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# INDIANA LICENSE LAW STUDY OUTLINE

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2018

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# INDIANA REAL ESTATE LICENSE LAW - STUDY OUTLINE

**Revised November , 2017**

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, as 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 made significant changes to Real Estate licensure, through Senate Bill 275 (SB275), which took 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 or Broker Companies now holding the licenses of affiliated Brokers replacing the prior structure of Principal Brokers holding the licenses of affiliated Salespersons and Brokers.

SB-275 also significantly increased both the "pre" and "post" license requirements, moved licensees to the same 3 year license cycle, and increased the continuing education (CE) requirements in both content and number of hours. It also created more targeted CE requirements for specific licensees such as Managing Brokers and Instructors. These changes have made both the general and license law portions of the State Exam considerably more challenging, and students must prepare themselves well.

## 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. (*So who is the Commission protecting the public from?... Against bad licensees!)*

**B.** There are 12 Members on the Indiana Real Estate Commission (IREC), **all** are appointed by the Governor to 4-year terms.(*They are considered Political Appointees)* The Governor may appoint and/or reappoint as needed. Commission members must be residents of the State and may not hold any elected State or Federal office. The make-up 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", are not licensed and have never professionally been a part of the industry. They bring a "layperson" or non-practitioner's perspective to the Commission. *(Actually, one (1) of the "At Large Members" is a former District Member and is a licensed Broker who was retained as a Commissioner when their District was lost due to a census change, but this issue would not be part of an exam.)*

## 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:

For the Commission to conduct official business, they must have an official meeting which begins with having enough Commissioners to reach a "quorum" and call a meeting to order. All meetings are open to the public and a schedule can be found at the PLA's website www.in.gov./pla .

(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. (*We say 6 Commissioners is a "get together and 7 or more could be a meeting if they "call it to order".)*

(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. (*This allows the Commission to take action without having to wait until the next meeting, which could be 6 weeks away.)*

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

All the revenue and expenses of the Commission go into or come out of, the State's General Fund. The Commission does not keep its' own bank account. Being a Real Estate Commissioner is not a full time job, most Commissioners work on Commission business only a few days per month.

(1) Each member is entitled to a minimum per diem (*daily rate*) as established by law for each day they work 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, the IAC)*
(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. *(What we call the "Gotta Do's and No No's)*
(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. review State exam, 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 and or allegations 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" for a fee).*

(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**; (*These legal representatives are not necessarily lawyers)*

(e) **Rental for less than 30 days by the hotel/motel industry;**

(f) **Apartment rental by those employed or supervised by a licensed broker or broker company.** *(the "rental/leasing side of this exemption is limited to apartments. Leasing of homes, or commercial space is not exempt and requires a license.)*

(g) **Property management by those employed or supervised by a licensed broker or broker company.**

(h) **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)*

(i) **Cross state referrals by licensees of other states to/from Indiana Brokers.**

(j) **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.)*

(k) **Public auctions by licensed Auctioneers**; (*They are separately licensed. They can conduct auctions but can not perform "brokerage activities")*

(l) **Sale, lease or transfer of cemetery lots**; (*Yes, the law actually refers to leasing cemetery lots)*

(m) **Acts performed by Out-of-State Commercial brokers regarding commercial real estate located in Indiana if properly affiliated with an IN managing broker/broker company.**

(n) **Acts by licensees of other states performing "licensed acts" in the state of Indiana with the written permission of the Commission.**

(o) **Those with the express written consent of the Commission.**

(2) **Property Management:** Property management is a regulated service and falls under a Broker's license. Generally, unless you are the full-time employee of the actual property owner, or are employed and/or supervised by a licensed Managing Broker, such as a property management company, you must be licensed as a Managing Broker to manage property for a fee. Specifically, affiliated Brokers may only manage property that is under management contract to their Managing Broker/Firm. *(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/Broker Company. It's when property managers "broker" by renting/leasing property that it gets tricky. Leasing by property managers is exempt only for residential apartment units.)*

(3) **Appraisal:** Appraisers are separately licensed in Indiana. They have extensive educational and practical experience requirements. Brokers 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 license law many terms overlap. It is important to know these terms and the context in which they are used to avoid confusion.

- **Principal:** Under agency law, the "Client", i.e. buyer, seller, landlord or tenant, the parties we owe fiduciary duties to. Under contract law, a "Principal" is primary party to a contract, i.e. the buyer and seller are principals to the purchase agreement.
- **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. The 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.)*

- **Managing Broker Eligible:** A broker who has fulfilled all the requirements to become a managing broker *(2 years active practice & completed 24 hr managing broker course)*, but has not yet applied for that license/status. (*Larger firms will often have multiple brokers in this status as a contingency plan. In case the current Managing Broker of the firm dies, becomes incapacitated, or otherwise "loses" their license, the "eligible" broker would simply transfer to Managing Broker status and then be able to step into the vacated position.)*
- **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.
- **Branch Manager:** Every real estate office (*main and branch)* must be overseen by a broker designated (*named*) to the Commission, referred to as a Branch Manager, but this is not a type of license. The Managing Broker may actually oversee one or every office of a multi-office firm, but for practical reasons they often designate one or more "Branch Mangers" to do so. A Branch Manager is simply a broker designated to the Commission as the one providing this oversight, in practical terms they are the "Sales Manager". Large offices may have more than one Branch/Sales Manager. Branch managers do not have a separate type of license, and do not hold the licenses of other brokers associated with the Broker Company.
- **Individual Broker:** The person designated to the Commission as the one overseeing the operations of a Broker Company. Basically, the Managing Broker of a Broker Co.
- **Affiliated licensee:** Also known as an **Associate**, these are Brokers affiliated or associated with a Managing Broker/Broker Company. *(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.
- **Listing Broker:** Legally, 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:** Legally, this is the Managing Broker of the firm representing the buyer or tenant, the **Selling Agent** *(commonly known as the Buyer's agent or tenant rep.)* 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 the parties on **both** sides of a transaction. (*i.e. buyer and seller)* This requires the "**written informed consent**" of all parties.
- **In-House Agency:** Two agents/brokers from the same firm 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"

unless one broker oversees the other, but the Managing Broker is a "limited agent" in an In-House" transaction. (*Discussed in detail later*)

- **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 a **Managing Broker** or **Broker Company** may contract directly with the public to provide services for compensation. All other licensees must affiliate/associate with and practice under a Managing Broker or Broker Company. Licenses can be held in one of the following "Statuses": **Active or Referral** (*these are assigned to a Managing Broker).* There are also **Inactive** and **Unassigned** licenses *(which are 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. (*There is no such thing as a commercial license, there are individual and business/corporate licenses.)*

### 1.) Type of License:

**(a) Broker's License:** A Broker's license is the first tier or entry level license. To obtain this license, applicants must complete and pass a Commission approved 90 hour pre-license broker 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 associate 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 association 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 receive compensation directly from consumers. They may also hold the licenses of other "affiliated" or "associate" brokers who practice under their oversight. Managing Brokers are responsible for their own acts as well as those of their affiliated licensees.

To become a Managing Broker, applicants must have a valid Broker's license held in Active status and practice under the guidance of a Managing Broker for the 2

years immediately preceding application and complete the approved 24 hour Managing Broker course prior to application.

Only a Managing Broker or Broker Company (*businesses such as corporations, partnerships, etc.)* may receive compensation directly from the public or other cooperating Managing Brokers/Broker Companies. All other licensees must practice under the oversight of, and be compensated only by, their Managing Broker. When a consumer lists a property for sale with an agent who is associated with a firm, they are legally contracting with the firm. (i.e. *When a Tucker agent lists a property, it is legally listed with the Company and not the agent.)* Licensees may affiliate with only one Managing Broker at a time.

Broker Companies are separately licensed and must be directed, supervised, and managed by an "Individual Broker" designated to the Commission. This Individual Broker must hold a Managing Broker's license

## 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 1 year, 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 and Unassigned status licensees must complete the required Continuing Education (CE) to be eligible for renewal. CE is a function of renewal. It is obtained during the current license cycle to make you eligible for renewal for the next license cycle.

There is a difference between a **"license cycle"** and a **"license year"**. A "license cycle" refers to the 3 year cycle all licenses are on. These cycles begin on July 1 of a given year prescribed by the Commission and run until midnight June 30th three years later. (i.e. 7/1/17 – 6/30/20).

A "license year", "education year" or "CE year" refers to a 12 month cycle beginning July 1st through June 30th of the next year, within a 3 year license cycle. This is the period during which the 12 hours of CE must be obtained. The Continuing Education specifics are outlined below:

- 36 hours each 3 year license cycle to be eligible for renewal, obtained as follows:
- Specifically, at least 12 hours of Commission approved CE per **license year** (i.e. 7/1/17 – 6/30/18) in any of the following subjects: (*Students do not need to memorize which subjects are approved. Only courses that increase knowledge and proficiency will be approved, subjects on how to sell more, negotiate or "stage" a home would not be approved.*)
    - 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 (CE) required for each specific "license year" of a "license cycle" must be completed during that 12 month period running from July 1st of one year to June 30th of the following year. In other words, there's no "carry over hours" from one license year to the next or from one 3-year license cycle to the next. Pre-license courses do not count as CE.

Managing Brokers need 4 of the 12 hours of CE required each license year to be in courses "related to the business and management skills as well as legal knowledge necessary to be a Managing Broker". These courses must be specifically approved for Managing Brokers and are part of the 12 hours of CE required under Active Status, not in addition to.

Those in Managing Broker Eligible status are not yet Managing Brokers so they do not need to have the 4 hours of CE specific to Managing Brokers until they become one. (*If one had completed the 12 hours of CE for the license year in which they became a Managing Broker, the next CE they would need would begin the next license year and only from then on need to include the 4 Managing Broker specific hours as part of the 12 in future license years.)*

Instructors /educators (pre-license and CE) must complete a minimum of 4 of the 12 hours of CE required each license year in courses "specific to providing real estate instruction". These courses must be specifically approved for Instructors and are part of the 12 hours required, not in addition to.

Though required each license year, CE is primarily a matter of making one eligible for renewal. Licensees must retain copies of their CE certificates for 3 years from the end of the licensing cycle for which the courses applied (meaning the renewal cycle), not 3 years beyond the cycle in which they were obtained. (*Since you obtain or complete CE during one 3 year license cycle to be eligible for renewal for the next 3 year license cycle, you are required to retain those records for 3 years beyond that next or renewal cycle, which is the cycle they really applied to or were required to make one eligible for renewal.)*

If an "Active" licensee has not completed the required CE hours by the time of license renewal, they must either; (a) stop practicing, renew their license in "Inactive" or "Referral" status, or (b) let the license expire. How to fulfill the CE requirements at this point is the question. (*The problem is that license law does not provide for completing CE hours "late" or outside of the timeframe prescribed by law, i.e. 12 hours for each license year. So how a licensee would fulfill these requirements "late" is unknown. We recommend completing at least the minimum required hours, if not more, as soon as possible and certainly prior to renewing in Active status. If faced with this situation, one should contact the Commission/PLA and seek specific guidance.)*

The license renewal, (*which may be done online at the PLA website*), for Active Status licensees requires a sworn statement that the required number of hours were 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*) and allows the licensee to make **referrals** only to, and receive referral fees only from their Managing Broker or Broker Company. 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 unassigned license (*not 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 do not intend on actively practicing and would like avoid CE, may consider Referral status because the CE requirements are the same and Referral status allows you to receive referral fees from your Managing Broker. Many, if not most, "firms" have a "Referral" arm. This status may not be granted if the licensee has disciplinary proceedings pending.

**(d) Unassigned status:** This status is typically 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, but 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 first obtain the 12 CE hours required for that specific "license year" or "CE year", prior to activation, then activate your license. Once activated, you would simply complete the same CE all active licensee's must obtain to be eligible for renewal. You do not need to "recapture" any CE hours from prior license years or cycles. (*i.e. to activate during the second year of a three year cycle, you would first need the 12 CE hours for that 2nd license year, then activate, then like all other Active status licensees, obtain the 12 hours for 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 (*meaning w/in 60days of renewal*), you must complete all 36 hours of CE for that license cycle prior to activation, but you do not need to "recapture" any hours from previous license cycles.

**Note:** If a new licensee begins in Inactive or Referral Status and then wants to activate prior to completing the 30 hours of Post License education, they must first complete those 30 hours prior to activation. Normally you would have 2 years to complete these 30 hours, but in this case of transitioning from Referral or Inactive to Active status the 30 hours must be completed 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 had any disciplinary issues with other licenses as well as any arrests, or criminal convictions, excluding only traffic violations for which the penalty was just a fine. Answer honestly. Lying to or withholding information from the Commission would likely be considered proof that you would lie*

*to a consumer. 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. Applications are generally reviewed by the Executive Director/PLA and many minor/old offenses that have been completely resolved may be waived by the Executive Director. Providing as much documentation as possible is your best chance to have an old or minor offense waived. The Commission's role is to protect the public by making a determination as to whether any past convictions/issues have bearing upon your ability to faithfully represent a client's interests, not to punish you again.)*

**(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 (*i.e. Tucker School of Real Estate*). The course must include three, 100 question multiple choice exams, totaling 300 points. Students must accumulate at least 225 of the 300 points available, 75%. Attendance is also taken and students must attend at least 80% of the classroom hours.

**(4) Post-license Education:** Brokers must obtain 30 hours of post-license education during the 1st two years of licensure, regardless of status (*Active, Referral, etc.)*. This fulfills the 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 (Pearson-Vue) and consists of two separately scored sections: 1.) an **80 question general content** section on real estate terms, principles and practices, and 2.) 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. You do not become licensed simply by passing the State Exam. The license must be applied for and granted.

FYI: It is common practice for Pearson-Vue to include 5-10 extra "pre-test" questions on each of the two sections. This allows them to "test" potential new questions to verify the question is in fact valid and to assign it a statistical degree of difficulty. Students will not know which questions are real (scored) or pretest (not scored).

**(6) Apply for a License:**

(a) Make application to the Commission 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 or Referral 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 or Inactive status.

**(7) Evidence of Licensure:**

Though brokers may obtain a pocket card and/or wall certificate from the PLA for a fee, neither of these would be your "license" as licensure is simply a status. There is no printed 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 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. (*It is not a violation let your license expire. But practicing on an expired license is a violation, and renewing an expired license does not absolve you 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. The late fee is just that, a fee, not a fine, fines are for violations.)*

## 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 broker's license)*

(2) **Experience and Education:**

((a)) Two year's **active** experience under the oversight of a Managing 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 actually sold or leased any property or "closed" any transactions.)*

((b)) Pass a Commission approved 24 hour Managing Broker course.

(3) **Apply for the License:** The Managing Broker's license must be applied for, it is not automatically issued after completing the Managing Broker course. Managing Broker "eligible" is for those who have completed all the requirements but are not yet ready to become a Managing Broker, such as those anticipating opening their own firm but not quite ready to do so, or in a corporate structure, it is common to have one or more

persons in "Managing Broker eligible" status, just in case something happens to the current Managing Broker / Individual Broker that is in charge of the firm.

(4) **Evidence of Licensure:**
You may obtain a pocket card and/or wall certificate from the PLA, but this is not required. Nor would either of these be considered your license. Licensure is a status, not a document. An applicant is considered "licensed" only upon verification that their name appears on the Commission/PLA web site www.in.gov/pla as a licensee. 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 year)* but 4 of the 12 hours required each license year must be "dedicated to the necessary business and management skills and legal knowledge needed by a Managing Broker."

(6) **Expiration and Renewal of a Managing Broker's License:**
(a) Same as for broker's license, except for the 4 hours of managing broker CE

## 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/associate with an Indiana Managing Broker / Broker Company and have a written agreement that details the terms of cooperation, any compensation as well as a statement that they will comply with the laws of this State. They must 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. (*Their distance won't hold up any proceedings.)*
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. Brokers must:

1. affiliate with only one Managing Broker/Broker Company at a time. *(w/in Indiana, you can be licensed in other States*)
2. maintain evidence of licensure in the Managing Broker's office.
3. advertise only in the name of their Managing Broker or Broker Company.
4. not maintain an office apart from one provided by the Managing Broker or Broker Company. *(In actuality, licensees work from where ever they are at the moment.*

*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 exclusive listings, buyer agency agreements and management contracts to the Brokerage. (*These employment agreements and any related fees are the personal property of the brokerage and remain with the brokerage, unless there was a prior agreement allowing an agent to keep them if they leave. i.e. A top producer recruited away from another firm may have negotiated such an agreement as a condition of joining the new firm.)*

   *License law generally does not address the rights brokers may have under commission split agreements with their broker company, such as fees earned on transaction not yet closed when the broker left, referred to as "hanging commissions". Fee disputes would be handled internally or by arbitration or through the courts, but never the Commission.*

   *When an agent leaves a firm and joins another, they may generally continue to represent the buyers they were representing when they left, unless there was a sale already pending or an exclusive buyer agency agreement in place.*

2. Though all licensees have a duty to inform the Commission of any changes such as: Brokerage affiliation (*changing firms)*, license status, business or home address, **it is the Managing Broker who has the ultimate responsibility to inform the Commission of these changes, and they have 5 business days to do so.** 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. **Reciprocity.** 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. **Each State establishes it's own licensing guidelines, applicants should confirm the specific**

**requirements with each respective State. Reciprocity does not mean you can use an out of state license here.**

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 & vice-versa.

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

Our Managing Brokers or Broker Companies are our legal connection to the marketplace. When the brokerage is structured as a sole proprietorship (*meaning as a person, not a company*) that connection to the marketplace is a person, who can die. 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 ongoing business entities such as corporations, LLC's etc., these business structures are discussed later.)*

This provision of license law applies to partnerships as well. They too are affected by death. Should any partner in a brokerage partnership die, the partnership dies. (*When one partner in a 5 person partnership dies, they don't just become a 4 person partnership, the partnership has simply died).* It has the same effect as if it were a sole proprietorship. "Game Over". Indiana Law provides that when a sole proprietor managing broker or any partner dies:

1. Associated licensees have 90 days following the death of their Managing Broker (*or a partner's death)* to complete "**business already contracted for**", *(i.e. take accepted offers/pendings to closing.)* Though this may be an opportunity to pursue a closing or fee, it is more about our obligation not to abandon clients. Listings without an accepted offer "die" with the Managing 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*

*any old transactions as doing so may create an unintended agency relationship, not to mention the fact that the new 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/reassignment application, and until such time are deemed to be in Unassigned Status.
6. This License Law provision does not address the rights to any fees or commission dollars of either the deceased Broker or any associated licensee, it only addresses our obligations to clients. (*Fees owed to the deceased broker would presumably be paid the deceased broker's estate and the estate would pay the licensee formerly affiliated with them. These are civil matters and not an issue for the Commission.)*

Contract Law Note: Purchase agreements survive the death of a principal, i.e. buyer or seller, but personal service contracts, such as listings, die with any principal. The principals to a typical listing agreement would be the seller and the Managing Broker or broker company, not the agent. So, the death of a listing agent associated with a brokerage firm legally doesn't terminate the agreement. As a practical matter a seller may want out of a listing agreement if their agent dies, but it is not automatic under law.

## L. Licensure of Business Entities as Broker:

Various business entities, such as corporations, partnerships and LLC's, etc. may become licensed as a "Broker Companies", provided they meet the criteria set forth below. Such a "firm" or "broker company" 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 Managing Broker's license designated as the "Individual Broker." 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.

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 listings 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 may remain intact, provided the Broker Company promptly replaces the Individual Broker. The brokerage must act immediately to fill this position and properly notify the Commission of any changes, 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 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 or over seen by a designated Broker, either the Managing Broker or another broker known, as a Branch Manager. Branch Managers do not have a different type of license, they are simply the Broker designated to the Commission as the one providing oversight to that office. The Managing Broker may over see one or more offices, but all offices be overseen by a broker designated to the Commission.
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 overseeing that branch office, and all licensees associated with that office.
6. Ensure the compliance of the firm and all affiliated licensees with all elements of Indiana License Law as well as all other State and Federal laws, including but not limited to: the firm's Written Office Policy on Agency, agency disclosures, escrow accounts, and all required documentation such as; settlement statements/Closing Disclosure, lead based paint & residential seller's disclosure.

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

It is common for real estate firms to hold, in escrow, money belonging to others as part of a real estate transaction. Such things as earnest money, down payments, security deposits, rent, and escrows for repairs are often held. For large firms, these accounts could potentially have hundreds of thousands of dollars, of other people's money, held in them. This is an area of great concern to the Commission as its' mission is to protect the public. The rules outlined below are designed to protect these funds by prohibiting such things as comingling and conversion. **Comingling** is the failure to keep "other people's money" separate from the brokerage's money. **Conversion** is spending or otherwise benefiting from the use of "other people's money." Conversion is legally theft, as the broker would be "converting" another's money to the broker's use or benefit. The escrow account and management guidelines are outlined below:

1. All Indiana Brokerages must establish and maintain **at least one escrow or trust account(s) to hold money belonging to others.** There may be more than one account.
2. Account(s) must be "demand" accounts (*not a 90-day CD*), and identified as 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 leger 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.*
4. Only money belonging to others may be deposited. *(only exception, broker may deposit up to $100 to open and maintain account.)*
5. Must deposit all monies **belonging to others** in an Escrow/Trust Account within two banking days after the acceptance of an offer. *(This two day time frame is for compliance with license law, not contract law. To "seal the deal", Selling Agents should deliver their buyer's earnest money immediately upon acceptance.)*
6. Earnest money is typically held by the Listing Broker/firm, but the parties may delegate the earnest money deposit to the Selling Broker/firm or a 3rd party such as a title company. The Commission shall hold any broker with whom the money is deposited responsible for the money.
7. 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!)*
8. May be an interest or non-interest bearing account. Because the money in the account is not the broker's, neither is the interest. Brokers must pay any interest earned to the beneficiaries. (*Usually a non-interest bearing account)*
9. 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 Broker Company's license, and appoint a Successor Trustee to administer the account.
10. Brokerages must provide the Commission or Attorney General with a detailed summary of the account(s) for investigation upon request.

11. 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.)*
12. The earnest money should be disbursed as follows:
    a) Returned to buyers upon rejection or revocation of offer.
    b) To the title company, as credit to the buyer if transaction is going to close.
    c) As agreed, if there is any amendment to the agreement, or termination other than closing. A written mutual release directing the earnest money disbursement should be obtained.
    d) Per IN law, such as when a buyer receives an amended seller's disclosure revealing a defect and they elect to nullify/terminate the agreement, earnest money **must** be returned to the buyer.
13. If there is a disagreement or dispute: Upon notification that one or more parties to a transaction intends **not** to perform *(Somebody is backing out)*, and the 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.

    Basically this forces the hands of the disputing parties and hopefully takes the issue of earnest money out of the hands of the broker. If not, it at least removes the liability the broker would face allowing them to settle the issue.

## 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 enacted by our Legislature (the Indiana Code or IC), and Rules and Regulations created by our Real Estate Commission (the Indiana Administrative Code or IAC) collectively referred to as License Law applicable to real estate licensees. FYI, because the IC applies to many licensed professions and the IAC to real estate licensees, there is some apparent overlap in the violations. License Law defines specific violations such as **"Class A Infractions, Incompetent Practices, Findings Meriting Discipline."** Also noted are the various **"Professional Standards"** licensees must comply with. (*Basically, these are the "Gotta Do's" and the "No No's.")* Also noted are the available **"Sanctions"** or discipline 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 law, specifically what is required, what is prohibited, what constitutes a violation and what the Commission can and can't do about it.

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.

### A. Investigations & audits: *(How the Commission learns of violations.)*

1. The Commission **randomly** audits licensees for such things as Continuing Education, escrow account, 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. (*For alleged violations)*
3. Investigations are **not** randomly undertaken. (*But violations revealed from an audit could then lead to an investigation.)*
4. An Investigative Fund has been established to assist the Commission, PLA and the Attorney General's office to help administer and enforce license law and investigate and prosecute real estate fraud and other violations. The investigators actually work for the PLA / Atty. General's office, and not the Commission. Regardless, they can look into allegations, conduct investigations and research. (*Yes, there are real estate cops, so look out and be on your best behavior!!!)*
5. If there is an alleged violation, the Commission will generally conduct a hearing to determine the facts, guilt, and then what if any sanctions. The attorneys from the Attorney General's office assist and represent the Commission. Three Commissioners preside over the hearings, acting as Administrative Law Judges, ALJ's, then present their decision to the Commission, who would then vote to affirm, modify or deny the panel's decision.

## B. Violations:

### Class A Infractions:

1. Acting as a Broker without a license, if allowed by a Managing Broker, they are in violation as well. *(practicing without a license.)(One who has never been licensed and simply practices would be prosecuted by Atty. General's Office, all others by the Commission under Professional Standards detailed below.*
2. One who operates an unapproved real estate school.
3. 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 for any firm.)*

### Incompetent Practices

1. Failing to account for and/or remit any funds or documents belonging to others that come into the licensee's possession. *(This certainly includes money, but we are accountable for anything of value, i.e. keys, blueprints, & complete documentation.)*
2. 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. *(The issue is not the inducement, but the failure to*

*disclose it to all parties. It is fine to offer an incentive to a seller 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. the buyer or seller. You can't give an unlicensed person outside of the transaction money for referring business. "Thank you" gifts are fine, but only given after the fact, should never be money, and they can't be offered.)*

3. Receiving, accepting, or giving an undisclosed direct profit on expenditures made in conjunction with a real estate transaction. *(i.e. Failure to disclose any fee earned for preparing a Home Warranty application.)*
4. Acting in dual capacity of licensee and undisclosed client in any transaction. *(Failing to disclose your true role and interest in a transaction.)*
5. Guaranteeing, authorizing, or permitting any person to guarantee future profits which may result from the resale of real property. *(Watch what you say!)*
6. Offering real property on any terms other than those authorized by the owner. *(Suggesting a price or terms other than list, or including in the MLS/BLC profile that a seller would entertain a land contract when they wouldn't or couldn't.)*
7. 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)*
8. Accepting employment or compensation contingent upon the issuance of an appraisal report at a predetermined value.
9. Appraising real property in which the licensee fails to disclose in writing to all parties their interest in that property.
10. 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 or meet with now to discuss only **future** listing and marketing efforts that could take place but 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.)*
11. A licensee associating with, representing, or attempting to represent more than one Managing Broker or Broker Company. *(We can have only one Managing Broker)*
12. 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. You can't pay unlicensed assistants or "team members" a commission, they should be salaried or paid hourly.)*
13. A Managing Broker requesting to hold another's license, if there is no intent to be associated with that licensee. (i.e. *"requesting to hold another's license" is what a Managing Broker is doing by signing the license application, they are requesting the Commission issue the applicant a license that they will "hold", meaning be responsible for. When a Managing Broker agrees to hold 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, they are both circumventing the law and the informal apprenticeship established by the Commission.)*

14. 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. i.e. Telling a broker who is about to write an offer on your listing that you already have one when you don't in an effort to pressure or push them to write a better one is nothing short of a lie, even if it works!)*
15. 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.
16. Having been finally determined to have engaged in an unlawful discriminatory practice under the Indiana Civil Rights Act or violation of Fair Housing laws.

**Professional Standards:** Practitioners and licensees must comply with various professional standards. The Commission may impose the sanctions if they find that a licensee or applicant has/have:

1. Obtained or attempted to obtain a license through fraud or deception. (*Cheating on any class or State exam or submitting an application with any false information or omitting past convictions.)*
2. Engaged in false advertising, or material deception in the course of professional activities. (*note this is not limited to real estate.)*
3. Convicted of a crime or assessed a civil penalty involving fraudulent billing practices.
4. Convicted of a crime that has direct bearing on the practitioner's ability to practice competently or is harmful to the public.
5. Violated any State or Federal law or regulation concerning real estate. (i.e. Fair Housing Laws, RESPA, ECOA)
6. 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.*
7. 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.)*
8. Committed acts in another state resulting in disciplinary action. (*a certified copy of a record of disciplinary action is conclusive evidence.*)
9. Assisted another person in violating license law.

10. 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.)*
11. 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!*)

**Finding Meriting Discipline:** Failure to comply with any obligation or regulation could cause the Commission to make a Finding Meriting Discipline, and impose sanctions. (*running an advertisement where the Broker Company's name was not clearly visible is not an Incompetent Practice or a failure of a Professional Standard but is sanctionable.*

**C. 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 the **Professional Standards** or any of the Commission rules or regulations not just the "named" violations.

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

a. **Revocation** of license. (*Referred to as Permanant Revocation because a Revoked license may not be reinstated, compared to Suspended license which can be reinstated. There is no Lifetime Revocation or Ban, as you may reapply in 7 years.)*
b. **Suspension** of license. (*This has a time frame associated with it, such as a 1-year suspension.)* Unlike Revocation, 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 further violations.)*
d. **Censure** of licensee. *(official reprimand)*
e. **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 **$5,000 per violation** not involving incompetence due to physical or mental disability. *(Penalties typically don't exceed $1,000 and 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 practitioner was allowed to continue to practice. This suspension may be renewed on 90-day intervals but only after a hearing.

Before a license or licensee 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 deemed to have been made if the Attorney General's office attempts to contact the practitioner at the last known address, phone and presumably email, and is unsuccessful. They may then proceed to summarily suspend.

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 include disciplinary or corrective measures as a part of this reinstatement.

(3) When the Commission receives a court order stating that a licensee is delinquent on Child Support Payments, they may place the licensee on probation and eventually suspension if the "arrearage is not paid in full" or a "repayment plan requiring income withholding" is established.

(4) The Commission **may** suspend or revoke the license, or deny the application of, one how has been convicted of these specific crimes:

a) **Possession** of illegal drugs or controlled substances or fraudulently or improperly obtaining prescription drugs and specified synthetic drugs.
b) Manufacture of, or dealing paraphernalia as a Class D/Level 6 felony.
c) Maintaining a common nuisance.
d) Specified sex crimes.
e) A felony that reflects adversely on the individual's fitness to hold a professional license.
f) Conspiracy to commit these offenses.

(5) The Commission **shall** suspend or revoke the license, or deny the application of, one who has been convicted of the following:

a) **Dealing or manufacturing** illegal drugs and controlled substances.
b) Conspiracy to commit these. (***Note the "shall" for dealing compared to the "may" for just possession.)***

(6) 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.)*

(7) 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 to hold the hearing to: get the facts on the record, recover the fee, and impose sanctions and a fine.)*

(8) 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.

(9) Sanctions must be consistently applied.

(10) Attorney General, Commission or County Prosecutors may bring actions.

(11) No harm need be done to a client or consumer to constitute a violation.

(12) Licensees found guilty of a violation have the right to appeal convictions to the Commission. (*A license is a privilege, not a right, so there are no appeals to a court.)*

## 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 the criminal acts of the agent such as 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, these 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 3-year license cycle.)*

(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. (*to give the Commission a "heads up" about potential future claims especially when multiple claims exist against one licensee)*

(2) The claimant must:
   **(a.)** file court action with in **2 years** of the alleged act,
   **(b.)** win a judgement and
   **(c.)** exhaust all other legal remedies within 1 year before:

(3) Then seek payment from the Recovery Fund by initiating a claim to the Commission, in writing, within **one year** of final court judgement. (*The Fund is a financial "safety net" but it is not the first line of protection, it's the last.)*

(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 in a manner that allows 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 6% 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. (*Once a claim has been paid from the fund, the Commission has the legal right to pursue the offending party(s) for reimbursement.)*

**D. Investigative Fund:**

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 maintain the fund and a surcharge may also be imposed should the balance drop below the minimum level.

These investigators work for the PLA not the Real Estate Commission, they can assist with many professions under the PLA. The fund includes monies from: 1.) The registration fee charged with application and renewal of brokers, appraisers, and management companies, 2.) Civil penalties collected, 3.) Sur-Charges levied when fund drops below minimum level.

Money in the Fund remains and does not revert to the State General Fund. If the total in the Fund at the end of the State's fiscal year exceeds $750,000, then that overage shall revert to the State's General Fund.

## 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, i.e. "CO-OP fees". (*Paying the other side doesn't breach fiduciary duties)*

(2) The split commission or CO-OP fee 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 an another Broker, or a client, over a fee if the first Broker was in violation of License law at the time.)*

**B. Broker's Interest in Property and Status as Licensee:**

1. Licensees must always disclose their interest, ownership or otherwise, in any property they are buying, selling, leasing or representing.
2. Licensees must always disclose their status as a licensee in any transaction they are involved with, regardless of role: agent, buyer, seller, lease or lessor.

**C. Listing Agreements:**

(1) Must be in writing, either on paper or in electronic format.

(2) Must have a definite expiration date.

((a)) One copy to owner within 3 days of signing.

((b)) Original and all electronic files retained by listing broker.

(3) Any "NET" listing must provide for a maximum commission.

**D. Broker's duty to cooperate with investigation:**

A broker who is the subject of an investigation by the Attorney General's Office, prosecutor, IPLA and/or the Commission shall cooperate with the investigation, by responding to any inquiry, requests for information and complying with any subpoenas.

**E. Offers to Purchase:**

(1) Must be in writing, in either paper or electronic format.

(2) Though the law no longer mandates a specific number of copies be made. Generally, purchase agreements **should** be made at least in quadruplicate: **4+ Copies distributed as follows:**

((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.** (*Regardless of how good or bad an offer is, or even if the seller has already accepted a better offer, all offers and counteroffers must be presented immediately until the property is closed. The only exception would be if you have a written directive from the owner not to present offers below a certain price.)*

**F. 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.

(2) True copies of these shall be retained for at least five (5) years. *(The Closing Disclosure or other "settlement statement" 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.)*

(3) The Listing Managing Broker and Selling Managing Broker, or their licensed associates *(the actual Listing and Selling Agents)*, must attend all closings. This does not apply to: **a.)** commercial real estate, **b.)** representing an institutional client such as a lending institution, or **c.)** if client does not attend. *(If you can't attend a required closing, simply appoint another broker to attend in your place. Don't try to amend or change the closing date to accommodate your schedule.)*

G. **Advertising:**

(1) Any and all advertising, including: display, classified, signage, broadcast, 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. *(This has started to become an issue where teams within a brokerage barely identify the brokerage and the team "logo" is so prominent that the team appears to be the "brokerage")*

(2) Any advertising shall be under the direct supervision of and in the name of the Broker Company name as it appears on its' license or the name as it is publically known by. *(i.e. Bill Broker dba "BB Realty.")*

(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 such as in electronic displays of limited information such as "thumbnails, text 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. *(Important with Controlled Business Arrangements, CBA's i.e. ABC Realty also owns ABC Mortgage Co., and ABC Title Insurance and offers "one stop shopping" for all these services.)*

(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)*

H. **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. *(Again the key is disclosure.)*

(2) No licensee may sell, lease 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.

I. **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.)*

J. **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.

K. **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 REIT to assist in the purchase, sale or leasing of its' real estate holdings, but could not sell shares of the REIT to investors as these are "securities". 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.

L. **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 as defined by IN law. The question then becomes "what disclosures should be made?" Licensees and students should be cautious with this provision as our instincts are to disclose material facts and defects, but "Psychological Affectations" are not legally defects, that was the reason for this law. The is sues outlined below may seem or be material, but law defines these differently, and if the property is in fact "Psychologically Affected" the owner/listing agent **are not required to disclose** these issues, they just can't lie in response to a question.

The following; outlines which properties are classified as "Psychologically Affected" and the disclosures that are required:
(1) **Psychologically affected** properties/transactions include the **sale or lease** of a 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. (*We generally would never discuss HIV or any medical condition because of HIPA laws.)*
((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;
3) may not intentionally misrepresent a fact in response to a direct question from a potential buyer or tenant.

((c)) We would still need to disclose any hazardous condition such as contamination from a former "Meth Lab" if known.

Indiana law does not specifically address issues of alleged "Hauntings or "Ghosts." Nor would a belief or "reasonable suspicion" render a property as "Psychologically Affected." The issue is not whether you believe in such things, but rather the extent to which such a general perception by the public *(i.e. the Amityville house)* would affect value, or be considered a material fact, and thus potentially be a required disclosure. We are not aware of any case law in Indiana on the matter, but like anything that could affect value or a consumer's course of action, listing agents should consider what they will do. Selling agents would always disclose any material facts, even a general perception they don't believe in, to their buyer or tenant clients. The question is, do listing agents have to disclose such a general perception? We don't have that answer, but believe such things at a minimum should be discussed with your owner client. And in no case ever lie or misrepresent in response to a question.

(3) Note to **Selling Agents *(buyer's agent's)***: This provision of license law doesn't differentiate between listing agents and "selling" agents, it just says "owners and agents…are not required to disclose" (*presumably because it was created prior to the establishment of buyer agency in Indiana*). But 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 always disclose what we knew to our client.

(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 you also represent)* that was the site of a notorious murder creates at a minimum, an ethical dilemma, and possibly a legal one under the common law of agency. Limited agents may be well advised to seek prior permission to disclose this status or simply choose not to be a limited agent in these circumstances.

## M. Agency Disclosure & Types of Agency Defined:

Much of license law is rooted in agency law. Compliance with agency law is probably the single greatest area of legal risk for firms and licensees. If we screw anything up, more than likely we have violated agency law, and in turn license law. Taking the time to simply clarify and document the role we play in every transaction not only helps minimize this risk, **it is the law! And it's our responsibility to do this!**

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 contact you requesting general information about a property, or people who have just walked into an open house are probably just customers. But once you start "acting" like their agent *(implied agency)* such as entering a dialog centered around satisfying **their** interests and concerns or simply by showing them properties, you have likely become an agent with fiduciary obligations. Remember implied agency carries with it the same duties as express agency would. The best course of action is to develop the habit of always discussing representation as early as possible and always prior to a consumer's disclosure of confidential information. (*i.e. asking if they are already working with another broker, and disclosing if you already represent a party such as the owner of the property they are inquiring about)*

Indiana Law clearly places the burden on licensees to clarify and document agency relationships with customers and clients. Indiana law also assumes that **we work for those we are working with (*i.e. implied agency at a minimum*).** Creating implied agency does not bind the consumer to work with us, it just requires that we provide that level *(fiduciary level)* of service to them. If we don't have an exclusive representation agreement with a consumer, they owe nothing to us. Indiana License Law contains several specific obligations regarding agency and it's disclosure:

(1) Managing Brokers and Broker Companies shall develop and enforce the use of a **"Written Office Policy on Agency"** which outlines the types of agency relationships the firm and its associates practice. Such policy should ensure that all parties understand **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 may 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 they **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 "by the book"/ law. 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. *(like we know at what point will that happen?)*
- Advise clients/customers if the Broker will share any commission with other Brokers. (*i.e. CO-OP fees through the MLS/BLC)*

- The payment of a fee/commission does not establish an agency relationship. (*Just because someone is paying a fee or commission doesn't mean everyone or anyone works for them.)*

(2) Required and prohibited Disclosures:

((1)) **The Listing Agent: (represents the owner, 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. (*You should never say you client is "motivated" unless agreed to in writing.)*

((c)) Must not disclose confidential information about the owner unless required by law or to prevent fraud or dishonest dealing. Material facts or property defects must be disclosed.

((d)) Must treat buyers/tenants honestly and not give false information.

((e)) May list competing properties.

((f)) May show competitive properties to buyers/tenants. (*You may show buyers/tenants that you showed your listing to, other properties owned and/or listed by others.)*

((2)) **The 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)) **A Limited Agent: (one agent representing both sides of the transaction)**

((a)) Must have "written informed consent" from all parties to proceed.

((b)) Must insure all parties understand the limits of your representation,

((c)) and that they don't have to accept Limited Agency.

((d)) Must not disclose the pricing strategy of either side.

((e)) Must not disclose the motivation of either side.

((f)) Must not disclose material or confidential information about either side, or party, unless required by law or to prevent fraud or dishonest dealing. But would disclose material facts regarding the property, such as property defects or encroachments.

((g)) May provide "MLS/BLC" data and other "comps" to both sides, but can't interpret the data. *(i.e. tell them what to offer, counter or accept.)*

((h)) Can not council either side about specific pricing strategy, what to offer, how to respond to offers or counters, i.e. what to accept or reject, etc.

***Note: As a practical matter, many of the complaints against licensees revolve around limited agency transactions. Making the proper disclosures 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; does the consumer really know "who works for whom?" and in what capacity? Did they know the "limits" of Limited Agency, and that they had other options? If that is not the case, then we don't "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, each represent different sides of the same transaction, but neither agent has oversight over the other, (*i.e. neither of the agents are the branch manager of the other or the managing broker)*. In-House Agency is not "Limited Agency", thus <u>does</u> <u>not</u> require written informed consent. Nor does it change each agent's relationship with their respective client, each agent remains the advocate of their client. It does require both agents be especially cautious about confidentiality and access to files, as well as discussions with the Managing Broker or Branch Managers must be considered. **The Managing Broker is always a Limited Agent in these situations, but the transaction is not Limited Agency**. Branch Managers could be Limited Agents depending on the circumstances.

**<u>Important Note:</u> In-House transactions sometimes create Limited Agency:**

When one of the two agents has "oversight" over the other, such as when one of them is the Managing Broker or Branch Manager of the other agent, then this creates Limited Agency and makes everyone a Limited Agent, and requires "**Written Informed Consent**" from all parties to the transaction.

This can be complicated depending upon the role the Managing Brokers plays in their firm. In some firms, the Managing Broker actively lists and sells real estate, acting as a Branch Manager/Sales Manager. In other firms, often the larger ones, the Managing Broker plays more of an executive role and does not actively or personally list or sell real estate, thus <u>they</u> <u>are</u> <u>not</u> considered to be "one of the two agents". But to the extent the Managing Broker becomes directly involved, such as when answering questions or settling disputes, they are a Limited Agent and must remain neutral.

To put this in context: 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 parties to the transaction. (*i.e. Alice is*

*associated with Jones Realty, she brings the buyer to a listing of her Managing Broker, Jeff Jones. This is limited agency for all).*

If one of the two agents is the **Branch Manager** (sales manager) of the office the first agent is associated with, then this is Limited Agency for all, requiring written informed consent from all parties to the transaction. (*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 first agent, then this is simply In-House Agency and not Limited Agency and thus doesn't require written informed consent, but the Managing Broker is always a limited agent in all In-House transactions. (*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 Agency, and not Limited Agency)*

If the two agents are both branch managers then this is also just In-House Agency or an In-House Transaction

((5)) **Non-representation:** Some parties to a transaction may decline or 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" or other disclosure form 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.

N. **Indiana Residential Seller's Disclosure Form:**

There has been some confusion as to when this form is required, and when it is not. Regardless of whether the form is required, all licensees must always disclose known defects.

This form is required for the sale, exchange, installment/land contract, or lease with an option to purchase of residential real estate of four or fewer dwelling units, with the following exceptions:

1. Court ordered transfers such as: Estates, foreclosure sale, 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 of local taxes *(tax sale).*
7. Transfers to or from any governmental entity.
8. Transfers involving the first sale of a dwelling where the property has never been occupied. *(New home sales, but if the first buyer of a home never occupies it and then subsequently sells it, that would require the use of the form. They may have little knowledge of defects, but the form would be required.)*

The use of this form has nothing to do with whether the property is listed with a licensee or a FSBO (*for sale by owner*). 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. If required, failure to have this form or to have it properly signed by all parties makes the transaction unenforceable against the buyer.

The following is an example of how a licensee must "balance" this law and our duty to disclose all known defects, even if the form is not required: *This author had a listing of an elderly women's home. As required, she filled out a Residential Seller's Disclosure Form and signed it. She passed away before the property was sold, which terminated the listing. After relisting the property with the heirs, this became an estate sale, which is exempt from the use of this form. But just because the estate wasn't required to use the disclosure form, didn't mean I was absolved of my disclosure duties. I was aware of a couple defects and thus was required to disclose them. There are a variety of ways in which these disclosures can be made, the key is that they be disclosed in writing. The estate didn't have to use the form, but I was required to disclose known defects. QUESTION: So did I as listing agent fill out and sign the "Seller's Disclosure Form"? ANSWER: No... I was not the seller. An addendum or other form could be used. The key is that the buyer(s) acknowledge in writing that these disclosures were made, prior to acceptance.*

Sellers must accurately complete the Indiana Residential Sales Disclosure Form themselves, (*We always say it should have their handwriting on it, not ours.*) and disclose known defects. Agents can assist as there are some confusing sections, but it is to be the seller's disclosure.

Sellers and their brokers 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."***

If the licensee notices a defect, they should discuss it with the seller. If there is disagreement with the seller about whether an issue is a defect requiring disclosure, this would need to be resolved. An expert could be called in to help determine the nature and

extent of the issue. If a defect is noticed after a disclosure form has been given to a prospective buyer, the defect must be disclosed, even if the seller wants the information withheld. In the end if the licensee and seller can't agree, the licensee should pass on the listing. No sale or listing is worth losing your license over.

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

(1) 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

(2) 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.)*
(3) It is not a substitute for an inspection by a qualified residential home inspector.
(4) The disclosure:
    ((a)) Is not a representation of the agent.
    ((b)) Must identify if the property is within one nautical mile of an Airport.
(5) The disclosure does not serve as a warranty by the seller or licensee.
(6) Distribution of signed disclosure forms: **(VERY IMPORTANT)**
    ((a)) The seller(s) sign the form and the buyer must receive a signed copy prior to acceptance of their offer. (*It should really be given up front, i.e. before the offer is made, such that the offer is made with these disclosures/defects in mind. Listing agents typically have these placed at the property and often online as part of the MLS/BLC profile.)*
    ((b)) <u>If requested</u>, the buyer's 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.
(7) The owner is not liable for inaccurate information provided by competent third parties. Further, sellers are not liable for defects discovered by buyers after the sale so long as the sellers were unaware of the issue. (*i.e. A property is listed in February, and sold and closed in April, the disclosure form noted that the A/C was "not defective" as it worked fine the previous October which was the last time the seller used it. In May the buyer turns on the A/C to find it inoperable. The seller would not be liable unless it could be shown that they knew of the problem and failed to disclose it.)*
(8) The owner is required to correct any inaccuracies or changes in disclosures prior to closing.

(9) The buyer may nullify the contract within two business days after receipt of a disclosure form if none had been provided or amended disclosure form **that discloses a new defect**. If nullified, the buyer shall have all earnest monies returned.

O. **Lead Based Paint Disclosure Form:**

Separate from the Indiana's Residential Seller's Disclosure Form, is the Federally mandated EPA Lead Based Paint Disclosure Form. Though not a part of IN license law, we reference it here as it's use, when required, operates much like the IN Residential Seller's Disclosure Form in that the lack of one where required, makes the transaction unenforceable against the consumer.

This form applies to the sale or lease of residential properties built before 1978 and is distributed much like the Seller's Disclosure Form:

(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.

**NOTE:** Keeping all the disclosure requirements straight can be challenging. (i.e. IN Residential Seller's disclosure form, Lead Based Paint disclosure form, Agency Disclosures etc.) Remembering which disclosures are required and when, can also be difficult to remember. (i.e. *Is it required for sales and/or leases?, or just sales?, is it for properties built before a certain year?, or is it only for residential properties? or all for all types of properties or transactions? Or is it a transaction where we don't have to disclose info that otherwise might seem to be a required disclosure such as a Psychologically Affected Property. It is important to remember what disclosures are required and when. The State Exam is known for asking several questions about disclosures!*)

P. **Limited Service Firms – Minimum Duties**

There's an increasing variety of business models emerging in the real estate brokerage industry, including "Limited Service" or "fee for service" firms. In some cases these firms, by agreement, are acting in a "non-fiduciary" capacity, which has led to some confusion between consumers and the firms themselves as to the exact role the firm plays. To help establish clarity among all concerned, the Commission has enacted the following provisions to define if and when an agency relationship exists and to 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 a "non-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/team members 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. **Unlicensed persons can not:**

(1) Prepare ads or promotional materials without the 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. Unlicensed assistants and unlicensed team members etc. can be paid hourly, salaried or by the project, *(i.e. "X" dollars to deliver these documents, or restock these brochure boxes.)* They **may not** be paid in a "transactional" fashion like a commission or share of any commission that is contingent upon a sale being made or a closing taking place. They may receive a bonus from the team leader, or employing broker, but this should not be the primary form of compensation.

C. Licensed assistants/team members are licensees and thus can perform any activity that requires a license, and may be paid commissions or a share of a commission.

# 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 desclosure 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.**

| 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 | | | | |

**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*) |
|---|---|---|---|

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?<br>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? | | | |

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| 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*) |
|---|---|---|---|