

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 300: COMMISSION MEETINGS

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**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.

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#### 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 of Applications, Documents and Fees

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.

STATUTORY AUTHORITY: 32 M.R.S. §§ 13062, 13065(8), 13069

EFFECTIVE DATE:

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 22, 1996

AMENDED:

October 4, 1999

NON-SUBSTANTIVE CORRECTION:

April 6, 2000 - spacing only

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 340: COMPLAINTS AND INVESTIGATIONS

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

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### 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 Commission rules, or concerning the qualifications of any Commission licensee, shall be sent to the last known contact information of the person against whom the complaint is filed. If the complaint is filed against a licensee, a copy of the complaint will also be sent to the licensee's designated broker.

The Director will request the person against whom the complaint is filed to 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 Commission rules, 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.
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STATUTORY AUTHORITY: 32 M.R.S. §§ 13065, 13067-A, 13069, 13174

EFFECTIVE DATE:

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 350: ADJUDICATORY HEARINGS

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

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### 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 10 M.R.S. § 8003(5-A)(A), Title 32, Chapter 114 of the Maine Revised Statutes, or 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 (A) deny a license or renewal; or (B) 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 8. 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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STATUTORY AUTHORITY: 5 M.R.S. §§ 9054, 9060; 10 M.R.S. § 8003(5-A); 32 M.R.S. §§ 13062, 13065(8), 13068, 13069

EFFECTIVE DATE:

AMENDED:

April 17, 1989 - Section 3

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 22, 1996

AMENDED:

October 4, 1999

**Chapter 360: APPROVAL OF QUALIFYING EDUCATION COURSES**

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

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**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 an application with 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, and the course application fee. 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; and
- K. A policy on cheating.

## 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 requirements for the purpose 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.

**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 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 its 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.

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STATUTORY AUTHORITY:

32 M.R.S. §§ 13065(6), 13069, 13198, 13199, 13200

EFFECTIVE DATE:

AMENDED:

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April 1, 1994 - Sec 3 (added)

April 1, 1994 - Sec. 4, 5, & 6 (changed numbering only)

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August 5, 2002 – filing 2002-287, Section 3(10); Section 5 repealed, Section 6  
renumbered to Section 5

July 1, 2006 – filing 2006-190

October 13, 2009 – filing 2009-545

April 22, 2020 – filing 2020-100 (EMERGENCY)

August 13, 2020 – Section 4(3), filing 2020-186

**SUMMARY:** This rule sets forth 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.

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### 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. **Asynchronous Distance Education.** A continuing education course where the instructor and students engage with course content at different times and from different locations.
2. **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.
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. **Continuing Education Course Provider.** A real estate continuing education course provider shall be defined as an individual, group of individuals, or organization responsible for the development, coordination, administration and delivery of a continuing education course.

5. **Core Course.** The core course shall be defined as a mandatory three (3) clock hour course which follows a Commission-prescribed curriculum.
6. **Synchronous Distance Education.** A continuing education course offered via electronics means with real time visual and audio interaction between instructor and student.

### 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:

- (1) Synchronous Distance Education. Synchronous distance education may be approved if the instructor or 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.
- (2) 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 be accompanied by the application fee, and 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; and
  - H. A description of what participants need for successful completion of the course.

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 the submitted or approved real estate continuing education course application shall be reported to the Director. A change in content or instruction 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 sponsor shall retain the roster of licensees 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 renewal approval is submitted by a provider.
- 3.. Course Renewal Application. A renewal application adopted by the Commission for course approval shall be furnished by the Director. This renewal application shall be accompanied by the renewal application fee and 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. 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.
4. Approval Expiration. Course providers who promote and conduct continuing education courses as approved after 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 course provider; and
3. Notice indicating whether the course has been approved by the Director for continuing education or is pending approval 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 [fill in the number of hours] 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 credit.
3. 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.
4. An instructor who teaches an approved course may receive clock hour approval for that course 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 educational programs. The licensee shall be responsible for submitting to the Director a completed 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.

STATUTORY AUTHORITY: 32 M.R.S. §§ 13065, 13069, 13194, 13197

EFFECTIVE DATE:

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August 5, 2002 - Sections 2(D), 3(B), 4(B, G), 7(B, E), and consequent renumbering.

**Chapter 390: LICENSING PROCEDURES AND REQUIREMENTS FOR INDIVIDUALS AND AGENCIES**

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

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**SECTION 1. Individual Licenses**

This section sets forth the requirements for individual licensure in addition to those set forth in Title 32, Chapter 114 of the Maine Revised Statutes.

**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 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 initial associate broker license term; and
- C. The applicant completed the Broker/Designated Broker Course with a minimum final grade of 75% and submitted a course completion certificate (valid for one year from the course completion date).

A licensed real estate broker may act as a 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 of Commission rules.

**2. Associate Real Estate Broker**

An individual may qualify for an associate 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 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;

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

- (1) An application approved by the Director with the required fee within one (1) year of the date of passing the examination set forth in Paragraph B with a minimum grade of 75%; and
- (2) The Designated Broker's Authorization of Agency Affiliation form.

B. An individual may sit for the sales agent license examination if the applicant completed the Sales Agent Course with a minimum final grade of 75% and submitted the course completion certificate to the examination vendor.

An applicant must take and pass the examination within one (1) 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 the 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 ever 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 Licensure 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 passed a Maine jurisprudence examination within one (1) year prior to applying for a Maine license; and
- 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 required fee and this fee shall be retained whether or not the extension 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 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 change of license application and the change of license application fee.
- (ii) If the licensee 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. At any time, to change a license from inactive to active status, a licensee may submit a change of license application and fee after passing a written jurisprudence examination covering Maine real estate laws. The change of license application must be submitted within one (1) year of passing the jurisprudence examination.

In the alternative, licensees who are inactive for less than six (6) years who wish to return to active status have the option to instead complete Commission-approved continuing education clock hours as follows:

- (1) 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.
- (2) 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.
- (3) Inactive more than 4 years but less than 6 years: The licensee must complete 36 hours of continuing education courses (including a Commission approved core course) completed within the previous biennium.

## **SECTION 2. Agency 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 in another state 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; and
- J. Disclose whether the agency, the designated broker or, if applicable, any of the applicant agency's members, officers or directors have 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 a change to the Director as required by 32 M.R.S. § 13195.

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

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

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STATUTORY AUTHORITY: 32 M.R.S. §§ 13065, 13172, 13173, 13175, 13176, 13178, 13182, 13191, 13194, 13195, 13196, 13198, 13199, 13200

EFFECTIVE DATE:

AMENDED:

April 17, 1989 - Section 4

April 1, 1994 - Section 4

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 22, 1996

AMENDED:

August 5, 2002 - Sections 1, 2 and 3 repealed, remaining sections renumbered

July 1, 2006 – filing 2006-191

October 13, 2009 – filing 2009-546

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

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

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**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 referenced 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;

- 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; and
- I. Affiliated licensees are properly licensed including completion of continuing education requirements for license renewal.

## **SECTION 2. Monitoring Compliance**

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

### **1. 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.

### **2. 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.

### **3. 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 (90) days with the new agency and the new designated broker 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 distributed to a charity or other such organization, proper written notice of the intended disbursement must be overtly posted in a manner readily accessible to the public, either physically, by electronics means, or otherwise.

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 disbursed.

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 3(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 Title 32, Chapter 114 of the Maine Revised Statutes or Commission rules, 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 3(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 3(7) of this chapter; and
- E. Real Estate Trust Account reconciliation records, as listed in Section 3(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 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 5. Examinations for Compliance with Licensing Laws**

- 1. A real estate brokerage office may be examined for compliance with Title 32, Chapter 114 of the Maine Revised Statutes and Commission rules:
  - 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;
  - 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.

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STATUTORY AUTHORITY: 32 M.R.S. §§ 13065(7), 13178, 13179, 13184

EFFECTIVE DATE:

July 1, 2006 – filing 2006-192  
July 29, 2009 – filing 2009-377

**Chapter 410: MINIMUM STANDARDS OF PRACTICE**

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

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**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 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.

**3. 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.

#### 4. **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.

#### 5. **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**

1. A licensee holding an active real estate license shall disclose, in the offer to purchase as a buyer, or as part of the property disclosure information as a seller, that the licensee is a real estate licensee:
  - A. When buying or selling real estate not listed with a real estate brokerage agency;
  - B. When buying or selling real estate listed with the licensee's real estate brokerage agency; or
  - C. 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 13271, Subsection 9 of the Maine Revised Statutes.

#### 4. **Factors or Conditions That May Impact the 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 signature. 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 to not compensate all other real estate brokerage agencies in the same manner, or not compensate other agencies at all, this policy must be included in the statement.

##### 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.

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**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 or 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.

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**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 provided with 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. 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 prior to withdrawal, expiration or written rejection of the offer or counteroffer.

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 prior to the transaction closing or terminating.

Buyer names and addresses are not terms of an offer and shall not be disclosed.

2. Notwithstanding the confidentiality provision contained in Section 12(1) of this chapter, any such document 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**

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 4 of the Commission's rules to the designated broker within five (5) calendar days after execution of the document or record.

### 3. **Internet Sites**

An affiliated licensee may not directly or indirectly, independently or through others develop and upload an internet 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 internet 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, Known Hazardous Materials, Potential Flood Risks and Access to Property**

All licensees have a duty to obtain and provide disclosure information on private water supply, heating, waste disposal system, known hazardous materials, potential flood risks, and access to property 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 disclosures, as set forth in Sections 15 to 20 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 20 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 20 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, 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**

A licensee listing for sale real property, and a licensee in transactions when the real property is not listed with a real estate brokerage agency, shall convey to a buyer prior to or during the preparation of an offer, 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 information and any other information obtained through different sources and means pertinent to flood risk shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding flood risk is not available shall also be conveyed, in writing, when such is the case.

## **SECTION 20. Access to Property**

A licensee listing for sale real property, and a licensee in transactions when the residential real property is not listed with a real estate brokerage agency, shall ask the seller for information describing the means of accessing the property by:

1. A public way, as defined in Title 29-A, section 101; and
2. 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.

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

## **SECTION 21. 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 21(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.]*

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STATUTORY AUTHORITY: 32 M.R.S. §§ 13065(3), 13271, 13272, 13273, 13274, 13275, 13277, 13278, 13279, 13280; 33 M.R.S. §§ 173, 193

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