval of continuing educational programs may be revoked or suspended for violation of this chapter.~~

The Director may revoke or suspend their approval of a real estate continuing education program~~course based upon a violation of this chapter. The continuing education program provider may request a hearing before the Commission to appeal the decision to revoke or suspend approval. Such a request shall be made in writing and submitted within thirty (30) days of receipt of notice of the revocation or suspension of approval. Refer to Chapter 350. The course provider may appeal the Director's decision to revoke or suspend approval by requesting a hearing in accordance with Chapter 350, Section 7 of Commission rules.~~

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~~SECTION~~Section 110. Core Educational Requirement

~~C. — As of January 1, 1994, no real estate license may shall be renewed or activated unless the licensee has completed a three (3) hour continuing education program course approved as meeting the core educational requirement.~~

~~A. — Sales agent licensees shall complete a three (3) hour continuing education program course approved as meeting the core educational requirement.~~

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C. The Commission, on an annual basis, shall review the prescribed curriculum for the core educational requirement.

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 390: LICENSING PROCEDURES AND REQUIREMENTS FOR INDIVIDUALS AND ESTABLISHMENTS

Summary: This chapter establishes the procedures requirements for the different types of individual licenses issued by the Commission, provides information concerning license examinations and explains the procedure for filing license applications.

SECTION 31. Educational Requirements For Licensure and Sales Agent Examination **Individual Licenses**

1. Real Estate Broker/Designated Broker

An individual may qualify for a real estate broker license if:

A. The applicant submits an application approved by the Director with the required fee;

B. The applicant ~~who~~ has been licensed as an associate broker affiliated with a real estate brokerage agency for two (2) years within the five (5) years immediately preceding the date of license application and submits the Designated Broker's Authorization of Agency Affiliation form with their application. An individual may not submit their application any sooner than thirty (30) days prior to the expiration date of their initial associate broker license term; and

~~B. must submit evidence of satisfactory completion of a qualifying educational programcourse which covers the minimum competencies defined in the Commission approved model entitled "The Broker/Designated Broker Course."~~ The applicant completed the **Broker/Designated Broker Course** with a minimum final grade of 75% and submitted the course completion certificate (valid from one year from the course completion date).

A licensed real estate broker may act as designated broker for an agency and, as such, is responsible for the actions of the agency and its associates or employees as set forth in Chapter 400.

~~The application for licensure must be submitted within one (1) year of completion of this qualifying educational programcourse.~~

2. Associate Real Estate Broker

An individual may qualify for an associate real estate broker license if:

A. The applicant submits an application on a form approved by the Director with the required fee;

B. The applicant ~~who has practiced~~ been licensed as a real estate sales agent and affiliated with a real estate brokerage agency for two (2) years within the five (5) years immediately preceding the date of license application and submits the Designated Broker's Authorization of Agency Affiliation form with their application. An individual may not submit their application any sooner than thirty (30) days prior to the expiration date of their sales agent license term; and

C. The applicant completed the Associate Broker Course with a minimum final grade of 75% and submitted the course completion certificate.

~~must submit a course transcript confirming that the applicant successfully completed the qualifying educational program/course which covers the minimum competencies defined in the Commission approved model entitled "The Associate Broker Course"~~

D. The applicant submits ~~and a course completion certificate for a three hour continuing education program approved as meeting the core educational requirement~~ demonstrating satisfactory completion of a core course approved by the Commission.

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3. Real Estate Sales Agent

A. An individual may qualify for a real estate sales agent license if:

(i) The applicant submits an application on a form approved by the Director with the required fee; and

(ii) The applicant submits the application for licensure within one (1) year of the date of passing the examination set forth in Paragraph B with a minimum grade of 75%.

B. An individual may sit for the sales agent license ~~application~~ examination if:

(i) The applicant completed the Sales Agent Course with a minimum final grade of 75% and submitted the course completion certificate

(ii) An applicant must take and pass the examination within one year of successful completion of the course.

~~As a prerequisite to examination, an applicant for a sales agent license must submit a course transcript confirming that the applicant successfully completed a qualifying educational program/course which covers the minimum competencies defined in the Commission approved model entitled "The Sales Agent Course".~~

An applicant for a sales agent license must take and pass the sales agent license examination within one year of successful completion of the course. If the one year expiration of the course transcript occurs after March 16, 2020 and while testing sites are closed or have limited hours, then the applicant may apply for examination up to 180 days after examination testing sites are fully reopened.

1. — Expiration of Sales Agent License Examination Results

An applicant qualifying for a sales agent license must shall apply for licensure within one (1) year of the date of passing the examination. In the absence of proper application for licensure, After the expiration of one (1) year from the date of passing the examination, the applicant shall be required to meet all of the requirements for licensure as set forth in Chapter 360, Section 34(3) of the board's Commission's rules for new applicants, including the provisions of this Section.

4. Course Completion CertificateTranscript Requirement

An applicant who seeks to qualify for licensure through educational requirements shall accompany such application for licensure with an official transcript. A transcript shall include, but shall not be limited to, the followingCourse completion certificates shall include, at a minimum, the following information:

- A. Title of course;
- B. Date of completion of course;
- C. Numeric grade received; and
- D. Signature of the authorized official. Electronic signatures are acceptable.

5. Criminal History Records of Applicant

In determining eligibility for a license the Commission, in accordance with Title 5, MRSA Chapter 341 of the Maine Revised Statutes, shall may take into consideration criminal history records of the applicant. As part of the application, the applicant will be asked to submit a fee so that a State Bureau of Identification background check can be performed on the basis of the individual's name(s) and date of birth.

6. Disciplinary Actions

For all levels of licensure, applicants must indicate whether disciplinary action has been taken against any professional or occupational license that they hold or have held, and provide a copy of the documentation regarding the disciplinary action(s) taken against them.

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7. Letters of Good Standing

For all levels of licensure, applicants must submit letters of good standing from each state which they now hold, or have ever held, a real estate license.

8. Nonresident License Applying on the Basis of License in Another Jurisdiction

An individual may apply for licensure on the basis of a similar active license in good standing if:

A. The applicant submits an application on a form approved by the Director with the required fee.

1. The applicant holds a similar active license in another state or jurisdiction at the time the application is made for the Maine license. The only acceptable evidence that the applicant holds an active license in good standing is a certificate of licensure issued by the licensing jurisdiction that evidences the type of license held, the date of original licensure and a statement indicating that any complaints against the applicant have been resolved to the satisfaction of the agency.

B. The applicant passes a jurisprudence examination within one (1) year of applying for a Maine license.

C. The applicant submits the Designated Broker's Authorization of Agency Affiliation form with their application.

A nonresident license applicant, upon making application for license, shall furnish a certificate of licensure from each state in which he the applicant holds a real estate license, evidencing the type of license held, the date of original licensure and a statement indicating that any complaints filed against him the applicant have been resolved to the satisfaction of the licensing agency; and

1. Pass a written jurisprudence examination pertaining to covering Maine real estate laws. Exam results are valid for one (1) year from the date of passing the examination.

2. (Repealed)

Reporting New Designated Brokers

An agency which changes its designated broker shall report such change to the Ddirector as required by 32 M.R.S.A. §1319S.

Waiver to 9. Extension of the 2-Year Sales Agent License

The sales agent license is a two-year nonrenewable license. An otherwise non-renewable The sales agent license term may be extended, due to extenuating circumstances, for one year beyond the 2-year requirement for one (1) year, subject to the sole discretion of the Director. A request for such waiver an extension shall be made in writing and shall

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include an explanation and any supporting documentation of the extenuating circumstance necessitating the extension. The request shall be accompanied by the Sales Agent fee and this fee shall be retained whether or not the waiver is granted. The request shall be evaluated by the director.

10. Renewal of License More Than Ninety (-90) Days Beyond Expiration

Any applicant for license renewal whose license has lapsed more than ninety (90) days shall pass a written jurisprudence examination pertaining to covering Maine real estate laws may reinstate the license by paying the late fee and passing a written jurisprudence examination covering Maine real estate laws. The application must be submitted within one (1) year of passing the jurisprudence examination. This subsection does not apply to individuals who hold an expired sales agent license.

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11. Inactive Associate Broker or Inactive Broker License

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An associate broker or a real estate broker who wants to preserve a license while not engaged in brokerage activity may apply for inactive status.

A. To qualify for inactive status, the licensee must:

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(i) Submit a request for inactive status in writing and submit a change of license application fee.

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(ii) If the license is changed to inactive status at the time of renewal of an active license, submit the license renewal fee.

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B. Change of status does not change the original license expiration date, and the inactive license must be renewed every two (2) years thereafter.

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C. To reinstate a license to active status:

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(i) Inactive up to 2 years: The licensee must complete 21 clock hours of continuing education courses (including a Commission approved core course) within the previous biennium.

(ii) Inactive more than 2 years but less than 4 years: The licensee must complete 28 clock hours of continuing education courses (including a Commission approved core course) within the previous biennium.

(iii) Inactive more than 4 years but less than 6 years: The licensee must complete 36 hours of continuing education courses (including the core course) completed within the previous biennium.

Licensees who are inactive for 6 or more years must complete the Maine jurisprudence examination with a minimum grade of 75% and submit a new license application and meet all the criteria for a new license.

SECTION 2. Establishment Licenses

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1. Real Estate Brokerage Agency

To qualify as a licensed real estate brokerage agency, an applicant must:

- A. Submit an application approved by the Director with the required fee;
- B. Indicate whether the agency intends to do business under a trade name as authorized by 32 M.R.S. 13176, which may not be similar to an existing agency already licensed by the Commission.
- C. Appoint a Maine licensed real estate broker to serve as the designated broker. Every real estate broker agency must have a designated broker. While a designated broker may act as a designated broker for more than one licensed real estate brokerage agency, they may only practice real estate brokerage and receive brokerage compensation from one agency.
- D. Have a fixed and definite place of business.
- E. Establish and maintain a federally insured trust account in a financial institution authorized to do business in Maine.
- F. Provide a Federal Employer Identification Number (FEIN), or, if the agency is an individual proprietorship, a social security number.
- G. If applicable, the business entity number issued by the Maine Secretary of State.
- H. If applicable, file a list of officers of the particular business entity.
- I. Any agency holding a real estate license must be in good standing with the licensing authority in its home state and must provide letters of good standing from every state where the agency holds a license.
- J. Disclose if the agency, the designated broker or if applicable any of the applicant agency's members, officers or directors had ever been convicted by any court of any offense or whether any jurisdiction had taken disciplinary action against this agency and if so, provide supporting documentation.

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2. Real Estate Brokerage Branch Office

To qualify as a licensed real estate brokerage branch office, an applicant must:

- A. Submit an application approved by the Director with the required fee;

B. Have a fixed and definite place of business.

3. Reporting New Designated Brokers

An agency which changes its designated broker shall report such change to the Director as required by 32 M.R.S. § 13195.

4. Renewal of License Up to Ninety (90) Days Beyond Expiration

An establishment license may be renewed up to ninety (90) days after expiration by complying with all requirements for renewal and payment of an additional \$50 late fee. A license cannot be renewed after ninety (90) days and a new application must be submitted.

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 400: REAL ESTATE BROKERAGE AGENCY ~~AND~~ DESIGNATED BROKER RESPONSIBILITIES

Summary: This chapter details requirements of maintaining a real estate brokerage agency and establishes the specific supervisory responsibilities of the designated broker.

SECTION 1. Responsibilities of Designated Broker

1. Generally

The designated broker shall supervise the activities of affiliated licensees, ~~the activities of and~~ unlicensed persons ~~affiliated working with the real estate brokerage agency and~~ **involved in the operation of the real estate brokerage agency including all branch offices.**

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The supervision includes, at a minimum, the establishment of policies and procedures that enable the designated broker to review, manage and oversee the following:

- A. ~~The real~~ Real estate transactions performed by an affiliated licensee;
- B. Documents that may have a material effect upon the rights or obligations of a party to a real estate transaction in which the agency is involved;
- C. ~~The filing~~ Filing, storage and maintenance of ~~such~~ documents described in Section 1(1)(CB);
- D. The handling of money received by the real estate brokerage agency ~~for on behalf of the parties any party~~ to a real estate transaction;
- E. The advertising of any service for which a real estate license is required that is provided by the agency or affiliated licensees;
- F. The familiarization by the affiliated licensee with the requirements of federal and state law governing real estate transactions; ~~and~~
- G. ~~The~~ Timely dissemination, ~~in a timely manner,~~ to affiliated licensees of all regulatory information received by the real estate brokerage agency ~~pertaining pertinent~~ to the practice of real estate brokerage; and

H. ~~The registration of any domain name for a web site in order to promote real estate brokerage services or the sale or purchase of real estate through the agency; and~~

I. ~~The development or uploading to the internet of a web site that promotes real estate brokerage services or the sale or purchase of real estate through the agency.~~

I. Registration, development and content of any internet site intended to promote (i) real estate brokerage services by the agency and affiliated licensees, or (ii) the sale or purchase of real estate through the agency.

SECTION 2. Monitoring Compliance

1. The designated broker shall establish a system for monitoring compliance with such the real estate brokerage agency's policies, rules, and procedures and systems, that includes regularly meeting with and assisting and advising s with affiliated licensees, developing and distributing company policy manuals, and offering training programs and resource materials and availability of designated broker to assist and advise.

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2. Delegation

The designated broker may designate another person to assist in administering the provisions of the Commission's rules. However, the designated broker does not relinquish overall responsibility for the supervision of affiliated licensees and unlicensed persons ~~affiliated working with~~ involved in the operation of the real estate brokerage agency.

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4. Company Policy

The designated broker shall have, and make available to agency affiliates and unlicensed persons working with the agency, a written company policy that identifies and describes the types of real estate brokerage relationships in which the real estate brokerage agency may and may not engage. In addition, the company policy must also include the procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the real estate brokerage agency, the arrangement of agency office space and the personal relationships of affiliated licensees who are representing buyers and sellers with adverse interests.

The designated broker shall review and update the written company policy as any changes are made to the policy as needed.

5. Review of Sales Agent Documents

The designated broker, at a minimum, shall review and initial, as soon as possible, all contracts, property data sheets, disclosure forms, market analyses and other

relevant information prepared by a sales agent for buyers and sellers during the first ninety (90) days of the licensing of that a sales agent is affiliated with a real estate brokerage agency. If a sales agent changes affiliated real estate brokerage agency affiliation during the license term, this requirement will apply again for the first ninety days with the new agency and the new DB is responsible. with the each real estate brokerage agency with which the sales agent affiliates. The requirements of this Subsection are not intended to affect the validity of a contract.

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SECTION 23. **Real Estate Trust Accounts**

1. **Definition of “Earnest Money Deposit”**

As used in this Section, the term “earnest money deposit” includes ~~earnest money deposits provided to a real estate brokerage agency as a good faith deposit as part of an offer to purchase real estate~~ and all other money held by the real estate brokerage agency for clients or other persons for purposes related to a real estate brokerage transaction.

2. **Various Forms of Real Estate Trust Accounts**

A real estate trust account shall be in the form of a checking or savings account and may accrue interest on an earnest money deposit provided that the accumulated interest is properly disbursed. If the parties to the transaction agree to place the earnest money deposit in something other than a real estate trust account, the real estate brokerage agency shall not hold the funds or act as trustee.

If accumulated interest is to be disbursed to a charity or other such organization, proper written notice of the intended disbursement must be posted in the public area of the agency and their website.

3. **Opening a Real Estate Trust Account**

The real estate trust account checks and bank statements must contain the real estate brokerage agency’s trade name as licensed by the commission and must be imprinted with the words “real estate trust account.”

4. **Making Earnest Money Deposits**

An earnest money deposit ~~received by~~ provided to a designated broker, as trustee, ~~as part of an offer to purchase real estate~~ shall be deposited within five (5) business days of acceptance of the offer ~~unless otherwise specified in the purchase and sale agreement~~. Other earnest money deposits received by the designated broker as trustee shall be deposited within five (5) business days of the trustee’s receipt of such earnest money deposits.

5. **Restrictions on Earnest Money Deposits in Real Estate Trust Accounts**

A designated broker, as trustee, shall not commingle ~~the~~ earnest money deposits ~~of buyers or sellers in a real estate transaction~~ with either:

A. Funds belonging to the real estate brokerage agency. This provision shall not be construed to limit deposits made by the real estate brokerage agency of an amount sufficient to maintain the account, but such amount shall not exceed \$500; or

B. Funds held for persons that do not involve the sale, purchase or exchange of real estate.

An earnest money deposit ~~shall not~~ may be utilized prior to a closing ~~for selling or buying expenses such as a title fee, survey, etc., unless agreed to in~~ only for reasons specified in writing by all parties ~~in~~ to the real estate transaction. There shall be a proper accounting for all monies held by the real estate brokerage agency and any remittance shall be made within a reasonable time, but not more than thirty (30) days, after the conclusion of the real estate transaction.

6. Maintaining Real Estate Trust Account Records

The designated broker shall be responsible for maintaining records and supporting documents sufficient to verify the adequacy and proper use of the real estate trust account. The records and supporting documents shall be maintained for a period of at least three (3) years after the date set forth in Section 7(G) of this chapter all funds are dispersed.

7. Information Included in Minimum Real Estate Trust Account Records

At a Minimum, real estate trust account records shall include a ledger or journal which records in chronological order all receipts and disbursements of funds in the real estate trust account and provides the following information:

- A. The date the earnest money deposit is received by the real estate brokerage agency;
- B. The date the earnest money deposit is received by the banking institution;
- C. The purpose of the earnest money deposit and from whom received;
- D. The purpose of the withdrawal and to whom paid;
- E. The amount of the earnest money deposit;
- F. The current running balance of funds held by the real estate brokerage agency; and
- G. The closing date of a transaction, if any, or the date the earnest money deposit was disbursed.

8. Real Estate Trust Account Supporting Documents

Real estate trust account supporting documents shall include:

- A. Bank statements;
- B. Canceled checks;
- C. Copies of contracts;
- D. Closing statements, if available;
- E. Correspondence; and
- F. Additional items necessary to verify and explain record entries.

9. Disbursement of Undisputed Earnest Money Deposits Held in Trust

Disbursement of an undisputed earnest money deposit may occur by one of the two following procedures:

- A. Authorization, in writing, from the parties to a real estate ~~brokerage~~ transaction agreeing to the disbursement; or
- B. Authorization by the designated broker who, in reasonable reliance on the terms of the purchase and sale agreement or other written documents signed by both parties, determines the appropriate disbursement of the undisputed earnest money deposit. The designated broker may, at the designated broker's own discretion, make such disbursement to release the undisputed earnest money deposit no sooner than five (5) business days after notifying ~~both~~ all parties of the designated broker's proposed decision to release the undisputed earnest money deposit. The earnest money deposit shall not be disbursed under this Subsection if prior to disbursement the designated broker receives actual knowledge of a dispute as provided in ~~Section 32~~(10) of this chapter.

10. Disputed Earnest Money

- A. Any time that more than one party to a transaction makes demand on the earnest money deposit for which the real estate brokerage agency is acting as trustee, the designated broker shall:
 - (1) Notify each party, in writing, within five (5) business days of the demand of the other party; and
 - (2) Keep all parties to the transaction informed of any actions by the designated broker regarding the disputed earnest money deposit, including retention of the earnest money deposit by the designated broker until receipt of written release from both parties agreeing to the disposition of the earnest money deposit or agreeing that the dispute has been properly resolved.
- B. After notice as provided in Section 2(10)(A)(1) of this chapter, the designated broker may reasonably rely on the terms of the purchase and

sale agreement or other written documents signed by both parties to determine the disposition of the disputed earnest money deposit and may, at the designated broker's own discretion, make such disbursement no sooner than five (5) business days after notifying both parties of the designated broker's proposed disbursement of the earnest money deposit. This discretionary disbursement by the designated broker is not a violation of ~~licensee~~ the Commission's law, but may not relieve the designated broker of civil liability.

- C. The designated broker may hold the earnest money deposit until ordered by a court of proper jurisdiction or agreement of the parties to make a disbursement. The designated broker shall give all parties written notice of any decision to hold the earnest money deposit pending a court judgment or agreement of the parties for disbursement.
- D. Absent written authorization from the party to be charged, the designated broker is not entitled to withhold any portion of the earnest money deposit when a real estate transaction fails to close even if a commission is earned. The earnest money deposit must be disposed of as provided by Section 2(10) of this chapter.

SECTION 34. Record Retention Schedules; Format

1. Generally

All real estate brokerage records, including real estate trust account and supporting records, transaction files, and other brokerage-related records, are to be under the control of the designated broker and made available to the ~~D~~irector upon request. Except for rejected offers and counteroffers, which must be kept for one (1) year from the date of the rejected offer or counteroffer, the following records must be kept by the designated broker for three (3) calendar years after all funds held by the designated broker in connection with a transaction have been disbursed ~~to the proper party~~ or until the conclusion of the transaction, whichever last occurs:

- A. The original or a true copy of all purchase and sale contracts;
- B. Listing or buyer brokerage representation agreements, appointed agent consent forms, disclosed dual agent consent forms and the Real Estate Brokerage Relationships Form required under Chapter 410, Section 9 of the Commission's rules;
- C. Property disclosure information forms, data sheets and other property information prepared by the real estate brokerage agency or one of its affiliated licensees to promote property for sale or purchase;
- D. Real Estate Trust Account ledger records, as listed in Section 2(7) of this chapter; and

- E. Real Estate Trust Account reconciliation records, as listed in Section 2(8) of this chapter; and
- F. Other transaction documents, including written documents, electronic messages including email and text messages, and any other type of document in any other format.

2. Electronic Format

Real estate brokerage records may be maintained in electronic format, as defined by Title 10, Chapter 1051 of the Maine Revised Statutes~~10 MRSA Chapter 1051~~. An electronic record means a record generated, communicated, received or stored by electronic means. Such electronic records must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the ~~D~~irector, printed records shall be produced.

SECTION 4. Examinations for Compliance with Licensing Laws

1. A real estate brokerage office may be examined for compliance with licensing-the Commission's laws;

~~-A. As a matter of routine~~ once each licensing period;

B. -aAs necessary as part of an investigation of a complaint filed with the ~~D~~irector; or

~~-C may be examined -u~~Upon receipt of prima facie evidence indicating improper use of a real estate trust account.

2. The designated broker shall produce for inspection by-to an authorized representative of the Commission any document or record reasonably necessary for investigation or audit in the enforcement of Title 32, Chapter 114 of the Maine Revised Statutes~~32 MRSA Chapter 114~~ and ~~in enforcement of~~ the rules promulgated by the Commission.

3. Failure to submit such documents or records as requested by the ~~D~~irector or authorized representative of the Commission shall be grounds for disciplinary action. ~~The examiner shall notify the agency of the results of such office examination and may file a complaint.~~

DRAFT – FOR DISCUSSION PURPOSES ONLY

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 410: MINIMUM STANDARDS OF PRACTICE

Summary: This chapter ~~clarifies and~~ establishes standards for practicing real estate brokerage.

SECTION 1. Advertising

1. Definitions

- A. **Advertise.** “Advertise,” “advertising” and “advertisement” include all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication for any purpose related to real estate brokerage activity, including, at a minimum, advertising the sale or purchase of real estate or promotion of real estate brokerage services conducted by mail, telephone, the Internet (including but not limited to the world wide web, electronic mail and social media), business cards, signs, television, radio, magazines, newspapers, and telephonic greetings or answering ~~machine~~ system messages.
- B. *(Repealed)*
- C. **Prominent.** “Prominent” means standing out so as to be seen easily; conspicuous; particularly noticeable ~~as large or larger than any other text in the advertisement.~~

2. *(Repealed)*

3. *(Repealed)*

4. *(Repealed)*

4-A. Advertising by Real Estate Brokerage Agencies

Real estate brokerage advertisements must contain the agency’s legal name or, when applicable, a brokerage has a trade name, and if applicable the its trade name as licensed by the Commission of the real estate brokerage agency that placed the advertisement. If the agency is not licensed with a trade name, the legal name shall be used. The ~~trade~~ name of the agency must be prominently ~~as large or larger than any other text~~ displayed or presented. In an advertisement that appears on or is sent

via the Internet, the ~~trade~~ name of the agency that placed the advertisement must prominently appear or be readily accessible.

~~In addition, tB.~~ The designated broker may authorize an advertisement that includes the name, telephone number, slogan, logotype or photo of an affiliated licensee or group or team of affiliated licensees as part of the brokerage services being offered by the real estate brokerage agency. The affiliated licensee or group or team of affiliated licensees may not independently engage in real estate brokerage.

5. **Written Permission of Owner Required to Advertise**

A real estate brokerage agency or its affiliated licensees shall not advertise any real estate for sale without first obtaining the written permission of the owner or the owner's authorized representative.

6. **Advertising of Exclusive Listing Held by Another Agency**

A real estate brokerage agency or its affiliated licensees shall not publish or cause to be published an advertisement that makes reference to the availability of real estate which is exclusively listed for sale by another real estate brokerage agency unless the licensee obtains the prior written consent of the designated broker who has been authorized by the owner to provide consent.

7. **Deception and Misrepresentation Prohibited**

Advertising must be free from deception and shall not misrepresent ~~the condition~~ of the real estate, terms of the sale or purchase, real estate brokerage agency policies, or real estate brokerage services.

SECTION 2. Acting in Self-Interest

A licensee holding an active real estate license shall disclose, in the offer to purchase, that the licensee is a real estate licensee:

1. When buying or selling real estate not listed with a real estate brokerage agency;
2. When buying or selling real estate listed with the licensee's real estate brokerage agency; or
3. When buying or selling real estate and sharing in the brokerage fee resulting from the sale of such real estate.

SECTION 3. Market Value

1. **When Opinion Permitted**

A licensee may provide a free opinion of value to a buyer or seller when the licensee is soliciting the buyer or seller to provide brokerage services and before an agreement to provide any services has been reached or executed.

2. **When Advice Prohibited**

At any time after the solicitation to provide brokerage services, as described in Section 3(1) of this chapter, a transaction broker may not provide advice to either party regarding market value.

3. **Provision of Comparable Market Data**

A licensee who provides comparable market data to a buyer or seller for the buyer or seller to determine market value or list price is performing a ministerial act as defined in [Title 32, Section MRSA § 13271, Subsection \(9\) of Maine Revised Statutes](#).

4. **Factors or Conditions That May Impact Client's Interest**

A licensee who represents a buyer or seller client shall advise the client of any factors or conditions actually known by the licensee, or if acting in a reasonable manner, should have been known by the licensee, that may materially impact the client's interest as it pertains to the market value of real estate.

SECTION 4. Net Listing Prohibited

A net listing shall be prohibited. A net listing is a type of listing in which the real estate brokerage agency receives, as commission, all excess money over and above the minimum sale price set by the seller.

SECTION 5. Duty to Furnish Real Estate Brokerage-Related Documents

A licensee shall furnish copies of brokerage agreements, offers, counteroffers, and all types of contracts to all parties the person signing the documents at the time of their signatures. Upon obtaining a written acceptance of an offer or counteroffer to purchase real estate, a licensee shall, within a reasonable time, deliver true, legible copies of the purchase and sale contract, signed by the seller and buyer, to both seller and buyer, or the licensee working with the other party.

SECTION 6. Disclosure of Real Estate Brokerage Agency Compensation Policy

1. **Other Agencies**

Written brokerage agreements must include a statement disclosing the real estate brokerage agency's policy on cooperating with and compensating other real estate brokerage agencies in the sale or purchase of real estate. If the real estate brokerage agency's policy is not to compensate all other real estate brokerage agencies in the same manner, this policy must be included in the statement and include a notice to

the buyer or seller that this policy may limit the participation of other real estate brokerage agencies in the marketplace.

2. **Affiliated Licensees**

When a real estate brokerage agency's policy on paying commissions to its affiliated licensees provides for an incentive to an affiliated licensee for a greater commission for an in-house sale versus transactions involving a cooperating real estate brokerage agency, this policy must be disclosed in a written brokerage agreement with a buyer or seller.

SECTION 7. Disclosed Dual Agency

A real estate brokerage agency which has a written company policy that permits disclosed dual agency shall obtain the informed written consent, as set forth in 32 M.R.S.A. § 13275, of the seller or buyer to the disclosed dual agency relationship at the time of entering into a written brokerage agreement that creates an agent-client relationship.

SECTION 8. Appointed Agent Procedures and Disclosure

1. **Designated Broker Responsibilities – Appointed Agent**

- A. A designated broker appointing an affiliated licensee(s) to act as an agent of a client shall take ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.
- B. An appointed agent may disclose to the agency's designated broker, or a designee specified by the designated broker, confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction. Confidential information shall be treated as such by the designated broker or other specified representative of the broker and shall not be disclosed unless otherwise required by [Title 32 MRSA Chapter 114 of the Maine Revised Statutes](#), or related Commission rules, or requested or permitted by the client who originally disclosed the confidential information.
- C. A designated broker who is appointed to act as the agent of the client must select a designee to fulfill the responsibilities as listed in Section 8(1)(B) of this chapter.

2. **Appointed Agent – Disclosure**

The appointed agent disclosure shall be provided to the client prior to entering into a written brokerage agreement and shall include, at a minimum, the following provisions:

- A. The name of the appointed agent and type of license held;

- B. A statement that the appointed agent will be the client's agent and will owe the client fiduciary duties which, among other things, include the obligation not to reveal confidential information obtained from the client to other licensees, except to the designated broker or the designated broker's designee, as listed in Section 8(1)(B) of this chapter, for the purpose of seeking advice or assistance for the benefit of the client;
- C. A statement that the real estate brokerage agency may be representing both the seller and the buyer in connection with the sale or purchase of real estate;
- D. A statement that other agents may be appointed during the term of the written brokerage agreement should the appointed agent not be able to fulfill the terms of the written brokerage agreement or as by agreement between the designated broker and client. At the appointment of new or additional agent(s), the designated broker must comply with the provisions of this Section, including but not limited to, obtaining the client's signature consenting or not consenting to the appointment. An appointment of another agent as a new or additional agent does not relieve the first appointed agent of any of the fiduciary duties owed to the client; and
- E. A section for the client to consent or not consent, in writing, to the appointment.

SECTION 9. Real Estate Brokerage Relationship Disclosure Procedures

1. Real Estate Brokerage Relationships Form

The Commission incorporates into this chapter by reference the Real Estate Brokerage Relationships Form attached to this chapter. (~~Maine Real Estate Commission~~ Real Estate Brokerage Relationships Form #3 revised 07/06).

2. Obligation to Furnish Real Estate Brokerage Relationships Form

Except as provided in Section 9(3) of this chapter, a licensee shall furnish a prospective buyer or seller with a copy of the Real Estate Brokerage Relationships Form when there is substantive communication regarding a real estate transaction by either a face-to-face meeting, a written communication, or an electronic communication with the prospective buyer or seller. The licensee shall discuss the content of the form and ascertain the intent of the buyer or seller regarding representation. The licensee shall complete the statement on the form acknowledging that the prospective buyer or seller has been given the information required by Maine law regarding brokerage relationships, appropriate section of the form relating to the presentation of the form.

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3. Exceptions

A licensee is not required to provide a copy of the Real Estate Brokerage Relationships Form ~~form~~ to a prospective buyer or seller in the following instances:

~~A.~~ A. The real estate is land without a residential dwelling unit;

~~A.B.~~ The real estate is land with more than four (-4) residential dwelling units;

B. The licensee is acting solely as a principal in a real estate transaction;

C. The written communication from the licensee is a solicitation of business;
or

D. The licensee has knowledge, or may reasonably assume, that another licensee has given a copy of the form to a prospective buyer or seller in that transaction.

~~4.~~ Completion of Real Estate Brokerage Relationships Form

~~The licensee shall complete the appropriate section of the form relating to the presentation of the form.~~

SECTION 10. Solicitation of Written Brokerage Agreements

A licensee shall not solicit a written brokerage agreement from a seller or buyer if the licensee knows, or acting in a reasonable manner should have known, that the buyer or seller has contracted with another real estate brokerage agency for the same real estate brokerage services on an exclusive basis. This Section does not preclude a real estate brokerage agency from entering into a written brokerage agreement with a seller or buyer, when the initial contact is initiated by the seller or buyer, provided that the written brokerage agreement does not become effective until the expiration or release of the previous written brokerage agreement.

SECTION 11. Inducements

The offering of a free gift, prize, money or other valuable consideration by a real estate brokerage agency or affiliated licensee as an inducement shall be free from deception, and shall not serve to distort the true value of the real estate or the service being promoted. Any limitations or conditions of the offering must be prominently displayed or presented. In an offering that appears on or is sent via the Internet, any limitations or conditions of the offering must prominently appear in the offering itself, or in a page view or window that is directly and immediately accessible via a link in the offering. The link must be identified by words such as "limitations," "conditions," or "terms of offer" and must prominently appear in the offering.

A real estate brokerage agency that claims to make contributions ~~of profits or donations~~ to charities ~~as an inducement~~ must produce to the Director any records related to such contributions ~~or donations~~ upon request.

SECTION 12. Confidentiality of Offers and Purchase and Sale Contract Terms

~~During the pendency of the transaction, the real estate brokerage agency or affiliated licensee shall not disclose any terms of an offer, counteroffer or purchase and sale contract to anyone other than the buyer and seller without the prior written permission of the buyer and seller, except said documents shall be made available to the director of the Commission upon request.~~

1. Prior to the written acceptance, the written rejection or the expiration of an offer or counteroffer, Aa real estate brokerage agency or affiliated licensees shall not disclose any terms of an offer or counteroffer to anyone other than the parties to the offer or counteroffer without the prior written permission of the parties. ~~prior to the expiration or rejection in writing of the offer or counteroffer, or the offer or counteroffer has been acted upon.~~

2. Prior to a real estate transaction closing or terminating, Aa real estate brokerage agency or affiliated licensees shall not disclose the terms of an executed contract to anyone other than the parties to the agreement without the prior written permission of the parties ~~prior to the transaction closing or terminating.~~

3. Notwithstanding the confidentiality provisions contained in Section 12(1) and (2) of this chapter, The exception to these provisions is that any such documents referenced in this section shall be made available to the Director of the Commission upon request.

SECTION 13. Licensee's Duty

1. **Keep the Designated Broker Informed**

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An affiliated licensee shall keep the designated broker fully informed of all activities conducted on behalf of the agency and shall notify the designated broker of any other activities that might impact on the responsibilities of the designated broker as ~~required set forth in under~~ Chapter 400, Section 1 of the Commission's rules, including that an affiliated licensee has terminated affiliation with the agency.

2. **Provide Documents to Designated Broker**

An affiliated licensee must provide originals or true copies of all real estate brokerage documents and records prepared in a real estate transaction as listed in Chapter 400, Section 3 of the Commission's rules to the designated broker within five (5) calendar days after execution of the document or record.

3. **Domain Names and Web Sites**

A. An affiliated licensee may not directly or indirectly, through ~~himself~~ themselves or others, ~~register a domain name for or develop and upload to the Internet a website~~

~~register a domain name for a web site, or~~

~~develop or upload to the internet a web site,~~

that promotes real estate brokerage services or the sale or purchase of real estate through the agency with whom the licensee is affiliated without the consent of the designated broker.

Any web site developed or uploaded under this Section must comply with the advertising requirements ~~contained set forth~~ in Chapter 410, Section 1 ~~of the Commission's rules.~~

SECTION 14. **Licensee's Duty to Obtain and Provide Disclosure Information on Private Water Supply, Heating, Waste Disposal System, ~~and~~ Known Hazardous Materials, and Potential Flood Risks**

All licensees have a duty to obtain and provide disclosure information on private water supply, heating, waste disposal system, ~~and~~ known hazardous materials and potential flood risks regardless of their relationship with buyer or seller. Forms used by an agency to provide property disclosure information shall be filled out completely.

1. **Listing Licensee**

A listing licensee shall be responsible for obtaining information necessary to make written property disclosures, as set forth in Sections 15 to ~~48~~ 19 of this chapter, to buyers and shall make a reasonable effort to assure that the information is conveyed to a selling licensee.

2. **Selling Licensee**

A selling licensee shall be responsible for obtaining from the listing licensee the information necessary for making written property disclosures, as set forth in Sections 15 to ~~48~~ 19 of this chapter, and for assuring that the disclosures are made to buyers.

3. **Unlisted Property**

~~A licensee shall be responsible for obtaining from the seller in~~ In a real estate brokerage transaction where the property is not listed with a real estate brokerage agency, a licensee shall be responsible for obtaining from the seller or other sources to the extent possible the information necessary for making written property disclosures, as set forth in Sections 15 to ~~48~~ 19 of this chapter, and for assuring that the disclosures are made to the buyer.

SECTION 15. Private Water Supply Disclosure

A licensee listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component served by a private water supply, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller for the following information:

1. Type of system;
2. Location;
3. Malfunctions;
4. Date of installation;
5. Date of most recent water test; and
6. Whether or not the seller has experienced a problem such as an unsatisfactory water test or a water test with notations.

Such information and any other information obtained through different sources and means pertinent to the private water supply shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding the private water supply is not available shall also be conveyed, in writing, when such is the case.

SECTION 16. Heating Disclosure

A licensee listing a single-family residential property, a multifamily property or a commercial property with a residential component, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller for the following information regarding the heating system(s) and/or source(s):

1. Type(s);
2. Age of system/source(s);
3. Name of company who services system/source(s);
4. Date of most recent service call;
5. Annual consumption per system/source (i.e. gallons, kilowatt hours, cords);
6. Malfunctions per system/source within the past 2 years; and
7. Date of most recent inspection of any chimneys and any vents for the heating system or source.

Such information and any other information obtained through different sources and means pertinent to the heating system(s) and/or source(s) shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer. The fact that information pertinent to the heating system(s) and/or source(s) is not available shall be conveyed, in writing, when such is the case.

SECTION 17. Waste Disposal System Disclosure

1. Private Waste Disposal System

A licensee listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component served by a private waste disposal system, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller for the following information:

- A. Type of system;
- B. Size of tank;
- C. Type of tank;
- D. Location of tank;
- E. Malfunctions of tank;

- F. Date of installation of tank;
- G. Location of leach field;
- H. Malfunctions of leach field;
- I. Date of installation of leach field;
- J. Date of most recent servicing of system; and
- K. Name of the contractor who services the system.

Such information and any other information obtained through different sources and means pertinent to the waste disposal system shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding the waste disposal system is not available shall also be conveyed, in writing, when such is the case.

2. **Municipal or Quasi-Public Waste Disposal System**

A licensee listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component served by a municipal or quasi-public waste disposal system, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller if the seller has experienced any system or line malfunction. This information shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer.

SECTION 18. Known Hazardous Materials Disclosure

1. **Duty to Keep Informed**

A licensee shall keep informed of any federal, state or local laws, rules, regulations or ordinances concerning known hazardous materials that may impact negatively upon the health and ~~well-being~~well-being of buyers and sellers.

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2. **Duty to Disclose**

A listing licensee, and a licensee in transactions when the property is not listed with a real estate brokerage agency, shall disclose, in writing, whether the seller makes any representations regarding current or previously existing known hazardous materials on or in the real estate. In addition, the licensee shall give a written statement to the buyer encouraging the buyer to seek information from professionals regarding any specific hazardous material issue or concern. Such written representation and statement shall be conveyed to a buyer prior to or during the preparation of an offer.

3. Request for Information from Seller

A licensee listing a single-family residential property, a multifamily property, a commercial property with a residential component and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller whether the seller has any knowledge of the presence of or prior removal of hazardous materials or elements on the residential real property, including, but not limited to ~~of current or previously existing~~ asbestos, radon, lead-based paint, ~~and~~ underground storage tanks, ~~and~~ methamphetamine. Such information and any other information obtained through different sources and means pertinent to hazardous materials shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding hazardous materials is not available shall also be conveyed, in writing, when such is the case.

SECTION 19. Flood Risk Disclosure

1. Duty to Disclose – Residential Real Property

"For the purposes of this section, "Residential real property" means real estate consisting of ~~one or not more~~ not less than one nor more than four (-4) residential dwelling units.

A licensee listing for sale residential real property, and a licensee in transactions when the residential real property is not listed with a real estate brokerage agency, shall disclose, in writing, information regarding potential flood risks, including:

A. Whether, at the time the seller provides the information to the purchaser, the property is located wholly or partly within an area of special flood hazard mapped on the effective flood insurance rate map issued by the Federal Emergency Management Agency on or after March 4, 2002; the federally designated flood zone for the property indicated on that flood insurance rate map; and a copy of the relevant panel of that flood insurance rate map.

For the purposes of this paragraph, "area of special flood hazard" means land in a floodplain having a 1% or greater chance of flooding in any given year, as identified in the effective federal flood insurance study and corresponding flood insurance rate maps.

B. Whether, during the time that the prospective seller has owned the property:

(1) Any flood events affected the property or a structure on the property;

(2) Any flood-related damage to a structure occurred on the property;

(3) Any flood insurance claims were filed for a structure on the property and, if so, the date of each claim; and

(4) Any past disaster-related aid was provided related to the property or a structure on the property from federal, state or local sources for the purposes of flood recovery and, if so, the date of each payment; and

C. For the purposes of this subsection, "flood" means:

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(1) A general and temporary condition of partial or complete inundation of normally dry areas from:

(a) The overflow of inland or tidal waters; or

(b) The unusual and rapid accumulation or runoff of surface waters from any source; or

(2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event that results in flooding as described in subparagraph (1), division (a).

Such written representation and statement shall be conveyed to a buyer prior to or during the preparation of an offer.

2. Duty to Disclose – Non-Residential Real Property

"Nonresidential real property" means real estate that is not residential real property as defined [above in Section 19\(2\) of this chapter](#).

Unless the transaction is exempt under 33 M.R.S. § 192, a licensee listing for sale non-residential real property, and a licensee in transactions when the non-residential real property is not listed with a real estate brokerage agency, shall provide to the purchaser, in writing, a property disclosure statement containing the following:

1. Roads on or abutting property.

2. Road maintenance.

3. Access to the property. Information describing the means of accessing the property by:

A. A public way, as defined in Title 29-A §101(59); and

B. Any means other than a public way, in which case the seller shall disclose information about who is responsible for maintenance of the means of access, including any responsible road association, if known by the seller. Any means other than a public way, in which case the seller shall disclose

information about who is responsible for maintenance of the means of access, including any

responsible road association, if known by the seller.; and

4. Flood hazard. Information regarding potential flood risks, including:

A. Whether, at the time the seller provides the information to the purchaser, the property is

located wholly or partly within an area of special flood hazard mapped on the effective flood

insurance rate map issued by the Federal Emergency Management Agency on or after March 4, 2002; the federally designated flood zone for the property indicated on that flood insurance rate map; and a copy of the relevant panel of that flood insurance rate map. For the purposes of this paragraph, "area of special flood hazard" has the same meaning as in Title 38, section 436-A, subsection 1-C;

B. Whether, during the time that the prospective seller has owned the property:

(1) Any flood events affected the property or a structure on the property;

- (2) Any flood-related damage to a structure occurred on the property;
- (3) Any flood insurance claims were filed for a structure on the property and, if so, the date of each claim; and
- (4) Any past disaster-related aid was provided related to the property or a structure on the property from federal, state or local sources for the purposes of flood recovery and, if so, the date of each payment; and

C. For the purposes of this subsection, "flood" means:

- (1) A general and temporary condition of partial or complete inundation of normally dry areas from:
 - (a) The overflow of inland or tidal waters; or
 - (b) The unusual and rapid accumulation or runoff of surface waters from any source; or
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event that results in flooding as described in subparagraph (1), division (a).

3. Delivery and Time of Disclosure; Cancellation of Contract

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1. Definition. As used in this section, "flood risk disclosure statement" means a statement containing, at minimum, the information required in the preceding section.

2. Delivery and time of disclosure. The seller of nonresidential real property under this subchapter shall deliver or cause to be delivered a flood risk disclosure statement to the purchaser no later than the time the purchaser makes an offer to purchase, exchange or option the property or exercises an option to purchase the property pursuant to a lease with an option to purchase.

3. Terminate contract. If the seller does not deliver or cause to be delivered a flood risk disclosure statement to the purchaser before the purchaser makes an offer or exercises an option in accordance with subsection 2, the purchaser may terminate any resulting real estate contract or withdraw the offer within 72 hours after receipt of the flood risk disclosure statement.

4. Withdrawal without penalty. If the purchaser terminates a real estate contract or withdraws an offer pursuant to this section, the termination or withdrawal is without penalty to the purchaser and the seller shall promptly return to the purchaser any deposits made by the purchaser.

5. Rights waived. Any rights of the purchaser to terminate a real estate contract provided by this section are waived conclusively if not exercised prior to settlement or occupancy, whichever is earlier, by the purchaser in the case of a sale or exchange, or prior to settlement in the case of a purchase pursuant to a lease with an option to purchase. Any rights of the purchaser to terminate a real estate contract for reasons other than those set forth in this section are not affected by this section.

6. Invalidated. A transfer subject to this subchapter is not invalidated solely because of the failure of any person to comply with this subchapter.

19. SECTION 20. Referral Fees

1. Certain Referral Fees Prohibited

A licensee may not receive compensation or other valuable consideration from a title company, lender or closing company or any affiliated employee for directing a buyer or seller in a real estate transaction to a company or an individual for financing, title or closing services.

2. Disclosure of Certain Referral Fees Required

A licensee who anticipates receiving compensation or other valuable consideration from a company or person for a referral of services, other than the services listed in Section ~~49~~20(1) of this chapter or real estate brokerage services, to a buyer or seller during a real estate brokerage transaction may not accept such compensation or valuable consideration unless the licensee discloses in writing to the person paying for such service, and to the client if not the same person, that the licensee anticipates receiving such compensation or other valuable compensation for such referral.

[APA Office Note: the Real Estate Brokerage Relationships Form is a separate file in Adobe .pdf format.]

DRAFT – FOR DISCUSSION PURPOSES ONLY

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 300: COMMISSION MEETINGS

SUMMARY: This rule establishes standards relating to the conduct of meetings, the format and content of agendas and the election of a Chairperson to preside over Commission meetings.

SECTION 1. Meetings

Meetings shall be called by the Chairperson or a majority of the members whenever such meetings are deemed necessary for carrying out the business of the Commission, but the Commission shall not meet less than four (4) times a year.

SECTION 2. Meeting Notices

The Director shall be responsible for distributing meeting notices to the members and to others as required by statute or rule. Notices may also be provided to others deemed to have an interest in the business before the Commission.

SECTION 3. Meeting Agendas

1. An agenda for meetings shall be prepared by the Director and shall include business requiring consideration or action by the members. The agenda shall also include all business items requested by the members provided such request is received by the Director at least seven (7) days in advance of the meeting.
2. Business not included on the agenda may be considered following an affirmative vote of a majority of the members present.

SECTION 4. Filing With the Commission

Whenever the statutes or rules specify filing with the Commission it shall be construed to mean the Director of the Commission. The Director shall be responsible for transmitting the information to the members if notice or action by the members is required. Timely filing with the Director shall be considered timely filing with the members.

SECTION 5. Election of the Chairperson

The Chairperson shall be elected annually by the members. The Commission members may also elect a Vice Chairperson to preside over meetings in the absence of the Chairperson.

DRAFT – FOR DISCUSSION PURPOSES ONLY

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 340: COMPLAINTS AND INVESTIGATIONS

SUMMARY: This rule establishes guidelines and procedures for filing complaints, conducting investigations and disposition of matters following investigations.

SECTION 1. Complaints

Pursuant to 32 M.R.S. § 13069(6), the Director may receive and process written complaints. A copy of a written complaint, alleging activities in violation of Title 32, Chapter 114 of the Maine Revised Statutes, or concerning the qualifications of any Commission licensee, shall be sent to the last known contact information of the licensee against whom the complaint is filed. A copy of the complaint will also be sent to the licensee's designated broker.

The Director will request the licensee provide a written response to the allegation(s) contained in the complaint.

Any related investigation may also include such other inquiries as may be deemed appropriate in order to complete the processing of the complaint according to the provisions of 32 M.R.S. § 13067-A or § 13174.

SECTION 2. Other Investigations

An investigation may be conducted based upon information other than a written complaint if such information provides prima facie evidence of a violation of Title 32 Chapter 114 of the Maine Revised Statutes, or if the information raises a substantial question regarding the qualifications of any applicant or licensee.

SECTION 3. Member Request for Investigation

A member of the Commission may file a complaint or request an investigation, but such complaint or request shall serve to disqualify the member from participating in consideration of the complaint and/or investigation. The member shall be prohibited from discussing the issue with other members, except as a witness or party, until after final Commission action and the time for filing an appeal has lapsed or appeal rights have been exhausted.

SECTION 4. Prohibited Communications

1. The members shall avoid discussing, except with adequate notice and opportunity for all parties to participate, any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, until after final Commission action and the time for filing an appeal has lapsed or appeal rights have been exhausted.
2. This rule shall not be construed to limit:
 - A. The members at Commission meetings from discussion among themselves or with the attorney for the Commission.
 - B. Communications regarding closed matters, investigations in general, inquiries regarding the status of a specific case, or other matters not relating to issues of fact or law concerning a specific case.

DRAFT – FOR DISCUSSION PURPOSES ONLY

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 350: ADJUDICATORY HEARINGS

SUMMARY: This rule establishes policies, guidelines and procedures relating to adjudicatory proceedings which come before the Commission.

SECTION 1. Hearings in General

Commission hearings shall conform to the Maine Administrative Procedure Act, Title 5, Chapter 375 of the Maine Revised Statutes.

SECTION 2. Duties and Responsibilities of the Chairperson

The Chairperson or an alternate designated by the Commission shall preside at a hearing in a manner affording consideration of fair play and compliance with the constitutional requirements of due process. The Chairperson or their alternate shall also have authority to:

1. Hold pre-hearing conferences;
2. Issue subpoenas requested by the parties;
3. Place witnesses under oath;
4. Take action necessary to maintain order;
5. Rule on motions and procedural questions arising during the hearing;
6. Call recesses or adjourn the hearing; and
7. Prescribe and enforce general rules of conduct and decorum.

SECTION 3. Role of Commission Members

The members collectively shall be responsible for reviewing evidence and hearing testimony and argument in order to:

1. Determine whether or not the alleged conduct was supported by the evidence;

2. Determine whether or not the conduct was a violation of Title 32 ,Chapter 114 of the Maine Revised Statutes and Commission rules;
3. Determine and impose appropriate sanctions; and
4. Determine whether or not to issue cease and desist orders, and to issue such orders.

SECTION 4. Intervention

An application for intervention in a Commission proceeding shall be filed, except for good cause shown, at least seven (7) days in advance of the scheduled hearing. Rulings by the Chairperson shall be subject to the provisions of 5 M.R.S. § 9054.

SECTION 5. Order of Proceedings

The order of proceedings, unless modified by the Chairperson or alternate designated to facilitate the hearing, shall be as follows:

1. The party bringing the action may offer an opening statement;
2. The party defending against the action may offer an opening statement;
3. The party presenting evidence in support of the action may offer their case;
4. The party defending against the action may cross examine each witness;
5. The party defending against the action may offer their case;
6. The party in support of the action may cross examine each witness; and
7. Each party may offer a closing statement.

SECTION 6. Subpoenas

A party shall be entitled to the issuance of subpoenas in the name of the Commission subject to the provisions of 5 M.R.S. § 9060. Subpoenas shall be requested, except for good cause, at least ten (10) days in advance of a scheduled hearing. Subpoenaed witnesses shall be paid the same fees for attendance and travel as in civil cases before the courts. Fees shall be paid by the party requesting the subpoenas when the request is submitted.

SECTION 7. Appeals of Director's Decisions

The decision of the Director to:

1. Deny a license or license renewal; or
2. Deny, suspend or revoke approval of a qualifying educational course or a

continuing education course

may be appealed and set for a hearing before the Commission. The request for an appeal shall be made in writing within thirty (30) days following the receipt of the decision of the Director.

SECTION 10. Notice of Hearings

Notice of a hearing shall be given to all parties at least ten (10) days prior to the date on which the hearing is to be held.

DRAFT – FOR DISCUSSION PURPOSES ONLY

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 360: APPROVAL OF QUALIFYING EDUCATION COURSES

Summary: This chapter establishes the minimum requirements for pre-licensure courses.

SECTION 1. Definitions

1. **Qualifying Education Course.** “Qualifying education course” means a course which meets one or more of the minimum competencies defined in the Commission-approved models entitled “The Sales Agent Course,” “The Associate Broker Course” or “The Broker/Designated Broker Course.” These courses shall be provided by a degree-granting institution, a proprietary school or a public school adult education program that follows the Commission-established procedure for approval.
2. **Course Provider.** A “course provider” shall be defined as that individual, group of individuals, or organization responsible for the development, coordination, administration and delivery of a course.
3. **Satisfactory Completion.** “Satisfactory completion” of a course shall mean having met all minimum requirements established by the course provider for the course and having achieved a grade of at least 75%.

SECTION 2. Approval of a Qualifying Education Course

1. Syllabus

The course provider shall submit the course syllabus, on a form furnished by the Director, setting forth how the course will meet the minimum course competencies set for each course offered. The syllabus, at a minimum, must contain:

- A. Name, address, phone number of the course provider;
- B. Instructor qualifications, including a resumé, showing the ability and competence of the instructor to teach the curriculum;
- C. Course title;
- D. Course start and end dates;
- E. Class session times;

- F. Course text titles and publishers;
- G. A timed class session-by-session breakdown of the content and concepts to be covered, with quiz and test dates noted and an instructor manual (as applicable);
- H. Grading policy;
- I. Attendance policy;
- J. Final course examination and answer key;
- K. A policy on cheating; and
- L. The course application fee.

2. Reporting Course Changes

The course provider shall report any substantial change in a submitted or approved course syllabus to the Director. Changes must be approved prior to being offered in a course.

3. Syllabus Review

The Director shall provide written notification to the provider of the approval or denial of the syllabus within thirty (30) days of receipt of a complete syllabus for a course provided in a live format, and within forty-five (45) days of receipt of a complete syllabus for a course provided in any format other than a live format.

4. Distribution of Course Guidelines and Syllabus

At the first class session, the course provider shall disseminate to students the course guidelines developed by the Commission and the syllabus.

5. Advance Notice to Course Participants

Course providers shall not advertise courses as approved, enroll students or conduct classes for which students expect to meet the course requirement for the purposes of obtaining a license prior to receiving written approval from the Director.

Upon commencement of the first class session of a qualifying education course, the instructor shall read and distribute to the students the following statement:

“The Maine Real Estate Commission is committed to quality real estate education. Toward this goal, the syllabus for this course has been reviewed and approved as meeting the guidelines established by the Commission. These guidelines and the syllabus have been distributed for your information. At the end of this course, you will be given an opportunity to

critique this course and its delivery. The Commission welcomes your comments regarding your experience in this course.”

6. Student Enrollment Report.

The course provider shall be responsible for submitting a completed enrollment report, in a format approved by the Director, within thirty (30) days of the completion of each course.

7. Evaluations Required

The course provider shall distribute course evaluation forms to students for their critique of the learning experience. A summary of the student evaluations shall be submitted to the Director with the enrollment report.

8. Transcripts

The course provider shall provide a course transcript to all students who demonstrate satisfactory completion of the course. Such transcript shall, at a minimum, include the course title, student’s name, final numerical grade, beginning and course completion date and be signed by the course provider. Electronic signatures are acceptable. Course providers shall retain a copy of the roster of students who were issued transcripts for a period of at least five (5) years and provide a copy to the Director upon request.

9. Revocation or Suspension of the Approval of a Qualifying Education Course.

The Director may revoke or suspend their approval of a qualifying education course for a violation of this chapter. The course provider may appeal the Director’s decision and request a hearing in accordance with Chapter 350, Section 7 of Commission rules.

10. Prohibition Against Recruiting

The course provider shall not allow anyone to use the school’s premises or classroom (including distance or virtual platforms) to recruit new affiliates for any real estate brokerage company.

11. Issues Identified During Audit

The course provider shall, without delay, take action to address and correct any issues identified by the Director during staff audits of qualifying education courses.

DRAFT – FOR DISCUSSION PURPOSES ONLY

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 370: CONTINUING EDUCATION

SUMMARY: This rule sets forth the guidelines for review and approval of continuing education courses and sets forth limitations on clock hours which will be accepted for credit toward continuing education requirements for license renewal.

SECTION 1. Generally

In reviewing and approving a course application, the Director shall consider:

1. Course content as it contributes to the ability of the licensee to serve and meet the needs of their clients and customers;
2. Course content as it assists a licensee to keep informed concerning real estate laws, regulations, and practices; and
3. Geographic availability to licensees.

SECTION 2. Definitions

1. Continuing Education Course. Continuing education course shall be defined as a planned learning experience of at least one (1) hour of instruction time not including quizzes or exams, designed to promote development of knowledge, skills, and attitudes pertaining to real estate brokerage as that term is defined in Title 32, Chapter 114 of the Maine Revised Statutes.
2. Continuing Education Course Provider. A real estate continuing education course provider shall be defined as that individual, group of individuals, or organization responsible for the development, coordination, administration and delivery of a continuing education course.
3. Continuing Education Course Instructor. A continuing education course instructor shall be defined as an individual appointed to impart knowledge or information to licensees participating in a continuing education course.
4. Synchronous Distance Education. A continuing education course offered via electronic means with real time visual and audio interaction between instructor and student.

5. Asynchronous Distance Education. A continuing education course where the instructor and students engage with course content at different times and from different locations.
6. Core Course. The core course shall be defined as a mandatory three (3) clock hour course which follows a Commission-prescribed curriculum.

SECTION 3. Continuing Education Course Criteria

1. Subject Matter. Consistent with 32 M.R.S. § 13197(2), the following real estate related topics shall be acceptable subject matter for continuing education courses:
 - A. Property valuation;
 - B. Construction;
 - C. Contract and agency law;
 - D. Financing and investments;
 - E. Land use, planning, zoning and other public limitations on ownership;
 - F. Landlord-tenant relationships;
 - G. License laws, rules and standards of professional practice;
 - H. Taxation;
 - I. Timeshares, condominiums and cooperatives;
 - J. Staff supervision and training;
 - K. Office management;
 - L. Brokerage-related technologies;
 - M. Diversity, Equity, Inclusion and Fair Housing; and
 - N. Any additional topic which is approved by the Director.
2. Accepted Modes of Continuing Education Course Delivery
 - A. Live In-Person Classroom Education

A continuing education course may be presented in a live, in-person format.
 - B. Distance Education

A continuing education course may be presented through distance education, so long as it meets the following criteria:

(i) Synchronous Distance Education

Synchronous distance education may be approved if the instructor or a proctor can continuously view all participating students on their monitor or other viewing device or screen, or otherwise demonstrate to the Commission's satisfaction the capability to track and record the presence and participation of students.

(ii) Asynchronous Distance Education

Asynchronous distance education may be approved if it includes a comprehensive examination to be completed by the licensee before a grade or credit may be awarded. A copy of the examination must accompany the application for course approval.

SECTION 4. Continuing Education Course Applications

1. Applications. An application for course approval adopted by the Commission shall be furnished by the Director. An application for live in-person classroom education may also seek approval to deliver the same course via synchronous distance education without submitting a separate application. The application shall at a minimum require the following information:
 - A. Name and contact information for the real estate continuing education provider;
 - B. The mode of delivery of the course;
 - C. The qualifications of the real estate continuing education instructor to teach the curriculum, including a resumé;
 - D. A description of the content and methodology of the course;
 - E. A timed outline and, as applicable, a copy of the instructor manual ;
 - F. A statement of learning objectives;
 - G. Assessment of learning objectives;
 - H. A description of what participants need for successful completion of the course; and
 - I. Application fee.

2. Continuing Education Course Approval. The Director, within thirty (30) days of receipt of a complete application, shall notify the real estate continuing education provider in writing of the terms and duration of the approval or the reasons for denial.
3. Reporting Course Changes. A change in a submitted or approved real estate continuing education course application shall be reported to the Director. A change in content or instructor shall be reviewed and evaluated in advance of the scheduled course, and the Director's decision to approve or deny the change will be communicated in writing.

SECTION 5. Course Completion, Evaluation and Renewal

1. Course Completion. The real estate continuing education provider following course delivery, shall issue a certificate of course completion to each licensee successfully completing the course and prepare a roster of licensees successfully completing the course. The course provider shall retain the roster of licensees completing the course for a period of not less than four (4) years.
2. Evaluation. A course evaluation shall be required, and the results shall be made available to the Director upon request. An evaluation form may be obtained from the Director. A summary of student evaluations shall be submitted when an application for renewed approval is submitted by a course provider.
3. Renewal Application. A renewal application adopted by the Commission for course approval shall be furnished by the Director. This renewal application shall require the following information:
 - A. Name and contact information for the real estate continuing education provider;
 - B. The mode of delivery of the course;
 - C. Name and contact information for real estate continuing education instructor;
 - D. Timed outline and instructor manual (if applicable);
 - E. Title of the continuing education course;
 - F. Course approval number;
 - G. List of dates, times, and locations course was held;
 - H. List of future dates, times, and locations;
 - I. Statement by real estate continuing education provider on the extent to which the identified learning objectives were met;

- J. Description of any changes implemented to ensure that the learning objectives will be met in the future; and
 - K. Summary of student evaluations; and
 - L. The renewal application fee.
4. Approval Expiration. Course providers who promote and conduct continuing education courses as approved once the course approval has expired may be subject to suspension or revocation of approval of additional continuing education courses.

SECTION 6. Course Advertisement

Course providers shall not conduct classes for which students expect to receive continuing education credit prior to receiving written approval from the Director. An advertisement for a course shall include the following:

- 1. A course description sufficient to identify the subject matter to be covered;
- 2. Identification of the course provider; and
- 3. Notice indicating the course has been approved by the Director for continuing education and the number of clock hours to be received upon satisfactory completion of the course.

SECTION 7. Advance Notice to Course Participants

Upon commencement of each course, participants shall be informed of the following:

“This course has been approved by the Director of the Real Estate Commission for (#) clock hours toward fulfillment of the educational requirements for renewal of a real estate license.”

“The Commission is interested in the quality and delivery of continuing education courses which are offered to licensees and, therefore, welcomes and encourages comments regarding course subject matter and quality of the delivery of the course.”

SECTION 8. Clock Hours Qualifying for License Renewal or Reactivation

- 1. As a prerequisite of renewal of a license, applicants must complete twenty-one (21) clock hours of continuing education courses prior to the date of application. Three (3) of those clock hours must consist of the core course approved by the Commission, and the remaining eighteen (18) hours may consist of any combination of other approved continuing education courses that otherwise meet the criteria set forth in this chapter.
- 2. A licensee shall complete a real estate continuing education course in its entirety

in order to be eligible for continuing education approval.

3. A licensee, for purposes of renewal or reactivation, shall use only those clock hours which were accumulated during the preceding two (2) year. Course completion certificates may only be submitted once for the purpose of a license renewal.
4. An r instructor who teaches an approved course may receive clock hour approval for that course ~~only~~ once per license renewal period.
5. Licensees who wish to use an asynchronous continuing education distance education course to activate or renew a real estate license must complete the course with a minimum grade of 85%.

SECTION 9. Approval of Individual Requests for Real Estate Continuing Education Courses without Pre-Approval

The Director shall consider, on an individual basis, a request by a licensee for approval of a course for which the provider did not seek approval, but in which the licensee participated. Approval of such a request shall be subject to the course meeting the standards and criteria required by the Director for other real estate continuing education courses. The licensee shall be responsible for submitting to the director a complete course application and fee.

SECTION 10. Revocation or Suspension of the Approval of a Real Estate Continuing Education Course

The Director may revoke or suspend their approval of a real estate continuing education course based upon a violation of this chapter. The course provider may appeal the Director's decision to revoke or suspend approval by requesting a hearing in accordance with Chapter 350, Section 7 of Commission rules.

DRAFT – FOR DISCUSSION PURPOSES ONLY

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 390: LICENSING PROCEDURES AND REQUIREMENTS FOR INDIVIDUALS AND ESTABLISHMENTS

Summary: This chapter establishes the procedures requirements for the different types of licenses issued by the Commission. .

SECTION 1. Individual Licenses

1. Real Estate Broker/Designated Broker

An individual may qualify for a real estate broker license if:

- A. The applicant submits an application approved by the Director with the required fee;
- B. The applicant has been licensed as an associate broker affiliated with a real estate brokerage agency for two (2) years within the five (5) years immediately preceding the date of license application and submits the Designated Broker's Authorization of Agency Affiliation form with their application. An individual may not submit their application any sooner than thirty (30) days prior to the expiration date of their initial associate broker license term; and
- C. The applicant completed the Broker/Designated Broker Course with a minimum final grade of 75% and submitted the course completion certificate (valid from one year from the course completion date).

A licensed real estate broker may act as designated broker for an agency and, as such, is responsible for the actions of the agency and its associates or employees as set forth in Chapter 400.

2. Associate Real Estate Broker

An individual may qualify for an associate real estate broker license if:

- A. The applicant submits an application on a form approved by the Director with the required fee;
- B. The applicant has been licensed as a real estate sales agent and affiliated with a real estate brokerage agency for two (2) years within the five (5) years immediately preceding the date of license application and submits the

Designated Broker's Authorization of Agency Affiliation form with their application. An individual may not submit their application any sooner than thirty (30) days prior to the expiration date of their sales agent license term;

- D. The applicant completed the Associate Broker Course with a minimum final grade of 75% and submitted the course completion certificate; and
- E. The applicant submits a course completion certificate demonstrating satisfactory completion of a core course approved by the Commission.

3. Real Estate Sales Agent

- A. An individual may qualify for a real estate sales agent license if:
 - (i) The applicant submits an application on a form approved by the Director with the required fee; and
 - (ii) The applicant submits the application for licensure within one (1) year of the date of passing the examination set forth in Paragraph B with a minimum grade of 75%.
- B. An individual may sit for the sales agent license examination the applicant completed the Sales Agent Course with a minimum final grade of 75% and submitted the course completion certificate.

An applicant must take and pass the examination within one year of successful completion of the course.

4. Course Completion Certificate

Course completion certificates shall include, at a minimum, the following information:

- A. Title of course;
- B. Date of completion of course;
- C. Numeric grade received; and
- D. Signature of the authorized official. Electronic signatures are acceptable.

5. Criminal History Records of Applicant

In determining eligibility for a license the Commission, in accordance with Title 5, Chapter 341 of the Maine Revised Statutes, may take into consideration criminal history records of the applicant. As part of the application, the applicant will be asked to submit a fee so that a State Bureau of Identification background check can be performed on the basis of the individual's name(s) and date of birth.

6. Disciplinary Actions

For all levels of licensure, applicants must indicate whether disciplinary action has been taken against any professional or occupational license that they hold or have held, and provide a copy of the documentation regarding the disciplinary action(s) taken against them.

7. Letters of Good Standing

For all levels of licensure, applicants must submit letters of good standing from each state which they now hold, or have ever held, a real estate license.

8. Applying on the Basis of License in Another Jurisdiction

An individual may apply for licensure on the basis of a similar active license in good standing if:

- A. The applicant submits an application on a form approved by the Director with the required fee.
- B. The applicant holds a similar active license in another state or jurisdiction at the time the application is made for the Maine license. The only acceptable evidence that the applicant holds an active license in good standing is a certificate of licensure issued by the licensing jurisdiction that evidences the type of license held, the date of original licensure and a statement indicating that any complaints against the applicant have been resolved to the satisfaction of the agency.
- C. The applicant passes a jurisprudence examination within one (1) year of applying for a Maine license.
- D. The applicant submits the Designated Broker's Authorization of Agency Affiliation form with their application.

9. Extension of the Sales Agent License

The sales agent license is a two-year nonrenewable license. The sales agent license term may be extended for one (1) year, subject to the sole discretion of the Director. A request for an extension shall be made in writing and shall include an explanation and any supporting documentation of the extenuating circumstance necessitating the extension. The request shall be accompanied by the Sales Agent fee and this fee shall be retained whether or not the waiver is granted.

10. Renewal of License More Than Ninety (90) Days Beyond Expiration

Any applicant for license renewal whose license has lapsed more than ninety (90) days may reinstate the license by paying the late fee and passing a written jurisprudence examination covering Maine real estate laws. The application must be submitted within one (1) year of passing the jurisprudence examination. This subsection does not apply to individuals who hold an expired sales agent license.

11. Inactive Associate Broker or Inactive Broker License

An associate broker or a real estate broker who wants to preserve a license while not engaged in brokerage activity may apply for inactive status.

- A. To qualify for inactive status, the licensee must:
 - (i) Submit a request for inactive status in writing and submit a change of license application fee.
 - (ii) If the license is changed to inactive status at the time of renewal of an active license, submit the license renewal fee.
- B. Change of status does not change the original license expiration date, and the inactive license must be renewed every two (2) years thereafter.
- C. To reinstate a license to active status:
 - (i) Inactive up to 2 years: The licensee must complete 21 clock hours of continuing education courses (including a Commission approved core course) within the previous biennium.
 - (ii) Inactive more than 2 years but less than 4 years: The licensee must complete 28 clock hours of continuing education courses (including a Commission approved core course) within the previous biennium.
 - (iii) Inactive more than 4 years but less than 6 years: The licensee must complete 36 hours of continuing education courses (including the core course) completed within the previous biennium.

Licensees who are inactive for 6 or more years must complete the Maine jurisprudence examination with a minimum grade of 75% and submit a new license application and meet all the criteria for a new license.

SECTION 2. Establishment Licenses

1. Real Estate Brokerage Agency

To qualify as a licensed real estate brokerage agency, an applicant must:

- A. Submit an application approved by the Director with the required fee;
- B. Indicate whether the agency intends to do business under a trade name as authorized by 32 M.R.S. 13176, which may not be similar to an existing agency already licensed by the Commission.

- C. Appoint a Maine licensed real estate broker to serve as the designated broker. Every real estate broker agency must have a designated broker. While a designated broker may act as a designated broker for more than one licensed real estate brokerage agency, they may only practice real estate brokerage and receive brokerage compensation from one agency.
- D. Have a fixed and definite place of business.
- E. Establish and maintain a federally insured trust account in a financial institution authorized to do business in Maine.
- F. Provide a Federal Employer Identification Number (FEIN), or, if the agency is an individual proprietorship, a social security number.
- G. If applicable, the business entity number issued by the Maine Secretary of State.
- H. If applicable, file a list of officers of the particular business entity.
- I. Any agency holding a real estate license must be in good standing with the licensing authority in its home state and must provide letters of good standing from every state where the agency holds a license.
- J. Disclose if the agency, the designated broker or if applicable any of the applicant agency's members, officers or directors had ever been convicted by any court of any offense or whether any jurisdiction had taken disciplinary action against this agency and if so, provide supporting documentation.

2. Real Estate Brokerage Branch Office

To qualify as a licensed real estate brokerage branch office, an applicant must:

- A. Submit an application approved by the Director with the required fee;
- B. Have a fixed and definite place of business.

3. Reporting New Designated Brokers

An agency which changes its designated broker shall report such change to the Director as required by 32 M.R.S. § 13195.

4. Renewal of License Up to Ninety (90) Days Beyond Expiration

An establishment license may be renewed up to ninety (90) days after expiration by complying with all requirements for renewal and payment of an additional \$50 late fee. A license cannot be renewed after ninety (90) days and a new application must be submitted.

DRAFT – FOR DISCUSSION PURPOSES ONLY

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 400: REAL ESTATE BROKERAGE AGENCY AND DESIGNATED BROKER RESPONSIBILITIES

Summary: This chapter details requirements of maintaining a real estate brokerage agency and establishes the specific supervisory responsibilities of the designated broker.

SECTION 1. Responsibilities of Designated Broker

1. Generally

The designated broker shall supervise the activities of affiliated licensees and unlicensed persons involved in the operation of the real estate brokerage agency, including all branch offices.

The supervision includes, at a minimum, the establishment of policies and procedures that enable the designated broker to review, manage and oversee the following:

- A. Real estate transactions performed by an affiliated licensee;
- B. Documents that may have a material effect upon the rights or obligations of a party to a real estate transaction in which the agency is involved;
- C. Filing, storage and maintenance of documents described in Section 1(1)(B);
- D. The handling of money received by the real estate brokerage agency on behalf of any party to a real estate transaction;
- E. The advertising of any service for which a real estate license is required that is provided by the agency or affiliated licensees;
- F. The familiarization by the affiliated licensee with the requirements of federal and state law governing real estate transactions;
- G. Timely dissemination, to affiliated licensees of all regulatory information received by the real estate brokerage agency pertinent to the practice of real estate brokerage; and

- H. Registration, development and content of any internet site intended to promote (i) real estate brokerage services by the agency and affiliated licensees or (ii) the sale or purchase of real estate through the agency.

SECTION 2. Monitoring Compliance

1. The designated broker shall establish a system for monitoring compliance with the real estate brokerage agency's policies, rules, and procedures that includes regularly meeting with and assisting and advising affiliated licensees, developing and distributing company policy manuals, and offering training programs and resource materials.

2. Delegation

The designated broker may designate another person to assist in administering the provisions of the Commission's rules. However, the designated broker does not relinquish overall responsibility for the supervision of affiliated licensees and unlicensed persons involved in the operation of the real estate brokerage agency.

3. Company Policy

The designated broker shall have, and make available to agency affiliates and unlicensed persons working with the agency, a written company policy that identifies and describes the types of real estate brokerage relationships in which the real estate brokerage agency may and may not engage. In addition, the company policy must also include the procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the real estate brokerage agency, the arrangement of agency office space and the personal relationships of affiliated licensees who are representing buyers and sellers with adverse interests.

The designated broker shall review and update the written company policy as needed.

4. Review of Sales Agent Documents

The designated broker, at a minimum, shall review and initial, as soon as possible, all contracts, property data sheets, disclosure forms, market analyses and other relevant information prepared by a sales agent for buyers and sellers during the first ninety (90) days that a sales agent is affiliated with a real estate brokerage agency. If a sales agent changes real estate brokerage agency affiliation during the license term, this requirement will apply again for the first ninety days with the new agency and the new DB is responsible. The requirements of this Subsection are not intended to affect the validity of a contract.

SECTION 3. Real Estate Trust Accounts

1. Definition of "Earnest Money Deposit"

As used in this Section, the term “earnest money deposit” includes money provided to a real estate brokerage agency as part of an offer to purchase real estate and all other money held by the real estate brokerage agency for clients or other persons for purposes related to a real estate brokerage transaction.

2. Various Forms of Real Estate Trust Accounts

A real estate trust account shall be in the form of a checking or savings account and may accrue interest on an earnest money deposit provided that the accumulated interest is properly disbursed. If the parties to the transaction agree to place the earnest money deposit in something other than a real estate trust account, the real estate brokerage agency shall not hold the funds or act as trustee.

If accumulated interest is to be disbursed to a charity or other such organization, proper written notice of the intended disbursement must be posted in the public area of the agency and their website.

3. Opening a Real Estate Trust Account

The real estate trust account checks and bank statements must contain the real estate brokerage agency’s trade name as licensed by the commission and must be imprinted with the words “real estate trust account.”

4. Making Earnest Money Deposits

An earnest money deposit provided to a designated broker as trustee as part of an offer to purchase real estate shall be deposited within five (5) business days of acceptance of the offer unless otherwise specified in the purchase and sale agreement. Other earnest money deposits received by the designated broker as trustee shall be deposited within five (5) business days of the trustee’s receipt of such earnest money deposits.

5. Restrictions on Earnest Money Deposits in Real Estate Trust Accounts

A designated broker, as trustee, shall not commingle earnest money deposits with either:

A. Funds belonging to the real estate brokerage agency. This provision shall not be construed to limit deposits made by the real estate brokerage agency of an amount sufficient to maintain the account, but such amount shall not exceed \$500; or

B. Funds held for persons that do not involve the sale, purchase or exchange of real estate.

An earnest money deposit may be utilized prior to a closing only for reasons specified in writing by all parties to the real estate transaction. There shall be a proper accounting for all monies held by the real estate brokerage agency and any

remittance shall be made within a reasonable time but not more than thirty (30) days after the conclusion of the real estate transaction.

6. Maintaining Real Estate Trust Account Records

The designated broker shall be responsible for maintaining records and supporting documents sufficient to verify the adequacy and proper use of the real estate trust account. The records and supporting documents shall be maintained for a period of at least three (3) years after the date all funds are dispersed.

7. Information Included in Minimum Real Estate Trust Account Records

At a minimum, real estate trust account records shall include a ledger or journal which records in chronological order all receipts and disbursements of funds in the real estate trust account and provides the following information:

- A. The date the earnest money deposit is received by the real estate brokerage agency;
- B. The date the earnest money deposit is received by the banking institution;
- C. The purpose of the earnest money deposit and from whom received;
- D. The purpose of the withdrawal and to whom paid;
- E. The amount of the earnest money deposit;
- F. The current running balance of funds held by the real estate brokerage agency; and
- G. The closing date of a transaction, if any, or the date the earnest money deposit was disbursed.

8. Real Estate Trust Account Supporting Documents

Real estate trust account supporting documents shall include:

- A. Bank statements;
- B. Canceled checks;
- C. Copies of contracts;
- D. Closing statements, if available;
- E. Correspondence; and
- F. Additional items necessary to verify and explain record entries.

9. Disbursement of Undisputed Earnest Money Deposits Held in Trust

Disbursement of an undisputed earnest money deposit may occur by one of the two following procedures:

- A. Authorization, in writing, from the parties to a real estate transaction agreeing to the disbursement; or
- B. Authorization by the designated broker who, in reasonable reliance on the terms of the purchase and sale agreement or other written documents signed by both parties, determines the appropriate disbursement of the undisputed earnest money deposit. The designated broker may, at the designated broker's own discretion, make such disbursement to release the undisputed earnest money deposit no sooner than five (5) business days after notifying all parties of the designated broker's proposed decision to release the undisputed earnest money deposit. The earnest money deposit shall not be disbursed under this Subsection if prior to disbursement the designated broker receives actual knowledge of a dispute as provided in Section 3(10) of this chapter.

10. Disputed Earnest Money

- A. Any time that more than one party to a transaction makes demand on the earnest money deposit for which the real estate brokerage agency is acting as trustee, the designated broker shall:
 - (1) Notify each party, in writing, within five (5) business days of the demand of the other party; and
 - (2) Keep all parties to the transaction informed of any actions by the designated broker regarding the disputed earnest money deposit, including retention of the earnest money deposit by the designated broker until receipt of written release from both parties agreeing to the disposition of the earnest money deposit or agreeing that the dispute has been properly resolved.
- B. After notice as provided in Section 2(10)(A)(1) of this chapter, the designated broker may reasonably rely on the terms of the purchase and sale agreement or other written documents signed by both parties to determine the disposition of the disputed earnest money deposit and may, at the designated broker's own discretion, make such disbursement no sooner than five (5) business days after notifying both parties of the designated broker's proposed disbursement of the earnest money deposit. This discretionary disbursement by the designated broker is not a violation of the Commission's law, but may not relieve the designated broker of civil liability.
- C. The designated broker may hold the earnest money deposit until ordered by a court of proper jurisdiction or agreement of the parties to make a

disbursement. The designated broker shall give all parties written notice of any decision to hold the earnest money deposit pending a court judgment or agreement of the parties for disbursement.

- D. Absent written authorization from the party to be charged, the designated broker is not entitled to withhold any portion of the earnest money deposit when a real estate transaction fails to close even if a commission is earned. The earnest money deposit must be disposed of as provided by Section 2(10) of this chapter.

SECTION 4. Record Retention Schedules; Format

1. Generally

All real estate brokerage records, including real estate trust account and supporting records, transaction files, and other brokerage-related records, are to be under the control of the designated broker and made available to the Director upon request. Except for rejected offers and counteroffers, which must be kept for one (1) year from the date of the rejected offer or counteroffer, the following records must be kept by the designated broker for three (3) calendar years after all funds held by the designated broker in connection with a transaction have been disbursed or until the conclusion of the transaction, whichever last occurs:

- A. The original or a true copy of all purchase and sale contracts;
- B. Listing or buyer brokerage representation agreements, appointed agent consent forms, disclosed dual agent consent forms and the Real Estate Brokerage Relationships Form required under Chapter 410, Section 9 of the Commission's rules;
- C. Property disclosure information forms, data sheets and other property information prepared by the real estate brokerage agency or one of its affiliated licensees to promote property for sale or purchase;
- D. Real Estate Trust Account ledger records, as listed in Section 2(7) of this chapter; and
- E. Real Estate Trust Account reconciliation records, as listed in Section 2(8) of this chapter; and
- F. Other transaction documents, including written documents, electronic messages including email and text messages, and any other type of document in any other format.

2. Electronic Format

Real estate brokerage records may be maintained in electronic format, as defined by Title 10, Chapter 1051 of the Maine Revised Statutes. An electronic record means a record generated, communicated, received or stored by electronic means.

Such electronic records must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the Director, printed records shall be produced.

SECTION 4. Examinations for Compliance with Licensing Laws

1. A real estate brokerage office may be examined for compliance with the Commission's laws:

A, As a matter of routine once each licensing period;

B As necessary as part of an investigation of a complaint filed with the Director; or

C Upon receipt of prima facie evidence indicating improper use of a real estate trust account.

2. The designated broker shall produce for inspection to an authorized representative of the Commission any document or record reasonably necessary for investigation or audit in the enforcement of Title 32, Chapter 114 of the Maine Revised Statutes and the rules promulgated by the Commission.

3. Failure to submit such documents or records as requested by the Director or authorized representative of the Commission shall be grounds for disciplinary action.

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 410: MINIMUM STANDARDS OF PRACTICE

Summary: This chapter establishes standards for practicing real estate brokerage.

SECTION 1. Advertising

1. Definitions

- A. **Advertise.** “Advertise,” “advertising” and “advertisement” include all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication for any purpose related to real estate brokerage activity, including, at a minimum, advertising the sale or purchase of real estate or promotion of real estate brokerage services conducted by mail, telephone, the Internet (including but not limited to the world wide web, electronic mail and social media), business cards, signs, television, radio, magazines, newspapers, and telephonic greetings or answering ~~machine~~ system messages.
- B. **Prominent.** “Prominent” means standing out so as to be seen easily; conspicuous; particularly noticeable.

2. Advertising by Real Estate Brokerage Agencies

Real estate brokerage advertisements must contain the agency’s trade name as licensed by the Commission of the real estate brokerage agency that placed the advertisement. If the agency is not licensed with a trade name, the legal name shall be used. The name of the agency must be prominently displayed or presented. In an advertisement that appears on or is sent via the Internet, the name of the agency that placed the advertisement must prominently appear or be readily accessible.

The designated broker may authorize an advertisement that includes the name, telephone number, slogan, logotype or photo of an affiliated licensee or group or team of affiliated licensees as part of the brokerage services being offered by the real estate brokerage agency. The affiliated licensee or group or team of affiliated licensees may not independently engage in real estate brokerage.

5. Written Permission of Owner Required to Advertise

A real estate brokerage agency or its affiliated licensees shall not advertise any real estate for sale without first obtaining the written permission of the owner or the owner's authorized representative.

6. Advertising of Exclusive Listing Held by Another Agency

A real estate brokerage agency or its affiliated licensees shall not publish or cause to be published an advertisement that makes reference to the availability of real estate which is exclusively listed for sale by another real estate brokerage agency unless the licensee obtains the prior written consent of the designated broker who has been authorized by the owner to provide consent.

7. Deception and Misrepresentation Prohibited

Advertising must be free from deception and shall not misrepresent ~~the condition~~ of the real estate, terms of the sale or purchase, real estate brokerage agency policies, or real estate brokerage services.

SECTION 2. Acting in Self-Interest

A licensee holding an active real estate license shall disclose, in the offer to purchase, that the licensee is a real estate licensee:

1. When buying or selling real estate not listed with a real estate brokerage agency;
2. When buying or selling real estate listed with the licensee's real estate brokerage agency; or
3. When buying or selling real estate and sharing in the brokerage fee resulting from the sale of such real estate.

SECTION 3. Market Value

1. When Opinion Permitted

A licensee may provide a free opinion of value to a buyer or seller when the licensee is soliciting the buyer or seller to provide brokerage services and before an agreement to provide any services has been executed.

2. When Advice Prohibited

At any time after the solicitation to provide brokerage services, as described in Section 3(1) of this chapter, a transaction broker may not provide advice to either party regarding market value.

3. Provision of Comparable Market Data

A licensee who provides comparable market data to a buyer or seller for the buyer or seller to determine market value or list price is performing a ministerial act as defined in Title 32, Section§ 13271, Subsection 9 of Maine Revised Statutes.

4. Factors or Conditions That May Impact Client's Interest

A licensee who represents a buyer or seller client shall advise the client of any factors or conditions actually known by the licensee, or if acting in a reasonable manner, should have been known by the licensee, that may materially impact the client's interest as it pertains to the market value of real estate.

SECTION 4. Net Listing Prohibited

A net listing shall be prohibited. A net listing is a type of listing in which the real estate brokerage agency receives, as commission, all excess money over and above the minimum sale price set by the seller.

SECTION 5. Duty to Furnish Real Estate Brokerage-Related Documents

A licensee shall furnish copies of brokerage agreements, offers, counteroffers, and all types of contracts to the person signing the documents at the time of signatures. Upon obtaining a written acceptance of an offer or counteroffer to purchase real estate, a licensee shall, within a reasonable time, deliver true, legible copies of the purchase and sale contract, signed by the seller and buyer, to both seller and buyer, or the licensee working with the other party.

SECTION 6. Disclosure of Real Estate Brokerage Agency Compensation Policy

1. Other Agencies

Written brokerage agreements must include a statement disclosing the real estate brokerage agency's policy on cooperating with and compensating other real estate brokerage agencies in the sale or purchase of real estate. If the real estate brokerage agency's policy is not to compensate all other real estate brokerage agencies in the same manner, this policy must be included in the statement and include a notice to the buyer or seller that this policy may limit the participation of other real estate brokerage agencies in the marketplace.

2. Affiliated Licensees

When a real estate brokerage agency's policy on paying commissions to its affiliated licensees provides for an incentive to an affiliated licensee for a greater commission for an in-house sale versus transactions involving a cooperating real estate brokerage agency, this policy must be disclosed in a written brokerage agreement with a buyer or seller.

SECTION 7. Disclosed Dual Agency

A real estate brokerage agency which has a written company policy that permits disclosed dual agency shall obtain the informed written consent, as set forth in 32 M.R.S. § 13275, of the seller or buyer to the disclosed dual agency relationship at the time of entering into a written brokerage agreement that creates an agent-client relationship.

SECTION 8. Appointed Agent Procedures and Disclosure

1. Designated Broker Responsibilities – Appointed Agent

- A. A designated broker appointing an affiliated licensee(s) to act as an agent of a client shall take ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.
- B. An appointed agent may disclose to the agency's designated broker, or a designee specified by the designated broker, confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction. Confidential information shall be treated as such by the designated broker or other specified representative of the broker and shall not be disclosed unless otherwise required by Title 32 Chapter 114 of the Maine Revised Statutes, Commission rules, or requested or permitted by the client who originally disclosed the confidential information.
- C. A designated broker who is appointed to act as the agent of the client must select a designee to fulfill the responsibilities as listed in Section 8(1)(B) of this chapter.

2. Appointed Agent – Disclosure

The appointed agent disclosure shall be provided to the client prior to entering into a written brokerage agreement and shall include, at a minimum, the following provisions:

- A. The name of the appointed agent and type of license held;
- B. A statement that the appointed agent will be the client's agent and will owe the client fiduciary duties which, among other things, include the obligation not to reveal confidential information obtained from the client to other licensees, except to the designated broker or the designated broker's designee, as listed in Section 8(1)(B) of this chapter, for the purpose of seeking advice or assistance for the benefit of the client;
- C. A statement that the real estate brokerage agency may be representing both the seller and the buyer in connection with the sale or purchase of real estate;

- D. A statement that other agents may be appointed during the term of the written brokerage agreement should the appointed agent not be able to fulfill the terms of the written brokerage agreement or as by agreement between the designated broker and client. At the appointment of new or additional agent(s), the designated broker must comply with the provisions of this Section, including but not limited to, obtaining the client's signature consenting or not consenting to the appointment. An appointment of another agent as a new or additional agent does not relieve the first appointed agent of any of the fiduciary duties owed to the client; and
- E. A section for the client to consent or not consent, in writing, to the appointment.

SECTION 9. Real Estate Brokerage Relationship Disclosure Procedures

1. Real Estate Brokerage Relationships Form

The Commission incorporates into this chapter by reference the Real Estate Brokerage Relationships Form attached to this chapter. Real Estate Brokerage Relationships Form revised 07/06).

2. Obligation to Furnish Real Estate Brokerage Relationships Form

Except as provided in Section 9(3) of this chapter, a licensee shall furnish a prospective buyer or seller with a copy of the Real Estate Brokerage Relationships Form when there is substantive communication regarding a real estate transaction by either a face-to-face meeting, a written communication, or an electronic communication with the prospective buyer or seller. The licensee shall discuss the content of the form and ascertain the intent of the buyer or seller regarding representation. The licensee shall complete the statement on the form acknowledging that the prospective buyer or seller has been given the information required by Maine law regarding brokerage relationships.

3. Exceptions

A licensee is not required to provide a copy of the Real Estate Brokerage Relationships Form to a prospective buyer or seller in the following instances:

- A. The real estate is land without a residential dwelling unit;
- B. The real estate is land with more than four (4) residential dwelling units;
- C. The licensee is acting solely as a principal in a real estate transaction;
- D. The written communication from the licensee is a solicitation of business;
or

- E. The licensee has knowledge, or may reasonably assume, that another licensee has given a copy of the form to a prospective buyer or seller in that transaction.

SECTION 10. Solicitation of Written Brokerage Agreements

A licensee shall not solicit a written brokerage agreement from a seller or buyer if the licensee knows, or acting in a reasonable manner should have known, that the buyer or seller has contracted with another real estate brokerage agency for the same real estate brokerage services on an exclusive basis. This Section does not preclude a real estate brokerage agency from entering into a written brokerage agreement with a seller or buyer, when the initial contact is initiated by the seller or buyer, provided that the written brokerage agreement does not become effective until the expiration or release of the previous written brokerage agreement.

SECTION 11. Inducements

The offering of a free gift, prize, money or other valuable consideration by a real estate brokerage agency or affiliated licensee as an inducement shall be free from deception, and shall not serve to distort the true value of the real estate or the service being promoted. Any limitations or conditions of the offering must be prominently displayed or presented. In an offering that appears on or is sent via the Internet, any limitations or conditions of the offering must prominently appear in the offering itself, or in a page view or window that is directly and immediately accessible via a link in the offering. The link must be identified by words such as “limitations,” “conditions,” or “terms of offer” and must prominently appear in the offering.

A real estate brokerage agency that claims to make contributions to charities as an inducement must produce to the Director any records related to such contributions upon request.

SECTION 12. Confidentiality of Offers and Purchase and Sale Contract Terms

1. Prior to the written acceptance, the written rejection or the expiration of an offer or counteroffer, a real estate brokerage agency or affiliated licensees shall not disclose any terms of an offer or counteroffer to anyone other than the parties to the offer or counteroffer without the prior written permission of the parties.
2. Prior to a real estate transaction closing or terminating, a real estate brokerage agency or affiliated licensees shall not disclose the terms of an executed contract to anyone other than the parties to the agreement without the prior written permission of the parties.
3. Notwithstanding the confidentiality provisions contained in Section 12(1) and (2) of this chapter, any such documents referenced shall be made available to the Director of the Commission upon request.

SECTION 13. Licensee's Duty

1. Keep the Designated Broker Informed

An affiliated licensee shall keep the designated broker fully informed of all activities conducted on behalf of the agency and shall notify the designated broker of any other activities that might impact on the responsibilities of the designated broker as set forth in Chapter 400, Section 1 of the Commission's rules, including that an affiliated licensee has terminated affiliation with the agency.

2. Provide Documents to Designated Broker

An affiliated licensee must provide originals or true copies of all real estate brokerage documents and records prepared in a real estate transaction as listed in Chapter 400, Section 3 of the Commission's rules to the designated broker within five (5) calendar days after execution of the document or record.

3. Domain Names and Web Sites

An affiliated licensee may not directly or indirectly, through themselves or others, register a domain name for or develop and upload to the Internet a website

that promotes real estate brokerage services or the sale or purchase of real estate through the agency with whom the licensee is affiliated without the consent of the designated broker.

Any web site developed or uploaded under this Section must comply with the advertising requirements set forth in Chapter 410, Section 1 of the Commission's rules.

SECTION 14. Licensee's Duty to Obtain and Provide Disclosure Information on Private Water Supply, Heating, Waste Disposal System, and Known Hazardous Materials, and Potential Flood Risks

All licensees have a duty to obtain and provide disclosure information on private water supply, heating, waste disposal system, known hazardous materials and potential flood risks regardless of their relationship with buyer or seller. Forms used by an agency to provide property disclosure information shall be filled out completely.

1. Listing Licensee

A listing licensee shall be responsible for obtaining information necessary to make written property disclosures, as set forth in Sections 15 to 19 of this chapter, to buyers and shall make a reasonable effort to assure that the information is conveyed to a selling licensee.

2. Selling Licensee

A selling licensee shall be responsible for obtaining from the listing licensee the information necessary for making written property disclosures, as set forth in Sections 15 to ~~18~~ 19 of this chapter, and for assuring that the disclosures are made to buyers.

3. Unlisted Property

In a real estate brokerage transaction where the property is not listed with a real estate brokerage agency, a licensee shall be responsible for obtaining from the seller or other sources to the extent possible the information necessary for making written property disclosures, as set forth in Sections 15 to ~~18~~ 19 of this chapter, and for assuring that the disclosures are made to the buyer.

SECTION 15. Private Water Supply Disclosure

A licensee listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component served by a private water supply, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller for the following information:

1. Type of system;
2. Location;
3. Malfunctions;
4. Date of installation;
5. Date of most recent water test; and
6. Whether or not the seller has experienced a problem such as an unsatisfactory water test or a water test with notations.

Such information and any other information obtained through different sources and means pertinent to the private water supply shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding the private water supply is not available shall also be conveyed, in writing, when such is the case.

SECTION 16. Heating Disclosure

A licensee listing a single-family residential property, a multifamily property or a commercial property with a residential component, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller for the following information regarding the heating system(s) and/or source(s):

1. Type(s);
2. Age of system/source(s);
3. Name of company who services system/source(s);
4. Date of most recent service call;
5. Annual consumption per system/source (i.e. gallons, kilowatt hours, cords);
6. Malfunctions per system/source within the past 2 years; and
7. Date of most recent inspection of any chimneys and any vents for the heating system or source.

Such information and any other information obtained through different sources and means pertinent to the heating system(s) and/or source(s) shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer. The fact that information pertinent to the heating system(s) and/or source(s) is not available shall be conveyed, in writing, when such is the case.

SECTION 17. Waste Disposal System Disclosure

1. Private Waste Disposal System

A licensee listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component served by a private waste disposal system, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller for the following information:

- A. Type of system;
- B. Size of tank;
- C. Type of tank;
- D. Location of tank;
- E. Malfunctions of tank;
- F. Date of installation of tank;
- G. Location of leach field;
- H. Malfunctions of leach field;

- I. Date of installation of leach field;
- J. Date of most recent servicing of system; and
- K. Name of the contractor who services the system.

Such information and any other information obtained through different sources and means pertinent to the waste disposal system shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding the waste disposal system is not available shall also be conveyed, in writing, when such is the case.

2. Municipal or Quasi-Public Waste Disposal System

A licensee listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component served by a municipal or quasi-public waste disposal system, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller if the seller has experienced any system or line malfunction. This information shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer.

SECTION 18. Known Hazardous Materials Disclosure

1. Duty to Keep Informed

A licensee shall keep informed of any federal, state or local laws, rules, regulations or ordinances concerning known hazardous materials that may impact negatively upon the health and well-being of buyers and sellers.

2. Duty to Disclose

A listing licensee, and a licensee in transactions when the property is not listed with a real estate brokerage agency, shall disclose, in writing, whether the seller makes any representations regarding current or previously existing known hazardous materials on or in the real estate. In addition, the licensee shall give a written statement to the buyer encouraging the buyer to seek information from professionals regarding any specific hazardous material issue or concern. Such written representation and statement shall be conveyed to a buyer prior to or during the preparation of an offer.

3. Request for Information from Seller

A licensee listing a single-family residential property, a multifamily property, a commercial property with a residential component and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller whether the seller has any knowledge of the presence of or prior removal of hazardous materials or elements on the property, including, but not

limited to asbestos, radon, lead- based paint, ~~and~~ underground storage tanks, and methamphetamine. Such information and any other information obtained through different sources and means pertinent to hazardous materials shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding hazardous materials is not available shall also be conveyed, in writing, when such is the case.

SECTION 19. Flood Risk Disclosure

1. Duty to Disclose – Residential Real Property

For the purposes of this section, “residential real property” means real estate consisting of not less than one nor more than four (4) residential dwelling units.

A licensee listing for sale residential real property, and a licensee in transactions when the residential real property is not listed with a real estate brokerage agency, shall disclose, in writing, information regarding potential flood risks, including:

A. Whether, at the time the seller provides the information to the purchaser, the property is located wholly or partly within an area of special flood hazard mapped on the effective flood insurance rate map issued by the Federal Emergency Management Agency on or after March 4, 2002; the federally designated flood zone for the property indicated on that flood insurance rate map; and a copy of the relevant panel of that flood insurance rate map.

For the purposes of this paragraph, "area of special flood hazard" means land in a floodplain having a 1% or greater chance of flooding in any given year, as identified in the effective federal flood insurance study and corresponding flood insurance rate maps.

B. Whether, during the time that the prospective seller has owned the property:

- (1) Any flood events affected the property or a structure on the property;
- (2) Any flood-related damage to a structure occurred on the property;
- (3) Any flood insurance claims were filed for a structure on the property and, if so, the date of each claim; and
- (4) Any past disaster-related aid was provided related to the property or a structure on the property from federal, state or local sources for the purposes of flood recovery and, if so, the date of each payment; and

C. For the purposes of this subsection, "flood" means:

- (1) A general and temporary condition of partial or complete inundation of normally dry areas from:
 - (a) The overflow of inland or tidal waters; or
 - (b) The unusual and rapid accumulation or runoff of surface waters from any source; or
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such

as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event that results in flooding as described in subparagraph (1), division (a).

Such written representation and statement shall be conveyed to a buyer prior to or during the preparation of an offer.

2. **Duty to Disclose – Non-Residential Real Property**

"Nonresidential real property" means real estate that is not residential real property as defined in Section 19(2) of this chapter.

Unless the transaction is exempt under 33 M.R.S. § 192, a licensee listing for sale non-residential real property, and a licensee in transactions when the non-residential real property is not listed with a real estate brokerage agency, shall provide to the purchaser, in writing, a property disclosure statement containing the following:

1. Roads on or abutting property.
2. Road maintenance.
3. Access to the property. Information describing the means of accessing the property by:
 - A. A public way, as defined in Title 29-A §101(59); and
 - B. Any means other than a public way, in which case the seller shall disclose information about who is responsible for maintenance of the means of access, including any responsible road association, if known by the seller. Any means other than a public way, in which case the seller shall disclose information about who is responsible for maintenance of the means of access, including any responsible road association, if known by the seller; and
4. Flood hazard. Information regarding potential flood risks, including:
 - A. Whether, at the time the seller provides the information to the purchaser, the property is located wholly or partly within an area of special flood hazard mapped on the effective flood insurance rate map issued by the Federal Emergency Management Agency on or after March 4, 2002; the federally designated flood zone for the property indicated on that flood insurance rate map; and a copy of the relevant panel of that flood insurance rate map. For the purposes of this paragraph, "area of special flood hazard" has the same meaning as in Title 38, section 436-A, subsection 1-C;
 - B. Whether, during the time that the prospective seller has owned the property:
 - (1) Any flood events affected the property or a structure on the property;
 - (2) Any flood-related damage to a structure occurred on the property;
 - (3) Any flood insurance claims were filed for a structure on the property and, if so, the date of each claim; and
 - (4) Any past disaster-related aid was provided related to the property or a structure on the

property from federal, state or local sources for the purposes of flood recovery and, if so, the date of each payment; and

C. For the purposes of this subsection, "flood" means:

(1) A general and temporary condition of partial or complete inundation of normally dry areas from:

(a) The overflow of inland or tidal waters; or

(b) The unusual and rapid accumulation or runoff of surface waters from any source; or

(2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event that results in flooding as described in subparagraph (1), division (a).

3. Delivery and Time of Disclosure; Cancellation of Contract

1. Definition. As used in this section, "flood risk disclosure statement" means a statement containing, at minimum, the information required in the preceding section.

2. Delivery and time of disclosure. The seller of nonresidential real property under this subchapter shall deliver or cause to be delivered a flood risk disclosure statement to the purchaser no later than the time the purchaser makes an offer to purchase, exchange or option the property or exercises an option to purchase the property pursuant to a lease with an option to purchase.

3. Terminate contract. If the seller does not deliver or cause to be delivered a flood risk disclosure statement to the purchaser before the purchaser makes an offer or exercises an option in accordance with subsection 2, the purchaser may terminate any resulting real estate contract or withdraw the offer within 72 hours after receipt of the flood risk disclosure statement.

4. Withdrawal without penalty. If the purchaser terminates a real estate contract or withdraws an offer pursuant to this section, the termination or withdrawal is without penalty to the purchaser and the seller shall promptly return to the purchaser any deposits made by the purchaser.

5. Rights waived. Any rights of the purchaser to terminate a real estate contract provided by this section are waived conclusively if not exercised prior to settlement or occupancy, whichever is earlier, by the purchaser in the case of a sale or exchange, or prior to settlement in the case of a purchase pursuant to a lease with an option to purchase. Any rights of the purchaser to terminate a real estate contract for reasons other than those set forth in this section are not affected by this section.

6. Invalidated. A transfer subject to this subchapter is not invalidated solely because of the failure of any person to comply with this subchapter.

SECTION 20. Referral Fees

1. Certain Referral Fees Prohibited

A licensee may not receive compensation or other valuable consideration from a title company, lender or closing company or any affiliated employee for directing a buyer or seller in a real estate transaction to a company or an individual for financing, title or closing services.

2. Disclosure of Certain Referral Fees Required

A licensee who anticipates receiving compensation or other valuable consideration from a company or person for a referral of services, other than the services listed in Section 20(1) of this chapter or real estate brokerage services, to a buyer or seller during a real estate brokerage transaction may not accept such compensation or valuable consideration unless the licensee discloses in writing to the person paying for such service, and to the client if not the same person, that the licensee anticipates receiving such compensation or other valuable compensation for such referral.

[APA Office Note: the Real Estate Brokerage Relationships Form is a separate file in Adobe .pdf format.]
