



SCHOOL of REAL ESTATE

INDIANA LICENSE LAW STUDY OUTLINE

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INDIANA REAL ESTATE LICENSE LAW - STUDY OUTLINE

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The following outline is offered as a study guide for real estate students preparing for the License Law section of the Indiana Real Estate Broker's exam. It is primarily a condensed and more simplified version of both the Indiana Code "**IC**" (*laws written by the Indiana Legislature*) and the Indiana Administrative Code "**IAC**" (*rules and regulations adopted and enforced by the Indiana Real Estate Commission*). Also included (*in italics*) are some further explanations and practical examples. Licensees are responsible for compliance with the actual IC and IAC which can be found online at www.in.gov/pla/ (*click Professions – Real Estate – Licensure Law*) or by contacting the Indiana Professional Licensing Agency at 317-234-3009. This outline is **not** in any way represented as being the law, it is simply an outline for study purposes, and there are several provisions not summarized here. Practitioners are subject to many other bodies of law as well, including; the State and Federal criminal codes and Federal Fair Housing Laws. This outline is **not** intended in any way as legal advice. Practitioners and their clients should always seek competent legal advice when faced with legal questions.

The Indiana Legislature and the Indiana Real Estate Commission have made significant changes to Real Estate licensure, through Senate Bill 275 (SB275), which takes effect July 1, 2014. The primary issue is "Single Licensure", transitioning all real estate licensees to Broker status, eliminating Salespersons. Though referred to as "Single Licensure", we will still have a two tier structure, with Managing Brokers now holding the licenses of affiliated Brokers replacing prior structure of Principal Brokers holding the licenses of affiliated Salespersons and Associate Brokers.

SB-275 also significantly increased both the pre and post license requirements for licensure, moved licensees to the same 3 year license cycle and increased and the continuing education requirements.

I. Purpose, Creation and Make Up of the Indiana Real Estate Commission:

- A. The Indiana Legislature created The Indiana Real Estate Commission (**IREC**) granting it sole authority to license and regulate real estate licensees. The Commission's primary purpose is to safeguard the public interest by encouraging and requiring a high standard of knowledge and ethical practice on the part of licensees, as well as, provide enforcement and disciplinary measures for those who engage in; dishonest, fraudulent, and criminal activities, or otherwise violate Commission rules and regulations.
- B. There are 12 Members on the Indiana Real Estate Commission (**IREC**), **all** are appointed by the Governor to 4-year terms. The Governor may reappoint members and shall appoint replacements as needed. Commission members must be residents of the State and may not hold any elected State or Federal office. The make up of the Commission is as follows:

- (1) There are **Nine (9) District Members**, 1 per Congressional District, they must be licensed Brokers for at least five years and live in their district at least one year prior to appointment.
- (2) There are **Three (3) At Large Members**, These “citizen members”, who are not licensed and have never professionally been a part of the industry, bring a non-practitioner’s perspective to the Commission. *(Actually, one (1) of the “At Large Members” is a former District Member and a licensed Broker who was retained as a Commissioner when their District was lost due to a census change.)*

C. Officers Terms, Duties, and the Executive Director:

- (1) Each year the Commission elects, from its membership, a Chairman and Vice-Chairman. These are one year positions that can be held no more than two years consecutively. The Chairman presides at all meetings or the Vice-Chairman in the absence of the Chairman.
- (2) The Indiana Professional Licensing Agency (PLA) acts as the “front office” for various Regulatory Commissions and Boards of State licensed professions. The PLA provides an Executive Director and staff as administrative support to the Real Estate Commission. The Executive Director may not be a Commission member, and thus can not vote or take the place of an absent Commission Member. The PLA: maintains the Commission’s records and files of all licenses and licensees, schedules and provides notice of all Commission meetings, hearings and investigations, records all votes taken, and processes license applications, renewals and collects all fees.

D. Meetings, Quorum, Written Consent to Action:

- (1) The Commission regularly meets once a month in Indianapolis, or upon the call of the Chairman or the written request of any seven members.
- (2) A “**quorum**” is a simple majority of the current members *(currently 7)* and is the minimum required to conduct official business.
- (3) A majority vote of a quorum can bind the Commission. *(Could be as few as 4)*
- (4) The Commission may take any permitted action without a meeting, if:
 - (a) There has been prior written consent or
 - (b) All members orally consent and follow with written confirmation.

E. Compensation & Expenses, and License /Renewal fees:

- (1) Each member is entitled to a minimum per diem *(daily rate)* as established by law for each day they are on Commission business.
- (2) Each member is entitled to reimbursement of travel and other expenses as allowed by state policy and procedures.
- (3) All compensation and expenses of the Commission are paid from the State’s General Fund.
- (4) License/renewal fees and fines are handled by the PLA and forwarded to the State Treasurer for deposit in the General Fund. *(The IREC and the PLA do not have their own bank accounts.)*

II. Powers and Responsibilities of the Commission:

A. Powers: *(Granted exclusively by the IN Legislature to the IREC)*

- (1) Adopt, administer and enforce license law. *(make and enforce law)*
- (2) Issue, deny, suspend, censure, or revoke licenses and/or licensees. *(Issue & sanction licenses and licensees)*

- (3) Adopt standards of competent practice and rules of behavior such as our Professional Standards.
- (4) Investigate complaints regarding licensees.
- (5) Bring actions in circuit court to enforce license law. (*i.e. issue a cease and desist order to prevent further violations*)
- (6) Inspect the records of licensees. (*i.e. audits for Cont. Ed. and escrow account compliance*)(*Note: licensees include individuals and firms*)
- (7) Conduct hearings, hire council and consultants, appoint others to investigate or conduct hearings.
- (8) Approve exams, courses of study, Continuing Education courses, various forms (*i.e. Residential Sales Disclosure Form, License Applications etc.*)
- (9) Adopt a seal containing the words “Indiana Real Estate Commission”.
- (10) The Commission **does not** rule on or resolve disputes between licensees over fees. These are civil issues handled through arbitration or the courts.

*Note: The Attorney General’s office handles complaints against those who are not licensed but should be, such as someone who has never been licensed that is selling real property for another, for a fee.

III. Requirements for Licensing:

A. Only the Commission (*not the Board of Realtors*) can license or regulate real estate licensees. In general, if it involves real estate located in Indiana and a fee for service, it falls under the authority of the Indiana Real Estate Commission, regardless of where the acts are performed. (*i.e. A Colorado resident offers to assist his new neighbor, who just moved from Bloomington, IN, sell his Bloomington home. If this is done for consideration, it would require an Indiana Real Estate license. The issue is where the property is located.*)

B. Who needs a Real Estate License?

Generally, any entity who, **for consideration** (*anything of legal value*), performs, or offers to perform (*advertisements*), any of the following services: **sell, buy, trade, exchange, option, lease, rent, manage, list, consult, appraise, practice business brokerage, or refer such services**, where Indiana real estate is involved, must be licensed, except as exempted below:

- (1) **Exceptions to licensure.** The follow persons and/or transactions **do not** require licensure:
 - (a) **Generally, activities regarding one’s own property;** (*FSBO, for sale or lease by owner. But when a licensee personally buys, sells, or leases property, they must disclose the fact they are licensed, and abide by the Professional Standards and ethics set forth in License Law*)
 - (b) **Attorneys practicing law;** (*i.e. Attorneys are not generally exempt, but are when the act is incidental to the practice of law such as being the executor or administrator of an estate where Indiana real estate was sold. This does not allow them to simply offer or perform “brokerage activities”.*)
 - (c) **Public officials carrying out the law;** (*officials in Sherriff’s, Tax or Foreclosure sales, or a Condemnation proceeding under eminent domain*)
 - (d) **Legal representatives such as guardians, receivers or trustees carrying out the terms of a trust, court order or will;** (*Trustees, Executors and Administrators of wills and estates are not necessarily lawyers*)
 - (e) **Rental for less than 30 days by the hotel/motel industry;**

- (f) **Apartment rental and or management by those employed or supervised by a licensed Broker;** *(the “rental/leasing side of this exemption is limited to apartments. Leasing industrial/office space requires a license.)*
 - (g) **Apartment rental of a 12 unit or less complex, owned and managed by that individual, where all 12 units are on one or adjoining parcels;** *(This provision leaves open the question of 13+ unit properties) Even though activities regarding one’s own property already appear to be exempt, some Commissioners have stated that they interpret the law as requiring the owner/manager of 13+ unit properties to be licensed brokers. (Law isn’t perfect, but we do know that 12 unit or less apt. buildings are exempt)*
 - (h) **Cross state referrals by licensed Brokers of other states to or from Brokers in Indiana;**
 - (i) **Regular full-time salaried employees of property owners;** *(this includes many situations such as: new home sales representatives directly employed by a builder selling that builder’s property, or; leasing representatives directly employed by building owners, or a property mgr. directly employed on a full time basis by the property owner or any other full time employee of a property owner.)*
 - (j) **Public auctions by licensed Auctioneers;** *(They are separately licensed. They can conduct auctions but can not perform “brokerage activities”)*
 - (k) **Sale, lease or transfer of cemetery lots;** *(Yes, the law refers to leasing cemetery lots)*
 - (l) **Acts performed by Out-of-State Commercial brokers regarding commercial real estate located in Indiana if properly affiliated with an IN managing broker.**
 - (m) **Acts by licensees of other states performing “licensed acts” in the state of Indiana with the written permission of the Commission.**
 - (n) **Those with the express written consent of the Commission.**
- (2) **Property Management:** Generally, unless you are the full time employee of the property owner, or employed and/or supervised by a licensed Managing Broker, you must be licensed as a Managing Broker to manage property for a fee. Specifically, Brokers may only manage property that is under management contract to their Managing Broker. *(Many of the people we know as property managers are not licensed, and are exempt from licensure because they are employed directly by the property owner or are employed or supervised by a Managing Broker.)*
- (3) **Appraisal:** Appraisers are separately licensed in Indiana. They have extensive educational and practical experience requirements. Broker’s may perform certain estimates of value or appraisals for a fee, but few lenders can use them. FIRREA, a body of Federal lending legislation, requires that appraisals for Federally related loans be performed only by licensed Appraisers.

If a Broker does perform an estimate of value or appraisal for a fee, it must be done according to USPAP guidelines. The law does not specifically address less formal estimates of value such as “Broker’s Price Opinion” (BPO), or a “Broker’s Opinion of Value.” The only conclusion we can draw is that any estimate of value, what ever it is called, performed by an Indiana licensee for a fee must follow USPAP guidelines. These guidelines are quite extensive and it is doubtful that many licensees are well versed in them.

C. Miscellaneous Definitions & Terms:

Many of the terms used in class, on exams and in practice are used somewhat interchangeably. Throughout the license law many terms overlap. It is important to know these terms and the context in which they are used to avoid confusion.

- **Principal:** Client, such as a buyer, seller, landlord or tenant. These are the parties to whom we owe fiduciary responsibilities.
- **Licensee:** Anyone who has a real estate license, regardless of type or status.
- **Agent:** Any licensee who has an agency relationship with a principal.
- **Broker:** One who has a Broker's license. Must affiliate with a Managing Broker to practice actively
- **Salesperson:** Eliminated by SB-275, all licensees must now be brokers.
- **Principal Broker:** Eliminated by SB-275, replaced with Managing Broker
- **Managing Broker:** The primary broker of an Indiana Brokerage or firm. The Broker whom the Commission holds responsible for the actions of Brokers affiliated with them. Type of license required to provide regulated services directly to the public for consideration or compensation. This term is used though out license law and the course to include Broker Companies and or Brokerage firms. (*i.e. when the law refers to a Broker's association with a "Managing Broker", it also means ...with a "Firm or Brokerage" as the Firm or Brokerage legally plays the role of Managing Broker.*)
- **Branch Manager:** A Broker designated to the Commission as the one providing oversight to a branch/sales office, in a multi-office brokerage or broker company. The Managing Broker may oversee main and branch offices, but all offices must have at least one Branch Manager designated to the commission.
- **Broker Company:** AKA firm, brokerage, agency or company. A business that is separately licensed to provide brokerage services and may hold the licenses of others. These companies are run by an "Individual Broker" who is basically the Managing Broker.
- **Individual Broker:** The person designated to the commission as the one overseeing the operations of a Broker Company. May also be a Branch Manager. Basically the Managing Broker of a Broker Company
- **Affiliated licensee:** Also known as an **Associate**, these are Brokers affiliated or associated with a Managing Broker. (*the terms affiliated and associated are used interchangeably*)
- **Responsible Party:** An older term, replaced for the most part by Individual Broker. This is the Managing Broker who is primarily responsible to the Commission in a brokerage that operates under a corporate, partnership or LLC license. Essentially the Managing Broker under a Corp./Business license structure.
- **Listing Broker:** Generally, this is the Managing Broker of the firm representing the seller or landlord, the **Listing Agent** is the licensee affiliated with that Managing Broker that specifically represents the seller or landlord. (*In practice and in course work, these are often interchanged. i.e. a reference to the "listing broker" may only be referring to the actual agent representing the seller and not necessarily the Managing Broker.*)
- **Selling Broker:** Generally, this is the Managing Broker of the firm representing the buyer or tenant, the **Selling Agent** (*commonly known as the Buyer's agent*) is the licensee affiliated with that Managing Broker that specifically represents the buyer or tenant. This term is often confused as it is not as commonly used. **Remember this term for exams as it is easy to confuse with the "listing side". Know the**

difference between the “Selling Agent” (representing the buyer) and the “Seller’s Agent” (representing the seller). Sorry, but we didn’t write the law, we just teach it.

- **Limited Agent:** A licensee representing **both** sides of a transaction. (*i.e. buyer and seller*) This requires the “**written informed consent**” of all parties.
- **In-House Agent(s)/Agency:** Two agents from the same firm or under the same Managing Broker each representing **different** sides of the same transaction. (*i.e. two brokers both affiliated with ABC Realty, one represents the seller and the other the buyer*). This is not limited agency for the two agents, but is for the Managing Broker.
- **Commercial Real Estate:** A parcel of real estate other than those containing one (1) to four (4) residential units. Specifically **does not** include single family residential units such as: Condos, townhouses, manufactured housing, or homes in a subdivision.

D. License Type and Status:

Real estate licensing in Indiana is basically a two tier structure; a **Managing Broker’s** license and a **Broker’s** license. Only **Managing Brokers**, may contract directly with the public to provide services for compensation. All others must affiliate with and practice under a Managing Broker. Licenses can be held in one of the following “Statuses”: **Active, Inactive, Referral** (*these are assigned to a Managing Broker*) or **Unassigned** (*which is held by the Commission*). The difference between each type and status is significant, as it dictates the role a licensee plays in a real estate transaction, how they are compensated, as well as their Continuing Education requirements. There is no licensure distinction between residential and commercial.

1.) Type of license:

(a) Broker’s License: A Broker’s license is the first or entry level license. To obtain this license, applicants must complete and pass a Commission approved 90 hour pre-license course, pass the State Broker’s exam, then apply for the license. Once licensed, these new licensees must then complete 30 hours of prescribed post-license education during their first two years of practice. So, in total, obtaining and maintaining a real estate license is a 120 hour proposition.

To practice “actively”, a Broker must affiliate with and practice under the authority and oversight of a Managing Broker or Broker Company. All regulated acts are performed in the name of the Managing Broker or Broker Company.

A Broker’s affiliation with a Managing Broker is somewhat of an informal apprenticeship. The Managing Broker/Brokerage becomes responsible for the acts of all associated licensees. (*i.e. when an associated licensee lists a property for sale, it is actually and legally listed with their Managing Broker or Brokerage.*)

(b) Managing Broker’s License: A Managing Broker’s license is the top tier. They are able to contract directly with the marketplace and practice for consideration by themselves, and/or hold the licenses of other brokers who practice under their over site. Managing Brokers are responsible for their own acts as well as those of their affiliated licensees. Brokers must practice in Active status for at least 2 years under the guidance of a Managing Broker and complete the 24 hour Managing Broker course prior to becoming a Managing Broker.

Only Managing Broker or Broker Companies (which essentially act as Managing Brokers) may receive compensation directly from the public or other cooperating Managing Brokers. All other licensees must practice under the oversight of, and be compensated only by, their Managing Broker. Licensees may affiliate with only one Managing Broker at a time.

Broker Companies are separately licensed and essentially act as the Managing Broker for that company, in that, the company is the entity the marketplace contracts with. (i.e. *When a Tucker agent lists a property, it is legally listed with the Company and not the agent.*) Every Broker Company must be directed, supervised, and managed by an “Individual Broker” who has been designated to the Commission.

2.) License status:

Separate from the type of license is the license status. License status dictates such things as the role a licensee plays in a real estate transaction.

Regardless of status, all licenses must be renewed when prescribed, with applicable fees, to be maintained. (*One who has only 4 months left until expiration and then has their license suspended for 6 months, should renew in suspended status if they intend to practice once the suspension is lifted.*)

(a) Active status: An “Active” license is for licensees who actively practice. These are licensees whose license is assigned to a Managing Broker or are the Managing Broker themselves. They represent clients, and in turn, generate fees for the Managing Broker or firm, in which they would typically share.

Continuing Education (CE)

Active status licensees must obtain the required Continuing Education to be eligible for renewal. The Continuing Education specifics are outlined below:

- 36 hours every 3 year license cycle to be eligible for renewal.
- Specifically, at least 12 hours of CE per license year in any of the following subjects.
 - License / Escrow law
 - Anti-trust law
 - Civil rights law
 - Agency law
 - Listing contracts and Purchase agreements
 - Ethics and professional standards
 - Settlement procedures
 - Appraising
 - Property management
 - Farm property management
 - Commercial brokerage and leasing
 - Financing
 - Residential brokerage
 - Land development

- Legislative issues affecting the real estate practice
- Other areas the Commission determines

The 12 hours of Continuing Education (CE) required for each specific year of a license cycle must be received in that 12 month period running from July 1st to June 30th of the following year, (*known as a “license cycle year” or a “continuing education year”*) for each of the 3 years of that license cycle. In other words, there’s no “carry over hours” from one year of a cycle to the next. Pre-license courses do not count.

Managing Brokers must have 4 of the annual 12 hours of CE in courses related to the business and management skills as well as legal knowledge necessary to be a Managing Broker.

Instructors (pre-license and CE) shall complete a minimum of 4 hours per license cycle year of CE specific to providing real estate instruction.

Licensees must retain copies of their CE certificates for 3 years from the end of the licensing period for which the courses applied.

If an “Active” licensee has not completed the required CE hours by the time of license renewal, they must; (a) stop practicing, renew their license in “Inactive” or “Referral” status, or (b) let the license expire, obtain the needed CE hours, then transfer to “Active” status, before practicing again.

The license renewal for active licensees requires a sworn statement that the required number of hours was obtained. To submit a false renewal is a License Law violation with severe penalties. The Commission randomly audits licensees for CE compliance.

The Commission may grant a waiver of CE for such circumstances as active service in the U.S. armed services or an incapacitating illness. This waiver must be applied for and verifying documentation is required.

(b) Referral status: A “Referral” license is an assigned status (*held by a Managing Broker*) that allows the licensee to make **referrals** only to, and receive referral fees only from their Managing Broker. These licensees may not actively practice. This status, like all others, must be applied for and renewed (*with fees*), but carries **no CE** requirements until activation.

(c) Inactive status: An “Inactive” license is an assigned license (*held by a Managing Broker*). This status, like all others, must be applied for and renewed (*with fees*), but carries **no CE requirements** until activation. As a practical matter, licensees who want to move out of Active status would probably choose Referral status because the requirements are the same but Referral status allows you to receive referral fees from your Managing Broker. This status may not be granted if the licensee has disciplinary proceedings pending.

(d) Unassigned status: This status typically is used for one of two scenarios:
1) New applicants approaching the 1 year deadline to apply for initial licensure but who haven't found a Managing Broker or firm to affiliate with, may apply for this status or;
2) Licensees whose Managing Broker holding their license has died or otherwise lost their license "for cause" such as disciplinary action, would by default be placed in Unassigned status.

These licensees may not perform any activity that requires a license, nor may they receive **any** compensation, including referral fees. This status, like all others, must be renewed (*with fees*) to be maintained, and carries the same CE requirement as Active status.

To activate this license, the licensee must affiliate with a Managing Broker or become one themselves, if eligible.

The Commission allows this status for two successive renewal periods. If the licensee fails to affiliate with a Managing Broker within that time frame, the Commission shall give the licensee 30 days notice to do so or the license becomes VOID.

Activation of Referral or Inactive Licenses: To activate an Inactive or Referral license "during" a 3 year license cycle, you must obtain the CE hours required for that specific "license cycle year or CE year" prior to activation, then receive the rest of the hours for that cycle to be eligible for renewal. You do not need to complete any CE hours from prior cycles, just the ones for the current cycle. (*i.e. to activate during the second year of a three year cycle, you would need the 12 CE hours you otherwise would have needed for that CE year, then activate, then obtain the 12 hours for the 3rd year, during that 3rd year to be eligible for renewal. You do not need any hours for that 1st CE year or prior license cycles.*)

To activate at the time of license renewal, you would need the same 36 hours of CE as if the license was active, but you do not need to "recapture" any hours from previous license cycles.

If the licensee was licensed after 7/1/14 and has not yet completed the 30 hours of post license education, they would also need to complete those hours prior to activation.

E. Requirements for a Broker's License:

(1) Age and Criminal Record: 18 years old and have no criminal conviction(s) for: a) an act that would constitute grounds for a disciplinary sanction, b) a crime that has direct bearing on the individual's ability to practice competently, or c) a crime that indicates the individual has the propensity to endanger the public. (*The license application form asks if you have any criminal convictions, excluding only traffic violations for which the penalty was just a fine. Answer this honestly. The*

Commission is most concerned about issues such as violence, fraud or theft. Answering “yes” to this question might “trigger” a hearing, but the Commission is very reasonable about our past. Minor offenses that have been completely resolved are often waived on by the Executive Director. The Commission’s role is to make a determination as to whether any past conviction(s) have bearing upon your ability to faithfully represent a client’s interests.)

- (2) **Formal Education:** Have a High School Diploma or GED.
- (3) **Pre-license Education:** Successfully complete a Commission approved 90 hour Broker pre-license course (*ie. Tucker School of Real Estate*). The course includes three, 100 question multiple choice exams, totaling 300 points. Students must accumulate at least 225 of the 300 points available. Attendance is also taken and students must attend at least 80% of the classroom hours.
- (4) **Post-license Education:** Brokers licensed after 7/1/14, must obtain 30 hours of post-license education during the 1st two years of practice. This these brokers CE requirements for the first two years of licensure.
- (5) **Testing:** Pass the State’s Broker Exam within 1 (one) year of completion of the pre-license course. The State Exam may be taken multiple times, if needed, but if not passed within the 1-year deadline, the pre-license course must be retaken.

The State Exam is administered by a third party company and consists of two separately scored sections; 1st an **80 question general content** section on real estate terms, principles and practices, and 2nd a **50 question Indiana License Law** section. Each section requires a score of 75% to pass. If a student passes only one section, they would only need to retake that failed section. Students must pass both sections before applying for a license. Note: Passing the State Exam does not make you a licensee. The license must be applied for and granted.

(6) Apply for a License:

- (a) Make application to the Commission, (Active, Referral, Inactive or Unassigned status) within **1 year** of passing the State Exam. (*Failure to apply within this time frame would require the applicant to retake the pre-license course and pass the State Exam.*)
- (b) Pay the applicable fees, and include **original** evidence of passing **both** the Pre-License course and State Exam.
- (c) To apply for an Active, Referral, or Inactive license, you must provide a sworn certification from the Managing Broker that intends to associate with you or;
- (d) Apply to have the Commission hold the license in Unassigned status.

(7) Evidence of Licensure:

Though the law still makes reference to a printed license/pocket card and wall certificate, the Commission no longer automatically issues these. In the past the pocket card was considered your license. Today an applicant is considered “licensed” upon verification that their name appears on the Commission/PLA web site www.in.gov/pla as a licensee. Licensees may obtain a pocket card and/or wall certificate from that same site for a fee, but this not a requirement, nor do either

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serve as your actual license. Licensees may also print evidence of licensure from the web page at no cost. Licensure is a “status” not a piece of paper.

(6) Expiration and Renewal of Broker’s License:

- (a) If not renewed, a Broker’s license will expire midnight June 30th, on the year prescribed by the commission. All licenses will renew/expire on the same date. Those who become licensed during the middle of a license cycle simply “join the show already in progress” and their license will expire just as everyone else’s would. Renewal must be applied for prior to expiration with a statement of CE compliance, where required, and payment of applicable fees. Licenses do not automatically renew.
- (b) An expired Broker’s license may be renewed for up to 36 months following expiration by paying the license renewal fee plus a late fee of \$50, and having completed the CE requirements for the current period. Remember, renewing an expired license does not absolve an applicant from practicing on an expired license. “Practicing”, would include providing any regulated service, as well as offering to do so. So just having your name on a Company roster that is publicized could constitute practicing.

F. Requirements for a Managing Broker’s License:

- (1) **Age and Criminal Record:** 18 years old and no criminal record that could affect the licensee’s dealing with the public. *(Same issues as noted for Salesperson)*
- (2) **Experience and Education:**
 - ((a)) Two year’s active experience as an Indiana broker in the 24 months immediately proceeding application for the Managing Brokers license or, if approved by the Commission, receive a waiver for equivalent experience. *(Active experience means active status under the guidance of a Managing Broker but does not require the applicant to have sold or leased any property)*
 - ((b)) Pass a Commission approved 24 hour Managing Broker course.
- (3) **Apply for the License**
- (4) **Evidence of Licensure:**

Though the law still makes reference to a printed license/pocket card and wall certificate, the Commission no longer automatically issues these. In the past the pocket card was considered your license. Today, an applicant is considered “licensed” upon verification that their name appears on the Commission/PLA web site www.in.gov/pla as a licensee. Licensees may obtain a pocket card and/or wall certificate from that same site for a fee, but this not a requirement, nor do either serve as your actual license. Licensees may also print evidence of licensure from the web page at no cost. Licensure is a “Status” not a piece of paper.
- (5) **Continuing Education:** Managing Brokers must also obtain 36 hours of CE every license cycle, *(12 hours each license cycle year)* but 4 of the annual 12 hours required must be “dedicated to the necessary business and management skills and legal knowledge needed by a Managing Broker.”
- (6) **Expiration and Renewal of Broker’s License:**
 - (a) Same as for broker’s license

G. Acts permitted by Out of State Commercial Brokers

A Commercial Broker licensed in another state, but not in Indiana, may perform acts typically requiring a license, with respect to commercial real estate within the State provided they:

1. Cooperate and have a written agreement with an Indiana Managing Broker that details the terms of cooperation, any compensation as well as a statement that they will comply with the laws of this State. They agree to deposit all necessary documentation and escrow funds with the Indiana Managing Broker, and include them in any advertising.
2. Provide the Indiana Managing Broker with evidence of licensure in good standing in their home state.
3. File an **irrevocable consent to suit** allowing any court action against them to commence in the county in Indiana where the cause of action arose.
4. Licensees affiliated with this Out of State Commercial Broker may practice in Indiana so long as these terms are met by all.
5. This exemption applies only to commercial real estate.

H. Licensee's Requirements with their Managing Broker:

1. Must affiliate with only one Managing Broker.
2. Must maintain evidence of licensure in the Managing Broker's office.
3. Must advertise only in the name of their Managing Broker or Broker Company. *(Advertising rules detailed later)*
4. Must not maintain an office apart from one provided by the Managing Broker or Broker Company. *(In actuality, licensees work from many different places. The point of this provision is that licensees have only one official business address for purposes of official Commission business, such as notice of a hearing, and that address must be under the supervision of the Managing Broker.)*

I. Termination, Transfer, Change of Address or Status (a form and a fee for everything):

1. Upon termination of association with a Brokerage, *(quitting or being fired)*, licensees shall turn over all listings and exclusive buyer agency agreements to the Brokerage. *(These employment agreements and any related fees are the personal property of the brokerage and remain with them. This provision does not address the rights associated licensees may have under commission split agreements with the Brokerage regarding "pending" transactions. Should there be a dispute over fees, this would be handled by arbitration or through the courts)*
2. It is the responsibility of all licensees to provide a properly signed transfer application to change: Brokerage affiliation, license status, business or home address. The Commission must always be informed of where and under which, if any, Managing Broker/Brokerage a licensee is practicing. This includes changing offices within a multi-office brokerage or even the licensee's home address.

J. Licensure as a Nonresident:

1. Nonresidents (including legal aliens) may be licensed in Indiana, but may serve only as Brokers, (*nonresidents may not be Managing Brokers or the "Individual Broker" in any of the Corporate, LLC or Partnership structures*)
2. Nonresident licensees shall file with the Commission a written ***Irrevocable Consent to suit*** to allow the Commission to commence legal action in any county of the state in which the cause of action arises, and to allow "service of process" for legal actions against them to be made on the Commission as their "agent for process." (*The Commission will make a good faith effort to communicate any official notice to the licensee's business address of record, but will not allow the non-resident's "distance" to delay any legal or official proceedings*)
3. Applicants licensed in other states, with which Indiana has formalized reciprocal agreements (Reciprocity), may request from the Commission a waiver allowing them to take only the License Law portion of Indiana's State Exam. **It is up to each state to establish its own licensing guidelines, applicants should confirm with each respective state their specific requirements for licensure.**
4. Nonresident licensees must ensure that they comply with Indiana's CE requirements, as credit hours obtained in their home state may not be recognized by Indiana.

K. Death of an Individual Sole Proprietor Broker or a Partner in a Partnership:

Our Managing Brokers or Broker Companies are our connection to the marketplace. When the brokerage is structured as a sole proprietorship (*meaning not a company*) that sole proprietor broker is the legal connection licensees have to the marketplace. Clients contract directly with that sole proprietor broker, as a person, as opposed to an enduring business entity like a corporation. Should that sole proprietor broker die, the connection of all associated licensees to the marketplace terminates as well. This also terminates all employment contracts, such as listing contracts, in which there is not an accepted offer (*all but "Pendings"*). (*This is one reason why many brokerages are established as on going business entities such as corporations, LLC etc., these business structures are discussed later*)

This provision of license law applies to partnerships as well. They too are affected by the death of a principal player. Should any partner in a brokerage partnership die it has the same effect as is it were a sole proprietorship. "Game Over". It is not the Commission's intent to harm or inconvenience the parties to these "pending" transactions. Indiana Law provides that:

1. Associated licensees have 90 days following the sole proprietor broker's (*or partner's*) death to complete "business already contracted for", (*i.e. take accepted offers/pendings to closing.*) This not just an opportunity to pursue a closing, it is an obligation to clients. Listings without an accepted offer "die" with the Broker, and would require re-negotiation by the licensee following their affiliation with a new Brokerage to create any new relationship. (*These "former" clients have no obligation to relist and are now fair game for any licensee.*)
2. The Commission shall appoint a "Successor Trustee" (*often a Commission Member*) to take over the trust/escrow account(s), (*but this party is not there to play the role of "surrogate" Managing Broker.*)
3. Associated licensees may need to open their own trust account if the timing of their Broker's death was such that it prevented the timely deposit of such things as

earnest money checks. These licensees should contact the PLA as well as their attorney to seek additional guidance.

4. During this 90-day period, licensees may affiliate with a new Brokerage for the purposes of new business (*such as trying to secure listings lost due to their Broker's death*), but **must** make every effort to complete any "pending" transactions under the name of the deceased Broker. There is no agency relationship, implied or otherwise, between the new Managing Broker/Brokerage and the parties to the old "pending" transaction(s), unless one is created. (*The new Managing Broker may not want to offer any advice to the new associate regarding these transaction(s) as doing so may create an unintended agency relationship with the parties involved, not to mention the fact that the Managing Broker is not being paid.*)
5. Brokers may not start any new business until affiliated with a new Brokerage. They have the responsibility of sending to the Commission a properly completed transfer application, and until such time are deemed to be in Unassigned Status.
6. This License Law provision does not address the rights to any income/commission dollars of either the deceased Broker or any associated licensee, it only addresses our obligations to clients. (*Fees, owed to the deceased broker or to affiliated licensees are civil matters with the estate.*)

L. Licensure of Business Entities as Broker:

Various business entities, such as corporations, and LLC's, etc. may obtain a Broker's License provided they meet the criteria set forth below. Such "firms" could hold the licenses of others and provide services, such as brokerage or property management, to consumers for a fee. There must be an Indiana resident holding a valid Broker's license designated as the "Individual Broker" (*formerly responsible party*). They play the role of the Managing Broker and are primarily responsible to the Commission for the firm's regulatory compliance, official communication as well as providing oversight to affiliated licensees. These entities are often referred to as a Broker Company.

Brokers may individually incorporate for a variety of tax or liability reasons, but their Real Estate license will only be issued to them individually, not their corporation.

Because these listing and property management agreements would be made with the "Broker Company" or "brokerage" and not a person individually, if the Individual Broker dies, these agreements remain intact. The brokerage must act immediately to fill this position and properly notify the Commission, but business is not necessarily interrupted.

(1) Requirements for Broker Licensure as a Corporation

- (a) There must be a licensed Managing Broker residing in Indiana designated as the "Individual Broker" who is either; 1) an officer of the corporation, or 2) the highest ranking employee with the ability to bind the corporation in real estate transactions. Expiration or revocation of this person's license terminates the license of the corporation. Death does not.
- (b) Everyone who acts as a Broker must be licensed and supervised by the Individual Broker or a Branch Manager.

- (c) Apply for a Corporate license and pay the applicable fees; this is separate from any individual's license fee.
- (d) Expiration is June 30 of the year prescribed by the commission, these like all licenses are on a 3 year cycle, and must be renewed prior to expiration to be maintained.

(2) Requirements for Broker Licensure as a Partnership

- (a) **All partners** must be licensed Brokers. Expiration or revocation of **any** partner's license or **death of any partner** terminates the partnership license.
- (b) At least one partner must be a resident of Indiana and who is Managing Broker eligible and designated as the Individual Broker.
- (c) Other provisions the same as for a Corporation

IV. Responsibilities of the Managing Broker/Individual Broker:

A. General Responsibilities:

1. Main and Branch offices must be managed by a designated Broker. (*The Managing Broker may over see one or more office, but all offices must be overseen by a broker designated to the commission. If this is not the Managing Broker, then a Branch Manager must be designated".*)
2. Must maintain an accurate list and evidence of licensure for all affiliated licensees.
3. Associating with unlicensed persons can cause the Managing Broker to have their license suspended or revoked after a notice and hearing by the Commission. (*You can't allow unlicensed persons to perform duties that require a license.*)
4. Responsible for the acts of all affiliated licensees.
5. Must submit to the Commission a Branch Office Registration Form prior to opening a branch office, naming the Managing Broker or Branch Manager, and all licensees with that office.
6. Ensure the compliance of the firm and all affiliated licensees with all elements of Indiana License Law, including but not limited to: the firm's office policy on agency, agency disclosures, escrow accounts, and all required documentation such as; closing statements/HUD-1, lead based paint & seller's disclosure.

B. Trust (Escrow) Accounts / Earnest Money Deposits:

1. All Indiana Brokerages (*one man shops to the largest firms*) must establish and maintain at least one escrow or trust account to hold the money of others as follows:
2. Account(s) must be identified as being a "Trust" or "Escrow" account and established in an insured Indiana bank or Savings & Loan.
3. The Brokerage must maintain an accurate and detailed accounting of all such funds typically in ledger form. The records should include: 1) the parties and property(s) involved, 2) the amount of deposit, 3) purpose (*i.e. earnest money or security deposit*), 4) dates of deposit and withdrawal, 5) running account balance. (*i.e. Property -123 Main St., Sellers-Smith & Buyers-Jones, \$1000 earnest money from Jones, deposited 3/15/13 withdrawn 4/14/13 credited to Jones at closing. There may be more than one account.*)
4. Must deposit all monies belonging to others in an Escrow/Trust Account within two banking days after the acceptance of an offer. (*just holding the check in the firm's safe is not adequate*)

5. May delegate earnest money deposit to the Selling Broker, however, the Commission will hold the Listing Broker responsible for the funds and their timely deposit. (*Most Listing Brokers obviously would not allow this.*)
6. Must not commingle business or personal funds with the trust account(s). (*Earnest monies can not be held in the firm's operating account, nor could the firm's operating funds be held in the earnest money/trust account. There is only one kind of money that can legally be in the escrow account, "Other People's Money!"*)
7. Pay any interest earned to the beneficiaries. (*Usually a non-interest bearing account*)
8. The Commission shall take over trust accounts upon death of the Managing/Individual Broker or revocation or suspension of the Managing/Individual Broker's or "Brokerage's" license, and appoint a Successor Trustee to administer the account.
9. Brokerages must, upon request, provide Commission or Attorney General with a detailed summary of the account(s) for investigation.
10. Sellers must be informed prior to acceptance if the earnest money is other than check or cash (*i.e. jewelry, auto*). (*How firms would deposit a 1973 Buick is unknown*)
11. Upon notification that one or more parties to a transaction intends **not** to perform (*Somebody is backing out*), and any agreed to closing date has past, the Brokerage holding the earnest money may release it as provided in the purchase agreement. If there is no such provision, that Brokerage may initiate the "release process" by sending a "Certified Letter" to all parties, stating the proposed disbursement(s) that will take place in 60 days unless either; **(a)** both parties enter into a "Mutual Release", or **(b)** one or more of the parties initiate litigation, before hand.

V. Enforcement of License Law:

There are various State and Federal rules, statutes, laws and regulations that licensees are subject to. Our focus here is on the specific Statutes, Rules and Regulations applicable to Indiana licensees. These bodies of law define specific violations such as a/an "**Class A Infraction, Incompetent Practice, Finding Meriting Discipline.**" Also noted are various "**Professional Standards**" with which licensees must comply and the available discipline or "**Sanctions**" the Commission could impose. Students will find these in the STATUTES AND RULES available online at www.in.gov/pla. For exam purposes, students need to know the Professional Standards as well as what constitutes a violation and the sanctions the Commission may or may not impose.

All licensees must now report criminal convictions (*felonies and misdemeanors punishable by imprisonment*) to the Commission by sending a copy of the complaint and the judgment within 30 days of the conviction, and final appeal.

A. Investigations & audits:

1. The Commission **randomly** audits licensees for such things as Continuing Education, escrow accounts, documentation and Fair Housing compliance.
2. The Commission may undertake investigations of licensees upon complaint(s) or inquiries from consumers, law enforcement officials, other licensees or upon the motion of a Commission member.
3. Investigations are **not** randomly undertaken.
4. An Investigative Fund has been established to assist the Commission, PLA and the Attorney General to help administer and enforce license law and investigate and prosecute real estate fraud and other violations. The PLA has a team of

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investigators that look into allegations, conduct investigations and research. *(yes, there are real estate cops, so look out and be on your best behavior!!!)*

B. Violations of License Law, Class A Infractions, Incompetent Practices:

(items #3 – 19 are the Incompetent Practices)

1. Acting as a Broker without a license, if allowed by a Managing Broker, they are in violation as well. *(practicing without a license)*
2. One who operates an unapproved real estate school.
3. Failing to account for and remit any funds or documents belonging to others that come into the licensee's possession. *(common law duty of accountability into made Indiana law)*
4. Offering or accepting any inducement or rebate for the purpose of obtaining a listing or inducing a sale, **without full written disclosure to all parties to the transaction** at the time of offer and acceptance. *(it is fine to offer something as an incentive to get a listing, such as "List with Lola and I'll buy you a Home Warranty, but full disclosure must be made to all parties. These inducements/rebates or kickbacks may only be given to "principals" to the transaction. i.e. You can't give someone outside the transaction \$50 for referring business. Thank you gifts are fine, but not money and only after the fact.)*
5. Receiving, accepting, or giving an undisclosed direct profit on expenditures made in conjunction with a real estate transaction. *(Failure to disclose any fee earned for preparing a Home Warranty application.)*
6. Acting in dual capacity of licensee and undisclosed client in any transaction. *(Failing to disclose your true role and interest in a transaction)*
7. Guaranteeing, authorizing, or permitting any person to guarantee future profits which may result from the resale of real property. *(Watch what you say!)*
8. Offering real property on any terms other than those authorized by the owner. *(suggesting a price or terms other than list, including in the MLS/BLC profile that a seller would entertain a land contract when they wouldn't or couldn't)*
9. Encouraging or inducing any party to a listing contract or purchase agreement to breach such contract for the purpose of substituting a new contract with another party. *(Any inducement to breach any contract would be a violation)*
10. Accepting employment or compensation contingent upon the issuance of an appraisal report at a predetermined value.
11. Appraising real property in which the licensee fails to disclose in writing to all parties their interest in that property.
12. Soliciting and/or negotiating a listing contract, a sale, exchange, or lease of real property directly with a principal, if the licensee knows that the principal has an existing exclusive agency relationship another licensee, unless the principal initiates the action in writing. *(We can't go after other's listings, but if a seller whose property is listed with another licensee calls and wants to discuss listing with you, you can discuss future listing and marketing efforts that could take place only after the end of their current listing. In no way could you discuss or*

encourage the early termination of the current listing, further, you must get a written statement that any meeting/discussion was initiated by the seller.)

13. A licensee representing, or attempting to represent either more than one Broker Company or a Broker Company other than the one with whom the licensee is associated. *(We can have only one Managing Broker)*
14. Paying a commission or otherwise compensating a person who is not licensed for performing services that by law require a license. *(you can't pay your unlicensed neighbor a "finder's fee" for referring a client to you)*
15. A Managing Broker requesting to hold another's license, if there is no intent to be associated with that licensee. *(i.e. a Managing Broker who holds the license of another for the sole purpose of meeting the 2 year "active" requirement for a Managing Brokers license when that Broker had no intention to actually practice)*
16. Committing any act of fraud, deception or misrepresentation while engaged in acts that require a licensee. *(This obviously could take many forms, but making any false statement to a customer, client, or another agent would be a violation.)*
17. Having been convicted of a crime having direct bearing on whether or not the person should be trusted to serve the public as a licensee. Conviction may not be the sole basis for sanction or denial of license. Commission must find relevance to licensee's ability to practice and represent the interests of others. **Licensees must now disclose to the Commission any criminal convictions within 30 days.**
18. Having been finally determined to have engaged in an unlawful discriminatory practice under the Indiana Civil Rights Act or violation of Fair Housing laws.
19. A Managing Broker, knowingly allowing any of its employees or representatives to utilize the premises of a real estate school for recruiting purpose. *(Students may voluntarily place their names on a list distributed to other Brokerages to explore employment opportunities, but the classroom and instructor should in no way be vehicles for recruitment with any firm.)*
20. Obtaining or attempting to obtain a license through fraud or deception. *(Cheating on any class or State exam or submitting an application with any false information.)*
21. Engaging in false advertising (note this is not limited to real estate.
22. Violating any State or Federal law or regulation concerning real estate. (i.e. Fair Housing Laws, RESPA)
23. Continued to practice after becoming unfit due to:
 - professional incompetence
 - failure to keep abreast of current professional theory and practice
 - physical or mental disability *(Commission may order a mental or physical exam and failure to comply makes the licensee subject to summary suspension)*
 - substance abuse impairing the licensee's ability to practice safely
 - lewd or immoral conduct in the delivery of services*This section deals with some potentially subjective issues, but the acts and changing capacities of humans do not always fall squarely within printed Statutes and Regulations. Commission must be consistent in it's application of the law.*
24. Practice beyond the scope of a licensee's training and/or license. *(A licensee taking on a complex commercial transaction such as a 1031 tax deferred exchange without proper training, or performing a Home Inspection for a fee.)*
25. Committed acts in another state resulting in disciplinary action. *(a certified copy of a record of disciplinary action is conclusive evidence)*

26. Assisted another person in violating license law.
27. Allowing a license to be used by another person. (*Taking credit for a C.E. class you didn't attend by having another attend under your name using your license*)
28. Practicing with a license that is expired, inactive, unassigned, revoked or suspended. (*Allowing your license to expire is not a violation, practicing on it is!*)

B. Discipline / Sanctions for Violations and Appeals :

Discipline / Sanctions will be applied, **generally after a hearing**, if it is found that a licensee has committed a/an **Class A Infraction, Incompetent Practice** or otherwise violated License Law or failed to comply with Commission rules, regulations and **Professional Standards**.

(1) The Commission may impose any of the following sanctions, singularly or in combination.

- a. **Revocation** of license. (*this is deemed Permanent Revocation, because once revoked, that license may not be reinstated. There is no Lifetime Revocation or Ban, as they may reapply in 7 years*)
- b. **Suspension** of license. (*usually has a time frame associated with it*)
Unlike a revoked license, the Commission may reinstate a suspended license early if they are satisfied that the licensee can now engage in competent practice. Reinstatement may include disciplinary or corrective measures.
- c. Commission may issue a **cease and desist** order, enforced by state Circuit courts, to prevent violations
- d. **Censure** of licensee. (*official reprimand*)
- e. Issue a **Letter of Reprimand** (*worse than censure, this makes it into the permanent official record*)
- f. Place licensee on **Probation** and require licensee to:
 - make regular reports to the commission
 - limit the scope of licensee's practice
 - obtain additional continuing education in areas causing problems.
 - perform or refrain from performing specific acts, including community restitution or service without compensation.
 - complete rehabilitation and/or treatment.
- g. Assess a civil penalty up to **\$1,000 per violation** not involving incompetence due to physical or mental disability. (*Commission shall consider the practitioner's ability to pay, aside from that, failure to pay when prescribed is grounds for license suspension without any further proceedings*)
- h. Assess a fine/penalty equal to any fee earned/received in the offending transaction.
- i. Order the practitioner to pay consumer restitution to person(s) who suffered damages as a result of the practitioners conduct.

(2) Summary Suspension

The Commission may **Summarily Suspend** a license for up to 90 days, prior to final adjudication or appeal, if the licensee represents a **clear and immediate danger to the public's health, safety or property** if the

Copyright of the Tucker School of Real Estate practitioner was allowed to continue to practice. This suspension may be renewed on 90 day intervals.

Before a license may be summarily suspended, the Consumer Protection Division of the Attorney General's office shall make a reasonable attempt to notify the practitioner of the hearing and provide information regarding the allegation. A "reasonable attempt" is made if the Attorney General's office attempts to contact the practitioner by telephone or facsimile at the last telephone and/or fax number in file with the Commission.

A suspended license may be reinstated, after a hearing, if the board is satisfied that the applicant is able to practice with reasonable skill, safety, and competency to the public. Such reinstatement may impose disciplinary or corrective measures as a part of this reinstatement.

- (3) A licensee, who is delinquent on Child Support Payments, may have their license placed on probation and eventually suspended if payments are not brought current or a repayment plan is established.
- (4) A **revoked license may not be reinstated**. An individual must wait 7 years after the date of revocation to request a new license, but the Commission has no obligation to allow the applicant to become licensed again. *(The law allows you to knock at the door after 7 years, but they don't have to let you in.)*
- (5) A licensee may request to voluntarily return a license to the Commission to avoid a hearing, but only with the written approval of the Commission. *(The Commission may very well want the hearing to: get the facts on the record, recover the fee, and impose sanctions and a fine.)*
- (6) A licensee receiving sanctions may be required to reimburse the Commission for many of the specific costs associated with the hearing **but not the hearing itself**. Such expenses may include: court reporters, transcripts and depositions, document certification, witness expenses, postage etc.
- (7) Sanctions must be consistently applied.
- (8) Attorney General, Commission or County Prosecutors may bring actions.
- (9) No harm need be done to a client or consumer to constitute a violation.
- (10) Licensees found guilty of a violation have the right to appeal convictions to the Commission.

VI. Real Estate Recovery Fund:

A. Purpose and Establishment of the Fund:

- (1) The fund reimburses qualified parties, *(those harmed by specific illegal acts of an Indiana licensee, performing acts that require a license)* only for actual monetary losses and court costs *(not punitive damages, attorney fees or loss of market value)*, not collectable after normal court actions. Only actual damages caused by agent fraud or embezzlement would qualify. *(The fund was not established to protect the public from agents who just do a poor job.)*
- (2) Those harmed by someone who does not have an Indiana Real Estate License would not be able to collect from the fund. *(i.e. A **Florida** licensee, not licensed in IN attempting to represent the seller of an Indiana parcel of real estate, forges a deed and fraudulently conveys the property to themselves and then sells the property and*

keeps the proceeds. Though this person has committed a crime and should have been licensed in Indiana, the victims will never be able to seek compensation from the Recovery Fund.)

- (3) The fund is administered by the Commission and invested for interest by the State Treasurer.

B. Recovery Fund Balance and Surcharge Assessment:

- (1) The objective is to maintain a fund of approximately \$600,000.
- (2) If the fund falls below \$450,000, all licensees are surcharged, at license renewal, their proportional share. *(The amount needed to raise the fund back to \$600,000. i.e. If the fund was short \$200,000 and there were 10,000 licensees at the time, then a surcharge of \$20 would be added to each new application/ renewal over the coming two years.)*
- (3) If the fund exceeds \$750,000, the excess reverts to the State's General Fund.
- (4) Any interest earned from the fund may be used for such things as; the development of Continuing Education *(the Commission doesn't pay for or provide actual classes)*, education about the industry, or information regarding Commission activities.

C. Payments and Limitations:

- (1) Claimants must notify the Commission of the **initial** court action against the licensee.
- (2) They must: **(a.)** file court action with in **2 years** of the alleged act, **(b.)** win a judgement and **(c.)** exhaust all other legal remedies;
- (3) Then seek payment from the Recovery Fund by initiating a claim to the Commission, in writing, within **one year** of final court judgement.
- (4) Claims are limited to \$20,000 per judgement.
- (5) There is an aggregate lifetime limit of \$50,000 per licensee.
- (6) If multiple claims against one licensee exceed \$50,000, claimants will share proportionately.
- (7) The court may change these procedures as it deems equitable. *(The Commission may withhold payment to the early claimants to allow anticipated future claims against the same licensee to be settled to allow all harmed parties to share equitably in the limited funds. Prevents the \$50,000 from being used up by the 1st one or two claimants)*
- (8) If payment is made from the fund, the license(s) of the guilty licensee and their Managing Broker are suspended until repayment is made. These suspended licenses will not be reinstated until repayment is made. *(Strong motivation for the Managing Broker to get the checkbook out if needed, and chances are, the guilty licensee has already lost their license and won't be getting it back, even if the fund is repaid.)*
- (9) Interest accrues at the rate of 12% interest for claims not repaid.
- (10) The Commission is subrogated to the rights of the judgement creditor with respect to the amount paid from the fund. *(The commission has the legal right to pursue the offending party(s) for reimbursement.)*

Note: There is an Investigative Fund that has been established to enable the PLA to investigate complaints and assist in the general enforcement of license law. This fund is structured in a manner very similar to the recovery Fund described above. A fee is charged with every application and renewal to provide such funds.

VII. Other Commission Rules and Regulations:

A. Commissions:

- (1) A Listing Broker may offer a portion of their commission to a Selling Broker as an inducement to sell a property.
- (2) The split commission may not be paid directly to a licensee unless they are a Managing Broker.
- (3) Any action to recover fees or commissions must be proved by a party who is not themselves in violation of license law at the time of alleged violation. *(one Broker can't sue a another Broker, or a client, over a fee if the first Broker was in violation of License law at the time.)*

B. Listing Agreements:

- (1) Must be in writing.
- (2) Must have a definite expiration date.
- (3) Must be made in duplicate: **2 Copies**
 - ((a)) Original retained in Managing Broker's files.
 - ((b)) Copy given to owner at time of signing.
- (4) Any "NET" listing must provide for a maximum commission.

C. Offers to Purchase:

- (1) Must be in writing.
- (2) Must be made in quadruplicate: **4 Copies**
 - ((a)) 1 copy given to prospective purchasers at time of signing offer.
 - ((b)) 1 copy for Managing Broker's files.
 - ((c)) 1 copy for the sellers.
 - ((d)) 1 copy to be returned to purchasers after acceptance or rejection.
- (3) All offers, counter offers, rejections etc. must be communicated **immediately.**

D. Closings and Closing Statements:

- (1) Every Managing Broker shall deliver to their clients, at the time such transaction is consummated (*at or preferably before closing*), a complete detailed closing statement showing all of the receipts and disbursements they handled. True copies of these shall be retained for at least five (5) years. *(The HUD-1 is commonly used for this purpose. Most firms retain complete files of all transactions they have been involved with for at least 5-7 years.)*
- (2) Managing Brokers, or their licensed associates (*the actual Listing and Selling Agents*), must attend all closings.

E. Advertising:

- (1) Any and all advertising, including: display, classified, signage, internet, or business cards that carry a Broker's name must contain the name of the Broker Company they are associated with, and the Broker Company's name must be clearly visible.
- (2) Any advertising by a Broker Company must clearly state the Broker Company name as it appears on its' license or the name as it is publically known.
- (3) Any internet, television, or radio advertising that carries the name of a Broker must include or disclose the Broker Company's name. However if such disclosure is not practical in electronic displays of limited information such as "thumbnails, text

Copyright of the Tucker School of Real Estate messages and tweets”, the Broker Company’s name does not need to be included if the electronic display is linked to another display that includes the Broker Company’s name.

- (4) No advertising in a manner indicating that the property is being offered by a private party not engaged in the real estate business. (*i.e. an ad for listed property that appears as if it is a FSBO, for sale by owner*)
- (5) No advertising of listed property shall appear with only a phone number, P.O. Box, or street address (*this is a “blind ad*). Prominent reference to the Broker Company or firm must be made in all advertising.
- (6) No advertising or signage shall be used without the written consent of the seller or owner or the owner’s authorized agent. This includes placing listings in the “MLS/BLC”, internet displays, or even a “FOR SALE” sign in the yard. (*consent for these is usually specifically obtained in the listing agreement*)

F. Personal Buying, Selling and Leasing of Real Property:

- (1) No licensee may buy property listed by his firm or himself without first making his position known to the seller.
- (2) No licensee may sell, or receive a commission from, a property he has ownership in without advance written disclosure of his interest to all parties.
- (3) In general, **always disclose, in writing, your status as a licensee** when ever buying, selling or leasing real property individually, directly or indirectly.

G. Referral Service Participation:

- (1) Managing Brokers are authorized to participate in referral programs.
- (2) Clients must agree in writing to such participation.
- (3) Managing Brokers must have a written agreement with Cooperating Brokers concerning fees. (*This is the beauty of the MLS/BLC, and the published “Co-op” fees, we don’t have to chase down fee agreements every time we want to show a listed property.*)

H. Licensees are Independent Contractors,

Licensees are Independent Contractors in their relationship with their Managing Broker unless there is a written contract to the contrary, establishing employment as an employee.

I. Securities Broker Association:

Interests in real estate are sometimes sold as “securities” much like stocks or bonds. REITs (*real estate investment trusts*) are one example where stock brokers, sometimes known as “broker-dealers” are involved in the selling of these “shares”. Real estate licensees could be hired by the officers of a REIT to assist in the purchase, sale or leasing of its’ real estate holdings, but could not sell shares of the REIT to investors. Generally, if a deed or lease agreement is used, it is considered a real estate transaction. If another form of conveyance like a share certificate is used, it is probably a securities transaction.

J. Psychologically Affected Properties:

AKA Stigmatized Properties. These are properties where certain notorious events have occurred earning the property a “reputation”. Some issues or events can have a significant negative impact on market value, but they do not represent a structural or physical defect. The question then becomes “what disclosures should be made?” The following; outlines

which properties are defined as “Psychologically Affected” and the disclosures that are required:

- (1) Includes the **sale or lease** of property where any of the following **occurred or are reasonably suspected** to have occurred:
 - ((a)) An occupant of the property is currently afflicted with, or has died of, an HIV related illness.
 - ((b)) An individual died of any cause on the property.
 - ((c)) The property was the site of a felony, criminal gang activity, police shooting incident, or the sale and/or distribution of a controlled substance.
- (2) Owners and agents:
 - ((a)) **Are not** required to disclose to the “**transferee**” (*buyer or tenant*) that a property is psychologically affected, and;
 - ((b)) Can not be held liable for failure to disclose:
 - ((1)) that a property is psychologically affected,
 - ((2)) the details or nature of the psychologically affected property, but;
 - ((c)) May not intentionally misrepresent a fact in response to a direct question from a potential buyer or tenant. (*We can not lie if asked*)
 - ((d)) This provision does not eliminate a licensee’s obligation to disclose known hazardous conditions such a contamination from a “Meth Lab” or the like.
- (3) Note to **Selling agents**; though not specifically required to disclose this information under this section of Indiana License Law, (*presumably because it was created prior to the establishment of buyer agency in Indiana*) the basic theories of agency law suggest, if not require, that material information regarding the property, known to the Selling Agent, be disclosed to the buyer or tenant client. Bottom line: As a Selling Agent (*representing the buyer or tenant*) we would disclose what we knew.
- (4) Acting as a limited agent in these transactions creates some possible issues. Under this provision of the law, limited agents should not voluntarily disclose the Psychologically Affected status of the property. But knowingly selling a property to an uninformed out of town buyer that was the site of a notorious murder creates at a minimum, an ethical dilemma, and possibly a legal one under the common law duty of agency. It may well be advised to seek prior permission to disclose this status or simply choose not to be a limited agent in these circumstances.

K. Agency Disclosure & Types of Agency Defined:

Agency compliance is probably the single biggest area of legal risk for firms and licensees. Taking the time to simply clarify and document the role we play in a transaction not only minimizes this risk, **it is the law!**

Though express agreements such as listing contracts and buyer agency agreements certainly create agency obligations, licensees can create such agency obligations just by their actions. Buyers who call the office requesting general information about a listing, or people who have just walked into an open house are probably just customers. But once you start to “act” like their agent by entering a dialog centered around satisfying **their** interests and concerns or just begin to show them houses, you have become an agent with fiduciary obligations, regardless of whether or not any specific discussions of representation have taken place or a contract has been entered into.

Indiana Law clearly places the burden on licensees to clarify these agency relationships with customers and clients and assumes **we are working for those we are working with**. Indiana License Law contains several specific obligations regarding agency and its disclosure:

(1) Managing Brokers and Broker Companies shall develop and enforce the use of a “Written Office Policy” which outlines the types of agency relationships the firm and its associates practice. Such policy should ensure that all parties to a real estate transaction are made aware of **who is representing whom**, as well as what options for representation there are. The written disclosure should:

- Describe the types of agency relationships the firm will enter into. Specifically, that licensees can work for either the Seller/Landlord or the Buyer/Tenant, or both parties as a limited agent when written “informed consent” has been obtained from all parties.
- Advise clients/customers of the possibility and **nature of limited agency** and that the parties **do not have to agree to it**. (*note: Limited agency is an area of great complexity and potential confusion, even if the licensee does everything according to the book. Licensee’s need to ensure clarity among clients and customers with respect to this issue!*)
- Be provided to prospective clients/customers **prior** to their disclosure of confidential information. (*at what point will that happen?*)
- Advise clients/customers if the Broker will share any commission with other Brokers.
- The payment of a fee/commission does not establish an agency relationship.

(2) Required and prohibited Disclosures:

((1)) Listing Agent: (represents the seller or landlord)

- ((a)) Must not disclose if the owner will accept less than the list price.
- ((b)) Must not disclose owner’s motivation to sell or lease.
- ((c)) Must not disclose material or confidential information about the owner unless required by law, such as property defects, or to prevent fraud or dishonest dealing.
- ((d)) Must treat buyers/tenants honestly and not give false information.
- ((e)) May list competing properties
- ((f)) May show competitive properties to buyers/tenants.

((2)) Selling Agent: (represents the buyer or tenant)

- ((a)) Must not disclose if they will pay more than the offered price.
- ((b)) Must not disclose buyer’s/tenant’s motivation to buy or lease.
- ((c)) Must not disclose material or confidential information about the buyer/tenant unless required by law or to prevent fraud or dishonest dealing.
- ((d)) Must treat owners honestly and not give false information.
- ((e)) May represent other buyers or tenants, including those competing for the same property.

((3)) Limited Agent: (one agent who represents both sides of the transaction)

- ((a)) Must have “written informed consent” from all parties to proceed.
- ((b)) Both sides must understand the limits of representation.
- ((c)) Must not disclose the pricing strategy of either side.
- ((d)) Must not disclose the motivation of either side.
- ((e)) Must not disclose material or confidential information about either side unless required by law or to prevent fraud or dishonest dealing.
- ((f)) May show “MLS/BLC” data and other “comps” to both sides.
- ((g)) Can not council either side about specific pricing strategy when offering and counter offering.

Note: As a practical matter, many of the complaints against licensees revolve around limited agency transactions. Making the proper disclosure is not always easy, especially when a new buyer calls and wants to see your listing, right now! Also, There is a big difference between “Consent” and “Informed Consent”. Though the agent may have a signed disclosure form, the question is; did the consumer really know “who worked for whom” and in what capacity? Did they know the “limits” of Limited Agency, and that they had other options? If we can’t answer YES to both questions, then do we really have informed consent?

With the emergence of the “Team” concept, special attention should also be paid to ensure that the actual roles team members play are understood by all. (i.e. Does everyone on Terry’s Team work for the same party? or is this going to be “Limited Agency”, or “In-House-Agency”.

((4)) In House Agency: This occurs when two agents from the same firm or office (*same Managing Broker*) are representing different sides of a transaction. This **does not** make them Limited Agents, nor does it change their relationship with their respective clients, but it does create a situation in which both agents must be especially cautious about confidentiality. Such things as maintaining separate files, and discussions with the Managing Broker or Branch Managers must be considered. **The Managing Broker is a certainly a Limited Agent in these situations.** Branch Managers could be Limited Agents depending on the circumstances.

Important note regarding In-House transactions:

If one of the two agents is the **Managing Broker** of the firm, then the transaction is automatically Limited Agency for all, requiring written informed consent from all. (*i.e. Alice is associated with Jones Realty, she brings the buyer to her Managing Broker Jeff Jones’s listing. This is limited agency for all.*)

If one of the two agents is the **Branch Manager** (sales manager) of the office the other agent is associated with, then this too is limited agency for all, requiring written informed consent from all. (*Agent Q shows her Branch Manager’s listing, this is Limited Agency for all.*)

If one of the two agents is the **Branch Manager of a different office** from that of the other agent, then this is simply an In-House transaction and not limited agency and thus doesn't require written informed consent. (*Stephanie is the Branch Manager of Robertson Realty's South office. Sue is a broker with Robertson Realty's East office. When Sue brings the buyer to Stephanie's new listing, this is simply an In-House transaction, and not limited agency*)

((5)) **Non-representation:** Some parties to a transaction may refuse representation entirely. Though they have that right, they must first be made aware of the various types of representation available, including, having their own agent. This creates a more "informed" type of refusal. In such cases, licensees should obtain a written "letter of non-representation" as documentation before proceeding. (*Agent "A" has a buyer for a FSBO, For Sale By Owner property. The seller doesn't want to list and the buyer doesn't want limited agency. There should be a disclosure that clearly states that agent "A" represents the buyer and not the seller. Agent "A" is required to provide the seller customer level duties such as honest fair dealing and disclosure of material facts.*)

((6)) **Sub-agency prohibited:** The Commission and Legislature have worked together to eliminate this confusing type of agency by specifically prohibiting it.

L. Indiana Residential Seller's Disclosure Form:

This applies to the sale, exchange, installment/land contract, or lease with an option to buy of residential real estate of four or fewer dwelling units, with the following exceptions:

1. Court ordered transfers such as: Estates, foreclosures, bankruptcy, eminent domain, specific performance decree, divorce decree, or property settlement agreement
2. Transfers by a mortgagee (lender) who has acquired the real estate under a foreclosure decree or by a deed in lieu of foreclosure.
3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
4. Transfers made from at least one co-owner solely to at least one other co-owner.
5. Transfers made solely to any combination of a spouse or an individual in the lineal line of consanguinity (blood line) of at least one transferor.
6. Transfers made because of the owner's failure to pay any federal, state or local taxes.
7. **new home sales where the property has never been occupied.**

This form is required regardless of whether the property is listed with a licensee. (*FSBOs - properties that are "for sale by owner" must also comply*) Though this is the "seller's" disclosure, if a licensee is involved, they must ensure it is properly used. If a transaction is exempt from the use of this form, licensees must still disclose known defects. Failure to have this form properly signed by all makes the transaction unenforceable against the buyer.

- (1) Sellers must accurately complete an Indiana Residential Sales Disclosure Form (see the Commission Statutes & Rules) and disclose known defects. Sellers are not required by law to know all defects. They are simply required to disclose what they know, or should have known. Indiana law defines a defect as "***a condition that***

would have a significant adverse effect on the value of the property, or would significantly impair the health or safety of future occupants, or if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.”

The disclosure form must address or include the following statements or information:

- (2) The known condition of the:
 - a) Foundation
 - b) Mechanical systems
 - c) Roof
 - d) Structure
 - e) Water and sewer/septic systems
 - f) Additions that may require improvements to the sewage disposal system
 - g) Other areas the commission determines appropriate
- (3) A statement that the prospective buyer and owner may want to consider a professional inspection, and that any agreement should include provisions to address inspections and how to settle any discovered defects. *(this is a paraphrase of the law, current standard “board forms” have such provisions.)*
- (4) It is not a substitute for an inspection by a qualified residential home inspector.
- (5) The disclosure:
 - ((a)) Is not a representation of the agent.
 - ((b)) Must identify if the property is within one nautical mile of an Airport.
- (6) The disclosure does not serve as a warranty by the seller or licensee.
- (7) Distribution of signed disclosure forms:
 - ((a)) The buyer must receive a signed copy prior to acceptance of their offer. *(Offers should be made with these disclosures in mind.)*
 - ((b)) If requested, the buyers appraiser should get a copy *(only if requested)*.
 - ((c)) Buyer(s) must sign the disclosure form for the purchase agreement to be enforceable against them.
 - ((d)) Seller(s) must sign again at closing to affirm there have been no changes to the condition of the property since the disclosure form was initially presented.
- (8) The owner is not liable for inaccurate information provided by competent third parties. Sellers are not liable for defects discovered by buyers after the sale has closed which the sellers were unaware of. *(a property is listed in February, and sold and closed in April. In May the buyer turns on the A/C to find it inoperable. A seller would not be liable unless it could be shown that they knew and failed to disclose it)*
- (9) The owner is required to correct any inaccuracies or changes in disclosures prior to closing.
- (10) The buyer may nullify the contract within two business days after receipt of a disclosure form or amended disclosure form **that discloses a defect**. If nullified, the buyer shall have all earnest monies returned.

M. Lead Based Paint Disclosure:

Separate from the State's Seller's Disclosure, is the Federally mandated EPA Lead Based Paint Disclosure form. It applies to residential properties built before 1978 and is distributed much like the Seller's Disclosure:

- (1) Sellers and landlords (*there are separate forms for sales and leasing*) must disclose known lead based paint hazards and provide any reports they have.
- (2) Disclosure must be made prior to acceptance.
- (3) Buyers and/or tenants must be allowed a 10 day opportunity to have testing done, but they may waive this.
- (4) The transaction is unenforceable against the buyer/tenant without a disclosure signed by all parties.

N. Limited Service Firms – Minimum Duties

There are an increasing number and variety of business models emerging in the real estate brokerage industry, including "Limited Service" or "fee for service" firms. The Commission is in no way separately regulating these firms. But with emergence of these new business models, there has been some misunderstanding among both the consuming public, as well as these firms themselves, as to the exact role played by them. To help establish clarity among all concerned, the Commission has enacted the following provisions to define when an agency relationship exists and establish "minimum duties" in all cases:

- (1) An agency relationship exists between a licensee and the individual they are working with unless;
 - (a) There is a "**written agreement to the contrary**" or;
 - (b) The licensee is merely assisting the individual as a "Customer" without compensation. (*This illustrates the need for all licensees and firms to accept the burden to clarify the exact nature of the relationship.*)
- (2) In cases where such a "**written agreement to the contrary**" exists, thus establishing no agency relationship, the licensee must perform **at least** the following duties **in a timely manner**, regarding the individual's property (*seller or landlord*) or the property the individual is seeking to acquire an interest in (*buyer or tenant*):
 - (a) be available to present and/or receive all offers, counteroffers, amendments, rejections etc., for purchase or lease and;
 - (b) assist in negotiating, completing and communicating real estate forms and;
 - (c) respond to questions pertaining to the subject property and the contracts under negotiation, and;
 - (d) these obligations continue until all contingencies are removed and the transaction is closed.

VIII. Licensed and Unlicensed Assistants:

- A. Unlicensed assistants are simply unlicensed, and thus limited in the scope of their duties to avoid any chance of the public being harmed or misinformed. They **can not** perform any activity that requires a license. Thus their activities are generally behind the scenes, supervised by the employing licensee and are specifically limited by license law as follows.
They can not:

- (1) Prepare ads or promotional materials without review or approval of the employing licensee.
 - (2) Show property or hold open houses.
 - (3) Answer questions from customers or clients about properties other than those concerning list price, address or geographic directions.
 - (4) Discuss or explain contracts or other relevant documents.
 - (5) Conduct telemarketing.
 - (6) Negotiate or discuss any commission/fee structure on behalf of the licensee or firm.
- B. Licensed assistants are licensed and thus can perform any activity that requires a license.

Single Licensure – SB 275

The following information is a summary of the recent changes that Senate Bill – 275 created.

Senate Bill 275 dramatically changes License Law in Indiana. It raises the bar for not only current licensees but new licensees as well with more targeted and relevant pre-license, post-license, and continuing education, moving us more into line with other states and our ever changing industry. The biggest change will of course be single licensure, all licensees will be Brokers by July 1, 2014. The antiquated and sometimes confusing term Salesperson will be eliminated. Even though we all will be Brokers, there is more to the story. Just being a Broker under the new law doesn't necessarily mean you can open your own brokerage firm and hold other's licenses. For those currently licensed who just want to keep selling and don't intend on going out on their own, there is a little more to do, but not that much. For those who want to run their own firm, the requirements are in line with the rest of the Country and most important, the educational and practical requirements are more targeted and relevant.

This legislation was not simply forced upon us by government, but industry driven. Indiana has historically had some of the lowest pre and post licensure requirements in the Country. Our primary trade association(s), NAR-National Association of Realtors, and IAR-Indiana Association of Realtors have and are playing a pivotal role in the creation and implementation of these much needed improvements to licensure and our industry.

The following outlines the basic provisions of SB275 and the requirements and implications for current licensees, (Broker, Broker-Associates, and Salespersons) and new licensees.

SB275: General provisions of the bill

- The following are Effective 7/1/2014:
- Minimum Education requirements for new licensees: High School Diploma or GED
- Creates "Single Licensure", eliminates Salespersons, all will be Brokers
- Creates a 3 year license cycle for all licensees w/12 hours of CE* each year (36 hrs/cycle) for renewal of active licenses after 7/1/2014
- Creates 90 hour pre-license curriculum* for licensure replacing current 54 hour pre-license curriculum
- Requires 30 hours of "post-licensing" education for those licensed after 7/1/2014, during first 2 years of licensure. Fulfills CE requirements for those two years

- Creates a 24 hour Broker Transition Course for Salespersons to become Brokers by the 7/1/2014 renewal.
- Broker Transition course counts as CE for Salespersons for 2012-14 renewal period
- Eliminates the term “Principal Broker” and replaces it with “Managing Broker”
- Current “Principal Brokers” become “Managing Brokers” upon 6/30/2014 renewal, the term Principal Broker will be eliminated.
- To become a Managing Broker after 7/1/2014, license must be held by a Managing Broker for 2 years and applicant must complete a 24 hour Broker Management Course* (not the same as the Broker Transition Course)
- Managing Brokers need 4 of the 12 annual CE hours to be dedicated to the necessary business and management skills and legal knowledge needed to be a Managing Broker*
- Licensees in Inactive or Referral status will need to complete required CE and Salespersons will need to complete 24 hour Broker Transition Course prior to activation
- Licensees placed in Referral status prior to completing the 30 hours of post-licensing education, must complete the 30 hours before removal from Referral status
- Commission creates an Educational Advisory Council to provide recommendations regarding various courses and content
- * Specific curriculum and educational requirements to be determined.

For Salespersons in Referral or Inactive Status:

- Salespersons in Inactive or Referral status who transitioned into the new license structure but have not completed the 24 hour Broker Transition course, must complete that course prior to activation and required CE for current cycle.

For Brokers in Referral Status:

- You may simply renew in Referral Status on or before 6/30/14 you do not need to complete the Broker Transition course. You will need to complete the required CE from previous cycle to activate after 7/1/2014.



SELLER'S RESIDENTIAL REAL ESTATE SALES DISCLOSURE

State Form 46234 (R6 / 6-14)

Date (month, day, year)

NOTE: This form has been modified from the version currently found at 876 IAC 9-1-2 to include questions regarding disclosure of contamination related to controlled substances or methamphetamine as required by P.L. 180-2014. Rule revisions will be made to 876 IAC 9-1-2 to include these changes in the near future, however the Commission has made this information available now through this updated form.

Seller states that the information contained in this Disclosure is correct to the best of Seller's CURRENT ACTUAL KNOWLEDGE as of the above date. The prospective buyer and the owner may wish to obtain professional advice or inspections of the property and provide for appropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property. The representations in this form are the representations of the owner and are not the representations of the agent, if any. This information is for disclosure only and is not intended to be a part of any contract between the buyer and the owner. Indiana law (IC 32-21-5) generally requires sellers of 1-4 unit residential property to complete this form regarding the known physical condition of the property. An owner must complete and sign the disclosure form and submit the form to a prospective buyer before an offer is accepted for the sale of the real estate.

Property address (number and street, city, state, and ZIP code)

1. The following are in the conditions indicated:

A. APPLIANCES	None/Not Included/Rented	Defective	Not Defective	Do Not Know
Built-in Vacuum System				
Clothes Dryer				
Clothes Washer				
Dishwasher				
Disposal				
Freezer				
Gas Grill				
Hood				
Microwave Oven				
Oven				
Range				
Refrigerator				
Room Air Conditioner(s)				
Trash Compactor				
TV Antenna / Dish				
Other:				

B. ELECTRICAL SYSTEM	None/Not Included/Rented	Defective	Not Defective	Do Not Know
Air Purifier				
Burglar Alarm				
Ceiling Fan(s)				
Garage Door Opener / Controls				
Inside Telephone Wiring and Blocks / Jacks				
Intercom				
Light Fixtures				
Sauna				
Smoke / Fire Alarm(s)				
Switches and Outlets				
Vent Fan(s)				
60 / 100 / 200 Amp Service (Circle one)				
Generator				

NOTE: "Defect" means a condition that would have a significant adverse effect on the value of the property, that would significantly impair the health or safety of future occupants of the property, or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

The information contained in this Disclosure has been furnished by the Seller, who certifies to the truth thereof, based on the Seller's CURRENT ACTUAL KNOWLEDGE. A disclosure form is not a warranty by the owner or the owner's agent, if any, and the disclosure form may not be used as a substitute for any inspections or warranties that the prospective buyer or owner may later obtain. At or before settlement, the owner is required to disclose any material change in the physical condition of the property or certify to the purchaser at settlement that the condition of the property is substantially the same as it was when the disclosure form was provided. Seller and Purchaser hereby acknowledge receipt of this Disclosure by signing below.

Signature of Seller	Date (mm/dd/yy)	Signature of Buyer	Date (mm/dd/yy)
Signature of Seller	Date (mm/dd/yy)	Signature of Buyer	Date (mm/dd/yy)

The Seller hereby certifies that the condition of the property is substantially the same as it was when the Seller's Disclosure form was originally provided to the Buyer.

Signature of Seller (at closing)	Date (mm/dd/yy)	Signature of Seller (at closing)	Date (mm/dd/yy)
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C. WATER & SEWER SYSTEM	None/Not Included/Rented	Defective	Not Defective	Do Not Know
Cistern				
Septic Field / Bed				
Hot Tub				
Plumbing				
Aerator System				
Sump Pump				
Irrigation Systems				
Water Heater / Electric				
Water Heater / Gas				
Water Heater / Solar				
Water Purifier				
Water Softener				
Well				
Septic & Holding Tank/Septic Mound				
Geothermal and Heat Pump				
Other Sewer System (Explain)				
Swimming Pool & Pool Equipment				

	Yes	No	Do Not Know
Are the structures connected to a public water system?			
Are the structures connected to a public sewer system?			
Are there any additions that may require improvements to the sewage disposal system?			
If yes, have the improvements been completed on the sewage disposal system?			
Are the improvements connected to a private/community water system?			
Are the improvements connected to a private/community sewer system?			

D. HEATING & COOLING SYSTEM	None/Not Included/Rented	Defective	Not Defective	Do Not Know
Attic Fan				
Central Air Conditioning				
Hot Water Heat				
Furnace Heat / Gas				
Furnace Heat / Electric				
Solar House-Heating				
Woodburning Stove				
Fireplace				
Fireplace Insert				
Air Cleaner				
Humidifier				
Propane Tank				
Other Heating Source				

Property address (number and street, city, state, and ZIP code)

2. ROOF	YES	NO	DO NOT KNOW
Age, if known: _____ Years.			
Does the roof leak?			
Is there present damage to the roof?			
Is there more than one layer of shingles on the house?			
If yes, how many layers? _____			

3. HAZARDOUS CONDITIONS	YES	NO	DO NOT KNOW
Have there been or are there any hazardous conditions on the property, such as methane gas, lead paint, radon gas in house or well, radioactive material, landfill, mineshaft, expansive soil, toxic materials, mold, other biological contaminants, asbestos insulation, or PCB's?			
Is there contamination caused by the manufacture of a controlled substance on the property that has not been certified as decontaminated by an inspector approved under IC 13-14-1-15?			
Has there been manufacture of methamphetamine or dumping of waste from the manufacture of methamphetamine in a residential structure on the property?			

Explain:

E. ADDITIONAL COMMENTS AND/OR EXPLANATIONS:
(Use additional pages, if necessary)

4. OTHER DISCLOSURES	YES	NO	DO NOT KNOW
Do structures have aluminum wiring?			
Are there any foundation problems with the structures?			
Are there any encroachments?			
Are there any violations of zoning, building codes, or restrictive covenants?			
Is the present use a non-conforming use? Explain:			
Is the access to your property via a private road?			
Is the access to your property via a public road?			
Is the access to your property via an easement?			
Have you received any notices by any governmental or quasi-governmental agencies affecting this property?			
Are there any structural problems with the building?			
Have any substantial additions or alterations been made without a required building permit?			
Are there moisture and/or water problems in the basement, crawl space area, or any other area?			
Is there any damage due to wind, flood, termites or rodents?			
Have any structures been treated for wood destroying insects?			
Are the furnace/woodstove/chimney/flue all in working order?			
Is the property in a flood plain?			
Do you currently pay flood insurance?			
Does the property contain underground storage tank(s)?			
Is the homeowner a licensed real estate salesperson or broker?			
Is there any threatened or existing litigation regarding the property?			
Is the property subject to covenants, conditions and/or restrictions of a homeowner's association?			
Is the property located within one (1) mile of an airport?			

The information contained in this Disclosure has been furnished by the Seller, who certifies to the truth thereof, based on the Seller's CURRENT ACTUAL KNOWLEDGE. A disclosure form is not a warranty by the owner or the owner's agent, if any, and the disclosure form may not be used as a substitute for any inspections or warranties that the prospective buyer or owner may later obtain. At or before settlement, the owner is required to disclose any material change in the physical condition of the property or certify to the purchaser at settlement that the condition of the property is substantially the same as it was when the disclosure form was provided. Seller and Purchaser hereby acknowledge receipt of this Disclosure by signing below.

Signature of Seller	Date (mm/dd/yy)	Signature of Buyer	Date (mm/dd/yy)
Signature of Seller	Date (mm/dd/yy)	Signature of Buyer	Date (mm/dd/yy)

The Seller hereby certifies that the condition of the property is substantially the same as it was when the Seller's Disclosure form was originally provided to the Buyer.

Signature of Seller (at closing)	Date (mm/dd/yy)	Signature of Seller (at closing)	Date (mm/dd/yy)
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