

Kelly Right Real Estate Policies and Procedures Manual

Dear Sales Broker,

Thank you for joining Kelly Right Real Estate. As an Independent Contractor, you are required to comply with Washington Real Estate Law and Washington Association of REALTORS® Ethics. The Policies and Procedures Manual is a handbook designed to help you perform your functions more effectively in an organization.

For the purpose of this manual, Agent, Broker, Sales Broker, Sales Agent, Independent Contractor and Salesperson all refer to Sales Broker.

I. INDEPENDENT CONTRACTOR

Kelly Right Real Estate does not withhold Federal, State, or Local taxes from the commission checks. All Brokers are responsible for paying their own taxes. Kelly Right Real Estate does not set work hours for Independent Contractors. Kelly Right Real Estate also does not set vacation times or number of days that Independent Contractors can take leave. The Broker is responsible to ensure in the event that he or she takes a vacation or has leave that their duties are followed up by a “substitute” Salesperson, customers are referred, and mail and phone messages forwarded.

This confirms that I have received a copy of the Policies and Procedures Manual.

Agent Signature

Date

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Introduction

The Kelly Right Real Estate Policies and Procedures Manual is provided as a resource for our Brokers and employees in their conduct of daily real estate and business activities. It will provide instructions for cooperation between Brokers, employees and management, as well as detailed procedures for real estate related activities.

At all times, Kelly Right Real Estate intends to abide by all federal, state and local laws and regulations, as well as those of our local association and the National Association of REALTORS®. Should any instruction or policy in this manual be in contradiction or in violation of laws or regulations, bring it to the attention of management for possible correction. It is expected that all Brokers and employees will also attempt to keep up with applicable laws and follow them at all times.

Though all Brokers, employees and management personnel should follow the instructions in this policy manual, doing so is not a guarantee of continued employment, nor is this an employment contract.

Kelly Right Real Estate retains the right to amend this policy manual as necessary. Amendments will be published as handouts to all Brokers and employees, as well as discussed in meetings if appropriate. Failure to attend a meeting where changes are discussed does not excuse the Broker or employee from understanding and compliance.

All employees and Brokers will acknowledge receipt, understanding and agreement to comply with each amendment as it is issued. Two copies will be delivered, whether in print in your office inbox, via email or other method. Within five days of the date of delivery, one copy will be returned to the Office Manager with signature. It is your responsibility to retain a working copy of this office policy manual at all times, and to place amendments into your copy as they are issued. Management may ask to review your copy at any time to assure compliance.

Chapter 1

Affiliation: Designated Broker and Broker

Mutual Benefit

For the working relationship of the Designated Broker and Broker, the following policies will be used to establish mutual benefit to both parties:

Designated Broker and Broker Agreement of Mutual Benefit

- The Broker and Designated Broker each agree to engage in business that promotes the utmost manner of professionalism by promoting positive relations, enhancing the business' reputation and its profits, and increasing community goodwill.
- The Broker agrees to put forth the best effort in selling, exchanging, and leasing all real estate and business opportunities listed with the Designated Broker and to include the solicitation of new clients and customers for future business. Furthermore, the Broker agrees to act in lawful and ethical manners promoting the professionalism of himself/herself, as well as the firm to the greatest mutual benefit of both parties.
- The Broker, as agent for the Designated Broker, agrees to act on the behalf of the Designated Broker. If a conflict of interest occurs, the Broker will promptly notify the Designated Broker in writing so that the Designated Broker can take appropriate steps in rectifying the conflict for the mutual protection of both parties involved in the transaction.

Adhere to the Code of Ethics and Bylaws of Local Board and MLS

- The parties agree to conform to and abide by all laws, rules and regulations, and codes of ethics that are binding on, or applicable to, Washington real estate Designated Brokers and affiliate Designated Brokers.
- Strict adherence to the governing rules and regulations of the Washington Department of Licensing, the Real Estate License Act, The Code of Ethics of the National Association of REALTORS®, Local Board/Association governing documents (Bylaws, MLS Rules and Regulations, etc.) will be followed by the Designated Broker and Sales Brokers.
- Each party acknowledges receipt of a copy of the Code of Ethics, the local Board/Association Constitution and/or Bylaws, and the Rules and Regulations of the Multiple Listing Service.

Broker Affiliation Requirements*

The following provisions will be complied with at the Broker's personal cost:

Real Estate License, Mandatory Continuing Education, Automobile Insurance Coverage

- The Broker shall maintain his or her own current real estate license
- The Broker shall meet all Continuing Education (CE) requirements as established by the Department of Licensing (DOL)
- Proof of CE compliance and license renewal shall be provided to Designated Broker no later than fifteen (15) days prior to the applicable renewal date
- The Broker shall maintain \$100,000/\$300,000 insurance coverage on any automobile used in their activities as a Broker.
- The Broker is responsible for all CE, licensing and license renewal fees.

Membership in the Board of REALTORS® and/or local MLS Board

- The Broker agrees to become a member of the local Board/Association and to be responsible for all applicable dues and fees.
- The Broker expressly understands that they may choose to join any Board/Association in which the Designated Broker holds membership. The Broker can also join other Boards/Associations as a secondary membership if the Designated Broker holds no membership in the particular Board/Association.

Miscellaneous Broker Expenses

- Any expenses relating to customer/client entertainment and agent's personal promotion will be paid for by the Broker. The Broker shall order business cards through the office secretary. Each business card will display the name and logo of the Designated Broker or Real Estate Office Name.
- All education required to maintain licensing and improve Broker's skills, REALTOR® designation courses and local MLS courses unless otherwise approved in writing in advance by the Designated Broker.
- Personal file supplies.
- Membership in the Multiple Listing Service.

Automobile

- In the course of real estate transactions, the Broker must use his personal automobile. All operating, maintenance, repair and other related automobile expenses will be paid for by the Broker.
- The automobile will be in such condition as to promote the professionalism of the agent as well as the firm. It will be maintained in good operating condition and in a cleanly manner.
- Transportation will not be provided by the Designated Broker.

The Broker shall at all times carry liability insurance on the automobile with coverage for personal injury and coverage for property damage. Changes in coverage will not become effective until fifteen (15) days after the Designated Broker has received and approved the coverage changes. The Designated Broker will be named as an additional insured in the policy. At the signing of this agreement and at the time of each policy renewal or change of carrier, the Broker shall provide evidence to the Designated Broker through the certificate of insurance policy of the carrier. Business pursuit liability coverage shall also be maintained. This may be as part of Broker's personal liability or homeowner's coverage.

In accordance with State law, the Broker must require that all passengers wear a seat belt and any infant under the age of four years shall be secured in a restraining seat during transportation.

Resolution of Disputes

Misunderstandings about Designated Brokerage prospects or sales are to be handled through the following processes to negotiate in an equitable manner these types of situations that may arise.

What Constitutes a Dispute?

Disputes are disagreements between Brokers in regards to:

- The equitable right to work with a certain prospect
- The right to a split of commission or fee when more than one Broker knowingly or unknowingly works with the same customer/client
- The percentage split of commission or fee earned when two Brokers have worked with the same customer/client

Intra-office Disputes Between Brokers

First and foremost, the Brokers in conflict must try to come to an agreeable mutual settlement.

In the event the Brokers cannot meet a satisfactory agreement, the Designated Broker shall hear both sides of the argument in a meeting with the involved parties. If a legitimate dispute exists, the Designated Broker will make a determination of action to follow. In the event the Designated Broker's action is not satisfactory, three neutral Brokers of the firm shall be appointed by the Designated Broker to act as jury and render a final decision (based on the majority vote of the committee). All inner-office disputes must be reported promptly to the Designated Broker. Personal disagreements not involving business related matters are not the responsibility of the Designated Broker. However, in an effort to promote goodwill, the Designated Broker can counsel the aggrieved parties. Disagreement between Designated Broker and Broker

Disagreements or disputes between Broker and Designated Broker pertaining to:

- A conflict arising out of, or in connection with, their business relationship and dealings
- The company policy
- Transactions or real estate laws
- Any real estate business related practice unresolved between the Broker and Designated Broker will be submitted to arbitration by an agreed upon chosen arbitrator. The arbitrator's decision shall be final and the Designated Broker and Broker must abide by the decision of the arbitrator.

Independent Contractor

Definition

The relationship of the Broker to the Designated Broker is that of an Independent Contractor. This relationship affords the Broker maximum freedom and flexibility. It is established and described in a contract and includes how listings and compensation will be handled in the event that the Broker leaves the company. It must be signed by the Broker and is included upon affiliation with the Designated Broker.

To meet state and federal requirements, a Broker is an Independent Contractor if

- The Broker holds a valid real estate license.
- Substantially all of the sales Broker's income performed as a real estate agent (90% or more) must be directly related to sales or other output rather than to the number of hours worked.
- A written agreement which specifically states that the Broker will not be treated as an employee for federal and state tax purposes with respect to services performed as a real estate agent.

Independent Contractor's Agreement

Upon affiliation with this Designated Broker, the Broker shall enter into a written Independent Contractor's agreement with the Designated Broker setting forth the duties and responsibilities of both parties. This agreement shall include, but shall not be limited to, the following:

- The terms of compensation for work performed during the time of affiliation with the Designated Broker.
- The terms of compensation for work in progress but not completed prior to termination of affiliation with the Designated Broker.
- The disposition after termination of affiliation of all active listings, buyer agency contracts, and pending sales the Broker obtained during affiliation with the Designated Broker.
- A written accounting to the Designated Broker, at the time of termination of affiliation, of the names of all prospective purchasers, sellers, lessees and lessors which the Broker encountered during affiliation with the Designated Broker.
- A provision for the return to the Designated Broker, at the time of termination of affiliation, all property of the Designated Broker in Broker possession or control, including but not limited to: all property files, computerized files, keys, for sale signs, notebooks, lock boxes and records of any kind used in connection with the listing and sale or leasing of property.

Tax Filing Requirements

Each Broker is responsible for maintaining the necessary personal financial records for purposes of reporting income for state and federal tax requirements. The Designated Broker's obligation is limited to providing a W-2 form which summarizes any annual non-production income and must have Social Security payments withheld from any non-production income, to which the Designated Broker also contributes. Otherwise, the Designated Broker is not liable for deduction of Social Security, or income or unemployment taxes for any production based income.

Workers' Compensation Requirement

According to State law, as long as the Designated Broker/Firm has a valid independent contractor agreement with a Broker, Firm must maintain workers' compensation insurance under worker's compensation program guidelines. This cost is deducted from Broker's first commission each calendar quarter.

Designated Broker Authorization to Contract

The obligation, commitment, or binding of a promise or representation by the Designated Broker is not valid unless the Broker receives authorization from the Designated Broker in writing and provided the Broker is authorized to execute listing contracts, buyer/seller agency contracts, and other approved forms in behalf of the Designated Broker and that the commission involved in the transaction is not less than that specified by the Designated Broker.

Authority to terminate a listing contract, buyer/seller agency contract, or other agency agreement, or make amendments to the contract that alter the term and/or change the amount of compensation established in the contract is prohibited unless such request is first presented to the Designated Broker or manager of the company who is authorized to execute such determinations and amendments and grants authorization in writing.

Chapter 2

Office Policies

Discrimination Issues

Federal Fair Housing Laws

It is illegal to discriminate against any person because of age, race, creed, color, religion, sex, handicap, familial status or national origin:

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services
- In the appraisal of housing
- Blockbusting is also illegal

Washington Association of REALTORS® Code for Equal Housing Opportunity This office subscribes to the Washington Association of REALTORS® Code for Equal Housing Opportunity in which equal opportunity in the acquisition of housing can best be accomplished through leadership, example, education, and the mutual cooperation of the real estate industry and the public. In the spirit of this endeavor, this firm proclaims the following provisions of its Code for Equal Opportunity to which each member is obligated to adhere:

1. In the sale, purchase, exchange, rental or lease of real property, REALTORS® and/or REALTOR® BROKERS have the responsibility to offer equal service to all clients and prospects without regard to race, color, religion, sex, handicap, familial status or national origin. This encompasses:
 - A. Standing ready to enter Broker-Client relationships or to show property equally to members of all racial, religious, or ethnic groups.
 - B. Receiving all formal written offers and communicating them to the owner.
 - C. Exerting their best efforts to conclude all transactions.
 - D. Maintaining equal opportunity employment practices.
2. Members, individually and collectively, in performing their agency functions have no right or responsibility to volunteer information regarding the racial, religious, or ethnic composition of any neighborhood or any part thereof.
3. Members shall not engage in any activity which has the purpose of inducing panic selling.

4. Members shall not print, display or circulate any statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitations, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.
5. Members who violate the spirit or any provision of this Code for Equal Opportunity shall be subject to disciplinary action.

Discrimination Accusations

An investigation by the Designated Broker will follow for any accusation of discrimination. If the investigation confirms a violation of discrimination, the Broker's actions will be reported to the DOL for further investigation and necessary disciplinary action. Affiliation with the Designated Broker will be terminated

Fair Employment Practices

It is the Designated Broker's policy that no person shall be discriminated against in either hiring or firing of personnel. According to T.C.A. § 4-21-401, it is discriminatory practice for an employer to:

1. Fail or refuse to hire or discharge any person or otherwise to discriminate against an individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, creed, color, religion, sex, age or national origin; or
2. Limit, segregate or classify an employee or applicants for employment in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, creed, color, religion, sex, handicap, familial status, age or national origin.

The Designated Broker shall provide reasonable accommodations to qualified individuals with disabilities, unless such accommodation would impose an undue hardship on business operations. Qualified individuals with disabilities are those who, with or without reasonable accommodation, can perform the essential functions of the job.

Harassment

Professional behavior is a requirement around your fellow Brokers, Designated Brokers, managers, company employees, staff and customers. Harassment, including verbal, physical, visual, religious, and sexual is strictly prohibited in this office. A list of things that can be considered harassment:

- Any racial, ethnic, sexual, religious, jokes / slurs / or insults
- Any physical contact such as unwelcome touching, groping, grabbing, or pinching
- Any visual renderings of sexually suggestive materials or materials negatively reflecting an individual's ethnicity, race, ancestry, or sexual preference
- Any unwelcome sexual advances, physically, verbally, and visually of a sexual nature that has a purpose or effect of work performance interference, intimidation, or hostile/offensive working atmosphere

In the event an employee, Broker, or any other staff person feels that he or she has been harassed, the incident must be reported immediately to the office manager or Designated Broker. The anonymity of the accuser, as well as the accused, shall be held in confidentiality by the manager and/or Designated Broker. An investigation will commence and a written report will be filed. If the allegation involves the manager or Designated Broker as the accused of such action, an outside investigator may be retained. Retaliation against complainants is strictly prohibited. Any employee, Broker or staff found guilty of engaging in harassment may be subject to disciplinary action up to and including reprimand, counseling, suspension, and termination.

Information Systems Conduct

Use of the information systems requires certain conduct be maintained to enhance professionalism among your working peers, customers, and clients. The following are strictly prohibited:

- Harassment, in any form, will not be tolerated
- Forwarding of messages or information that will disparage individuals or groups based on their gender, race, national origin, or other protected characteristic
- Forwarding of messages which might disrupt the work place or damage morale
- Offensive comments, jokes/riddles, cartoons, pornography, profanity and offensive messages or information in any form
- Threatening messages or forms of other threatening communications
- Forgery or attempted forgery of e-mail or voice mail
- Accessing, deleting, copying or modifying of e-mail and/or voice mail. This includes the attempt to do so.

Any Broker who receives threatening, harassing or improper communications shall immediately report the situation to their immediate supervisor, consistent with our prohibition of harassment.

Dress Code

Professional manner of dress is a requirement when serving the public in real estate transactions and when representing the Designated Broker.

Changes in Name, Address and Telephone Number

All changes in name, address, and telephone numbers of any Broker **MUST** be reported by the Broker **WITHIN 24 HOURS** to the Office Manager or secretary who will make a record of the changes and report these changes to the DOL and the local Board/Association of REALTORS®. The Broker is responsible for any fees Brokered with name, address and telephone number changes from DOL or the Board/Association of REALTORS®.

Drug and Alcohol Use

Substance Use

Drug and alcohol use are strictly prohibited while engaged in real estate Designated Brokerage transactions and shall not be present or used during work hours unless medically prescribed and under the supervision of the Broker's health care provider. Any situations in which duties cannot be properly performed without the assistance of prescribed medication must be reported to the Designated Broker. Drug and alcohol use in the workplace may be grounds for termination.

Client or Customer Substance Use

A Broker should also discourage the use of drugs or alcohol by any party during a transaction. Upon discovering that a party is under the influence of either drugs or alcohol, the Broker should take appropriate action to terminate that day's activity and suggest that they discuss or complete the transaction another time.

Legal and Tax Advice Prohibited

Legal Advice

No Broker shall give legal advice to a party, offer opinion, or give advice regarding legal rights or obligations of a party. Parties may be referred to the Default section in the Offer to Purchase form and advised to consult with their own attorneys. The Broker also may explain the preprinted provisions of the standard listing and offer to

purchase and any other approved forms the parties may be asked to complete and/or sign.

Tax Advice

NO BROKER SHALL GIVE TAX ADVISE to a party, including advice pertaining to deductions, exemptions, and/or tax liabilities resulting from the purchase or sale of real estate. If a tax question, beyond the scope of real estate practice, and an explanation is asked for, the Broker should always suggest that the party consult an attorney, tax accountant or other appropriate expert having expertise in the area addressed by the client's or customer's question.

Problem Reporting Procedures

Immediately report problems to the Designated Broker that pertain to:

- A party having complaints involving real estate transactions
- Automobile accidents occurring while the Broker is participating in real estate Designated Brokerage transactions
- Criminal charges against the Broker, with the exception of traffic offenses
- Civil lawsuits or administrative actions involving real estate Designated Brokerage transactions
- DOL contacts concerning disciplinary actions or other purposes
- Party default under an accepted contract
- Threatened legal or administrative actions involving the parties and/or a real estate transaction
- Acts of discrimination committed by Brokers or parties to transactions
- Unresolved disputes between Brokers, within or outside the office
- Physical injuries within the office or while in performance of services or duties in the name of the Designated Broker
- Local Board/Association contacts concerning disciplinary action or other purposes.

Contacting the Designated Broker

Emergency Contacts

The Designated Broker generally will be available during work hours to discuss real estate matters. In the case of an emergency, the Designated Broker may be contacted at his home after business hours.

If the Designated Broker cannot be reached, the Broker should contact the Kelly Right Real Estate corporate office at 888-302-5550 the Broker should not act until he or she is able to contact the Designated Broker; however, if the emergency pertains to the wording of a contract, a protective clause to the effect that:
"This contract is subject to the review and approval of legal counsel within (an agreed upon time frame) acceptance of this offer."
should be inserted in the contract.

Corporate Office:	Spokane, WA
Designated Broker:	Joe Kelly
Office Phone:	509-489-7000
Cell Phone:	509-389-4125

Confidentiality

All records of Kelly Right Real Estate, this office, as well as conversations between Brokers, Designated Broker and Brokers, and Brokers and parties to the transaction, are considered confidential. No files shall be removed from this office without the expressed permission of the Designated Broker and no other information obtained while working for this company shall ever be used to the detriment of the Designated Broker.

All Brokers shall also be obligated to honor the confidential information of any client or non-client party to any transaction, as designated in writing on an Agency Disclosure form or other document. All documents stating a party's confidential information shall be kept by the Office Manager in a special locked file to guard against any unauthorized sharing of this information. Access to this information shall be limited to the individual Broker working with the party.

Observance of Safety Practices

All Brokers are encouraged to be aware of unsafe situations and prepare themselves to avoid unsafe practices. Some suggestions are:

- Get a prospect's full name, address and telephone number at the first meeting. Ask to see their driver's license and jot down the driver's license number and the date of birth.
- If you are meeting for the first time, or are otherwise concerned about a buyer or seller, ask the Designated Broker, another Broker or a personal assistant to accompany you.
- Always have your buyers and sellers meet you at the real estate office, never at a vacant property, and use your car or take separate cars.
- While showing a property, unlock the door and allow the prospects to enter first and keep them in front of you at all times.
- Don't carry a lot of cash or wear expensive jewelry during showings and open houses
- When leaving the office, always let someone know where you will be and how you can be reached.
- Use caution and judgment. DO NOT put yourself in an unsafe or compromising position.

Vacation / Leave Time for Brokers

The Designated Broker does not control Broker's time off except that Brokers must make themselves available for mandatory meetings, tours, etc., discussed in previous policy statements. However, if a Broker plans to be absent from the office (i.e., out of town) for any period of time, he or she must inform the Designated Broker. Additionally, another Broker must be scheduled to cover for the Broker during this absence. Failure to arrange coverage by another Broker will require Designated Broker to make necessary assignments and determine the appropriate commission split, if applicable.

Sign Policy

The Designated Broker requires that all Brokers use uniform signs and sign riders. To insure uniformity, ALL Signs and Sign Riders will be ordered by the office secretary at the individual Broker's expense.

Sign Riders

The cost and storage of Sign Riders will be the sole responsibility of the individual Broker. Sign riders will be placed on the bottom portion of the yard sign.

Direction Signs

Directional signs can be used to direct prospective buyers to the property. The cost and storage of Directional Signs will be the sole responsibility of the individual Broker. It is the sole responsibility of the individual Broker to ensure that sign placement is in compliance with all local, regional and State sign ordinances.

Sold and Offer Pending Signs

Only after all contingencies of the offer have been waived or satisfied and after obtaining the permission of the seller, "Sold" signs shall be posted. "Offer pending" or similar signs may be posted, with the seller's permission, after acceptance of an offer but prior to waiver or satisfaction of contingencies. Sold signs will be the sole responsibility of the individual Broker.

Business Cards

The Designated Broker requires that all Brokers use uniform Business Cards. To insure uniformity, ALL Business Cards will be ordered by the office secretary at the individual Broker's expense.

Expired Listings

Without a current listing contract, signs are NOT to be left on the property. Signs from expired listings must be removed within two days after expiration or closing. Sold signs may remain on a property for up to 10 days after closings provided that the consent of the new owner (buyer) has been obtained.

Legal Assistance for Brokers

Legal Counsel Involvement

If a question arises in which the Broker feels that legal advice must be obtained, the Broker will inform the Designated Broker at which time the Designated Broker shall make the decision as to whether legal consultation is necessary. If legal consultation is required, the Designated Broker will consult with the attorney. Failure to follow these procedures, will exempt the Designated Broker from responsibility of any legal expenses incurred.

Lawsuits and Threats of Action

If the Broker is sued or threatened with a lawsuit or administrative action in conjunction with a real estate transaction, immediate attention of the Designated Broker is required. The Designated Broker will then report the suit to the Errors and Omissions insurance carrier. The responsibility as to payment of legal fees will be determined on a case-by-case basis between the Designated Broker and Broker.

Arbitration

In matters of arbitration, an attorney may be employed at the discretion of the Designated Broker. The responsibility as to payment of fees for said attorney will be determined on a case-by-case basis between Designated Broker and Broker.

Code of Ethics & License Law Violations

In matters of alleged violation of the Code of Ethics and/or License Law, an attorney may be employed at the discretion of the Designated Broker. The responsibility for payment of such attorney fees will be determined on a case-by-case basis between the Designated Broker and Broker.

Fraud/Compliance Zero Tolerance Policy

Kelly Right Real Estate sets the standard in the industry for ensuring that all Clients, Brokers, and the Company itself, are protected from loss due to fraudulent or non-compliant activity. The following explains company policy when dealing with these issues. This policy will be strictly enforced in order to maintain an ethically, legally and financially sound company for all its employees.

Fraud will not be tolerated at Kelly Right Real Estate. Any Broker found to be involved in fraudulent activity of any kind whatsoever will be subject to immediate contract termination for cause. These activities include, but are not limited to;

- . Falsifying documents
- . Forgery

- . Knowingly submitting inaccurate or altered documents of any kind.
- . Knowingly submitting inaccurate disclosures.
- . Involvement in any mortgage schemes that permeate the industry;
- . Flipping, straw-buys, illegal kick-backs to clients or service providers, or assistance in inflation of appraised values.

Compliance with all Federal, State and Local laws and disclosure requirements is imperative. There are severe penalties involved with lack of proper compliance. Monetary penalties can also be assessed in the event that files are not found to be properly maintained. The possible penalties for lack of compliance can be substantial; therefore, commissions on files that do not meet Kelly Right Real Estate compliance policies will be subject to the retention of broker commissions to offset these penalties.

Inspection Services

Designated Broker shall not be liable to the Broker for any expense incurred by the Broker unless approved in writing in advance. All inspections and related services, such as well and septic inspections, surveys, etc., are to be ordered in the name of, billed to, and paid by the seller or buyer; billings shall NEVER be made to Designated Broker or Kelly Right Real Estate

Document Control

Listing Document File

The Listing Document File must be submitted by the Broker to the Designated Broker through the Firm's Paperless Pipeline system within two (2) business days after signed by the client. Any and all changes, extensions, amendments and addenda must be added within one (1) business day after signed by the client and maintained in the Designated Broker's file. All documents listed on the Listing Client Checklist worksheet must be accounted for in the file.

Buyer Document File

The Buyer Document File must be submitted by the Broker to the Designated Broker through the Firm's Paperless Pipeline system within two (2) business days after originally signed by the client. Any and all offers (accepted AND rejected), changes, extensions, amendments and addenda must be added within one (1) business day after each item is signed by the client and maintained in the Designated Broker's file. All documents listed on the Buyer Client Checklist worksheet must be accounted for in the file.

The Broker is responsible for placing documents in the Designated Broker's file until the file is closed due to a closing, the expiration of the listing, or the expiration of the agency contract. Closed and expired files are maintained by the office secretary for a minimum of three years in compliance with DOL regulations.

For the protection of all parties, all agreements shall be in writing and shall be in clear and understandable language expressing the specific terms, conditions, obligations, and commitments of the parties. A copy of each agreement shall be furnished to each party upon their signing or initialing.

Fines for files turned in late

Any Listing Agreement or Mutually Accepted Offer added to Paperless Pipeline after the 2nd business day will incur a \$100 fine. Any Listing Agreement or Mutually Accepted Offer added to Paperless Pipeline after the 7th calendar day will incur an additional \$250 fine. Fines will be added to the transaction fees at closing. If the transaction fails to close the fine will be added to the transaction fees of the Broker's next closing.

Personal Assistants

The Washington Real Estate License Act prohibits the Broker from personally employing unlicensed persons to engage in real estate practice. All personal assistants, whether licensed or unlicensed, shall be employed and supervised according to the terms and conditions set forth in the agreement between the Broker and the personal assistant.

Licensed Assistants

Licensed assistants may engage in activities which constitute negotiation provided that they are properly supervised and monitored by the Designated Broker and only by the Designated Broker. The DOL does not formerly recognize licensed assistants. DOL specifically holds any licensed broker to the rules and regulations that govern a Broker regardless of the specific duties placed upon the licensed assistant by the Designated Broker. Licensed assistants shall join the local Board/Association of REALTORS®, Washington Association of REALTORS® and the National Association of REALTORS®. Membership dues shall be the responsibility of the licensed assistant.

Unlicensed Assistants

Employment of a personal assistant who will be providing services which do not require a license (unlicensed assistant) is at the Designated Broker's discretion.

Unlicensed assistants MAY:

- Answer the phone, forward calls and give information contained only on the listing agreement as limited by the Designated Broker
- Fill out and submit listings and changes to any multiple listing service
- Follow-up on loan commitments after a contract has been negotiated and generally secure status reports on the loan progress
- Assemble documents for closing

- Secure public information from courthouses, utility districts, etc.
- Have keys made for company listings
- Write ads for approval of licensee and Designated Broker, and place classified advertising
- Receive, record and deposit earnest money, security deposits and advance rents under the direct supervision of Designated Broker
- Type contract forms for approval by licensee and Designated Broker
- Monitor licenses and personnel files
- Compute commission checks
- Place signs on property
- Order repairs as directed by the licensee
- Prepare flyers and promotional information for approval by licensee and Designated Broker
- Deliver documents and pick-up keys
- Place routine telephone calls on late rent payments
- Schedule appointments for licensee to show listed property
- Gather information for a comparative market analysis (CMA)
- Hand out objective, written information on a listing or rental
- Give a key to a prospect, or unlock property
- Disclose the current sales status of a listed property

Unlicensed assistants MAY NOT:

- Make cold calls by telephone or in person to potential listers or purchasers
- Show properties for sale and/or lease to prospective purchasers
- Host public open houses, host licensee open houses, home show booths or fairs
- Answer any questions concerning properties listed with the firm except only that information contained on the listing agreement as limited by the Designated Broker
- Prepare promotional material or advertising or properties for sale or lease without the approval of the Designated Broker
- Discuss or explain listings, offers, contracts, or other similar matters with persons outside of the firm
- Be paid on the basis of real estate activity; such as percentage of commission, or any amount based on listings, sales, etc.
- Act as a "go-between" with a seller and buyer such as when an offer is being negotiated
- Negotiate or agree to any commission split or referral fee on behalf of a licensee

Company Agency Policy

Designated Agency for Sellers and Buyers,
Default to Facilitator for Transactions
Involving Same Agent on Both Sides

Kelly Right Real Estate has adopted the following agency policy, to be implemented in all transactions involving this company's sales Brokers and prospective Buyers or Tenants (collectively "Buyers") and/or Sellers or Landlords (collectively "Sellers"). Any exceptions to the policy below must be approved by the Designated Broker of the company prior to implementation:

1. Sales Brokers will verbally disclose their agency status to every prospective Buyer or Seller with whom they work, PRIOR to providing any real estate services to a Buyer or Seller. With Sellers, as well as with any Buyers who approach them to specifically see (or negotiate the purchase of) a personal listing, Sales Brokers will indicate their status as a Designated Seller's Agent. With Buyers for whom they are searching for acceptable properties, Sales Brokers will indicate their status as Designated Buyer's Agent.
2. After the initial disclosure, Sales Brokers will immediately negotiate and complete a written Buyer Representation Agreement with any Buyer (other than Buyers of personal listings), and a Listing Agreement (inclusive of agency representation) with any Seller. With Sellers, Sales Brokers will also explain various options for cooperation in a sale and will secure the Seller's instructions and/or authorization for extending cooperative compensation to subagents, buyer's agents, and facilitators. If a Buyer - who would otherwise become a Buyer client - is not comfortable or agreeable with a Buyer Representation Agreement, the Broker must indicate his/her status as Facilitator, and postpone negotiation of a Buyer Representation Agreement until a later date; such a Buyer should, nevertheless, be encouraged to enter into such an agreement as soon as possible.
3. Upon initial contact with any other licensee, Sales Brokers will immediately disclose the Company's agency or facilitator status in the transaction. If this role changes at any time, Sales Brokers will immediately notify any other licensees and parties (involved in the transaction) of this change.
4. The Company and its Sales Brokers must default - with accommodating language in agency agreements - to Facilitator status for all showings or transactions involving the same Designated Agent on both sides, immediately notifying (verbally) the Buyer and the Seller of the need to default to this Facilitator status. Upon any default to Facilitator status, the Company and its Sales Brokers must assume a neutral position and will not be a representative of either the Seller or the Buyer.

5. Prior to preparation or presentation of a contract, Sales Brokers will confirm their agency status in the transaction with both Buyer and Seller - by use of the "Confirmation of Agency Status" form, providing signed copies to both signatories and retaining a signed copy to be filed with the Broker's files for the transaction.

6. PERSONAL INTEREST PROVISIONS

If a Sales Broker with this Company is representing himself/herself (or a family member or relative) in a transaction, the Broker will complete the "Personal Interest Disclosure & Consent" form, securing the signatures and consent of all parties to the transaction, giving a signed copy of the form to other parties, and keeping a signed copy for the Broker's files on this transaction.

If a Sales Broker with this Company is representing himself/herself (or a family member or relative) as either Seller or Buyer in an in-house transaction, the Managing Designated Broker may exercise any of the following options: (If the same Sales Broker is involved on both sides of the transaction)

- Appointing the Sales Broker as a Designated Agent for himself/herself, and reassigning the Sales Broker's former client - with the client's consent - to a different Sales Broker in the Company as their Designated Agent
- Changing the Company's status in the transaction to Disclosed Dual Agent with the consent and notification of all parties involved
- Referring the other party (not the Sales Broker involved) to another company for representation in completion of the transaction

Chapter 3

Advertising

Real Estate Advertising

Advertising Media

ALL advertising shall be at the sole expense of the individual Broker. ALL advertising MUST be approved in writing by the Designated Broker at least 72 hours prior to any deadline.

Open House Ads*

ALL Open ads are the sole expense of the individual Broker and MUST contain the name "Kelly Right Real Estate"

Allocation and Costs of Advertising

Allocation of advertising to listings will be the sole responsibility of each individual Broker. ALL advertising MUST be approved in writing by the Designated Broker at least 72 hours prior to any deadline.

DOL Advertising Rules

General Principles:

- No Broker shall advertise to sell, purchase, exchange, rent or lease a property in a manner indicating that the advertiser is not engaged in the real estate business.
- No advertisement by a licensee shall direct responses to only post office box number, telephone number, and/or street address.
- Every Broker shall affirmatively and unmistakably indicate in any advertising that he or she is a licensed real estate agent.
- All Brokers shall advertise under the firm name offers to purchase, sell, rent, or lease any property. All advertising must be under the direct supervision of the Designated Broker.
- No Broker shall post a sign on any property for which he or she does not have an active written authorization from the owner.
- Brokers may not advertise in any medium by utilizing letters in their name larger than those of the firm.

Licensees are exempt from this list if the licensee's advertising shall include the designation "owner/agent" and the property is not listed.

Advertising:

Any licensee shall clearly and unmistakably indicate his/her name, Firm name, and business telephone number and/or office address adjacent to any specific properties advertised for sale or lease in any media.

Fair Housing Advertising

Equal Opportunity Slogans and Logos

Brokers shall use the Equal Opportunity slogan or logo in all advertising. Brokers shall use publications which reach large audiences and does not limit to a small select audience.

Prohibited Advertising Language

Advertising copy used by Brokers must describe the property, NOT THE DESIRED BUYER OR TENANT. Examples of prohibited advertising language are:

1. Race, color, national origin: Real estate advertisements may not state a discriminatory preference or limitation on account of race, color, national origin or any other protected class, and shall not describe the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms. However, Brokers may use phrases such as "master bedroom", "rare find" or "desirable neighborhood."
2. Religion: Brokers shall not use advertisements which contain an explicit preference, limitation or discrimination on account of religion. Advertisements which use the legal name of an entity which contains a religious reference (i.e., Sisters of God Catholic Home) or a religious symbol (such as a cross) must contain an appropriate disclaimer against any religious preference or limitation. Brokers may use descriptions of the property (apartment complex with chapel) or the services (kosher meals available), and terms (Merry Christmas or Happy Easter) or symbols (Santa Claus or Easter Bunny) relating to certain religious holidays.
3. Sex: Brokers shall not advertise single family dwellings or separate dwelling units in multifamily housing in a manner which explicitly indicates a preference, limitation or discrimination on the basis of sex. Brokers may, however, use terms such as "master bedroom," "mother-in-law suite" and "bachelor apartment" which describe a property type.

4. Handicap: Brokers' real estate advertisements shall not contain exclusions, limitations or other indications of discrimination based on handicap. Brokers may describe the property (great view, fourth floor walk-up, walk-in closets), the services or facilities (jogging trails), the neighborhood (walk to the bus stop), the conduct required of residents (nonsmoking), and accessibility features, such as a wheelchair ramp.
5. Familial Status: Brokers shall not place advertisements which contain limitations on the number or ages of children or state a preference for adults (unless the property meets the housing for older persons exemption), couples or singles. Brokers may use descriptions of the property (two bedroom, cozy, family room), services and facilities (no bicycles allowed) or neighborhoods (quiet streets).

Chapter 4

Compensation

Commission and Fee Rates

Rates of commission have been established by the Designated Broker in the commission schedule attached to the Independent Contractor Agreement. The schedule sets forth the Designated Broker's commission policies for buyer agency and for the following property types:

1. Residential single family
2. Residential income
3. Vacant land
4. Business/Commercial/Industrial
5. New construction
6. Buyer Brokerage
7. Referral fees
8. Bonuses

The schedule also details the Designated Broker's policies for allocating compensation between the Designated Broker and the Broker.

Broker Commission and Fee Compensation

Definition

Compensation shall be defined to include commissions, buyer agency fees, referral fees, fees for negotiating construction contracts or referring customers to builders, appraisal fees, or any other thing of value received in connection with the Broker's real estate Designated Brokerage services.

Schedule of Compensation

Broker compensation checks are issued by the Designated Broker within one (1) business day following the closing, the Designated Broker's receipt of payment, or the file clearing compliance with Designated Broker's signed approval, whichever is later. Special situations or special requirements for the compensation checks will be handled through the Designated Broker on a case-by-case basis. No commissions will be paid under any circumstances without clearing compliance with Designated Broker's signed approval.

Partial Receipt of Commissions

If a commission is paid by a party to the Designated Broker partially in cash, and a promissory note or other arrangement is given for the remainder, then the Designated Broker will deduct any transaction fees with the remaining amount paid to the Broker. The remaining amounts owed, including interest, if any, will be split proportionately as it is received. Brokers must obtain the advance written consent of the Designated Broker before acceptance of a promissory note in lieu of a cash commission, or any other agreement to defer receipt of commission.

Reduction of Commissions and Fees

Brokers shall not have the authority to reduce the commission to be paid by the seller pursuant to a listing contract, the fee to be paid by a buyer pursuant to a buyer agency agreement, nor any other fee payable to the Designated Broker without the written consent of the Designated Broker or the Broker's manager. Any unauthorized reduction of commissions or fees by an Broker, either directly or indirectly, through negotiations or the assumption of various charges, expenses, fees or otherwise, shall be reimbursed to the Designated Broker by the Broker.

Referrals and Bonuses

When a referral is sent to a Broker by a cooperating Designated Broker, the Broker must immediately clarify the referral agreement in writing. All payments for referrals and/or bonuses shall be made payable to the Designated Broker and the Broker shall be compensated on the basis of the commission schedule in the Independent Contractor Agreement.

Commission Agreements and Disputes

Entitlement to Commission

Entitlement to compensation shall be documented in writing in all transactions where anything other than the compensation offered through the MLS will be paid. Brokers shall obtain a written compensation agreement specifying the commission or fee to be paid to Designated Broker for all non-MLS transactions before beginning any cooperative efforts, and absolutely before the submission of any offer to purchase. If Designated Broker has a policy letter agreement with the listing Designated Broker setting commissions in non-MLS transactions, a specific compensation agreement will not be needed.

Compensation agreements shall identify the property, name the parties and the Designated Brokers, state the amount of the commission or fee (or the way the same shall be calculated, e.g., 2.4% of purchase price*), when the commission or fee shall

be paid, and what must be done to earn it (e.g., write offer that closes, procure the buyer, etc.).

Inter-Office Disputes of Compensation

Any Broker becoming aware of any commission dispute with another company shall promptly inform the Designated Broker or office manager. Management shall make all decisions regarding negotiation of settlements, retaining legal counsel and filing arbitration.

In the event that the Designated Broker finds it necessary to sue for a commission or fee, all expenses, including court costs and attorney's fees, must be subtracted from the commission before the split between the Designated Broker and the Broker. The decision to initiate legal action will rest solely with the Designated Broker.

Intra-Office Disputes of Compensation

Brokers are expected to work out their own agreement on how the commission is to be split when a prospect is shared or turned over from one Broker to another. In the event any controversy between Brokers concerning a commission, the dispute shall be resolved as stated in Chapter 1 of this Policy Manual.

Chapter 5

RESPA Policy

Brokers are required to comply with RESPA law requirements at all times. The area of referral fees is specifically addressed in this policy manual in order to explain the sometimes-confusing requirements of the federal law and to emphasize the importance of compliance. Additional information on RESPA law can be obtained from TAR's Legal Hot Line.

Prohibition Against Kickbacks and Unearned Fees

Regulation X details the elements of a RESPA Section 8 violation:

- Pursuant to Section 8, paying or receiving a fee or a "thing of value" for the referral of business related to a mortgage loan settlement without rendering a service is illegal under RESPA.
- Reg. X also prohibits the splitting of any settlement charge except for paying for actual services rendered. If no or nominal services are performed or if duplicative fees are charged, an unearned fee exists and payment of this fee violates Section 8.
- Reg. X makes clear that any agreement or understanding that a thing of value will be given in exchange for a settlement service referral need not be written or even verbalized. This agreement can be established by a practice, pattern or course of conduct.
- Reg. X gives a list of the real estate-related services which are defined to be "settlement services."

These "settlement services" include, without limitation, any services related to:

1. The origination, processing or funding of a federally-related mortgage loan
2. Mortgage Broker services such as counseling, taking applications, obtaining verifications and appraisals, lender-borrower communications, etc.
3. Title company services
4. An attorney's legal services
5. Closing document preparation
6. Credit reports and appraisals
7. Property inspections
8. Conducting the settlement
9. Mortgage insurance
10. Hazard, flood or casualty insurance, and home owner warranties
11. Mortgage life, disability or similar insurance
12. Real property taxes and assessments
13. Real estate Brokers and agents

What is Permitted

Regulation X specifically does permit:

- Payments for services actually rendered by attorneys, title companies, lenders, and real estate Designated Brokers and also for real estate agents "pursuant to cooperative Brokerage and referral arrangements or agreements."

Key Referral Fee Reminders

- Don't pay referral fees to providers of settlement services other than pursuant to a referral agreement with another real estate Designated Broker. RESPA generally forbids paying someone for the mere referral of business.
- No "gifts" or fees may be given to individuals who refer business to settlement service providers.
- When someone performs a service, that party should be paid a fee that is reasonably related to the benefit received. He or she should not be given an excessive payment that blatantly announces itself as a reward for steering business in the direction of a certain company.
- Don't ask for or receive fees for referring business. There is a statutory exemption for Designated Broker-to-Designated Broker referrals and agreements between Designated Brokers and agents. Therefore a real estate licensee should never ask to receive or accept fees for referring business unless he or she has an established written Designated Broker-to-Designated Broker or Designated Broker-to-sales agent fee arrangement.

Chapter 6

Listing Policy

Agency Disclosure

Prior to the seller's signing of the listing contract, the Broker shall discuss the different types of agency relationships with the seller, explaining the responsibilities of seller's agents, buyer's agents, subagents, dual agency, and facilitators. Upon execution of the listing contract, Broker will obtain a completed "Residential Property Disclosure form" from the seller. The Broker shall tender every written offer to purchase or sell until a contract is signed by all parties.

Residential Property Condition Disclosure

The Owner of the residential property shall furnish to a purchaser one of the following:

- A residential property disclosure statement
 - Provides the condition of property including any material defects known to the owner.

The disclosure form must contain:

1. Include all items listed on the disclosure form required in T.C.A. § 66-5-210.

Notice to prospective purchasers and owners that the prospective purchaser and the owner may wish to obtain professional advice or inspections of the property.

Notice to purchasers that the information contained are representations of the owner solely.

Note: The owner is not required to undertake or provide any independent investigations or inspections of the property in order to make the disclosure.

- A residential property disclaimer
 - States the owner makes no representations or warranties as to the condition of the property and that the purchaser will be receiving the property "as is" unless provided in the real estate purchase contract. A disclaimer statement may only be permitted where the purchaser waives the required disclosure.

Disclosure of Adverse Facts

An "adverse fact" means a condition or occurrence that is generally recognized by a competent licensee as:

- Significantly and adversely affecting the value of the property
- Significantly reducing the structural integrity of improvements to real estate
- Presenting a significant health risk to occupants of the property

"Material" means any statement, representation or fact relative to a transaction that would affect a reasonable person's decision to enter into an agreement and which has been identified by such person as being of significance to a particular party. Written disclosures must be given as soon as is reasonably possible and always before the writing of any offers to purchase.

Lead Based Paint (LBP) Disclosure Requirements

It will be imperative for all Brokers to fully comply with the requirements of the federal lead paint disclosure laws in all transactions where the law requires compliance. Penalties available under the law include triple damages plus attorney fees.

Disclosure Requirements

The federal disclosure rules specifically require that sellers and landlords of most residential housing built before 1978 must:

1. Disclose the presence of known LBP and LBP hazards
2. Provide buyers and tenants with any available records or reports about any LBP present in the housing
3. Provide buyers and tenants with a federally- approved lead hazard information pamphlet

Offers to purchase and leases must contain certain disclosures and acknowledgments. Sellers must also provide buyers with an opportunity to inspect for LBP. Finally, real estate agents must ensure compliance with these requirements.

The new rules do not require that any testing be conducted for LBP, nor do they require the removal of such paint or hazards.

Properties and Transactions Subject to LBP Rules

The new EPA/HUD requirements for the disclosure of LBP apply to all transactions to sell or rent target housing, subject to certain exceptions. The following discussion specifies what types of residential properties are covered under the new LBP rules and those which are not subject to the rules' requirements.

Target Housing

"Target housing" means any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age lives in or expects to live in such housing), and except for any "0-bedroom" dwellings.

Excluded Properties

1. Housing for the Elderly (No Resident Children Under 6). Housing for the elderly means retirement communities or similar types of housing designed specifically for households where at least one person is 62 years of age or older at the time of initial occupancy.
2. Housing for Persons with Disabilities (No Resident Children Under 6). With both housing for the elderly and housing for persons with disabilities, the exclusion from the LBP disclosure rules is lost if children under the age of 6 live there or are expected to live there. The parties to any sales or lease transaction involving housing for the elderly or persons with disabilities where children under 6 live or are expected to live would need to comply with the federal LBP disclosure rules.
3. "0-Bedroom" Dwellings. "0-bedroom" dwellings means residential dwelling units where the living area is not separated from the sleeping area. This includes efficiencies, studio apartments, lofts, dormitory housing, military barracks and rentals of individual rooms in residential dwellings.

Transactions Subject to LBP Rules

Both sales and leases (Includes Subleases & Oral Leases). Subleases are included so that the subtenant or sublessee (i.e., the new tenant) receives the LBP disclosures and information. Informal rental agreements not involving a written lease, for example, oral leases, are included despite the difficulties in complying with the rules requirements during a process handled verbally without written documentation.

Exempted Transactions

1. Foreclosure (sheriff) sales.
2. Leases of Housing Found to be Lead Free. Leasing transactions involving target housing that has been found to be LBP free by a certified inspector are excluded from the LBP disclosure rules. "Lead-based paint free housing" means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.
3. Short-Term Leases of 100 Days or Less (No Renewals or Extensions).
4. Lease Renewals if Disclosures Done and No New Information. LBP disclosures need not be repeated for the renewal or extension of existing leases where the landlord previously disclosed all information required by the rules and no new information concerning LBP on the premises has come to the attention of the landlord. In situations with no formal renewal process involved, i.e., a month-to-month holdover after the expiration of a one-year lease term, "renewal" shall be interpreted to occur at the point where the parties agree to a significant written change in the terms of the lease such as a rent rate adjustment. Then

disclosure would be required as to any new LBP information not previously disclosed to the tenant.

5. Purchase, Sale or Servicing of Mortgages.

Agents Covered

"Agent" means agents of sellers, landlords, tenants and buyers except for buyer's agents who receive all of their compensation from the buyer.

Buyer Opportunity to Inspect for LBP

The LBP disclosure rules require that sellers provide buyers with a 10-day opportunity to conduct an LBP risk assessment or inspection of the target housing before becoming obligated under the offer to purchase. The length of time may be shortened or lengthened by mutual agreement of the parties. This requirement does not mean that the buyer must be permitted to conduct an LBP inspection before signing an offer to purchase.

This requirement may be met by having an LBP inspection contingency in the offer, similar to the home inspection contingencies typically used in residential offers.

There is no mandatory language or provision for this purpose, so the contingency may be negotiated by the parties. Thus, the terms and conditions for the conduct and completion of the LBP inspection or evaluation will be reached by mutual agreement and not by federal mandate. A lead-based paint inspection contingency which is included in the LBP disclosure and acknowledgment addendum to the offer is discussed later. Buyers may choose to waive their opportunity to inspect for LBP. The rules do not contain any requirement for providing tenants with the opportunity to conduct an LBP inspection. Sellers may not reject an offer to purchase simply on the basis that it contains a lead inspection/contingency provision. They may, however, attempt to negotiate the terms and conditions of the provision.

Timing of LBP Disclosures

The rules only identify the latest point at which full disclosure must occur, that is, before the buyer or the tenant becomes obligated under the offer to purchase or the lease.

Agent Responsibilities

Each agent involved in a sale or lease transaction shall be responsible for ensuring compliance with all the requirements imposed by the rules.

To ensure compliance, the agent must:

- Inform the seller or landlord of his or her duties to disclose known LBP on the target housing

- Furnish LBP records and reports and the EPA-approved lead hazard information pamphlet to buyers and tenants
- Advise the seller that he or she must permit the buyer to have a 10-day opportunity or inspection contingency to conduct an inspection or evaluation of the premises with respect to LBP
- The seller and landlord must also be told about his or her duty to certify compliance with these obligations on and retain a copy of a signed LBP disclosure and acknowledgment addendum
- Certain specifically-prescribed LBP "Warning Language" must be included in sales contracts and leases
- Ensure compliance with all of these requirements

Ensuring compliance can be done by making sure that the seller or the landlord has performed all of these required activities, or by personally performing these activities on behalf of that party. If the agent has informed the client about all of his or her obligations under the federal LBP disclosure rule, the agent shall not be liable for the failure to disclose LBP to a buyer or tenant if the LBP is known by the seller or landlord but not disclosed to the agent. The new LBP disclosure rules require that sellers and landlords disclose to agents the presence of any known LBP as well as any additional information about the basis for the determination that LBP exists on the property, the location of any LBP on the premises, and the condition of painted surfaces. Sellers and landlords must also disclose to agents the existence of any available records or reports pertaining to LBP on the premises. The federal LBP rules provide that each agent shall ensure compliance with all the requirements of the rules. "Agent" is defined as any party who enters into a contract with a seller or landlord for the purpose of selling or leasing target housing. For real estate agents in sales transactions, this means all listing, selling, cooperative, and buyer's agents (except those paid only by the buyer). In rental transactions, this means property managers, and leasing and rental listing agents.

Listing the Residential Property

The listing agent will complete the property condition disclosure, and complete a listing contract which contains a termination of contract date. The following guidelines detail the steps which must be taken by the listing agent to comply with the federal LBP rules.

1. Determine if the property is target housing.
2. Look for painted surfaces in bad condition while inspecting the property.
3. Advise the seller of his or her obligations under the LBP rules.
4. Ask the seller if he or she has any knowledge of LBP or LBP hazards on the property.
5. Obtain copies of any available LBP records pertaining to the property.

By the time the offer is accepted, the seller should have made any LBP disclosures; signed by the seller, buyer, listing agent and cooperating agent, and incorporated into the offer. In addition, the buyer should have received the LBP information pamphlet.

Listing Contracts

The Broker shall complete the listing contract and shall require that all owners and spouses sign the listing. The Broker, however, may sign a listing contract provided by the seller, (e.g., a relocation company) or may accept a listing with the signatures of less than all of the owners and spouses, with the prior approval of the Designated Broker. The Broker shall review the contract in detail with the owners and leave a copy of the signed agreement with them.

If owners refuse submission of the listing to the MLS or to the Internet, the listing contract must state that fact. The listing must specify other Designated Brokers who the seller wishes to have excluded from cooperation in the "Other Designated Brokers" provision in the approved listing contract forms. The listing shall always obtain specific written instructions from the seller as to any buyers or licensees which are to be excluded from access to showings, or from whom no offers to purchase are to be submitted. This will be written on the additional provisions blank lines in the listing contract from, on an addendum to the listing contract, or as a separate memorandum or letter from the seller.

Filing Listing Documentation

Listing contracts and the appropriate supporting forms (agency confirmation form, MLS profile sheets, seller property condition report, etc.) shall be turned in no later than two (2) business days after execution to the Designated Broker.

Security of Listed Property

It is the Broker's responsibility to exert as much effort and influence to assure that listed properties are secure.

Cancellation of Listing Contract

Brokers shall NOT have the authority to cancel a listing contract nor amend the listing contract to provide for an early termination without the written consent of the Designated Broker or the Broker's manager. In the event a seller desires to cancel a listing contract, the Broker must notify the Designated Broker. This shall apply regardless of whether the seller's request is verbal or in writing or whether the seller uses the words "cancel," "terminate," "revoke," etc. If the seller's intent is evident, the Broker shall report the request to the office manager or Designated Broker. Such requests from sellers shall, in all cases, be honored.

If the Designated Broker determines that a seller's demand of release from the listing contract is a result of substandard performance on the part of the Broker, the Designated Broker reserves the right to charge the Broker for costs incurred during the period the listing was in effect. If the early termination is for other reasons, the Designated Broker shall make the determination of whether any expense reimbursements or other damages shall be requested from the seller.

Listing Protection

Whenever a listing contract expires per its terms, or is terminated early by the seller, the listing Broker shall prepare and deliver to the seller a list of buyers who have attended individual showings or who have seriously discussed purchase terms with the Broker or some other licensee involved with a prospective buyer. This list must be personally delivered or mailed to the seller no later than three days after the expiration date or date of early termination. If the Broker later becomes aware that the property is listed with another Designated Broker, the Broker shall deliver to the other Designated Broker a complete list of names of all buyers who attended individual showings, seriously discussed purchase terms with licensees or the seller, or who submitted offers during the term of Broker's listing.

Cooperating Compensation

It is the policy of the Designated Broker to offer maximum exposure to its selling clients. Therefore, all listed properties shall be offered to all other selling and buyer's Designated Brokers on a cooperative basis, unless otherwise specifically directed by the owner. The Designated Broker shall establish compensation fees that are appropriate to the marketplace and will lead to a good working relationship with other Designated Brokers.

Chapter 7

Buyer Brokerage

Broker's Capacity as Buyer's Broker

Trust Accounts & Deposit of Earnest Money

The Designated Broker DOES NOT operate a Trust Account and will not accept ANY Earnest Money deposit (in any form) made payable to the Designated Broker or Kelly Right Real Estate ALL Earnest Money Deposits MUST be made payable and deposited by Broker to the escrow agent/attorney within one (1) business day of receipt.

Buyer Representation Agreement

A Broker may, at the request of a buyer, act as a buyer's agent. If the Broker is so employed, a "Buyer Representation Agreement" (exclusive or nonexclusive) shall be completed. The provisions of the Buyer Representation Agreement, including the terms of the contract and the Designated Broker's compensation, shall be clearly established. The amount and manner of compensation shall be as outlined in the Designated Broker's policy concerning commissions and fees.

Agency Disclosure

Prior to the buyer's signing of the buyer agency agreement, the Broker shall discuss the different types of agency relationships with the buyer, explaining the responsibilities of seller's agents, buyer's agents, subagents, facilitator/transaction Designated Broker, and dual agency. If a Buyer Representation Agreement has been entered into, the Broker must comply with the following when showing property or requesting information from listing agents:

1. Notify the listing agent upon first contact that the Broker is a buyer's agent.
2. The Offer to Purchase must indicate that the Broker represents the buyer as the buyer's agent.

Negotiations

The Broker, when acting as the buyer's agent, can expect that the listing agent will often be present on showings of listed properties. All information and negotiations concerning the transaction must be communicated to seller through the listing agent.

Compensation

Brokers working as buyer's agents shall be expected to pursue the compensation offered to buyer's agents through the MLS, any applicable office policy letter agreements or any specific compensation agreement. An Broker may consider having the buyer write the offer conditioned upon the seller paying the buyer's Designated Broker's fee at closing on behalf of the buyer. The Broker must also pursue this option if there is no compensation agreement in place, unless the buyer is willing to directly pay the buyer's Designated Broker's fee in addition to the purchase price.

Cooperation as Listing Agents with Buyer's Brokers

As listing agent, the Broker will cooperate with and compensate buyer's Designated Brokers who procure a buyer or a contract of sale acceptable to the seller, in accordance with the Designated Broker's commission policy. The Broker shall advise seller that certain agents may elect to reject the Designated Broker's offer of subagency and represent a buyer. The Broker shall explain the Designated Broker's policy of sharing the commission with buyer's Designated Brokers in exchange for procuring a buyer and producing an offer to purchase acceptable to seller.

If the Broker, as listing agent, is advised that a cooperating Designated Broker, employed under a Buyer Agency Agreement, requests to show the listed property, the Broker must advise the seller of the cooperating Designated Broker's representation. The Broker shall be present at all showings and inspections.

Dual Agency

In the event a buyer/client of the Designated Broker wishes to purchase property listed by the Designated Broker, the Designated Broker may act as a disclosed dual agent with one of the Designated Broker's Brokers as a designated agent representing the buyer as a client and one of Designated Broker's Brokers as designated agent representing the seller as a client. Such a multiple representation (dual agency) requires the informed consent of each party. The Brokers working with these parties must explain the limitations of a multiple representation to the parties.

Brokers shall stress to the parties the importance of committing to writing any information they wish to be held as confidential. All listings of confidential information from the parties in a multiple representation situation shall be held by the office manager in his or her office. Every effort shall be made to keep confidential information about the seller away from the buyer's agent and to keep confidential information about the buyer away from the listing agent.

Chapter 8

Selling Policies and Procedures

Information Provisions

Secretaries, receptionists and other unlicensed employees may be permitted to provide factual information on listings which is normally found in newspaper ads and property data sheets. These staff members shall indicate that they are not licensed agents, can give out only limited factual data and that further requests for information must be relayed to an Broker.

Lead Generation

Brokers shall screen the prospect on the first call if possible. The prospect's name shall be obtained, and the Broker shall try to determine their motive, needs, desires and ability to buy, as well as their down payment capability, and record this information on a Buyer Worksheet. As the Broker continues to work with the prospect, the prospect cards shall be used to log information on properties shown, the dates and their comments.

A prospect that calls in because of a personal reference, or through work an Broker has previously done, will be the Broker's prospect if the prospect asks for the Broker in the call. Accordingly, Brokers may wish to impress upon their prospects the importance of asking for an Broker by name. Prospective buyers are not aware of company rules and ethics and are usually concerned only with seeing the property in which they have an interest. It is up to the Broker to establish and maintain a strong prospect/Broker relationship with them.

Agency Disclosure

When initial contacts are by telephone, the best time to give the disclosure form may be hard to pinpoint. Where the telephone conversations are preliminary and only lead to a mailing on different properties, the agency disclosure form may be useful, but it is not necessarily required. Once a particular property becomes the subject of further conversations, the Broker shall verbally discuss agency relationships and mail the Agency Confirmation Status form to the buyer, with a return envelope, if no face-to-face meetings are planned within the next few days. One copy of the form, acknowledged by the buyers, shall be given to the buyer, and one copy retained for the Designated Broker's file. In addition, a copy of the form shall be submitted to the listing agent along with the Offer to Purchase.

Servicing the Prospects

When Brokers have inspected a listed property, they shall review their prospect sheets and call any prospects that may have ANY interest. In this manner, Brokers can keep in contact with their prospects and provide them with more incentive to work with the Broker. There is a psychological advantage when an Broker calls a prospective buyer and says, "We just listed a beautiful property that I think will meet your needs and requirements. Would you be interested in seeing this property?"

Drafting Offers

All offers, counter offers and any other forms used shall be completed and handled as per this manual, using standard forms obtained from the Washington Association of REALTORS®. The Broker shall familiarize himself/herself with the standard forms as well as the rules of DOL for the use of approved forms. Only Designated Broker approved forms may be used in any transaction. All offers, counter offers and any other forms shall utilize office-approved provisions for contingencies, inspections, warranties, representations, disclosures, etc.

There is no designated amount of earnest money that is required with an offer. It is desirable, however, to obtain a minimum of approximately \$1,000 or at 1% of the offered price. This is good faith money; consequently, deposits should be larger on loan assumptions, owner financing and all cash offers.

Confidentiality of Offers

Intra-office AVOID PROBLEMS:

- Do not discuss the possibility of getting an offer with any Broker prior to obtaining a signed Offer to Purchase
- Do not discuss the details of an offer you have drafted or presented with anyone other than the listing agent or the Designated Broker
- Do not ask any Broker about his or her offer unless you are the listing agent

To Cooperating Designated Brokers

Each Broker who is a listing agent may decide whether he or she shall disclose to cooperating agents whether other offers have been submitted, and whether accepted offers have contingencies and bump clauses. Brokers shall disclose the existence of accepted offers to cooperating Designated Brokers upon first contact, unless the seller has given the Broker written direction to keep the existence of any accepted offers confidential.

Timeliness in Offers

All offers and counter offers must be presented in a timely manner. Although an offer may allow 2, 3, or 4 days for acceptance, the Broker must make every effort to present the offer or counter offer immediately or as soon as possible. If timing, distances or other circumstances make personal presentation impractical, presentation by fax, express mail, e-mail or verbal presentation over the telephone may need to be done. Any verbal presentation should be followed as soon as possible with a hard copy forwarded by fax, express mail or whatever means of communication is most expedient in the circumstances.

The time and date of presentation shall be noted on each offer or counter-offer, and the receiving party shall, as soon as possible, sign and date the form to indicate an acceptance, or initial and date the form to indicate a rejection or counter-offer. A copy of these notations on the offer or counter-offer shall be furnished to the cooperating Designated Broker.

Assure that the Buyer or Seller is aware that a counter offer is, in effect, a rejection of the previous offer or counter-offer, and the presentation of a new offer back to the other party. With the counter-offer, only the terms which vary from the original offer are written out and all terms remaining the same from the original offer are incorporated by reference. Any terms from previous counter-offers which are intended to be carried forward must also be written out.

Delivery of Accepted Offers

When a party has accepted an offer or a counter-offer, the Broker shall discuss with that party the different methods of delivery available for returning the offer to the other party, and thus creating a binding contract. Brokers shall explain that delivery by mail is considered delivered upon deposit in the mail. Whenever an offer is being handled by a Broker for the purpose of personally delivering it back to the cooperating office or to the other party, a copy of that accepted offer shall also be mailed as soon as possible following the Broker's receipt of the same.

Referral Fees

The Broker will have many opportunities to send and receive prospective buyers and sellers via the referral process. All referral fees must go through the Designated Broker. If a referral company requests that a Broker pay or accept an amount other than the amount set forth in the Designated Broker's commission and compensation schedules, the Broker must first consult the Designated Broker or office manager.

Brokers shall always confirm a referral fee agreement in writing prior to sending or accepting a referral. When dealing with Designated Brokers from other states, Brokers shall request written evidence that the Designated Broker is licensed (copy of current license) and that the Designated Broker is actively practicing real estate in his or her state, before agreeing to pay that Designated Broker a fee.

Chapter 9

Closing Procedures

Listing Broker Responsibilities

At the consummation of every real estate transaction, the Broker shall furnish to each buyer and seller a complete, detailed closing statement showing all of the receipts and disbursements involved in such transaction. The furnishing of a closing statement by an attorney or title company will relieve the Broker of this requirement.

A Broker shall not handle the closing of any real estate transaction except under the direct supervision of the Designated Broker. The Designated Broker will assume full responsibility for the execution of all closing statements prepared by the Broker acting under his direct supervision.

Failed Transactions

The Broker shall notify the closing officer in writing immediately if an accepted offer has failed. Earnest money shall be disbursed in accordance with the Purchase Contract without unreasonable delay.

Attorneys at Closing

It is the policy of the Designated Broker that Brokers always recommend, to both buyers and sellers, that they seek legal advice from an attorney with respect to their legal questions throughout the negotiation process and transaction, and that an attorney attend the closing to represent their legal interests. Problems often occur that are not necessarily related to title and attorneys are best equipped to solve these problems. Furthermore, many legal burdens are lifted from the Broker when an attorney is in attendance at closing.

Deposits and Earnest Money

Handling

The Designated Broker DOES NOT operate a Trust Account and will not accept ANY Earnest Money Deposit (in any form) made payable to the Designated Broker or Kelly Right Real Estate ALL Earnest Money Deposits MUST be made payable and deposited by Broker to the escrow agent/attorney by the end of the next business day after receipt. Checks received after office hours or on weekends MUST BE DEPOSITED with the escrow agent/attorney BY THE END OF THE NEXT BUSINESS DAY.

Disbursement

Disbursement of earnest money is the responsibility of the Designated Broker who will make a determination as to the recipients in accordance with provisions of the license law and any earnest money disbursement agreement signed by both parties. In this regard, the Broker should not commit the Designated Broker to any decision as to the disposition of the earnest money being held except that it will be applied to the amount owed by the purchaser when the sale closes. The secretary will place a copy of all papers relative to disbursement in the canceled file and make a notation on the canceled contract as to how disbursement was made. If there is a dispute in disbursements of such funds, the Designated Broker will be responsible for and will file an interpleader action in a court of competent jurisdiction.

Chapter 10

Antitrust

Summary of Federal Antitrust Laws

The basic statutes making up the body of law known as the antitrust laws are the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act.

THE SHERMAN ACT - This statute enacted in 1890 was the first modern United States antitrust law and remains the cornerstone of all the federal antitrust statutes. It establishes two broadly stated principles of antitrust policy:

1. Section 1 of the Sherman Act prohibits agreements, combinations or conspiracies between two or more persons, firms, corporations, or associations which unreasonably restrain trade.
2. Section 2 of the Act prohibits the monopolization or any attempted monopolization of any market for a particular product or service.

These very general precepts of the Sherman Act have achieved specific meaning through a process of court interpretation, which has continued for more than 90 years. The selected cases most applicable to real estate Designated Brokers and the real estate industry have been compiled by the National Association of REALTORS® as Volume 2 of its publication, Antitrust and Real Estate.

It is not necessary to show a written contract to prove a violation of the Act. "Understandings," formal or informal, written or oral, express or implied, are enough for a court or jury to infer that an agreement has been reached. As the Supreme Court said in a leading antitrust case, "A wink of the eye or a shrug of the shoulder is often more important than a formal handshake."

THE CLAYTON ACT - The Clayton Act was enacted by Congress in 1914, and was the next major antitrust statute. Its approach differs from the Sherman Act in two basic ways:

1. While the Sherman Act applies to restraints of trade which have a present anti-competitive effect, the Clayton Act represents an effort to stop anti-competitive practices in the beginning by outlawing future conduct resulting in an unreasonable restraint of trade.
2. While the Sherman Act deals in broad principles, the Clayton Act is concerned with a limited number of specific subjects such as exclusive bidding arrangements (Section 3); acquisitions or mergers (Section 7); interlocking boards of directors (Section 8).

THE ROBINSON-PATMAN ACT - The Robinson-Patman Act enacted in 1936, amended the Clayton Act and deals with discrimination in prices charged various customers. The basic purpose of the Robinson-Patman Act was to protect small businessmen by putting constraints on the ability of a large company to command price discounts by use of greater purchasing power. The Federal Trade Commission is the enforcing agency for this law.

THE FEDERAL TRADE COMMISSION ACT - The Federal Trade Commission Act authorizes the FTC to enforce these federal laws. Such authority is shared with the Department of Justice. The FTC also enforces Section 5 of the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "deceptive practices." Under this general provision, the FTC has enjoined potentially anti-competitive conduct before it could ripen into a violation of any of the antitrust laws.

In addition to having the authority to seek injunctions, the FTC is authorized to sue in federal court to recover refunds for consumers who have been injured by violation of an FTC rule or cease and desist order.

Antitrust Compliance

In antitrust cases, whether criminal prosecutions or civil treble damage suits, proof against the defendant is most likely to come from the defendant's own files and records or from statements made by the defendant or his Brokers. Thus, an antitrust compliance program must not only avoid actual violations of antitrust laws, but must also avoid creating or permitting the creation of files, records, documents, statements or conversations which might create an appearance of violation.

It is impossible, of course, to formulate a set of guidelines to cover all situations at all times, but insofar as the principles of antitrust compliance can be stated in specific rules, it would be well advised to remember the following:

1. **DO NOT Discuss Your Business With Competitors** - At any time, in any place, or under any circumstances or have any personal or telephone conversations with competitors concerning commissions, fees, charges or any other business practices of your real estate business or those of the firm with which you are Brokered. This applies at social gatherings, on the golf course, while hunting, in the bar, cocktail parties, board functions and at all times and at all places. At Association or Board meetings, confine discussions to topics of Association or Board business directly involved in the purpose of the organization and the meeting.
2. **Written Communications Must Be Clear and Explicit** - When you discuss a real estate transaction or the superiority of your business practices over your business competitors, talk to your Designated Broker or Brokers in the firm with which you are Brokered. Regardless of how carefully you may phrase your letter or memorandum, things look much different in

writing than they should sound when spoken between knowledgeable people. Of course, financial and economic data sometimes must be written but in many instances, any information relevant to business or legal relations can be communicated by talking, and talking only to those who have legitimate justification for receiving the information you are transmitting. More than one antitrust defendant has had his letter, correspondence, memoranda and written notes admitted in evidence against him for purposes for which the writer never intended. It is amazing how differently what you wrote sounds when it is read back to you in the grand jury room or during trial. All correspondence and memoranda must be clear and specific.

3. **DO NOT Talk Unless You Know Who You're Talking To And What You're Talking About** - In any business, complete candor among trusted business Brokers is necessary. It is not necessary, however, to tell everyone your business. Inform only those who need to know such matters as how and in what manner commission or fee contracts were negotiated, how much business you're doing, what business prospects are, how many and which properties you have sold, and anything else which might be of interest to someone investigating your business for a reason you know nothing about. If you receive a telephone call from anyone who refuses to identify himself or who begins what amounts to a probing cross examination about your business practices, terminate the conversation as quickly and courteously as possible. In this day of ever-improved recording devices for both telephonic use and miniature recording devices easily concealed in a room or on the person of an investigator, it is well to make it a rule in discussing business matters to speak as if you were being recorded. The chances are better than you think they are!
4. **DO NOT Deceive Yourself Or Let Anyone Else Deceive You Into Believing That Any Transgression Of The Antitrust Laws Has Little Risk Of Discovery** -The federal government possesses extensive investigatory powers, such as grand juries and civil investigative demands, as well as ingenious and dedicated investigators. Also, in private litigation, parties have litigation discovery tools to examine corporate or firm records and documents and to compel testimony. Even though an antitrust violator may not keep records, it's competitors or the injured parties may. In this age of photocopying, it is difficult to restrict distribution. Unexpected records such as telephone bills, expense accounts, a secretary's notes, engagement calendars or a forgotten written note may be uncovered. In a prosecution or suit for antitrust violations, a party may be faced with surprise witnesses such as former Brokers and employees and plea bargainers. Also, an alleged co-conspirator may take advantage of the antitrust division's leniency program and confess, thus perhaps avoiding indictment, a jail sentence and fines and keeping the tax-deductibility of civil damage payments.

5. DO NOT Use Such Terms As "Please Destroy When Read", "For Your Eyes Only", "No Copies", Or Similar Terms and Phrases - Experience has demonstrated that even if no copies are made, the original of such documents eventually end up in somebody's file. Even when marked "personal and confidential," the document is usually retained by the recipient and eventually filed. When an antitrust investigation is underway or documents are produced on a civil investigative demand or in private antitrust litigation, such terms and phrases are red flags for the investigator or opposing counsel. All written documents must comply with the antitrust laws whether inspected or discovered and should not indicate or infer an attempt to conceal any document.

6. DO NOT-At Any Time-Use Any Of The Words And Phrases Which NAR's Program For Compliance Designated As "Dangerous" - Since such statements are so improper, incorrect and dangerous, they need to be emphasized here along with some other words and phrases.
 - "We would like to charge a lower commission, but the board has a rule..."
 - "This is the rate that all REALTORS® charge."
 - "The MLS will not accept less than a 120 day listing."
 - "Before you list with XYZ Realty, you should know that nobody is going to work on their listing."
 - "If John Doe is really professional (or ethical) he would have joined the Board."
 - "The Board requires that all REALTORS® force their sales people to join."
 - "The best way to deal with John Doe is to boycott him" or "we don't worry about John Doe; we just don't show his listings."
 - "If you valued your services as a professional, you wouldn't cut your commission."
 - "No board member will accept a listing for less than 90 days."
 - "Let him stay in his own part of town, this is our territory."
 - "If he was really a professional, he wouldn't use part timers."
 - "X is the going rate in this area."
 - "We have to charge that commission since our rates are set by the Washington Real Estate Commission."
 - "The standard commission in this area is X."
 - "When I see that guy's signs, I just drive the prospect down another street."
 - "We've all agreed that any commission below X is unfair."
 - "Something's got to be done about that company, nobody can charge such a low commission and make a living."
 - "That price-cutter has no business being a member of the board."

- "You will not get a lower commission from a REALTOR®."
8. If In Doubt, Call the Kelly Right Real Estate corporate office - No compliance program or manual can spell out all the answers to questions which may arise. Situations are bound to arise which create doubt. If you do not have doubts about the legal of any business practice, procedure or activity, consult your board executive officer, the Designated Broker under whose license you work or legal counsel knowledgeable about antitrust matters.
 9. Without Clearance: Don't Do It - If neither the board executive officer, an executive officer of your firm nor legal counsel will give clearance to a proposed business deal or activity with antitrust implications-don't do it.

DOCUMENT RETENTION POLICY

Documents should not be kept any longer than reasonably necessary and should be destroyed when their useful life is over.

CONSEQUENCES AND COSTS OF FAILURE TO COMPLY if not persuaded by the positive approach to antitrust compliance alternative practical reasons must be considered. In other words, will an antitrust compliance program for TAR, its affiliated local boards of REALTORS® and its membership be "cost effective"? It is going to take a considerable expenditure of money, staff-time, and membership-time to institute and maintain a continuous, on-going antitrust compliance program. To make that judgment, consideration must be given to the awesome consequences and costs of the failure to carry on a continuous antitrust compliance program. Those who choose to ignore the antitrust laws or fail to educate themselves about such laws and develop a sensitivity to antitrust risk very serious consequences and costs for themselves, those with whom they are Brokered and their fellow REALTORS®.

1. Criminal Prosecution - The criminal penalties for violating antitrust laws are severe, and the present enforcement trend is to prosecute not only the association, corporation, or firm involved, but also the officers, directors, staff, and employees personally. A violation of the Sherman Act, for example, is a felony for which any corporation may be fined up to one million dollars for each offense and an individual can be fined up to \$100,000 and imprisoned for up to three years for each offense. The fines are not tax deductible. Also if a taxpayer is indicted and subsequently pleads guilty or nolo contendere or is convicted, payments or damages in civil treble-damage actions are only one-third deductible. Jail sentences and probation, which by now are by no means uncommon, can be great personal tragedies. It is not pleasant trip through the typical arrest, fingerprinting, photographing and bail processes! Furthermore, convicted felons incur many civil disadvantages with respect to voting, holding of public office and the like. The emphasis today in the Justice

Department is on stronger and more frequent criminal enforcement. Nolo contendere pleas are usually opposed by the government, and larger fines and sentences are being sought.

2. Private Treble Damage Suits - Antitrust laws also provide for civil penalties. Persons or businesses injured by violations of the antitrust laws may recover three times the amount of their damages, plus attorney's fees and all costs of litigation. The potentially enormous size of these judgments, particularly in a class action suit, can spell disaster for all real estate Designated Brokerage firms and boards of REALTORS®, which are involved.
3. Injunctions - The government and injured persons or businesses may also obtain injunctions against further antitrust violations. The severe requirements of these injunctions will handicap any Designated Brokerage business or board of REALTORS®.
4. Consent Decrees - To avoid the shocking expense of defending antitrust suits, some defendants elect to "settle out of court" by agreeing to consent decrees. However, these consent decrees can severely restrict an association's operations or a company's business, and, in some instances, the result is that the officers, directors and staff of a defendant from day-to-day carry on the operations under peril of contempt of court citations or threats of civil penalties of up to \$10,000 per day. Conduct and practices which have not been adjudicated to be unlawful are often prohibited on consent decrees.
5. Time - Antitrust litigation usually requires years of preparation before trial and many months of appeals. From the filing of suit to settlement of judgment, on the average may take from 4 to 5 years. Not only may the defendant board or real estate firm in an antitrust case face years of uncertainty, but the valuable time of REALTORS® and other personnel almost certainly will be spent in long hours of preparing testimony, giving depositions, producing documents, tabulating statistics and performing other necessary preparations for trial. It is almost impossible for board executives and REALTORS® in antitrust cases to appreciate the time lost and the expense involved until they actually experience serious antitrust litigation.
6. High Cost of Antitrust Litigation - The cost of defending antitrust suits, civil or criminal, are astonishing. It is not at all unusual in criminal antitrust cases for the cost of litigation to exceed the fines imposed. Even defendants confident of acquittal are faced with the prospect of spending shocking amounts of money and countless days of employee time and effort in establishing their innocence. So called "simple" antitrust cases usually cost hundreds of thousands of dollars to defend. It is, therefore, imperative that REALTORS® involved in the real estate Designated Brokerage business not only comply with the antitrust laws, but also avoid even the suspicion of any violations.

7. Adverse Publicity - Whether the antitrust case is civil or criminal, once the suit is filed, damages to the reputation and public image of both the local board as well as the individual defendants and especially the image of REALTOR® as an ethical and responsible business person are incalculable. Even if the government's prosecution or private plaintiffs treble damage suit against a REALTOR® is without merit and the cases are eventually won by the defendants, the bad publicity lingers on.

8. Internal Strife and Tension - No matter how well organized and managed a local board or REALTOR® firm may be, once an antitrust investigation is launched or an antitrust suit is filed, internal strife and tension among the staff and employees is unavoidable. Personnel will be kept busy assisting in matters involving the investigation or in preparing for litigation, and some inevitably will seek to disBroker themselves from others whom they perceive to have contributed to the charge. The loss of work efficiency and production resulting from these conflicts is expensive and can be ruinous to any board or REALTOR® business.

Chapter 11

Termination of Affiliation

Should the Designated Broker and the Broker terminate this relationship, the Broker will immediately turn in all company property including all transactional files pertaining to listings, offers, or other contracts, any other office files, office policy books, office keys, lock box keys and lock boxes, signs, books, supplies and a copy of all prospect and referral lists generated while employed by the Designated Broker. The Broker will contact the Designated Broker for final out-processing. The Designated Broker's supervisory responsibility shall terminate upon his signing of the release form.

Note: The licensee shall not engage in any real estate transactions nor shall he or she act under contract with another firm until completion and transmittal to the Commission of the change of affiliation form and fee is remitted.

Listing contracts are the property of the Designated Broker. The Designated Broker reserves the right to reassign any listing or other contract upon termination by or of a Broker. Compensation for offers to purchase or for listings obtained by the Broker prior to termination of this relationship shall be payable on the basis of the commission schedule shown in the Independent Contractor Agreement.

Addition to Supplements

All Washington Based Brokers and Managing Brokers are to follow the following laws per the State of Washington:

(1) Licenses of the real estate brokers and real estate managing brokers must be available at the address appearing on the individual license.

(2) All firm and branch office licenses must be displayed in an area visible to the public.

A firm must operate under their firm name or an assumed name as licensed.

(1) All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising, web pages, email, newspaper, and other visual media must include the firm name or an assumed name as licensed.

(2) Brokers and managing brokers advertising using a name, title, or brand without obtaining an assumed name license must:

(a) Always use and display the firm's licensed name or the firm's licensed assumed name in a clear and conspicuous manner in conjunction with the use of such name, title, or brand.

(b) Not use a name, title, or brand which suggests a legal entity separate and distinct from the firm, such as "Inc.," "LLC," "LLP," "Corp.," "firm," or "company."

(c) Not use name, title, or brand commonly understood to reference a firm or an office, such as "realty," "realtors," "firm," or "real estate."

(d) Receive advance written approval from the firm's designated broker to use an unlicensed title or brand.

Designated broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters [18.85](#), 18.86, [18.235](#) RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensure that copies of required records are made available upon demand.

(4) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(5) Ensuring monthly trial balances are completed, accurate and up-to-date.

(6) Ensuring that the trial balance and the reconciliation show the account(s) are in balance.

(7) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.

(8) Maintaining up-to-date written assignments of delegations of managing brokers and branch manager duties. The delegation agreement(s) must be signed by all parties to the agreement. Delegations must:

(a) Only be made to managing brokers licensed to the firm.

(b) Address duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and property, authority to bind, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, supervision of brokers and managing brokers, and heighten supervision of brokers that are licensed for less than two years.

(c) Address hiring, transferring and releasing licensees to or from the firm.

(9) Maintaining, implementing and following a written policy that addresses:

(a) Procedures for referring a home inspector to buyers or sellers. The policy will address the consumer's right to freely pick a home inspector of the buyer's or seller's choice and prevent any collusion between the home inspector and a real estate licensee. If a licensee refers a home inspector to a buyer or seller with whom they have or have had a relationship including, but not limited to, a business or familial relationship, then full disclosure of the relationship must be provided in writing prior to the buyer or seller using the services of the home inspector.

(b) Levels of supervision of all brokers, managing brokers and branch managers of the firm.

(c) Review of all brokerage service contracts involving any broker of the firm licensed for less than two years. Review must be completed by the designated broker or their delegated managing broker within five business days of mutual acceptance. Documented proof of review shall be maintained at the firm's record locations.

(10) Ensuring that all persons performing real estate brokerage services on behalf of the firm and the firm itself are appropriately licensed.

(11) Ensuring affiliated licensees submit their transaction documents to the designated broker, branch manager or delegated managing broker within two business days of mutual acceptance.

(12) Being knowledgeable of chapters [18.85](#), 18.86, and [18.235](#) RCW and their related rules.

(13) Within five business days provide the department with a closing firm affidavit when closing the firm.

(14) Within five business days ensure that all brokerage services contracts are either terminated or transferred to another licensed real estate firm with the parties' written authorization.

(15) Within five business days notify all parties to pending brokerage service transaction(s) that the real estate firm is closing and that the firm will either:

(a) Transfer the pending transaction documents, with the parties' written authorization(s) to another real estate firm; or

(b) Ensure the transaction(s) are completed without any new licensable activity.

(1) The designated broker or managing broker shall supervise the conduct of brokers and managing brokers for compliance with this chapter, chapter [18.235](#) RCW, and RCW[18.86.030](#).

(2) Listings, transactions, management agreements, and other contracts relating to providing brokerage services are property of the real estate firm. Brokers shall timely deliver to their appointed managing broker all funds and records required to be held or maintained by the real estate firm. A managing broker is responsible for such funds and records only after they are received from the broker. A managing broker shall timely deliver to the designated broker all funds and records required to be held or maintained by the real estate firm. The designated broker is responsible for such funds and records only after they are received from the managing broker or broker.

(3) The designated broker may delegate by written agreement the duties of safe handling of client funds, maintenance of trust accounts, and transaction and trust account records, along with supervision of brokers, to a managing broker licensed to the firm. The designated broker shall maintain a record of the firm's managing brokers and delegations to managing brokers.

(4) The designated broker or the designated broker's delegate has the authority to amend, modify, bind, create, rescind, terminate, or release real estate brokerage service contracts on behalf of the real estate firm. The designated broker has the authority to accept new or transferred licensees to represent the real estate firm.

(5) A broker who supervises or exercises right of control over other brokers in the performance of real estate brokerage services must be licensed as a managing broker.

(6) During the first two years of a broker's licensure, a managing broker must provide a heightened level of supervision as provided by rule of the director.

The designated broker is required to keep the following on behalf of the firm:

(1) Trust account records:

(a) Duplicate receipt book or cash receipts journal recording all receipts;

(b) Sequentially numbered, nonduplicative checks with check register, cash disbursements journal or check stubs;

(c) Validated duplicate bank deposit slips or daily verified bank deposit;

(d) Client's accounting ledger summarizing all moneys received and all moneys disbursed for each real estate or business opportunity transaction or each property management account, contract or mortgage collection account;

(e) In conjunction with (d) of this subsection, separate ledger sheets for each tenant (including security deposit), lessee, vendee or mortgagor; for automated systems, the ledger sheets may be a computer generated printout which contains required entries;

(f) Reconciled bank statements and canceled checks for all trust bank accounts.

(2) Other records:

(a) An accurate, up-to-date log of all agreements or contracts for brokerages services submitted by the firm's affiliated licensees.

(b) A legible copy of the transaction or contracts for brokerage services shall be retained in each participating real estate firm's files.

(c) A transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and material correspondence for each real estate or business opportunity transaction, and for each rental, lease, contract or mortgage collection account.

(d) All required records shall be maintained at one location where the firm is licensed. This location may be the main or any branch office.

The real estate licensee shall be responsible for negotiating the agreement between seller and purchaser as follows:

(1) The real estate licensee shall furnish or cause to be furnished to each buyer and to each seller in every real estate or business opportunity transaction wherein the licensee provides brokerage services, at the time the transaction is closed, a complete detailed closing statement as it applies to the buyer and a complete detailed closing statement as it applies to the seller. The firm shall retain a copy of all closing statements of the respective buyers and sellers wherein the licensee provides brokerage services for all transactions even though funds are not handled by a licensee and closing is done elsewhere.

(2) The closing statements of all real estate or business opportunity transactions in which a real estate firm participates shall show the date of closing, the total purchase price of the property, an itemization of all adjustments, money, or things of value received or paid showing to whom each item is credited and/or to whom each item is debited. The dates of the adjustments shall be shown, together with the names of the payees, makers and assignees of all notes paid or made or assumed.

(3) The net proceeds of sale on all real estate transactions closed by a real estate licensee are to be paid direct to the seller unless otherwise provided by written agreement.

(4) Where an agreement for the sale of real estate has been negotiated involving the services of more than one licensee, and funds are to be deposited by the purchaser prior to the closing of the transaction, the firm first receiving such funds shall retain custody and be accountable, until such funds are distributed or delivered in accordance with written instructions signed by all parties to the transaction.

(5) All licensees must keep the party to whom they provided brokerage services informed of the earnest money deposit status and must retain and provide copies of receipts to the principals and participating firms.

Addition to Supplements

Inspectors. It is advised that all agents, salespeople and managers refer at least 3 inspectors to clients and customers (buyers and sellers) when working with them. It is also advised that licensees prevent collusion and allow the buyers and sellers to freely choose an inspector of their choice. If licensee is related to or has a special relationship with an inspector, the licensee must advise the buyer and seller in writing of this relationship.