

# **ILLINOIS ASSOCIATION OF REALTORS®**

## **Sample Office Policy Manual**

**2012 edition**

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**Illinois Association of REALTORS®**

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**ILLINOIS ASSOCIATION OF REALTORS®**

**SAMPLE OFFICE POLICY MANUAL<sup>1</sup>**

The Illinois Association of REALTORS® assists its members in conducting their businesses in an ethical and professional manner. This sample office policy manual is one such product and is also a significant tool for its members to reduce risk in their businesses. It is only a sample. It is assumed that the individual member will use whatever is appropriate for the member's business and will make additions, deletions, or other appropriate modifications to this sample manual, in cooperation with the member's legal counsel, to fit the needs of the individual business.

The general approach of the sample manual is for a residential brokerage which accepts listings and services buyers. However, important questions of agency and buyer brokerage are referenced where possible so that the member can be aware of choices which must be made in today's complex business and legal environment.

Where matters such as a company's commission charge policy would appear, appropriate notations to the member to have a written policy are made rather than any suggestion of what the policy should be. Obviously, a trade association cannot and does not suggest or recommend any policy such as the price for the member to charge.

The Manual must be modified to include individualized information about practical and business matters and to delete items not appropriate or pertinent to an individual company. Rather than suggest a method for these kinds of items, the manual recommends that the company include or delete such items where appropriate and concludes with a list of other possible business items to be considered for inclusion in an individualized manual.

The Illinois Association of REALTORS® believes that services such as this Sample Office Policy Manual are not only vital to the successful practice of the real estate business today but is also required by the Real Estate License Act. The Association is pleased to present this tool to its members.

<sup>1</sup>The Illinois Association of REALTORS® gratefully acknowledges Bruce Aydt, an attorney/REALTOR, who originally drafted this sample manual for the Missouri Association of REALTORS® and the Missouri Association of REALTORS® who licensed its use by the Illinois Association of REALTORS®. Some modifications have been made from the original, including those necessary to reflect Illinois law.

## Sample Office Policy Manual (2012 ed.)

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## MISSION STATEMENT

It is the mission of **SUPER SAFE SALLY, REALTORS®**, to profitably and ethically provide high quality professional real estate services to the home buying, home selling and real estate investing public.

**(NOTE: If the company is an exclusive buyer agency firm, delete the reference above to home selling.)**

## STATEMENT OF BUSINESS PRINCIPLES

The following principles form the basis for executing the mission statement of **SUPER SAFE SALLY, REALTORS®**. Agents, management and staff of the company work as a team to accomplish the mission statement and will abide by these principles.

1. **PROFESSIONALISM:** Professionalism at **Super Safe Sally, REALTORS®** means approaching the business with ethical conduct toward our customers and clients. Abiding by the **REALTOR® CODE OF ETHICS** forms the basis of that standard. Secondly, continuing training and education keep us informed and at the peak of awareness for customer and client. Each agent and employee of Super Safe Sally, REALTORS® is pledged to these ideals.
2. **INTEGRITY:** Simply put, honesty in all business dealings is the best way to get and keep business over the long term. Simple honesty also forms the basis for the best business protection we can get. It is a simple, effective, efficient and cost effective risk reduction method.
3. **PROFITABILITY:** **Super Safe Sally, REALTORS®** is in business to make profits in the course of its ordinary activity. Each agent and staff member has a responsibility to the company to contribute to its profitability, whether it be in terms of direct production of revenue or careful expenditure of company funds.

This Office Policy Manual for **Super Safe Sally, REALTORS®** is designed to guide each agent and staff member in the most important areas of company activity. If a matter is not covered, bring it to the attention of the President/Owner for possible inclusion in future revisions. If a matter is covered, the agent or staff member is expected to act according to this Manual. Failure to act in accord with company policy will be taken into account in future evaluations and/or retention of the agent or staff member.

**SUPER SAFE SALLY, REALTORS®** welcomes each new agent and employee to the business of professional, ethical and profitable real estate sales.

## EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is SUPER SAFE SALLY, REALTORS'® policy to provide equal employment opportunities without regard to race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service, (**Note: Add here any other protected classes established by local ordinance in your area**) to all qualified employees and applicants for employment. This policy applies to all areas of employment, job assignment, training, promotion, transfer, compensation, discipline and discharge. The company abides by all federal, state and local laws regarding employment practices, including, but not limited to the Americans with Disabilities Act.

## POLICY AGAINST SEXUAL HARASSMENT

Any harassment of an associate, whether agent, employee or applicant, because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service is clearly prohibited and will not be condoned. Sexual harassment is one particular form of discrimination which is illegal and violates the company's longstanding equal employment opportunity policy. SSS, REALTORS'®, maintains a strong policy prohibiting any form of sexual harassment.

No agent, employee, staff member, customer or vendor, male or female, may sexually harass an employee, agent or other person associated with the company by:

1. Making unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexually suggestive nature; or
2. Making submission to or rejection of such conduct the basis for employment, continued employment or any other employment decision affecting the employee; or
3. Creating an intimidating, hostile or offensive working environment by such conduct.

Any agent or employee who has been found to have sexually harassed another agent or employee will be subject to appropriate discipline up to and including discharge from association or employment.

This policy applies equally to any work-related sexual harassment by or to both men and women employed by or associated with the company or who deal with the company in our business, and it is not limited to supervisor/employee or manager/agent relations or to conduct occurring on premises or during working hours.

Any agent or employee who believes that he/she is being or has been sexually harassed by another agent or employee should promptly take one or more of the following steps:

1. If appropriate, discuss the situation directly with the person whom you feel is harassing you, and politely request that the person cease harassing you because you feel you do not like or welcome his/her conduct. You might also add that if such conduct does not cease altogether, you will take further steps under this procedure. (If the person involved is a customer or client, please refer the complaint to senior management instead.)
2. If you believe that some adverse employment consequence may result from your discussions with that person, or if the harassment continues, go to a higher level of supervision including any senior executive of the company. You may be required to state in writing the specific details of the harassing behavior including date, time, place and witnesses, if any.
3. An investigation of any complaint will be undertaken immediately. All complaints will be handled in a prompt, confidential manner insofar as the investigation permits. There will be no adverse action directed toward any complaining agent or employee or witness as a result of making or supporting the complaint, unless there clearly was bad faith.

### **INDEPENDENT CONTRACTOR/EMPLOYEE AGREEMENT**

**(NOTE: A company should choose the type of legal relationship it desires between its sales agents and the company or broker. The Illinois Association of REALTORS® does NOT recommend any particular type of relationship. This sample policy is based on an independent contractor relationship. If a company chooses an employer-employee relationship, appropriate revisions should be made to the policy.)**

SSS, REALTORS<sup>®</sup>, has a policy of associating with its licensees as independent contractors or statutory non-employees (independent contractors). Each agent will be required to sign the SSS, REALTORS<sup>®</sup>-Salesperson (Sponsoring Broker- Sponsored-Licensee Contract) agreement setting out the relationship as an independent contractor. While the exact terms of the relationship are covered in the contract, a few reminders about being an independent contractor follow.

1. Income Taxes: All income taxes, federal and state, are the responsibility of the agent. The company does not withhold or pay Social Security taxes on commission earnings. Self employment tax must be paid by the agent.
- \*2. Unemployment Taxes: As an independent contractor, the agent is not covered under state or federal unemployment laws. Independent contractor real estate agents acting under an agreement such as the SSS, REALTORS<sup>®</sup> form and compensated by commission, are exempt from the unemployment laws by Illinois statute. Accordingly, SSS, REALTORS<sup>®</sup> does not pay unemployment taxes on the earnings of its agents.
- \*3. Worker's Compensation: As with unemployment taxes, an independent contractor real estate agent signing an independent contractor agreement like the SSS, REALTORS<sup>®</sup> form and compensated by commission are exempt from the worker's compensation laws by Illinois statute. Given this statute, SSS, REALTORS<sup>®</sup> does not cover agents under its worker's compensation insurance policy. An agent should check that her/his insurance, particularly health and accident insurance, is adequate.
4. Automobile Insurance: Each agent should carry adequate automobile insurance to protect not only the agent but also the customer or client. In today's legal climate, liability coverage of \$ \_\_\_\_\_ per person/\$ \_\_\_\_\_ per accident should be obtained. Any lesser amounts could cause unnecessary exposure of personal assets. Consult carefully with your insurance agent. The agent must name Super Safe Sally, REALTORS<sup>®</sup>, as an additional insured and provide the company with a certificate reflecting that status.

Each agent is reminded that state law requires that every person in an automobile is required to wear a seat belt. Children and small adults should not sit in the front passenger seat. Airbags are known to release with such force that injury or death is possible for children and small adults. Please see the following links for current requirements regarding infants and children and the use of car seats and the use of seat belts:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1819&ChapAct=625%20ILCS%20A025/&ChapterID=49&ChapterName+VEHICLES&ActName=Child%20Protection%20Act>;  
<http://www.ilga.gov/legislation/ilcs/documents/062500050K12-603.1.htm>.

- \* In Illinois, a licensee must receive all his/her compensation from commissions to be exempt from unemployment tax and worker's compensation laws. With regard to unemployment tax laws, in Illinois, if the licensee does not receive all his/her compensation in commissions, he/she must meet a three-part test to be considered an independent contractor.

5. Expenses: As an independent contractor, each agent is expected to be in business for herself/himself. Generally, the expenses of that business will be the responsibility of the agent. SSS, REALTORS® will provide the following items and/or pay for the following expenses:

**(NOTE: The company or broker should determine the expenses which it is willing to provide or pay and delineate the major items here. Some of these expenses may include office space, newspaper advertising, business cards, yard signs, telephone expense, stationery, etc.)**

The agent will be expected to pay for all other expenses, including these particular items:

**(NOTE: Here, the company should list the typical expenses borne by agents. Some of these expenses may be things such as business cards, personal car or yard signs or personal advertising. The Illinois Association of REALTORS® makes no recommendations as to what should or should not be on either the broker or agent list of expenses.)**

This list of expenses paid by company or agent may be amended by the company from time to time by appropriate publication to all agents.

### **USE OF PERSONAL ASSISTANTS**

A growing trend in the real estate business is for high producing agents to use specific persons, both licensed and unlicensed, as their assistants. SSS, REALTORS® encourages the appropriate use of personal assistants as a tool for high earning agents to be even more productive. Several caveats are in order from the perspective of the company. Many of the distinctions are based on whether a licensed or unlicensed assistant is used. SSS, REALTORS® policies on the use of personal assistants are as follows:

1. **EMPLOYEE v. INDEPENDENT CONTRACTOR:** Whether licensed or unlicensed, the agent must decide whether to associate with the personal assistant (hereafter "PA") as an employee or independent contractor. Remember, that if the PA is licensed the employment or independent contractor agreement will be between SSS, REALTORS® and the PA.

Serious issues of the right of control, method of payment and direction of the work exist if the agent chooses to have an independent contractor PA. SSS, REALTORS<sup>®</sup>, strongly urges the agent to consult with her/his tax consultant and/or attorney to determine the proper procedures in making this choice. If independent contractor status is chosen, all of the issues mentioned above regarding withholding, unemployment taxes, worker's compensation and automobile insurance will be dealt with in the independent contractor agreement between the SSS, REALTORS<sup>®</sup> and the PA. The form of independent contractor agreement used by SSS, REALTORS<sup>®</sup> will be signed by the PA unless the agent with whom the PA works indicates otherwise.

If employee status is chosen for a licensed PA the employment agreement will be between SSS, REALTORS<sup>®</sup> and the licensed PA with related costs and expenses being charged back to the agent with whom the PA works. The agent should be aware that for an unlicensed PA all employment taxes, withholding reports, unemployment tax reports, worker's compensation insurance and reports and W-2 forms are the responsibility of the agent. SSS, REALTORS<sup>®</sup> will not be a party to the arrangement between the agent and the unlicensed PA and will not be responsible for any employment activities of the agent.

2. **UNLICENSED PERSONAL ASSISTANTS:** The policy of SSS, REALTORS<sup>®</sup> is that unlicensed personal assistants **WILL NOT UNDER ANY CIRCUMSTANCES** perform licensed real estate activities as defined in the License Law (Section 1-10). The agent associating with the PA is strictly responsible for maintaining this policy. If an unlicensed PA does any licensed activities, the agent puts herself/himself in jeopardy of disassociation. The Illinois Department of Financial and Professional Regulation (“IDFPR”) has taken a position as to the types of things unlicensed office personnel may and may not do. Please review Section 1450.740 of the License Law rules to familiarize yourself with these items. The policy of SSS, REALTORS<sup>®</sup> is that unlicensed personal assistants fall into the same category as unlicensed office personnel.

The agent is further advised that unlicensed persons may not be paid any fees or commissions for any licensed activities done (Sections 10-15(a) and 20-20(a)(38)). The company will not split commissions with an unlicensed person.

3. **LICENSED PERSONAL ASSISTANTS:** By definition, a licensed PA can perform licensed activities. The license of the PA must be held by SSS, REALTORS<sup>®</sup> and any payments for the real estate business must come from SSS, REALTORS<sup>®</sup>. The licensed PA will be in violation of the License Law (Section 10-5(b)) if any compensation for doing licensed activities is accepted from anyone except the sponsoring broker with whom the PA is associated. Please review the section of “Functions of Unlicensed Office Personnel” to determine the difference between “clerical” functions and “licensed activities.”

The easiest and cleanest way to accomplish this end is for the agent to split commissions as they are earned with the licensed PA in whatever proportion the two parties negotiate. The amount of the split between the PA and the agent should be specific and regular and should not vary per transaction. The company requires written agreements between the company and both agents to delineate the relationship and also requires the PA and agent enter into a written agreement defining the relationship and specifying the compensation arrangement.

### **OFFICE HOURS**

SSS, REALTORS® regular office hours are \_\_\_\_\_ a.m. to p.m. Monday through Friday. Office hours on Saturday are \_\_\_\_\_ a.m. to p.m. Sunday will be \_\_\_\_\_ a.m. to p.m. Changes may occur periodically and notices will be posted in the office.

### **HOLIDAYS AND HOLIDAY HOURS**

SSS, REALTORS® will post the holidays on which the office will be either closed or open but with an abbreviated schedule at the beginning of each year. Any such schedule will be posted subject to change.

### **OFFICE OPENING AND CLOSING PROCEDURES**

**(NOTE: A general description of procedures to open and close the office should be inserted here. Things such as locking doors, turning off computers and copiers, setting thermostats, etc. could be included.)**

### **SMOKING POLICY**

Smoking is prohibited in any office of SSS, REALTORS® including private offices, conference rooms, rest rooms and areas not normally accessible to the public. Smoking is only permitted outdoors in an area that is located at least 15 feet away from the door to the building.

## **TRAINING PROGRAM AND SCHEDULE**

**(NOTE: Training of agents and staff is a critical risk reduction technique. Whether the training is accomplished through a franchise, an independent vendor, one-on-one or with an in-house program it is a company decision. A company should insert its education/training philosophy, programs and schedule in this section.)**

## **SALES MEETINGS/PROPERTY INSPECTIONS**

**(NOTE: Likewise, regular sales meetings and inspection of listings are ideal forums for training & education as a risk reduction technique. A schedule and procedure for sales meetings/property inspections, as appropriate for the company, should be inserted here.)**

## **INQUIRIES/VISITS BY GOVERNMENT OFFICIALS**

Any inquiry by a government official, whether by telephone, letter or in person, should immediately be forwarded to the managing broker. In the absence of the managing broker, the name of the official and agency or department he/she represents should be obtained. Then, the president or other officer of the company should be contacted. If none of these persons are available, the person receiving the inquiry should immediately contact the company's attorney by phone and request that she/he come to the office. Unless presented with a valid search warrant signed by a federal judge or a judge of the county in which the office is located, the person receiving the inquiry should not allow any representative from a local, state or federal office to see any files or any information maintained in the office, nor should the person ever answer any questions of such a representative official unless the company's attorney is present.

## **SUBPOENAS AND SUMMONSES**

If a process server appears in the office with a subpoena or summons for the company, any employee or agent should accept it. Once accepted, it should immediately be turned over to the managing broker. The managing broker should immediately contact the president or other officer of the company. In the absence of any of these persons, the managing broker should contact the company's attorney. If the process server asks for a specific person, only that specific person may accept the subpoena or summons. If that person is not in the office, the person receiving the inquiry should not volunteer any information about the person requested and should not give out home phone numbers or home addresses, even if asked. Refer the inquiry to the managing broker immediately.

## AGENT SAFETY

It is critically important that an agent be aware of safety risks inherent in any business. The residential real estate business presents certain safety risks because of the time of day and week when much of the business is conducted. SSS, REALTORS® has the following safety policies, guidelines and suggestions:

1. If the agent does not know a customer, try to arrange a meeting at the office or other public place. Another alternative would be to do a basic internet search of the name of the individual(s).
2. NEVER meet a prospect at a vacant house ALONE. ALWAYS take another person with you. DO NOT meet the prospect after dark.
3. ALWAYS let the office or someone at your home know where you will be when showing property, especially, to prospects you are first meeting.
4. When on the showing, DO NOT go to dark areas, basements, garages, or areas without multiple exits. Allow the prospect to view those areas on his/her own and stay in an area which allows for quick exit.
5. ALWAYS drive your own car. DO NOT let a prospect you do not know drive your car. Preferably, meet the prospect at the office, tell the office your destination and expected time of return and drive separate cars to the showing.
6. USE COMMON SENSE. If something doesn't feel right or look right, trust your instincts and remove yourself from the situation.
7. Whether to use self-defense techniques and how to handle a crisis if it occurs are personal decisions. Think about your choices in advance.
8. View safety videotapes and talk to your local police. The company has a videotape available on agent safety and urges each agent to view it regularly. In addition, the videotape is regularly shown at a sales meeting and the local police are asked to make safety presentations at a sales meeting periodically. Take advantage of these opportunities to be smart and be safe. Remember, no commission is big enough to justify personal risk!! **(Note: Delete all but the last sentence of #8 if these opportunities are not available in your office.)**

## FUNCTIONS OF UNLICENSED OFFICE PERSONNEL

The policy of SSS, REALTORS® regarding the functions and use of unlicensed office personnel follow the License Law rules promulgated by IDFP. The general policy is that unlicensed office personnel (secretaries, assistants, personal assistants, receptionists, accounting personnel, etc.) are to be used in a support role to the main real estate business function of the company. UNDER NO CIRCUMSTANCES will unlicensed office personnel be allowed to engage in licensed activities.

"Engaging in licensed activities" means doing any of the acts for which a license is required as defined in the License Law (Section 1-10).

Further defining this area is Section 1450.740 of the License Law rules. This section explicitly allows for the use of unlicensed clerical personnel to support licensed activities but strictly limits their ability to perform licensed activities.

The Rule governing unlicensed PAs states that the unlicensed PA may:

1. answer the telephone, take messages, and forward calls to a licensee;
2. submit listings and changes to a multiple listing service;
3. follow up on a transaction after a contract has been signed;
4. assemble documents for a closing;
5. secure public information from a courthouse, sewer district, water district, or other repository of public information;
6. have keys made for a company listing;
7. draft advertising copy and promotional materials for approval by a licensee;
8. place advertising;
9. record and deposit earnest money, security deposits, and rents;
10. complete contract forms with business and factual information at the direction of and with approval by a licensee;
11. monitor licenses and personnel files;
12. compute commission checks and perform bookkeeping activities;
13. place signs on property;
14. order items of routine repair as directed by a licensee;
15. prepare and distribute flyers and promotional information under the direction of and with approval by a licensee;
16. act as a courier to deliver documents, pick up keys, etc.;
17. place routine telephone calls on late rent payments;
18. schedule appointments for the licensee (this does not include making phone calls, telemarketing, or performing other activities to solicit business on behalf of the licensee); *emphasis added*
19. respond to questions by quoting directly from published information;
20. sit at a property for a broker tour which is not open to the public;
21. gather feedback on showings;
22. perform maintenance, engineering, operations or other building trades work and answer questions about such work;
23. provide security;
24. provide concierge services and other similar amenities to existing tenants;
25. manage or supervise maintenance, engineering, operations, building trades and security; and
26. perform other administrative, clerical, and personal activities for which a license under the Act is not required.

An unlicensed PA may not:

1. host open houses, kiosks, or home show booths or fairs;
2. show property;

3. interpret information on listings, titles, financing, contracts, closings, or other information relating to a transaction;
4. explain or interpret a contract, listing, lease agreement, or other real estate document with anyone outside the licensee's company;
5. negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of a licensee; or
6. perform any other activity for which a license under the Act is required.

## **PAYMENTS TO UNLICENSED PERSONS**

SSS, REALTORS® maintains a strong policy that no unlicensed person will be paid for any real estate activity requiring a license. The License Law (Sections 10-15(a) and 20-20(a)(38) makes clear that an unlicensed person may not be paid for engaging in licensed activities.

## **POLICY CONSIDERATIONS AND TEAMS**

Before setting up a "shop within a shop," you might consider a few legal principles and some important issues to address when considering the practice of real estate brokerage using teams.

### **What Is a Team?**

While not defined within the Act, for discussion purposes, a "team" is a functional unit operating within a real estate brokerage office comprised of one or more real estate licensees and one or more administrative personnel.

### **The Act Applies**

One simple rule to remember is that the Act applies to all licensees licensed to a sponsoring broker, whether they are part of a team or not.

- The sponsoring broker will remain ultimately responsible for the oversight of the team and all of its licensed members.
- A licensee must work for only one sponsoring broker. Thus, if a licensee is a team member, he/she will be sponsored by the same sponsoring broker as that of the "team captain" and not by the "team captain."
- The sponsoring broker and not the "team captain" must pay every licensee on a team.
- Each licensee on a team must have a written independent contractor or employment contract with the sponsoring broker.
- The team must not be a separate corporation within the sponsoring broker's corporation. This would require another sponsoring broker, and licensees may only work for one.

NOTE: This is not to be confused with a licensee's ability to set up a single shareholder, unlicensed corporation for the purpose of receiving that licensee's compensation. See Section 10-20(e) of the Act and Section 1450.745 of the Rules under the Act. Remember, only one licensee can receive compensation through that corporation.

### **Agency Issues**

Designated agency, covered in Article 15 of the Act, applies to teams. As a result, if one team member represents the seller and one team member represents a buyer, they are not automatically dual agents, but can be designated agents for each party.

- If this is the case, confidential information of opposing parties must be protected from team members on the opposite side of the transaction.
- Office policies and procedures should address agency issues that arise within the team.
- If the team practices disclosed dual agency, written disclosure and consent must be obtained before team members act as dual agents.
- The sponsoring broker should analyze how the team is holding itself out to the public.
- If your company or the team is saying to the public that the team represents everyone (both sides) then even if your office policy is designated agency, this may create dual agency requiring disclosure and consent of the parties. The bottom line questions to ask are whether you are protecting opposing parties confidential information and what are you representing to the public? (Here decide what the office policy will be).

### **Advertising and the Use of Team Names**

If the team has a "team name" which is used in advertising without using the name of the brokerage company, it would be up to the sponsoring broker to register that name with the appropriate governmental authority and the Illinois Department of Financial and Professional Regulation (IDFPR) as an assumed name or dba. Neither the team as a unit nor any of the team members should have authority to register a "team name" that is different than the sponsoring broker's business name.

- If the brokerage company is a franchise, then the company name and the franchise affiliation must appear in all ads. So, if a team name is included in the ad along with the company name and the franchise affiliation, no special registration of the team name is necessary.
- If the team name appears in an ad and the company name is also included, no additional registration of the team name is needed.
- If the team name is being used in lieu of the brokerage company name, then registration of the team name by the sponsoring broker is required.

If the brokerage is a sole proprietorship, the assumed business name would be registered by the sponsoring broker in the counties in which the company does business.

If the brokerage is a corporation, the assumed name would be registered by the sponsoring broker with the Illinois Secretary of State's Office.

Once the assumed name is properly registered, it must also be placed on file with IDFPR.

### **Independent Contractor v. Employee**

The sponsoring broker must consider whether licensed team members should be treated as independent contractors or employees under the Internal Revenue Code, the Fair Labor Standards Act and other applicable laws.

- If the team member is a licensee, that member could be treated as an independent contractor under statutory provisions of the Internal Revenue Code or under the “traditional test” for independent contractor.
- If a licensed team member is a statutory non-employee, this might be true for tax purposes only; and for other purposes the licensee might be a common law employee. For example, the Illinois workers’ compensation laws might apply, for which the sponsoring broker would be responsible.
- In either case, a licensed team member must have a written contract with the sponsoring broker.
- Unlicensed team members will be employees. Either the sponsoring broker or the team could compensate an unlicensed team member. The sponsoring broker will want to ensure who is responsible for paying the employee and for complying with all applicable employment requirements, such as withholding and workers compensation.

## **SAMPLE BROKERAGE RELATIONSHIP POLICIES**

*(Note: The following pages provide samples of alternative brokerage policies.)*

### **1. SINGLE AGENCY - Seller Representation Only**

SSS, REALTORS<sup>®</sup> adopts this written policy identifying and describing the relationships in which licensees may engage with sellers, landlords, buyers or tenants. As used in this policy, the word “Company” means SSS, REALTORS<sup>®</sup>.

The Company acts only as seller’s agents (and/or landlord’s agents) through written exclusive representation agreements (listing agreements) or other written agreements for brokerage services with sellers (and/or landlords) and represents only sellers or landlords. Licensees affiliated with Company shall be named as designated agents of the sellers or landlords with whom the company contracts.

The Company’s written exclusive representation agreement includes the licensee’s duties and responsibilities as agent of the seller. The Company does not act as buyers’ agents (or tenants’ agents) and will not represent buyers (and/or tenants) nor enter into written agreements for brokerage services with buyers (and/or tenants). However, licensees may perform ministerial acts, as defined in the License Law, for prospective buyers. The Company will work with buyers (and/or tenants) to sell its listings. The appointment of a designated agent will be made in the exclusive representation agreement, other written agreement for brokerage services or other written notice to the client. The managing broker(s)\* is/are authorized by this policy to make the appointment of designated agents on behalf of the Company.

The Company will not act as a dual agent.

The Company (**CHOOSE ONE**) (**authorizes**) or (**does not authorize**) its affiliated licensees to enter into written agency agreements on behalf of the Company.

### **2. SINGLE AGENCY - Buyer Representation Only**

SSS, REALTORS<sup>®</sup> adopts this written policy identifying and describing the relationships in which the licensees of SSS, REALTORS<sup>®</sup> may engage with sellers, landlords, buyers or tenants. As used in this policy, the word “Company” means SSS, REALTORS<sup>®</sup>.

The Company acts only as buyers’ agents (and/or tenants’ agents) through written buyer (and/or tenant) agency agreements or other written agreements for brokerage services with buyers (and/or tenants) and represents only buyers/tenants. Licensees affiliated with Company shall be named as designated agents of the buyers/tenants with whom the Company contracts. The Company’s written agency agreement includes the licensee’s duties and responsibilities as agent of the buyer (and/or tenant).

**\* Managing broker(s) is used in this Policy Manual only to refer to the individual(s) designated with IDFPR as a managing broker for the company.**

The appointment of one or more designated agents will be made in a buyer's agency agreement, written notice of terms and conditions of the brokerage services to be provided or other written notice to the client. The managing broker(s) is/are authorized by this policy to make the appointment of designated agents on behalf of the Company.

The Company does not act as sellers' agents (and/or landlords' agents) and will not represent sellers (and/or landlords) nor enter into written agreements for brokerage services with sellers (and/or landlords). The Company does not accept listings of property.

The Company will work with a seller (and/or a landlord) as a customer in circumstances where a seller's (and/or landlord's) property is not listed and the Company's buyer client desires to purchase seller's/landlord's property. In such circumstances, the Company will obtain the appropriate written authorizations to show the residential property of seller (and/or landlord).

The Company will not act as a dual agent.

The Company will accept compensation from listing brokers and/or sellers with appropriate disclosures to its clients.

The Company (**CHOOSE ONE**) (**authorizes**) or (**does not authorize**) its affiliated licensees to enter into written agency agreements on behalf of the Company.

### **3. SELLER/BUYER AGENCY - Designated Agency (Disclosed Dual Agency Authorized)**

SSS, REALTORS<sup>®</sup> adopts this written policy identifying and describing the relationships in which the licensees of SSS, REALTORS<sup>®</sup> may engage with sellers, landlords, buyers or tenants. As used in this policy, the word "Company" means SSS, REALTORS<sup>®</sup>.

The Company represents sellers, buyers, landlords and tenants through written exclusive representation agreements (listing agreements or property management agreements) or written buyer (and/or tenant) agency agreements or other written agreements for brokerage services with sellers (and/or landlords) or buyers (and/or tenants).

The Company adopts the additional policy of appointing one or more designated agents as limited agents for clients pursuant to provisions in the License Law (known as "designated agency"). A designated agent shall be an affiliated licensee of the Company who is appointed in writing to be the agent of a client to the exclusion of all other affiliated licensees of the Company. The appointment of a designated agent will be made in a listing agreement, buyer agency agreement, other written agreement for brokerage services or other written notice to the client. The managing broker(s) is/are authorized by this policy to make the appointment of designated agents on behalf of the Company.

In the event that a licensee personally represents both the seller and buyer or both the landlord and tenant in a particular transaction, that licensee shall be a disclosed dual agent and is required to comply with the provisions of the License Law governing disclosed dual agents and the Company's policy regarding disclosed dual agents herein.

In the event that the designated broker of the Company or any of its managing brokers learn confidential information about either party to a transaction or if such broker is consulted by any licensee involved in the transaction, such broker will be a disclosed dual agent. Such broker will also be a disclosed dual agent if the broker supervises the licensee for one side of the transaction and personally represents the other side of the transaction.

If acting as a disclosed dual agent under this policy, the dual agent in the transaction must have the consent of all parties to the transaction. The designated agent must secure the signatures of sellers and buyers on a Consent to Dual Agency form before acting as a dual agent. In addition, the parties must initial the section confirming their consent to dual agency in the Real Estate Sales Contract.

If acting as a disclosed dual agent, the dual agent will be an agent for both the seller and buyer or the landlord and tenant as defined by Illinois law. The dual agent will have the duties and obligations of both a seller's agent and a buyer's agent as specified by law. The designated agent should be guided by the duties set forth in the Consent to Dual Agency form. The disclosed dual agent's role is limited in some respects.

The Company will also work with unrepresented buyers (and/or tenants) to sell its listings. Licensees may perform ministerial acts, as defined in Article IV of the License Law, for unrepresented buyers. In any such situation written notice should be given to the buyer by the designated agent indicating that the designated agent does not represent the buyer. This should be done at a point in time prior to the buyer disclosing any confidential information to the designated agent but in any event no later than the preparation of an offer to purchase or lease.

The Company will not act as a subagent and does not authorize its licensees to act in any subagency capacity.

The Company (**CHOOSE ONE**) (**authorizes**) or (**does not authorize**) its affiliated licensees to enter into written agency agreements on behalf of the Company.

## COOPERATION AND COMPENSATION POLICY

Subagency cannot be offered through a multiple listing service under Illinois law. SSS, REALTORS® cooperates and compensates cooperating agents. Typically, these are buyers' agents as a result of the designated agency laws in Illinois. However, this does not preclude compensation to a cooperating agent who has some other agreement with a buyer as to the role of the cooperating agent.

In all cases, before entering into an agreement, the listing agent must disclose to the seller:

1. The Company's policy regarding dealing with cooperating and compensating agents as set forth above. The listing agent will disclose to the client the amount that will be paid to cooperating agents' offices (per the REALTOR® Code of Ethics); and
2. Any potential for SSS, REALTORS® to be a disclosed dual agent, if company policy allows disclosed dual agency.

These disclosures must be made under provisions of the Illinois Real Estate License Act and REALTOR® Code of Ethics.

## AGENCY DISCLOSURE POLICY

SSS, REALTORS®, maintains a policy promoting discussion of agency relationships at the first reasonable opportunity with a customer or a client. **(Note: Please remove the following sentence if it does not apply.)** Each agent is required to attend training and education on agency relationships and disclosure within the Company training program.

Illinois law requires a licensee to disclose to a customer the fact that you are not acting as their agent. Written disclosure must be given to a customer, any person who has not entered into an agreement to be represented, that you are not acting as their agent. This includes prospective sellers, buyers, landlords and tenants. The disclosure must be given to the person at a time intended to prevent the disclosure of confidential information but, in any event, no later than the preparation of an offer to purchase or lease.

The Company recommends that disclosure be made as follows:

1. If you are acting as a seller's agent then oral disclosure must be made at the time the prospective buyer begins to disclose personal or financial information to the licensee. Written disclosure must be made no later than the beginning of the preparation of an offer to purchase. Use the form entitled Notice of No Agency Relationship.
2. If you are acting as a buyer's agent then oral disclosure should be given to the seller no later than the time of the first showing. Written disclosure must be given to the seller no

later than the presentation of an offer to purchase. Use the form entitled Notice of No Agency Relationship.

These disclosures are required only if you are representing a buyer or seller and working with a prospective buyer or seller who is unrepresented.

In light of the increasing emphasis in the industry on agency relationships, SSS, REALTORS<sup>®</sup>, prefers and urges that each agent discuss agency relationships with customers and clients at the earliest possible time in the relationship to avoid later misunderstandings. All agents must disclose not later than the time periods required by the Real Estate License Act and the rules promulgated thereunder.

In cases of potential dual agency, remember that in order to act as a dual agent, you must obtain the signatures of the sellers and prospective buyers on the Consent to Dual Agency form before beginning to act as a dual agent and the parties initial on the Confirmation of Consent to Dual Agency Section in the purchase contract no later than at the contract signing.

**(NOTE: The Company should insert the appropriate procedure and place for retaining agency disclosure forms.)**

### **MANDATORY BUYER AGENCY EVENTS**

It is the policy of SSS, REALTORS<sup>®</sup> that any agent working in the following circumstances **MUST** only act as a buyer's agent and may not act as a dual agent.

1. The agent is buying property for her or himself, or any entity in which he or she will have an ownership interest.
2. The agent is working with the agent's immediate family, that is, mother, father, brother, sister, children, any of their spouses or any business owned fully or partially by any of these persons.

### **STRONGLY RECOMMENDED BUYER AGENCY EVENTS**

It is the policy of SSS, REALTORS<sup>®</sup> that any agent working in any of the following circumstances is strongly urged to work only as a buyer's agent and not as a dual agent.

1. The agent is working with any relative by blood or marriage not in the agent's immediate family as defined above.
2. The agent is working with a close friend, business associate or long term past customer or client.

## AGENCY AND CONFIDENTIALITY

One of the most important statutory duties of an agent is to maintain the confidentiality of the client, whether buyer or seller. The Illinois agency statute defines confidential information. It includes information made confidential by written instruction from the client and information made confidential by the statute. The statute notes that an agent should treat confidential information provided by the client that may reasonably be expected to have a negative impact on the client's real estate activity. Agents should pay particular attention not to make unauthorized or offhand comments about a client's situation or a client's property in a way which could be considered a violation of the duty of confidentiality. In particular, four areas are considered of particular importance. They are:

1. The lowest price a seller is willing to accept.
2. The highest price a buyer is willing to pay.
3. The motivation of either party to enter into the transaction, i.e. job change.
4. Previous offers and counteroffers of either party.

In some markets, sellers are in distressed or "underwater" situations with their home loans. If there is no lawsuit yet on file to foreclose, this information might still be confidential to the seller. However, if the seller must have lender approval to consummate a short sale, the listing agent will need to disclose this information to the buyer's side so the listing agent will need to get consent from the seller to disclose seller's distressed position.

If disclosed dual agency is offered, it is particularly important for the agent to realize that she/he must hold confidential the information of both buyer and seller, regardless of which party the particular agent is working with at that time.

**(NOTE: If disclosed dual agency is offered, confidentiality provisions for office procedures must be instituted. The following is one example of some areas of procedures to adopt.)**

In offering disclosed dual agency, the Company and all of its associates must be sensitive to confidential information within the office and among the associates of the Company. The following procedures and policies are intended to protect the confidentiality of the Company's clients.

1. Associates should not discuss confidential information of the client between or among themselves.
2. Comments at sales meetings should not reveal confidential information of the client without the client's permission.
3. Office files of listings and pending sales are confidential and may not be accessed except by authorized staff and the particular agent involved in the listing or transaction.
4. Fax transmissions are confidential. Office staff will place faxes in envelopes or fold them so as not to reveal contents to persons other than to whom the fax is addressed.
5. Telephone messages with confidential information will be distributed in an envelope or be folded to protect the confidential information.
6. Direct clients to send all e-mail communications directly to the e-mail address of their designated agent.
7. Contracts, offers, counteroffers or other transactional documents will be delivered to the person addressed in envelopes. Persons other than the addressee are not authorized to open any such envelope.

Please refer to the attachments to the policy manual which refer to "Buyer Agency Do's and Don'ts", and "Disclosed Dual Agency Do's and Don'ts."

### **FAIR HOUSING POLICY**

SSS, REALTORS<sup>®</sup> believes that fair housing policies are not just the law of the land but simply the right thing to do. SSS, REALTORS<sup>®</sup> maintains a strong policy upholding all federal and state fair housing laws and Article 10 of the REALTOR Code of Ethics and the NAR Code of Fair Housing Practices. In addition, SSS, REALTORS<sup>®</sup> requires each agent and staff member to participate in periodic fair housing education. **(NOTE: Delete last sentence if you do not have this requirement.)**

Accordingly, SSS, REALTORS<sup>®</sup>, prohibits any agent or staff member from discriminating against any person in the provision of any of the Company's services because of the person's race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, familial status, military status, sexual orientation, unfavorable discharge from military service, or any other class protected by Article 3 of the Illinois Human

Rights Act. The parties agree to comply with all applicable federal, state and local fair housing laws.

Among the prohibited practices which are against this policy and the law are:

1. Refusing to show, sell or rent based on a person being a member of a protected class.
2. Different treatment/disparate treatment to persons of a protected class.
3. Steering: A person shall not encourage or discourage another from moving into any area because of the race, color, religion, sex, handicap, marital status, familial status, ancestry, age, military status, sexual orientation, or order of protection status.
4. Discriminatory advertising that “expresses” a preference for buyers or tenants of a particular race, color, religion, sex, handicap, marital status, familial status, national origin, ancestry, age, military status, sexual orientation, or order of protection status.
5. Harassment (i.e., coercion, intimidation, threats or interference with a person’s fair housing rights or because a party is abiding by fair housing law).
6. Applying more burdensome criteria to applicants of protected classes.
7. Blockbusting/Panic Peddling: A person is prohibited from inducing or attempting to induce another to sell or rent a property by making any express or implied representations regarding the entry or prospective entry into a neighborhood of a person or persons of any particular race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service, or any other class protected by Article 3 of the Illinois Human Rights Act. The parties agree to comply with all applicable federal, state and local fair housing laws

Agents and staff should be aware that persons with AIDS are considered handicapped and "familial status" means families with children under the age of 18 years, an individual who is pregnant or an individual in the process of obtaining legal custody of a person under the age of 18 years.

SSS, REALTORS<sup>®</sup> and the Safety First Association of REALTORS<sup>®</sup> (**NOTE: Delete reference to Association if Association has not signed the Fair Housing Partnership.**) have agreed to and adopted the Fair Housing Partnership as adopted by the National Association of REALTORS<sup>®</sup> and the Department of Housing and Urban Development. Each agent and staff member of SSS, REALTORS<sup>®</sup> is required to participate in Association and/or Company education regarding the Partnership. (**NOTE: Delete last sentence if this is not accurate for your company.**)

## ANTITRUST POLICY

SSS, REALTORS<sup>®</sup> maintains a strong policy against any antitrust involvement by the Company, its agents or employees. Few obligations can be taken more seriously than those in this area. SSS, REALTORS<sup>®</sup> requires each person associated with the Company to participate in antitrust education and acknowledge his/her understanding of these principles. Two areas are the primary antitrust focus.

1. **PRICE FIXING:** Price fixing means any agreement, setting, consent to, suggestion or implication with a competitor regarding a fee to charge. This includes fees charged to the public, fees split among brokers and fees paid to agents. "Agreement" can be overt, covert, express or implied. It is very broad and can even be suggested or implied by casual conversation with any competitor.

Accordingly, SSS, REALTORS<sup>®</sup>, its agents and staff are prohibited from discussing with any competitor, including an individual agent, any aspect of the fees the Company charges or how total fees are split. SSS, REALTORS<sup>®</sup> determines its charges based on the Company's own independent internal analysis of its expenses, its revenue, its desired profit level and its choice of the type and level of service it desires to provide.

In any discussion with a member of the public about our charges (such as a listing appointment), the only acceptable answer about why the Company charges what it does is the foregoing explanation. Do not be drawn into a discussion about Company fees as "the standard rate," "the Association rate," "the typical rate" or the like. If questions arise about other Company's fees, suggest that the potential client call several competitors and ask about their rates.

2. **BOYCOTTING COMPETITION:** It is also a violation of federal law to make any agreement, express or implied, with a competitor to boycott or otherwise not deal with a third party competitor. For example, assume Discount Realty opens up an office. Then assume Bob Broker, an agent with Big Bucks Broker, and Alice Agent, an agent with Just As Big Broker are having lunch one day and discuss the competitive impact of Discount Realty. Bob and Alice agree that Discount is a danger to their large listing portfolios and further agree that individually they will not show Discount's listings because "Something has got to be done about that price-cutting monger." This simple agreement with two agents is an illegal boycott. Even if it were implicit and not overt, it could be construed as an illegal boycott.

SSS, REALTORS<sup>®</sup> prohibits any agent or staff member from making any agreement or suggestion with a competitor, including an individual agent, that he/she or the Company will not deal with a third broker or agent, whether it be a listing company, buyer's brokerage, discount broker or any other broker or agent whatsoever.

**(NOTE: If a company cannot access the NAR videotape on antitrust or the NAR guidebook on antitrust, delete the next paragraph. All companies are strongly urged to consider using the NAR and IAR materials available in this area. IAR has published a manual dealing with this area. Contact IAR headquarters for supply and prices.)**

Each agent and staff member of SSS, REALTORS® is required to view the NAR videotape on antitrust, read the NAR guide book "Antitrust Compliance Program," execute the acknowledgment in the guide book and participate in training on antitrust, including reading the manual from the Illinois Association of REALTORS®.

## **LISTING PROCEDURES**

**(NOTE: If a company practices buyer agency exclusively and does not take listings, this section should be deleted.)**

SSS, REALTORS® accepts listings and seeks to build an inventory of available merchandise for sale to buyers of homes and investment real estate. It offers the merchandise directly to the public and by cooperating with other licensed agents.

Listings not only represent "the merchandise on the shelf" but also present a significant area of risk. Traditionally many of the claims filed against real estate agents involve claims of misrepresentation or fraud. It is at the listing level that many of these claims originate. As a listing company, it is imperative that SSS, REALTORS® develop clear policies to reduce the risk of later claims from oversights and exposures at the time of listing. The following policies apply to all listings taken by SSS, REALTORS®.

### **1. TYPES OF LISTINGS**

In accord with the REALTOR® Code of Ethics, SSS, REALTORS® urges the exclusive listing of property, unless it is contrary to the best interests of the owner. Open listings may be accepted (Option 1:) at the agent's discretion **OR** (Option 2:) only with consent of a manager or broker of the company. Net listings are not accepted as such would be a violation of ethical standards. A net listing is one in which the owner agrees to let the agent keep any sale proceeds over a "net" price the owner wants for the property.

**(NOTE: A company may choose to accept any type of legal listing, may choose to restrict its listings to a certain type or types or may limit its acceptance of certain types of listings to certain situations. Local competitive market conditions may influence the types of listings accepted. Whatever policy the Company chooses, it should specify the policy here.)**

## 2. COMMISSION POLICIES

**(NOTE: Whatever commission policies a company has should be specified here or in an attachment or addenda to the Policy. A company should consider covering the following areas:**

- a. Rates and prices charged for services to the public. Examples of areas to consider, depending on the company's selection of agency policy and business practice, are:**
  - (1) Charges to sellers for listings.**
  - (2) Charges to buyers for representation.**
  - (3) Charges to owners for leasing.**
  - (4) Charges to clients for consulting.**
  - (5) Charges for any other services it renders.**
- b. Compensation offered to buyer's agents.**
- c. Compensation offered to the company's licensees.)**

## 3. OTHER LISTING TERMS:

**(NOTE: A company should specify any policies it has as to other terms in a listing contract such as length of listing, length of protection period, i.e. time after end of listing term in which a commission is owed if a buyer procured by broker purchases property, if any, whether and for what length of time exclusions from the listing contract will be accepted and who in the company has authority to accept the listing on behalf of the sponsoring broker.)**

## 4. DISCLOSURE OF ADVERSE MATERIAL FACTS

Illinois statutes require the disclosure to any customer all latent material adverse facts pertaining to the physical condition of the property that are actually known or which should have been known by the licensee. Latent adverse material facts are defined as facts actually known by the licensee related to the physical condition of the property not reasonably ascertainable by a diligent inspection of the property by the customer.

## 5. RESIDENTIAL REAL PROPERTY DISCLOSURE FORMS

The Residential Real Property Disclosure Form is a detailed statement by the seller of his/her knowledge of the condition and features of the property. SSS, REALTORS® has a policy of urging sellers to complete the form and to provide them to buyers in compliance with the state statute. An agent should provide a blank disclosure form to the seller and request the disclosure form be completed on every listing unless the property is exempt from disclosure under state law. It is in the best interest of the seller to complete a disclosure form because it can avoid future misunderstandings with a buyer as to what the seller's knowledge of the condition of the property was at time of listing and because it is required by State law. If the seller questions the property or the transaction is exempt from disclosure refer the seller to his/her own attorney.

In addition, it is a valuable risk reduction tool for SSS, REALTORS® and assists the Company in complying with its obligations to disclose adverse material facts. By the seller making accurate, factual statements as to his/her knowledge of the property, later controversies as to "who said what" can be minimized.

A listing agent should be careful to make sure that the seller and not the agent complete the Disclosure form and keep it current. If the information becomes inaccurate because the property's condition has changed, a seller could have liability for allowing known inaccurate information to be given to buyers. Once the form is complete the agent needs to make sure that it is delivered to prospective buyers before they prepare an offer to purchase.

Some sellers may refuse to sign a Disclosure form. In Illinois, there is a state law which requires a seller to execute such a statement unless the property or the transaction is exempt. If a seller declines to complete a disclosure form he/she should be referred to his/her own attorney to determine if the transaction or the property is exempt from disclosure. SSS, REALTORS® **(WILL) (WILL NOT)** accept a listing for which a seller refuses to complete a disclosure form unless the property or transaction is exempt.

In completing the disclosure form, the seller her/himself **MUST** fill in the form. An SSS, REALTORS® agent **MAY NOT** complete the form on behalf of a seller. The responsibility to complete the form under Illinois law is on the seller and not on the agent. If an agent completes the form, much of the benefit of this risk reduction technique is lost.

In general, the agent may rely on the statements of the seller. Article 15 of the License Law provides that the licensee owes no duty to conduct an independent inspection of the property for the benefit of the customer and owes no duty to independently verify the accuracy of any statement made by the client.

However, an agent may not ignore any suspect items on the disclosure form just because the seller completed it. If an agent, in his/her reasonable judgment and expertise, suspects that a statement is not accurate, the agent should seek further information from the seller. An example might be a seller who states that there has been no water in a basement in which there are obvious water stains and cracks. An agent's best course is to seek further information from the seller as to the exact nature of their statements and if the seller persists in inaccurate statements then either refuse to take the listing or withdraw as the listing agent. If an agent needs assistance with this type of problem they should contact their managing broker.

## 6. LEAD BASED PAINT

Particular note should be paid to lead-based paint disclosures. Current FHA regulations require that a special lead-based paint disclosure form be signed by all parties to a contract with FHA financing BEFORE entering into the contract if the transaction involves a property built prior to 1978. Also, a federal law which took effect late in 1996 requires certain disclosures on properties built prior to 1978 about the hazards of lead-based paint and requires that the buyer be given the opportunity for inspections for lead-based paint in the sale contract. Under lead-based paint regulations, agents do have a duty to make sure the seller completes a disclosure form and provides a pamphlet.

## 7. RADON AWARENESS ACT

The Illinois Radon Awareness Act became effective on January 1, 2008. Agents of SSS, REALTORS® should have a general knowledge about the existence of the Radon Awareness Act and that the provisions impose duties on sellers of real property. In short, before a buyer becomes bound on a contract to purchase real estate the seller is required to provide a pamphlet entitled "Radon Testing Guidelines for Real Estate Transactions" and the Illinois Disclosure of Information on Radon Hazards. The language of the latter is set forth by statute. The pamphlet is provided by the Illinois Emergency Management Agency Division of Nuclear Safety and can be found on that agency's Web site, <http://www.radon.illinois.gov>.

Nothing in the Act requires a seller to test for radon or to engage in "mitigation activities." The Act excludes certain types of transactions, which are summarized as follows: transfers made pursuant to court order, transfers resulting from foreclosure, transfers by fiduciaries of estates, transfers among co-owners, transfers pursuant to estate or interstate succession, transfers made by relocation companies (if the relocation company has the required documents from the original seller) and transfers to or from a governmental entity. Agents need to be aware of this required disclosure so they can inform their seller clients.

Radon disclosures are now sometimes required for rentals in residential lease transactions. The form does not have to be provided in every residential lease transaction; only those where a radon test has been done, a radon hazard is indicated and

the owner has not remediated using an IEMA licensed contractor. It is important to note that the radon disclosure requirement only covers the second floor and below of residential dwelling units.

## 8. ACCURACY OF LISTING INFORMATION

Several "traps" that might create liability exist in taking a listing. These are covered below. Each SSS, REALTORS<sup>®</sup> agent should take careful note of these hazard areas and be particularly diligent in handling these issues.

- a. **ROOM COUNTS:** SSS, REALTORS<sup>®</sup> agents must be careful to accurately represent the number of rooms, bedrooms and bathrooms in a property. Generally, questions of whether an area constitutes a room, bedroom or bathroom are resolved by determining whether an appraiser would count the area as such. For example, basement rooms which are below grade are not generally considered rooms, bedrooms or bathrooms for appraisal purposes. Another example is that a room normally must have a closet to be considered a bedroom. Also, "walk-through" rooms are not usually considered separate bedrooms. These ambiguous areas can be denoted by a symbol such as a "+" sign after the room count (e.g. 8+ rooms, 4+ bedrooms) or highlighted in remarks for the property or other descriptive information.
- b. **ROOM SIZES:** The agent should personally measure each room. **DO NOT** take room sizes from a former listing company's form. Be cautious about taking room sizes from plans. There may have been construction changes not reflected on the plans. Measure room sizes to feet and inches. **(NOTE: Many MLS systems do not allow input of room sizes to feet and inches. In such case, round inches to the nearest foot, e.g., 7 feet 7 inches rounds to 8 feet but 7 feet 5 inches rounds to 7 feet.)** If you have not measured yourself or will not measure, be sure to cite the source of your information so it is clear that it did not come from you.
- c. **EXCLUSIONS/INCLUSIONS:** An agent should pay particular attention to inclusions and exclusions in the sale of the property and verify the seller's intention. For example, if an owner checks off that the master bedroom draperies will not be sold with the house, the agent should verify that this is the seller's intent and then make clear in any promotional material mentioning draperies that the master bedroom draperies are excluded. Also, it is very important to make sure the exclusion is expressly specified in the contract. The listing information sheet is not usually incorporated into the terms of the contract. Thus, an agent should not rely on the listing information sheet to control the contract but must make sure that the exact understandings of the parties are reflected in the sale contract. Also, it is a good idea to suggest that seller remove an excluded item before marketing the property for sale if possible.

- d. **LOT SIZE:** Lot size and acreage should only be determined from an accurate survey, the owner's real estate tax bill or the county tax records. The agent should NOT attempt to measure lot size on her/his own.
- e. **TAXES:** Taxes should be determined from county tax records or the owner's tax bill. The agent should not rely on the statements of the owner as to tax amounts. If there is a question regarding reassessment between time of contract and time of closing, refer the client to their attorney to negotiate contract language when necessary.
- f. **MODERNIZATION INFORMATION:** Often, good selling features about a property are the updates or upgrades made by the owner. In order to accurately advertise these items, SSS, REALTORS® requires that the owner verify any information given to us before it can be used in any promotional material on the listing.

Items such as "new" roof, "new" air conditioner, "new" furnace, "new" bathroom, "new" kitchen, etc. are misnomers because of the difficulty in defining what "new" means. Substantiation of the information means the owner must supply SSS, REALTORS® with receipts, canceled checks or other proof of payment of upgraded or rehabbed items. Once provided, then SSS, REALTORS® will accurately advertise and promote these good selling features with language like "New roof, 2000", "New furnace, 2003", "Kitchen remodeled, 2006".

If it is not possible to substantiate modernized features, they can be advertised or promoted as "Newer" or "Recent", as in "Newer furnace" or "Recently remodeled bathroom".

- 9. **SIGNATURES:** Illinois requires written listing agreements to be signed by "the parties." In addition, SSS, REALTORS® desires that listing agreements be enforceable in every possible situation to ensure that the company and agent will be paid under the terms of the listing agreement. Because of these factors, agents must secure listing agreements with the signatures of all sellers or the duly authorized representative of all sellers before the listing will be promoted or advertised in any way. Agents should be particularly aware in the several situations below.
  - a. **SPOUSAL SIGNATURES:** A spouse\* must ALWAYS sign a listing agreement unless certain conditions exist, as follows:
    - (1) A waiver of marital rights given by the non-signing spouse exists and a copy is provided to SSS, REALTORS®.
    - (2) A quitclaim deed made to the signing spouse has been executed and recorded by the spouse not signing and a copy is provided to SSS, REALTORS®.

- (3) A prenuptial agreement waiving the non-signing spouse's rights exists, a copy of the prenuptial agreement has been given to SSS, REALTORS<sup>®</sup>, and legal counsel for SSS, REALTORS<sup>®</sup> has consulted with a title company to determine the validity of the prenuptial agreement.
- (4) A court order provides otherwise.

**\* A "spouse" as used in this Section includes a partner in a civil union.**

Most often, these questions come up when the property is titled only in the "selling" spouse's name and the "non-selling" spouse claims that he/she has no interest in the property. Typical situations are a widowed person who has remarried or a divorced person who has remarried. The spouse not on the title ALWAYS has a potential homestead interest under Illinois law and MUST sign the listing agreement unless one of the four exceptions noted above exists.

- b. **PROPERTY IN ESTATE:** When property is in an estate, ALL heirs AND spouses must sign. If a Personal Representative (Executor or Administrator) has been named, it is possible that the Personal Representative has authority to sell the property. The agent must secure a copy of the part of the will or court order which empowers the Personal Representative to sell property. The power of sale granted the Personal Representative by a will may not be acceptable to a title company until the time to file a will contest has expired, which is six months after the first publication of notice of Letters Testamentary being issued. Management or legal counsel for SSS, REALTORS<sup>®</sup> will consult with a title company to determine if the power to sell in the will is acceptable.
- c. **TRUSTEES:** If a property is held by a trust, the trustee will normally be empowered to sell. However, the agent must secure a copy of the part of the trust which empowers the trustee to sell because some trusts require the signatures of more than one trustee to sell as in the case of an individual and corporate trustee (bank). The trustee's spouse does not sign the listing agreement because the trustee is acting in a representative capacity.
- d. **SELLER INCAPACITATED:** If a seller is not mentally competent to sell, and no acceptable Power-of- Attorney exists, a guardian must be appointed by the court and the guardian must obtain a court order to sell the property. Until such time, the property cannot be sold even if a child, sister, niece, nephew, etc. is also on the title. Also, if a property is jointly owned in this fashion, the spouse of the "second signer" (child, sister, niece, nephew, etc.) must also sign the listing contract. It is possible that a properly drawn Durable Power of Attorney may provide a means to sell this type of property. However, before relying on the Durable Power of Attorney, a title company should be consulted to determine whether the company will insure the title based on the existing Durable Power of Attorney. Also, refer to the paragraph on Powers of Attorney, below.

- e. **DIVORCES:** A person, including a partner in a civil union, is NOT legally divorced until a court so orders. A person "in the process of divorce" cannot sign the listing agreement alone. The spouse must also sign, regardless of whether the spouse is living on the premises or the couple has a "legal separation." Once divorced, the person may sign alone. However, if the county records continue to show the property in both names, the agent must secure a copy of that part of the divorce decree which awards the property to the signing spouse for SSS, REALTORS<sup>®</sup> files.
  - f. **POWERS-OF-ATTORNEY:** A Power-of-Attorney is acceptable for signature on a listing contract. However, not all powers-of-attorney authorize the sale of real estate. A copy of a recordable Power-of-Attorney authorizing the sale of real estate must be secured for the files of SSS, REALTORS<sup>®</sup>. Illinois law requires a Power-of-Attorney for the sale of real estate to be recorded.
10. **SELLER NET PROCEEDS CALCULATIONS:** It is the policy of SSS, REALTORS<sup>®</sup> to calculate estimated net proceeds for sellers as often as appropriate. The first estimate should be given on the listing call or as soon as possible after listing the property. Even though some information may not be available, such as exact loan balances or prepayment penalties, the agent should use all existing information to prepare as accurate an estimate as possible and note any missing information.

When information becomes available, estimated net proceeds should be recalculated. This is particularly appropriate when an offer is presented and when each new offer or counteroffer is received.

Many reasons exist for using seller net calculations. First, it is an important service to a client. Secondly, it is important for SSS, REALTORS<sup>®</sup> to know whether it is likely that there are sufficient proceeds to pay off the indebtedness on the property and the real estate commission. Finally, the company must know whether the seller of the property can deliver marketable title. If the indebtedness exceeds the listed price, immediate discussions must occur with the seller and the lenders to determine whether the property can be sold with clear title given the level of indebtedness.

Please see your managing broker for a format to use in determining estimated seller net proceeds and if you believe you have a short sale listing.

**(NOTE: If an area does not have a common lock box system, alterations to the following section will be needed. Some companies may wish to consider whether to put lock boxes on furnished property and/or whether adequate security measures exist in the absence of a board-sponsored lock box system. This manual assumes a common lock box system and you may want to modify this section to deal with specific issues in your system.)**

- 11. **LOCK BOX PROCEDURES:** SSS, REALTORS<sup>®</sup>, as part of the local Association of REALTORS<sup>®</sup> common lock box system, encourages the use of lock boxes on all listings

as a safe, secure, efficient tool in marketing property. Specific permission from the owner must be obtained on each listing before installing a lock box. Forms for this purpose are in each office. **(NOTE: Many local Associations or companies have automatic authorizations or "check-off" authorizations in the listing agreement. If such is the case, no separate form is required.)**

12. **OPEN HOUSE PROCEDURES:** The "how-to" of holding open houses, etc., is covered elsewhere in SSS, REALTORS<sup>®</sup>, training programs and manuals. However, SSS, REALTORS<sup>®</sup> maintains a policy that owners be informed of their responsibilities in consenting to open houses. Agents must strongly recommend to owners that they take common sense precautions with any valuables in the house during the time of the open house. This includes removal of all jewelry boxes, collectibles of value, (sentimental or dollar value), small audio or video equipment or other items which may be of value. Owners should also be informed that their homeowner's insurance company is the responsible party for any losses on an open house.

As in all other areas, an agent may not act carelessly or recklessly. If for no other reason, an agent must be diligent in conducting an open house to maintain good business relations and rapport with the owner.

13. **INTERNAL VERIFICATION PROCEDURES:** SSS, REALTORS<sup>®</sup> maintains a system of checking and verifying both listing agreements and documents and sale contracts and documents for accuracy, enforceability and compliance with the Real Estate License Act and the rules issued pursuant to the Act. **(NOTE: The Company should insert its specific procedure for dealing with this item. Options include the managing broker or a central person verifying the files.)** Each agent is expected to cooperate fully and promptly with any requests for verification, further information or correction of any oversights in the documents.

For other related policies, see the section on Risk Reduction Policies.

## **BUYER QUALIFICATION POLICY**

When acting as an agent of the buyer, qualifying the buyer is a critical step in completing a property transaction. SSS, REALTORS® strongly recommends that each agent become knowledgeable through company training and offered continuing education programs about properly qualifying a buyer as to her/his financial ability to purchase a property. Financial qualification has two major parts, as follows.

### **1. LOAN QUALIFICATION**

If working as an agent of the buyer, the agent has duty to act diligently for her/his client. In this case, the client is the buyer. The buyer client has a right to expect that the agent will diligently determine whether a buyer can qualify to purchase a certain type of property. These, steps may include:

- a. Completion of a financial qualification form. This form should be in sufficient detail and sufficiently accurate that the buyer is reasonably sure of qualification. If an agent is not sure of her/his level of skill to complete such a form, the agent should get further education and training and immediately call a sales manager or lender to assist.
- b. Consultation with the buyer and a lender to determine financial ability to qualify for a loan and the amount of the loan.

Remember, that if you are working as a disclosed dual agent of the seller and the buyer your qualification of the buyer will benefit both clients but that you must keep confidential information of each client to yourself.

## 2. ESTIMATED CLOSING COSTS

The second type of financial qualification which accompanies loan qualification (and in many cases is a part of loan qualification) is estimating closing costs. Duties exist to diligently and accurately estimate closing costs. SSS, REALTORS® has a policy of strongly encouraging its agents to become educated through company and/or board/association training and education about estimating closing costs.

Do not use rules of thumb such as 2-5% of the purchase price. The spread of costs is too great in such estimates to be sufficiently accurate. For a first time buyer with little cash, a one-half percent difference in closing costs can mean the difference between purchasing and not purchasing.

Do not use computerized closing cost estimating programs unless previously approved and authorized by SSS, REALTORS®. The programs may or may not take local costs and variations into account. In addition, the programs which allow for local costs may require that the agent input the costs. If the agent desires to use such a program, management of SSS, REALTORS® will approve its use and review the local costs being input.

Lender closing costs are generally reviewed in loan qualification procedures. One note of caution is in order. Some lenders unbundle services and charge for each service. These so-called "extra" costs are in addition to origination fees and points. They may include charges for "processing fee", "underwriting fee", "lender's closing fee" (apart from title company closing fee), "notary fees", "document preparation fee", "courier fee", etc., totaling \$500.00 or more on a single closing.

Whether representing a buyer or a seller, a lender should be asked what her/his "extra" fees are at the time closing costs are estimated and not at time of commitment or closing.

Although SSS, REALTORS® emphasizes accurately and diligently estimating closing costs, it is the policy of SSS, REALTORS® that we do not prepare final closing statements. The preparation of final closing statements may require contract interpretation and thus result in allegations of the unauthorized practice of law.

### 3. TYPES OF BUYER BROKERAGE AGREEMENTS

Some types of buyer brokerage agreements are listed below:

- Exclusive Buyer Brokerage Agreement
  - IAR Sample Form #338  
([http://www.illinoisrealtor.org/sites/illinoisrealtor.org/files/Forms/338a\\_secure.pdf](http://www.illinoisrealtor.org/sites/illinoisrealtor.org/files/Forms/338a_secure.pdf))
  
- Non-Exclusive Buyer Brokerage Agreement
  - Buyer reserves the right to try and find property on his own
  - IAR Sample Form #339  
(<http://www.illinoisrealtor.org/sites/illinoisrealtor.org/files/old/Member/memberservices/forms/339REVISED.pdf>)
  
- Terms of Non-Exclusive Buyer Representation
  - Not a contract at all but describes duties and expectations of buyer broker, sponsoring broker and buyer
  - IAR Sample Form #341  
([http://www.illinoisrealtor.org/sites/illinoisrealtor.org/files/Forms/341\\_secure.pdf](http://www.illinoisrealtor.org/sites/illinoisrealtor.org/files/Forms/341_secure.pdf))

## SALE CONTRACT POLICY

### 1. SALE CONTRACT COMPLETION

As a member of the Safety First Board of REALTORS<sup>®</sup>, SSS, REALTORS<sup>®</sup> uses the standard contract form and riders available through the Association. The Illinois Supreme Court decision in Chicago Bar Association vs. Quinlan & Tyson and Article 13 of the REALTOR Code of Ethics govern an agent's conduct with respect to use of the form and the unauthorized practice of law. Based upon the Quinlan & Tyson decision the agent may only complete the contract form that is commonly used in the community with business or factual information. Beyond that, if the client wants to change the language of the contract provisions or add other than the standard form riders, the client must do so themselves or through their attorney. If the client has a question concerning the legal effect or impact of contract language they should be referred to their attorney. The agent may answer questions about the contract and riders based on their experience and what the customs and practices in the community may be. It is the policy of SSS, REALTORS<sup>®</sup> that no agent shall prepare or complete a legal document for a client or customer other than the standard sales contract form or standard riders to the contract.

### 2. SALE CONTRACT TERMS

Several areas of contract terms are traps creating risk for the unsuspecting agent. SSS, REALTORS<sup>®</sup> maintains policies regarding these areas to reduce risk and heighten awareness. These are covered below.

- a. **EARNEST MONEY:** Several concerns regarding earnest money are involved. First is the "how much" issue. The Company cannot maintain a policy which requires any specific amount of earnest money as the company and agent are not parties to the contract. However, if you represent the seller, the advice to the seller will be that sufficient earnest money is very important in that it shows how "earnest" a buyer is. The company has seen many cases where low earnest money (1-2% of offer price or less) has resulted in a buyer simply defaulting on the contract and forfeiting the low amount of earnest money, banking on the fact that it is unlikely that a seller would sue. There have also been many cases where sufficient earnest money (4-7% of the offer price or more) has kept an anxious buyer in a contract to closing because of the prospect of losing a substantial amount of earnest money.

If you represent the buyer, the classic approach to buyer representation might suggest to provide the lowest possible earnest money in every case. However, the agent is cautioned that this may not serve the best interests of the buyer in all cases. For example, because earnest money indicates how "earnest" a buyer is, or how "strong" an offer is, a buyer may be at a competitive disadvantage if low earnest money is offered in a situation where the buyer's offer is competing with one or more other offers. As in all other situations, if you represent the buyer, your job is to give the buyer the best of the agent's and company's expertise, advice and talent which may include advice which on first impression does not follow the "typical" rules.

A second earnest money issue deals with what can be accepted as earnest money. Illinois rules define "escrow moneys" which includes earnest money, as "all moneys, promissory notes or any other type or manner of legal tender or financial consideration..."

The policy of SSS, REALTORS<sup>®</sup> is that only cash, checks or money orders are accepted as earnest money without further permission from the parties. The company's policy regarding the rule is that items such as postdated checks are not acceptable. The company will not hold checks even if postdated. Any money given to SSS, REALTORS<sup>®</sup> will be deposited to the Company escrow account immediately upon an accepted contract and not later than the next business day after acceptance as provided for in the License Law rules. Agents must promptly transmit funds to the broker for deposit.

A corollary issue occasionally arises regarding acceptance of a credit card or line of credit check (Visa, MasterCard, American Express, home equity loan). While it is arguable that these "checks" are negotiable, SSS, REALTORS<sup>®</sup> takes a conservative position regarding these instruments and strongly discourages their use. The primary reason for this policy regards the difficulty in determining whether this instrument has "cleared". There is no easy way to determine whether the line of credit has been exhausted or overdrawn and upon presentation, will be rejected. In addition, a lender may require that such balances be paid off before loan approval or closing.

- b. **INCLUSIONS AND EXCLUSIONS:** As covered in the section on Accuracy of Listing Information, the contract is the primary method to determine what is being sold with the property. Do not rely on the listing agreement or listing information sheet as to the inclusions and exclusions in a transaction. These documents are not normally made a part of the contract.

This area is of great importance for risk reduction purposes. Personal property inclusions and exclusions cause a great number of the disputes in a sales contract and can be expensive for an unwary agent.

Some common problem areas the company is familiar with are as follows:

- (1) Loose laid carpet that resembles tacked down carpeting.
- (2) Draperies, curtains, window treatments, etc., especially as to which may be excluded (e.g. master bedroom draperies which match the bedspreads).
- (3) Stoves/ranges (check contract for inclusion in printed matter)
- (4) Portable dishwasher
- (5) Refrigerator (Even if built-in.)
- (6) Burglar alarms (Be sure to determine whether leased or owned and whether any continuing service fees apply.)
- (7) Outside mailbox and post (Typically "fancy" or ornate mailboxes and posts which a seller may want to remove.)
- (8) Swimming pool equipment and pool equipment.
- (9) Porch swing
- (10) Bathroom mirrors
- (11) Farm equipment
- (12) Riding lawn mower
- (13) Fireplace equipment and/or screen
- (14) Gas lights or BBQ's (Be sure to check whether these are paid off.)
- (15) Above ground pool
- (16) Hot tub or spa
- (17) Swag lights
- (18) Book shelves (Watch shelves where brackets are attached and wood shelves are not.)
- (19) Special shower heads
- (20) Playhouse/treehouse
- (21) Special or ornate door knockers
- (22) Water softener (Check whether leased or owned.)
- (23) Central vacuum equipment (hoses, nozzles, etc.)
- (24) Stained glass (Even though usually attached, can sometimes have sentimental value to seller who intends to remove.)
- (25) LP gas tanks (Check whether leased or owned.)
- (26) Fireplace logs
- (27) Ben Franklin stove
- (28) Solar or alternative energy systems
- (29) Fireplace inserts (May or may not be attached.)

- (30) Satellite dish and converter boxes/units.
- (31) Under counter appliances (Microwave, coffee maker, can opener, radio)
- (32) Basketball hoop
- (33) Garage door opener controls

This list certainly does not address all of the possible problems. For example, the company is also aware of a seller who removed a flagstone walk which was obviously attached to the property. Be aware of the potential hazards in this area and act with caution, making sure inclusions and exclusions are clear in the contract. Agents are cautioned not to use simple statements in the address section of the contracts stating "per MLS sheet" or "per MLS #XXXX." These create confusion as to what MLS sheet and when the MLS sheet was run. **(NOTE: If a company wants to allow its agents to use this type of format, buyer's counsel should be consulted for acceptable language to incorporate MLS information by reference.)**

- c. "AS-IS" CONTRACTS: Often, listings may be offered in "as-is" condition. This term is unclear, at best. The policy of SSS, REALTORS® is to refer the parties to legal counsel for acceptable language to memorialize the "as-is" agreement.

In addition, the Illinois Residential Real Property Disclosure Act is clear that an "as-is" sale does not relieve the seller of the obligation to accurately disclose all material facts of which he/she has knowledge relating to the physical condition of the property. Also, the fact that the parties agree to an "as-is" sale does not change the agent's disclosure obligations to answer the questions on the form completely to the best of their actual knowledge.

### 3. SALE CONTRACT NEGOTIATION

The techniques and principles of sale contract negotiation (the "how-to") are covered in the Company's and Board's training programs. Each agent is encouraged to take full advantage of these resources to improve her/his skill in this area vital to success in this business.

**(NOTE: If a company practices exclusive buyer agency and does not take listings, amend the sections on Presentation of Offers and Timing of Presentation to reflect the buyer as client and delete references to listings.)**

Aside from sale contract negotiation techniques, SSS, REALTORS® maintains policies which are directed to the legal and ethical aspects of contract negotiation. These are listed below.

#### a. PRESENTATION OF OFFERS

In accord with the Code of Ethics and License Law, SSS, REALTORS® requires the agent to present all offers to the seller until closing and all counter offers to the buyer, regardless of how many offers received and regardless of the order in which the offers were received. The only exception to this would be when the client has provided

direction to the contrary. If this is the case, make sure the client's direction is clearly set forth in writing. SSS, REALTORS® urges any agent involved in a multiple offer situation to contact management to review the proper procedures.

**(NOTE: An exclusive buyer agency company will not use either option and should delete these references. Otherwise, a company should establish its own procedures for dealing with multiple offers. The two options listed below are two typical options followed to minimize risk and offer a fair presentation to all parties. Neither the Code of Ethics nor the License Law and its rules require any specific method.)**

The Company will always be guided by lawful instructions of the client in any multiple offer situation. While the Company believes that these procedures protect the client, the client may choose to give the Company other lawful instructions. The agent should discuss with the client, whether seller or buyer, the customary procedures for handling multiple offers so that the client may determine whether the client wishes to give the agent or Company different instructions.

## **OPTION 1**

In the event of multiple offers on one property, SSS, REALTORS® follows a policy of notifying all offers that his/her offer is in competition with other offers as well as giving that person the opportunity to change the offer. The notification shall take place only after multiple offers actually exist and not when the listing agent may have knowledge of other offers being written or possibly being written.

An exception to this policy exists if the seller has a currently effective counter offer in possession of a buyer. In that event, the agent will not disclose the competition to the second or later offeror until the seller has had the opportunity to examine the second offer. This gives the seller the ability to determine whether he/she desires to revoke her/his counter offer to the first offeror to negotiate with the second offeror.

The agent should not reveal any terms of the offer to any other party including expiration time of the offer, price, closing dates, earnest money amounts, financing types, amounts or dates or other terms.

## **OPTION 2**

In the event of multiple offers on one property, SSS, REALTORS® follows a policy of silence to all offerors as to whether other offers are in existence. SSS, REALTORS® believes that each offeror has the opportunity to put his/her "best foot forward" in making the offer.

**(NOTE: The balance applies to all companies regardless of which option was chosen.)**

If another agent, whether from SSS, REALTORS® or another company, asks the listing agent to "let me know if another offer comes in", SSS, REALTORS® has a general policy of not acknowledging such requests. If other offers come in, the agent should advise the client that inquiries of this nature have been made and ask the client whether those requests should be followed up.

If multiple offers exist and the listing agent has written one of those offers, the policy of SSS, REALTORS® in such circumstance is that the listing agent may not present any of the offers. In this case, a sales manager or broker (or other SSS, REALTORS® agent if management is not available) must be asked to present the multiple offers.

If a listing agent has already presented an offer from another agent and a customer or client of the listing agent asks to write a competitive offer, the policy of SSS, REALTORS<sup>®</sup> is that the listing agent must ask the sales manager, broker or other SSS, REALTORS<sup>®</sup> agent to write the offer for the listing agent's prospective buyer. The listing agent's prior knowledge of the first offer could be seen as influential or biased if the listing agent's prospective buyer should be successful in negotiations.

In general, whenever the listing agent has knowledge of an offer presented, or could use information he/she has to the detriment of one of the competing parties, SSS, REALTORS<sup>®</sup> strongly recommends that a third party agent, such as a manager, broker or other agent, be appointed to assist in the negotiations.

A final issue regarding presentation of offers regards whether an oral offer must be presented. The REALTOR Code of Ethics and Illinois law require that, unless otherwise directed by the Seller, all offers be presented to the seller.

In accord with agency obligations of disclosure and loyalty and in the spirit of the Code, SSS, REALTORS<sup>®</sup> has a policy of giving the seller client all material and relevant information of which the agent has knowledge. In accord with this policy, if a buyer insists on an oral offer, the company believes that the seller is entitled to that information.

The Company recognizes that such an oral contract is unenforceable under the laws of Illinois. However, it is prudent to tell the seller what the agent knows, that is, an oral offer was made by this party and it is unknown whether the party will ultimately be willing to commit the offer to writing. At this point, a seller may choose to make a written offer to sell and thereby initiate the contract process him/herself.

- b. **TIMING OF PRESENTATION:** SSS, REALTORS® also strongly supports and maintains a policy to present all offers and counter offers as quickly as possible. The REALTOR Code of Ethics and License Law provide the standards in this area. License Law uses the term "timely" as to tendering offers and counter offers and the Code states offers must be submitted "as quickly as possible."

The policy of SSS, REALTORS® is that these terms are to be interpreted to mean "immediately" or "as soon as reasonably possible". As an example, a listing agent's receipt of an offer should immediately generate a telephone call to the owner to determine when the seller is available for presentation of the offer. Once contacted, the seller can then instruct the listing agent as to when to present the offer. The critical point is that SSS, REALTORS® believes that the listing agent **MUST** make a diligent effort to contact the seller immediately upon receipt of the offer - not an hour later, not when the agent finishes lunch, not after the agent shows property.

In the case of a buyer agency, the same principles apply with equal weight. The buyer is the client and must be treated with the same high levels of professionalism as a seller who is a client. Section 15-15(b) of the Real Estate License Act provides that if you are making contemporaneous offers on behalf of two prospective buyers in the same property that written disclosure needs to be given to the buyers who then have an option to proceed with their designated agent or be referred to another designated agent. These same principles should be adhered to even in the case of a buyer who is a customer and not a client. License Law and the Code of Ethics do not premise delivery of any counter offer to the buyer upon whether there is an agent-client relationship.

This is an extremely simple yet very important risk reduction technique. Every SSS, REALTORS® agent should consider this of prime importance. The obvious danger in not taking this issue seriously is that the offeree can revoke/withdraw her/his offer at any time prior to delivery of a valid acceptance. SSS, REALTORS® does not want to be in a position of defending an action where an offer was withdrawn before a seller was contacted or diligent efforts to contact the seller were not made.

These issues are common, daily events which the agent should learn to handle with skill and ease. The agent's ability to understand and deal with these issues will act as a significant risk reduction method and contribute to an agent's successful practice of the real estate business.

## ADVERTISING POLICY

**(NOTE: A company which practices exclusive buyer agency or does not accept listings should delete references to listings. However, several other sections are appropriate, especially those regarding salesperson advertising.)**

The specific procedures for advertising properties with SSS, REALTORS® are found in other training materials. These procedures, such as where and when properties are advertised are subject to change. The policies stated here primarily regard the legal and risk reduction aspects of advertising.

The following policies apply to all property listed with SSS, REALTORS®.

1. SSS, REALTORS® adheres strictly to the Illinois License Law and rules regarding advertising.
2. No property will be advertised in any way, including placing a sign on the property without a signed written listing agreement on file with the broker (managing broker). The listing agreement in the hands of the agent is not sufficient. If a listing agent has a listing he/she wants to advertise, the original, a fax, or electronic version of the original must be in the hands of the managing broker.
3. One party listing agreements (also called "one-time listings") will not be discussed, orally or in writing, with any person outside of SSS, REALTORS® agents unless a signed one party listing agreement is obtained.
4. A listing which is due to expire by the publication date of a newspaper or magazine ad will not be inserted into the ad unless a written extension of the listing is received by the managing broker before the deadline for placing the ad.
5. No price changes or other substantive changes to the listing will be advertised unless a written change of the price or other appropriate information is received by the managing broker before the deadline for placing the ad.
6. Information on features of the property will not be advertised as "new" unless substantiated by written receipts or other evidence of payment from the owner showing the date the work was done. If the verification is received, it will be advertised with the appropriate date. If the verification is not received, the listing agent must use other words such as "newer" or "recent" to describe the feature.

Agents should take special care to follow these same rules in the use of "special feature" sheets. If an agent does not follow this policy regarding any information sheets or other documentation/advertising the agent prepares, the agent will be solely liable for any errors or omissions which later cause any losses.

7. "For Sale" signs and lock boxes will be removed immediately upon request of the owner or expiration or withdrawal of a listing.
8. According to the REALTOR Code of Ethics, prior to closing, only the sold sign of the listing broker is allowed on the listing, unless the listing agent consents otherwise. It is the policy of SSS, REALTORS<sup>®</sup> that the seller's permission must also be obtained. It is also the policy of SSS, REALTORS<sup>®</sup> that if the company is the cooperating broker a sold sign may be placed at the property after the closing with the written permission of the buyer. Per the Code of Ethics, either the listing broker or the cooperating broker may claim to have sold the property in advertising and representations to the public.
9. Personal advertising by individual agents is encouraged. Any personal advertising must be approved by the managing broker. Illinois License Law and rules require that the sponsored licensee include the company name if the sponsored licensee's name is used. This policy covers all types of licensee advertising, including personal sign riders, business cards, car signs, homes magazine ads, classified ads, direct mail solicitations, specialty items (key chains, pens, pads, etc.), newsletters, farming materials, neighborhood newsletters, billboards, Internet advertising, etc. This list does not include all possible types of licensee advertising. One possible problem may exist in the use of a licensee's first name only in advertising. While the rules do not specifically address this issue, SSS, REALTORS<sup>®</sup> believes that the rule's and Code's use of the term the licensee's "name" means the full name of the person and not just a first name, initials, or a first name with last initial. Without the full name, the public cannot identify the person doing the advertising. Use of first names, initials, or first name with last initial only in licensee advertising is not allowed.
10. The managing broker designated as such by the sponsoring broker with DFPR may use that term in advertising of any kind. A managing broker designated as such with DFPR must use the term "managing broker" in all advertising except broker yard signs.
11. Any advertising containing financial terms of the offering must comply with federal Truth-in-Lending laws, also known as Regulation Z. Regulation Z requires that all of the terms of the financing be stated if any of the "triggering terms" are used. "Triggering terms" are terms such as the amount of down payment ("10% down"), the amount of any payment ("Only \$550 per month"), the period of repayment ("30 year loan available") or the number of payments ("Only 48 monthly payments").

If any of these terms are used, the following disclosures are required:

- a. Amount or percentage of down payment.
- b. Terms of repayment.
- c. Annual Percentage Rate, stated and calculated as such.

Use of any interest rate in advertising is not allowed. Only the Annual Percentage Rate, stated and calculated as such is allowed. Therefore, a property cannot be advertised as having a "7% assumable VA loan."

Not all terms trigger Regulation Z disclosure. Some examples of terms which can be used without triggering Regulation Z disclosure are "No down payment", "Financing Available" or "Special Financing", "Assumable Loan".

12. The Internet or some other form of electronic advertising may be used for advertising purposes. Keep in mind that all advertising rules and regulations apply to any material that a consumer might reach that is not behind any "firewall" or in a password protected area. In other words, anything not protected by password entry is advertising. As a result, the company name must be included and information must be accurate and timely. On the other side of the "firewall" or after a consumer enters a password protected area, the agent should follow brokerage relationship procedures outlined in this Manual starting on page 14.
13. Commercial e-mail messages are also governed by the Federal CAN-SPAM Act. For CAN-SPAM requirements see Attachment A to this Manual.
14. See the Social Media section in this Manual regarding Advertising and the use of social media in accordance with this Company's policies.

## **RISK REDUCTION**

SSS, REALTORS<sup>®</sup> advocates and encourages the concept of risk reduction. The strong majority of claims filed against real estate agents and brokers allege some misrepresentation or fraud. The trend of the law in the real estate industry is for more and more disclosure. Accordingly, SSS, REALTORS<sup>®</sup> has the following policies regarding risk reduction and disclosure.

1. **COMPLIANCE WITH ALL LAWS, RULES AND REGULATIONS:** As an agent of SSS, REALTORS<sup>®</sup>, each person assumes the obligation of strict compliance with all laws, rules and regulations which govern real estate licensees in the State of Illinois.
2. **COMPLIANCE WITH THIS POLICY MANUAL:** As an agent of SSS, REALTORS<sup>®</sup>, each person agrees to comply with all policies as stated in this manual and its additions, changes and amendments as from time to time published by management of the company. Failure to comply with the policies herein subject the agent or staff member to disciplinary action which may include termination of association with the company.
3. **PHYSICAL CONDITION OF THE PROPERTY:** In accord with the REALTOR Code of Ethics, the Illinois Real Estate License Act, the License Law rules and Illinois common law, the policy of SSS, REALTORS<sup>®</sup> is to disclose to all appropriate parties any known material physical conditions or defects of a property which are latent or not

readily observable. This applies whether SSS, REALTORS® is the listing agent, or buyer's agent.

Physical conditions on the property may include water in the basement, foundation cracks, drainage problems, defects in any of the major systems of the property (electrical, plumbing, heating, cooling), environmental conditions on or near the property, roof problems, etc.

4. PSYCHOLOGICAL "STIGMAS" ON THE PROPERTY: These include whether a homicide or other felony, or a suicide occurred on the premises or if an occupant or former occupant of the real property has or had AIDS or any HIV positive condition. The "psychological impact" statute in Illinois provides that no cause of action may be brought against a real estate agent or broker for failure to disclose to a buyer or other transferee of real property that the real property was a psychologically impacted real property. Although this statute protects an agent for failure to make a disclosure, it does not prohibit disclosure. Likewise, the Code of Ethics does not require disclosure in situations where state law defines these factors as not material. (As mentioned above, Illinois statutes do provide that these facts are not material.)

The 1988 amendment to the Fair Housing Act includes a person with AIDS, HIV, or other related illness as a handicapped person. The Act likely prohibits an agent or broker from disclosing that the occupant or the former occupant of a dwelling suffered or suffers from AIDS. Therefore, it is the policy of SSS, REALTORS® that an agent should not make an unsolicited comment that the current or former occupant has or had AIDS. Further, if an inquiry is made by the buyer as to whether the occupant has AIDS, the agent shall not respond to such a question. The agent should state to the effect "it is the policy of SSS, REALTORS® not to answer that type of question one way or the other since it is not material and may violate the Fair Housing Act." If the buyer persists, the agent shall state, "if that information is important to you, you must determine that information for yourself."

Because of the practical problems of the inevitable "disclosure" of these factors (often by the neighbors), the policy of SSS, REALTORS® is to discuss with the seller-client the inevitability of this disclosure and to recommend disclosure of psychological factors other than AIDS, HIV, or related illnesses that may have an impact on a purchaser's decision to buy. Recent violent crimes or suicides are specific examples of such events. If, after this discussion, the seller-client instructs the company not to disclose these factors, the company will comply with such request and rely on the protection of the Illinois statute or after consultation between the managing broker and the agent to terminate the listing agreement.

If an agent of the company represents the buyer and has knowledge about a stigma that does not relate to an HIV/AIDS situation, the buyer's agent should disclose the information to the buyer client in serving the buyer client's best interest. The agent

should have actual knowledge. Also, buyers can be directed to the Illinois State Police website for a list of registered sex offenders.

5. DOCUMENTATION OF DISCLOSURE: As is apparent, SSS, REALTORS® advocates full disclosure in appropriate circumstances. However, all the disclosure in the world does no good if it cannot be proven. While it would be ideal to have every single disclosure as to every material item disclosed to the parties in writing with their acknowledgment of the disclosure, such is not usually possible.

It is the policy of SSS, REALTORS® that a copy of the Residential Real Property Disclosure Report be put in each file. In addition, the agent should document in his/her own personal notes and files each item which is disclosed in a transaction.

This simple policy can reduce risk and potentially save many thousands of dollars. It assumes that the agent has a regular, systematized method of organizing and keeping files. This is vitally important to a good documentation procedure.

**(NOTE: If a company does not provide a record keeping system for each transaction, the following paragraph should be deleted. However, companies are strongly urged to consider adopting some type of standardized record keeping system for each agent to use in each transaction as a significant risk reduction tool.)**

While the Company does not require an agent to use any one method, it does provide standardized files/folders/envelopes for agents to use in each transaction. Agents are strongly encouraged to use this organization system as it has been developed to keep track of details, act as a transaction checklist and risk reduction method.

Disclosure is great, but documentation of the disclosure is the glue that seals the cracks.

6. USE OF EXPERTS & "RECOMMENDATIONS": SSS, REALTORS® maintains a strong policy that an agent not go beyond her/his area of expertise regarding a transaction. The company strongly recommends that an agent advise the use of an expert in situations where appropriate, including the use of an attorney by a client. For example, if questions arise with a buyer about the adequacy of the electrical system, the agent should advise that a building inspector, engineer or licensed electrician be consulted.

However, an equally strong policy exists in **NOT** recommending any particular inspector, engineer, electrician or other expert. While advising that **AN** expert be used is a good risk reduction technique, the benefits of this technique may be lost if a specific expert is recommended. Recommendation of a specific expert could lead to liability if the expert fails to do his/her job and the agent was negligent in recommending that person.

The policy of SSS, REALTORS® is to give the names of three experts in each field whenever asked for a recommendation. Do not fall into the trap of responding to a

customer/client saying "Yeah, but which one do you really recommend?" The agent should be firm in having the customer/client make the choice.

Some agents have found a helpful tool in keeping several sample reports from various building/mechanical inspectors, engineers, roofers, etc. When the customer/client asks for a recommendation, the agent gives the customer/client the samples and suggests that they choose the style and cost of the expert which fits their style and needs the best.

A related issue is ordering the report. The policy of SSS, REALTORS<sup>®</sup> is that the agent should not order the report if at all possible. The Company recognizes that certain situations require the agent to place the order, but, in general, the agent should have the customer/client place the order. This removes the Company and agent from any involvement in the selection process and reduces the liability of possible negligence in "recommendation" of an expert.

7. TRAINING: As stated in other parts of this manual, training and education are integral parts of any risk reduction and professionalism program. All agents are expected to complete the company's initial training program and are strongly encouraged to take advantage of company, board and association education programs.
8. USE OF LEGAL COUNSEL: Whenever an agent believes she/he requires legal assistance, the managing broker should be contacted. The company has legal counsel for appropriate legal questions and problems. In addition, the Illinois Association of REALTORS<sup>®</sup> provides a free Legal Hotline for legal educational information for those registered by the company or the designated broker. The earlier a legal question or problem is brought to the attention of management, the earlier the problem can be solved. The Company's position is that wisely spent legal fees early in a problem can save many thousands of dollars if a formal complaint or lawsuit arises.
9. ERRORS AND OMISSIONS INSURANCE:

**(NOTE: If a company does not carry errors and omissions insurance, delete this paragraph. All companies should strongly consider purchasing some minimal amount of coverage. At the least, this can serve to prove a company's track record for a later purchase of more insurance. If the company does not carry the insurance, it is strongly suggested that Option 2 be adopted.)**

#### **Option 1:**

SSS, REALTORS<sup>®</sup> carries errors and omissions insurance in the amount of \$ \_\_\_\_\_ with a deductible of \$ \_\_\_\_\_ **(NOTE: Fill in the appropriate amounts of your policy.)** All agents and staff of the Company are covered by the policy. The policy is paid by **(NOTE: The company should insert here the method of payment for the policy, whether by the Company, on a cost sharing basis with the agents, by the agents or some other arrangement.)**

Errors and omissions insurance generally covers the negligent acts of the insured. It does not cover all possible damages for which the Company could be liable. For example, no errors and omissions insurance covers punitive damages or managing or selling properties you own. For other exceptions, contact the managing broker for a copy of the policy.

Errors and omissions insurance does cover defense costs, that is, the legal fees involved in defending a claim against the Company or agent subject to any pertinent deductible. This is very valuable coverage.

The policy of SSS, REALTORS® is that each agent must notify the managing broker as soon as the agent is aware of a possible claim against the agent/broker. "Possible claim" means the potential of a disagreement which could lead to a lawsuit against the Company or agent. It is only in this way that the Company can properly invoke the errors and omissions coverage, if necessary.

## **Option 2:**

While the Company does not carry errors and omissions coverage, each agent should consider doing so. Such individual coverage is available through a program sponsored by the Illinois Association of REALTORS® and underwritten by CNA (as well as from other carriers). The agent should contact the broker (sales manager) for details on securing such coverage.

Errors and omissions insurance generally covers the negligent acts of the insured. It does not cover all possible damages for which the agent could be liable. For example, no errors and omissions insurance covers punitive damages or managing or selling properties you own.

Errors and omissions insurance does cover defense costs, that is, the legal fees involved in defending a claim against the company or agent, subject to any pertinent deductible. This is very valuable coverage.

The policy of SSS, REALTORS® is that each agent must notify the broker (sales manager) as soon as the agent is aware of a possible claim against the agent/broker. "Possible claim" means the potential of a disagreement which could lead to a lawsuit against the Company or agent. It is only in this way that the Company can properly defend itself against the possible claim.

10. COMPLAINT HANDLING PROCEDURES: One of the simplest and most cost effective risk reduction methods is a good complaint handling process. Accordingly, SSS, REALTORS® establishes the following procedures for handling complaints.
- a. If the complaint comes to an agent involved in a transaction, the agent will initially be the primary contact person to handle the complaint with management assistance. At a minimum, the agent should immediately notify the managing broker of the complaint. The managing broker will then make a determination as to whether the agent should continue to handle the complaint or whether the complaint should be handled by a designated management representative.
  - b. If the complaint comes in without specifying an agent, the managing broker will handle the complaint. If a specific management person is requested (such as "I want to speak to the President!"), the person answering the call should courteously direct the call to the requested person, if available, or the broker (sales manager) in the requested person's absence. The caller should **ALWAYS** be assisted in some way. The person taking the call should not say "Oh, she isn't here right now." or "You'll have to call him later." or "Please call her office." It is very important to handle an aggravated or upset caller with the utmost courtesy and care.
  - c. Whoever takes the complaint, the key factor in handling the call is to LISTEN to the caller's complaint. The most appropriate and helpful thing the call handler can do is give the person filing the complaint a full and fair airing of his/her grievance. Many times, simple listening to the complaint does much to alleviate the caller's frustration. Sometimes, being listened to is all the person really wants. ACTIVE LISTENING is critical.
  - d. Usually, the most successful way to handle the initial complaint call is to validate the caller's concerns. In general, it is best not to challenge the caller or become defensive. GET THE FACTS!! Simply try to get all necessary information from the caller's perspective, even if the complaint handler knows it may not be 100% accurate. Remember to document the conversation in writing. Make notes or write a memo about the conversation as soon as possible.
  - e. Usually the call can be ended by assuring the caller that the matter will be investigated. The complaint handler should tell the caller what he/she can expect. For example, "Mr. Smith, I would hope you understand that I need to do some research. I will look into the matter, discuss it with Suzie and get back to you by Tuesday." The caller should always be told what the complaint handler will do and by when. **THEN DO IT!!**

## SOCIAL MEDIA

### (Governing the use of e-mail, Internet and Social Networking Tools)

SSS, REALTORS<sup>®</sup> (Company) policy is that Company owned computers and Company provided access to e-mail and the Internet are to be used principally for business purposes. **(Personal use of agents'/employees' own equipment and access secured on your own are covered by this policy when used for business purposes. When using your personal equipment and access secured on your own remember that you are always licensed and thus subject to regulation whenever you are discussing your business, even when using personal e-mail, the Internet or social networking tools.)** The Company recognizes that limited personal use of e-mail, the Internet, and social networking tools (such as Facebook<sup>®</sup>, Twitter<sup>®</sup>, Linked In<sup>®</sup>, You Tube, Pinterest or "blogging") can be a benefit to agents, employees and other authorized users.

The use of technology in our business is changing at a very rapid pace. Therefore, this policy will not only provide guidance with regard to the use of the Internet, e-mail and social networking tools in the businesses of agents/employees of the Company but also general principles to be followed in using future technologies and communication. Note that this policy applies when agents/employees are using e-mail, the Internet, and social networking in an effort to advance their real estate brokerage business while using Company, personal or a third party's equipment. The Company directs its agents/employees to follow the basic limits listed below; along with more specific requirements outlined in this chapter of the Policy Manual.

#### General Requirements

1. Agents/employees must take care to protect their client's confidential information at all times. This includes in the agent/employee's use of the Internet, certain e-mail messages and social networking tools.
2. Agents/employees must be courteous and professional at all times, especially when representing the Company. This includes the agents/employees' use of the Internet, e-mail and social networking tools. Agents/employees shall not make defamatory or derogatory remarks about others in their electronic communications. They will not engage in gossip, rumor-spreading, "cyber-bullying" or any similar behavior.
3. Agents/employees must take care to be truthful when advertising or making other representations. This includes those statements made or advertising placed through use of e-mail, the Internet, your personal Website or social networking tools.
4. Agents/employees are encouraged to seek the advice of their managing broker or the Office Internet Consultant (identified on p. \_\_\_\_ ) if they have questions or

concerns regarding the use of the Internet, e-mail or social networking tools before publishing any information that could be questionable.

Use of the Internet, e-mail or social networking tools while at the office of the Company or on Company equipment.

Use of e-mail, the Internet and social networking tools by agents and employees is subject to the following guidelines:

1. Agents/employees may use e-mail, the Internet and social networking tools in connection with conducting their business on behalf of the Company.
2. Agents/employees may not use e-mail, the Internet or social networking tools for personal use except during break times, lunch time, and before and after normal working hours so as not to interfere with agents'/employees' duties for the Company.
3. Agents/employees may not use e-mail, the Internet or social networking tools for non-work related private business.
4. Agents/employees may not use e-mail, the Internet or social networking tools to participate in football, basketball or other sports pools or leagues, or to gamble.
5. Agents/employees may not use e-mail, the Internet or social networking tools to conduct political activities (unless expressly authorized to do so as part of agent's/employee's duties to the Company).
6. Agents/employees may not use e-mail, the Internet or social networking tools to visit any pornographic sites.
7. Agents/employees should not use e-mail, the Internet or social networking tools to discuss the business policies or practices of the Company with any person outside the Company without first clearing that with your managing broker. Agents/employees may discuss policies/practices of the Company with a client or prospective client, but only through "private" e-mail and not through the use of social networking tools.
8. Agents/employees may not use e-mail, the Internet or social networking tools to transmit any defamatory, offensive, harassing, disruptive, or derogatory statements or images; or statements or images that offend on the basis of race, religion, ethnicity or national origin, sexual orientation, political beliefs or disabilities.
9. Agents/employees may not use e-mail, the Internet or social networking tools to distribute chain letters, search for alternative employment, transmit jokes, or

participate in Internet discussion groups (unless such discussion groups relate directly to agent's/employee's job).

10. Agents/employees may not use e-mail, the Internet or social networking tools in any manner that may impair the Company's reputation or public standing, or that is prohibited by law or otherwise illegal.
11. Agents/employees may not use e-mail, the Internet or social networking tools to upload, download or transmit, without the Company's managing broker's permission, copyrighted, trademarked or patented materials, trade secrets, or confidential, proprietary or private information or materials, except to the extent that they are used by an agent/employee in connection with a transaction.
12. Agents/employees should not use e-mail or social networking tools in any manner that would advocate that the Company adopt or that would indicate that the Company has a position or policy in place that is anticompetitive or which would otherwise violate state or federal antitrust laws.

The Company reserves the right to monitor, access, retrieve, read and (for legitimate business purposes) disclose all communications by or to agent/employee with or without notice to agent or employee. Accordingly, agents/employees have no right to or expectation of privacy in the use of e-mail, the Internet or social networking tools on equipment owned by the Company. The Company has no obligation to ensure against authorized access to your e-mail or Internet use.

### Advertising

1. When agents/employees are advertising properties using e-mail, the Internet or social networking tools they shall abide by all provisions contained in the Illinois License Law, its rules, and the REALTOR® Code of Ethics. Examples are including the Company name and information that makes the message truthful and complete in all advertising.
2. Agents/employees will comply with Federal CAN-SPAM requirements when using e-mail, the Internet or social networking tools to transmit electronic commercial messages. (See Attachment A of this manual for CAN-SPAM compliance requirements).
3. Agents/employees will not use deceptive key words, meta tags or other devices to deceptively drive traffic to an Internet site.
4. Agents/employees will make sure that all advertising information given via e-mail, the Internet or social networking tools is current and accurate. Information should be checked at least every 18 days for accuracy and freshness.
5. Agents/employees will comply with all Fair Housing laws or regulations (federal,

state, local and ethical) when using e-mail, the Internet or social networking tools in their businesses. (See p. 18 of this manual for fair housing policy).

6. Agents/employees will discuss with client(s) the advertising/marketing to be done on their behalf including the use of e-mails, the Internet and social networking tools to market properties. Agents/employees must note if there is any objection to marketing via use of these methods and if so, avoid such marketing methods.

### Collection of Information

1. Agents/employees may not collect consumer information through the use of e-mail, the Internet or social networking tools unless the agent/employee:
  - Tells the consumer they are doing so;
  - Tells the consumer what they will be doing with the information gathered; and,
  - Tells the consumer how they are protecting the information.

### E-mailing

1. Agents/employees are required to follow the provisions set forth in Section 1450.720 in the Administrative Rules under the License Law as from time to time amended.
2. Agents/employees are also required to follow the provisions set forth in the federal CAN-SPAM Act as from time to time amended.
3. Agents/employees should make sure they double-check any text they are sending or posting via e-mail and to whom it is being sent before they hit the “send” button.
4. Agents/employees are required to print those e-mails that deal with specifics of a transaction or authorization to perform a service or task and to place those printed copies in the appropriate transaction files.

### Blogging

1. Agents/employees may participate in “blogging” in relation to their business as a real estate licensee so long as they follow all the policies and procedures set forth in this manual with regard to the use of e-mail, the Internet and social networking tools.

2. If agents/employees wish to establish a blog, they should contact their managing broker or the Office Internet Consultant identified on p. \_\_\_\_ of this manual. When establishing a blog, agents/employees should work with the Office Internet Consultant on posting “terms and conditions” that will apply to the blog.

### Copyright and Protected Information

1. Agents/employees shall not copy, frame or otherwise use information received or viewed through e-mail, the Internet, or social networking tools without the express written consent or other appropriate authority from the owner of the information. If permission is given with certain conditions then follow those conditions. Document the conditions when possible for your files.
2. Agents/employees must recognize that the Company owns the copyright to Company information contained on its web site or in other printed materials. Republishing or copying of this information for other than use in a transaction requires consent of the agent/employee’s managing broker (or the designated “Office Internet Consultant” identified on page \_\_\_\_ of this manual) so long as the information includes the following: copyrighted or © by SSS REALTORS®. If agents/employees have any questions about intended use or how to show the copyright, contact the managing broker or the Office Internet Consultant.

### Linking

1. Agents/employees shall review the content of any Internet site to which they might link. Agents/employees shall obtain the consent of the site owner before linking.
2. For any questions, the agent/employee should consult with the Company’s “Office Internet Consultant,” as identified on page \_\_\_\_\_ of this manual.

### Designated Office Internet Consultant

1. The Company designates \_\_\_\_\_ its Office Internet Consultant to whom all questions regarding the business use of e-mail, the Internet or social networking tools should be directed.
2. Agents/employees should contact the Office Internet Consultant to report suspected illegal, unethical or inappropriate use of e-mail, the Internet or social networking tools by other agents/employees.

## **RECORD RETENTION AND DESTRUCTION**

### **SCOPE**

This Record Retention and Destruction Policy applies to all records generated in the course of SSS, REALTORS® (the Company)'s operation, including original documents, reproductions, and electronic documents.

### **PURPOSE**

The purpose of this section is to ensure that that necessary records and documents of the Company are adequately protected and maintained and to ensure that records that are no longer needed by the Company or are of no value are discarded at the proper time. This policy is also intended for the purpose of aiding agents/employees of the Company in understanding their obligations in retaining electronic documents—including e-mail, Web files, text files, sound and movie files, PDF documents and all Microsoft Office or other formatted files.

1. The information that is covered in this section includes, but is not limited to, physical records of the Company, electronic documents of the Company, including but not limited to information that is either stored or shared via electronic mail or Instant Messaging technologies, Web files, text files, sound and movie files, PDF documents and all Microsoft Office or other formatted files.
2. All the Company agents and employees should familiarize themselves with the retention topic areas that follow this introduction.
3. This section is intended to supersede all existing document retention policies and ensure that retention and disposal practices are consistent throughout the Company.
4. This Policy is further intended to avoid or limit unnecessary accumulation of Email Messages, including attached documents and materials, that are not needed (or no longer needed) for business, regulatory or other reasons.
5. Federal and state laws require the Company to maintain certain types of records for particular periods. Failure to maintain such records could subject you and the Company to penalties and fines, obstruct justice, spoil legal evidence, and/or seriously harm the Company's position in litigation.
6. Unless you have been notified by the Company, if you believe that (1) such records are or could be relevant to any future litigation, (2) there is a dispute that could lead to litigation, or (3) you or the Company is a party to a lawsuit, you **MUST PRESERVE** such records until the Company's legal counsel determines that the records are no longer needed.

## **DEFINITIONS**

1. Retained Electronic Data (hereafter, Electronic Data): Any and all information, in whatever format, collected and/or stored by the Company. This includes, but is not limited to, demographic, financial, transactional, marketing and related information. This could include database records, web pages, emails, and voicemail to name a few. It does not include information not stored, for example live phone calls.
2. Metadata: Information about the Content, not the Content itself. For example, records relating to who placed a call to whom. That is, not the content of the call, but only the information about the call, like when it occurred and the parties numbers involved. Another example is records relating to web site visits. That is, not the content of those web sites, but data related to the access, when it took place, what Internet addresses were involved, etc.
3. Email Messages: Text documents which are created, stored, and delivered in an electronic format. As such, Email Messages are similar to other forms of communicated messages, such as correspondence, memoranda, and circular letters. For purposes of this Policy, all references to Email Messages shall include any corresponding attachments.
4. Contracts: Whether a hard copy or electronic, will include all purchase contracts, leases, listing or representation agreements with a seller or landlord and representation agreements with a buyer or tenant.

## **ADMINISTRATION**

Included in this section is a Record Retention Schedule that is approved as the initial maintenance, retention and disposal schedule for physical records of the Company and the retention and disposal of electronic documents. The managing broker is the employee of SSS, REALTORS® in charge of the administration of this policy and the implementation of processes and procedures to ensure that the Record Retention Schedule is followed. The managing broker is also authorized to: make modifications to the Record Retention Schedule from time to time to ensure that it is in compliance with local, state and federal laws and includes the appropriate document and record categories for the Company; monitor local, state and federal laws affecting record retention; annually review the record retention and disposal program; and monitor compliance with this Policy.

## **RETENTION REQUIREMENTS**

1. All Records and Electronic Documents must be maintained in accordance with applicable laws and regulations (and contractual provisions) governing record retention.
2. The Record Retention Periods (see the Record Retention Schedule) apply regardless of the record's medium or method of transmission; the content of the record determines how long the record will be maintained.
3. Employees are responsible for classifying records, including Email Messages they send or receive according to the content. The sender of the Email message is responsible for retaining the message or information, unless the Sender is outside the Company, in which case the recipient is responsible. The sender should use the subject lines on the Email Message to help both the sender and the recipient identify and file messages.
4. Agents/Employees should refer to the Record Retention Schedule for information concerning the minimum retention periods for specific types of documents.
5. Email messages should not be destroyed before the prescribed Email Retention Period has expired. Email messages shall not be retained for longer than the prescribed period without first contacting the managing broker. Agents/Employees should not selectively delete or discard Email Messages or other electronically transmitted or stored documents that would normally be retained for a longer period of time because they believe that the documents might be harmful to any agent/employee or to the Company.
6. The Administrator will review the appropriateness of the retention periods periodically and recommend modifications, as necessary, to ensure regulatory compliance.
7. Any exceptions to this Policy may be made only after consultation with legal counsel. Any agent/employee who believes that circumstances warrant such a deviation should promptly contact his or her managing broker.

## **POLICY REVIEW**

This Policy will be reviewed every three years, or earlier as necessary to ensure conformity with the applicable laws and regulations.

## **REPORTING**

Concerns regarding adherence to this Policy in any given instance should be reported to the managing broker.

## **CONCLUSION**

SSS, REALTORS® is committed to strict compliance with all laws and ethical standards by all of its agents/employees. Any questions regarding issues raised by this section should be directed to the managing broker.

## RECORD RETENTION SCHEDULE

### TRANSACTIONAL RECORDS

Record Type	Retention Period
Sales or Transaction Records except Contracts	5 years
Contracts and Related Correspondence (including any proposal or direction that resulted in the contract and all other supportive documentation)	10 years after expiration or termination
Incident Reports and Claims (settlement cases)	7 years
All Required Disclosures	5 Years

### CORRESPONDENCE AND INTERNAL MEMORANDA

**General Principle:** Most correspondence and internal memoranda should be retained for the same period as the document they pertain to or support. For instance, a letter pertaining to a particular contract would be retained as long as the contract (10 years after expiration).

Correspondence or memoranda that do not pertain to documents having a prescribed retention period should generally be discarded sooner. These may be divided into two general categories:

1. Those pertaining to routine matters and having no significant, lasting consequences should be discarded **within two years**. Some examples include:
  - Routine letters and notes that require no acknowledgement or follow-up, such as notes of appreciation, congratulations, letters of transmittal, and plans for meetings.
  - Form letters that require no follow-up.
  - Letters of general inquiry and replies that complete a cycle of correspondence.
  - Letters or complaints requesting specific action that have no further value after changes are made or action taken (such as name or address change).
  - Other letters of inconsequential subject matter or that definitely close correspondence to which no further reference will be necessary.
  - Chronological correspondence files.

Please note that copies of interoffice correspondence and documents where a copy will be in the originating department file should be read and destroyed, unless that information provides reference to or direction to other documents that must be kept for traceability.

2. All correspondence in transaction files should be retained for 5 years.
3. Those pertaining to non-routine matters or having significant lasting consequences should generally be retained permanently.

## **ELECTRONIC DOCUMENTS**

1. **Electronic Mail.** Not all Email needs to be retained, depending on the subject matter. All of the Company's Email Message information is categorized, each with distinct retention guidelines:

- a. **Transactional Email Correspondence (inbox, sent mail) (5 years)**

Transactional Email Correspondence covers information (sent or received) that relates to client/customer interaction in a transaction. When direction is given or received in an email in regards to a transaction it needs to be placed in a transaction folder, electronic or hard copy, and should be retained for 5 years. The agent/ individual employee is responsible for Email retention of General Correspondence.

- b. **Ephemeral & Personal Email Correspondence (retain until read, destroy promptly)**

Ephemeral Email Correspondence is by far the largest category and includes personal Email messages, requests for recommendations or review, Email messages related to updates and status reports.

- c. **Instant Messages (5 years)**

When used as a form of business communication, Instant Messages (sent or received) create business records that are subject to all legal retention regulations of other formats, like Email messages or snail-mail correspondence.

- d. Email or Instant Messages can be printed to include a hard copy in the file in which case the electronic version can be deleted or can be retained electronically for the period indicated.

### **General Guidelines for Electronic Mail:**

- Staff and agents/employees of the Company will strive to keep all but an insignificant minority of their Email related to business issues.
  - Staff and agents/employees of the Company will not store or transfer Company-related Email on non-work-related computers except as necessary or appropriate for Company purposes.
  - Staff and agents/employees of the Company will take care not to send confidential/proprietary Company information to outside sources.
2. **Electronic Documents.** Including Microsoft Office Suite and PDF files. Retention also depends on the subject matter.
- **PDF Documents.** The length of time that a PDF file should be retained should be based upon the content of the file and the category under the various sections of this Policy. The maximum period that a PDF file should be retained is 10 years. PDF files the agent/employee deems vital to the performance of his or her job should be printed and stored in the agent/employee's workstation.
  - **Text/formatted files.** The Company will conduct annual reviews of all text/formatted files (e.g. Microsoft Word documents) and will delete all those it considers unnecessary or outdated. After five years, all text files will be deleted from the network and the staff/agent/employee's desktop/laptop. Text/formatted files the agent/employee deems vital to the performance of their job should be printed and stored in that person's workspace.

## DO NOT CALL

### General Statement

1. As you are probably aware, the Federal Trade Commission ("FTC") adopted regulations under the Federal Telephone Consumer Protection Act ("Act") adopting a national Do Not Call Registry ("DNC Registry"). The FTC and the Federal Communications Commission ("FCC") are charged with adopting rules to implement the Act and handling complaints concerning violations of the Act. This policy is adopted by SSS, REALTORS<sup>®</sup> to provide guidance for members of the Company in connection with compliance with the Act and the DNC Registry.
2. The policy of the Company is that the Company, all of its sponsored licensees, and any of its employees and representatives, will comply with the Act and DNC Registry.
3. The Company reserves the right to amend or modify this policy at any time as may be determined necessary by the Company.

### General Rule

1. Sponsored licensees of the Company, employees of the Company, and any other representatives of the Company shall not make any telephone calls to any telephone number listed on the DNC Registry or the Company Do Not Call List (“Company DNC”) (as explained below) unless one of the following exceptions applies:
  - (a) You are currently working with the consumer;
  - (b) Within the last 18 months you have represented the consumer in a real estate transaction;
  - (c) The consumer has made an inquiry concerning real estate brokerage services or inventory within the last three months;
  - (d) The consumer is a personal friend or acquaintance of the caller; or
  - (e) Written consent has been obtained from the consumer to call a specific number(s).
2. PLEASE BE AWARE THAT EVEN IF AN EXEMPTION APPLIES, INCLUDING CURRENTLY WORKING WITH A CONSUMER, THE CONSUMER CAN REQUEST EITHER ORALLY OR IN WRITING THAT THEY NOT BE CALLED AND THAT REQUEST MUST BE HONORED. FURTHER, THAT NUMBER MUST BE PLACED ON THE COMPANY DNC.
3. Do not make any calls to numbers listed on the Company DNC without written permission from the consumer to call that specific number.

#### **Access to DNC Registry and Company DNC**

1. (No sample language can be provided for this section as each brokerage company will need to establish its own desired method of allowing sponsored licensees, employees, or other representatives of the Brokerage Company to access the DNC Registry, or at least certain area codes, on the brokerage company’s website as well as the Company DNC on the website. Brokerage companies may come up with whatever options they believe are effective in making this information available to the sponsored licensees, employees, and other representatives of the company. In establishing the methodology for accessing these lists, the brokerage company must remember that the requirements to comply with the Act and the DNC Registry are entity requirements, that means requirements of the brokerage company, and are not specifically directed at the agents, employees, and representatives of the brokerage company.)
2. Any person making a call to a consumer whose telephone number is not on the DNC Registry and which consumer requests that they not be called again shall immediately report that request to \_\_\_\_\_ (fill in a name or procedure for relaying the request) for inclusion on the Company DNC.

3. If a consumer's name appears on the DNC Registry but they fall under one of the exemptions referred to above, and that person requests, either orally or in writing, that their number not be called again, that request must immediately be reported to \_\_\_\_\_ (fill in a name or procedure for relaying the request) for inclusion on the Company DNC.
4. Before making a call to a consumer, you should check with the DNC Registry and the Company DNC as provided for in this policy.
5. The DNC Registry will be updated quarterly, on the calendar quarter.
6. Phone numbers placed on the Company DNC will remain there for a period of five (5) years. The Company DNC will be updated at least every thirty (30) days.
7. The information on the DNC Registry and Company DNC shall not be sold, transferred, or used for any purpose other than determining whether a cold call or telemarketing call can be made to a specific telephone number.

### **Making Sales Calls**

1. No sales calls shall be made except in accordance with this policy.
2. If you will be making calls to consumers, you must:
  - (a) Disclose on every sales call your name, name of the Company, and the telephone number or address where you or the Company may be contacted.
  - (b) Describe the services you are offering.
  - (c) Make calls only after 8:00 a.m. and before 9:00 p.m. (local time at consumer's location).
  - (d) You may not misrepresent, harass, intimidate, annoy, or use obscene language in any such call.
3. The Company prohibits you from contracting with or using third party or outside calling services without first obtaining permission from the Company.
4. It is impermissible for any agent/employee of the Company to make calls using automated dialers and a pre-recorded message without the express written consent of the person being called.

### **Record-Keeping and Record Retention**

1. Documents containing the express written consent of the consumer to call specific numbers shall be retained in the Company's files. If you do not have a file with regards to a specific consumer, a copy of that consent shall be forwarded to \_\_\_\_\_ (fill in name or procedure for forwarding and retention of documentation).
2. Provide copies of any scripts that you may be using in telemarketing and cold calling to \_\_\_\_\_ (insert name).
3. If you are requested not to call a number, then follow up with written confirmation to \_\_\_\_\_ (name of appropriate party) of the request so the phone number can be placed on the Company DNC.
4. If a telephone number is inadvertently made to a consumer whose number appears on the DNC Registry and you are so advised of that during the telephone call, then prepare a written report to the administrator of the Company DNC advising them of that fact.

### **Questions**

1. Frequently asked questions and answers are available both on the websites of the Illinois Association of REALTORS®. Acquaint yourself with those questions and answers with regards to the making of calls under specific circumstances.
2. If you have other questions concerning the policy or compliance with this policy, consult with or direct your questions to \_\_\_\_\_ (name or position of person to contact within your Company).
3. If you have questions concerning access to the DNC Registry or the Company DNC, contact or direct your inquiries to \_\_\_\_\_ (name or position of person to contact within your Company).
4. Some common scenarios that you may be faced with and the Company policy on those scenarios are as follows:
  - (a) If a For Sale by Owner (FSBO) has their telephone number on the DNC Registry, then you should not be calling that consumer unless you have a bona fide buyer prospect for the subject property. In the course of the conversation, do not try to steer the conversation to issues regarding your listing of the property unless the owner makes inquiry concerning that possibility. If the FSBO requests not to be called in the future, then notice should be given to \_\_\_\_\_ (appropriate person) so that number can be placed on the Company DNC.
  - (b) Do not contact individuals who simply visit an open house of yours. If you wish to contact guests who come to an open house that you are conducting, you must include in the guest register a space allowing the guest to specifically indicate that they can be called and to indicate the phone number that can be called.

- (c) If you have a contact on your web site from a consumer, please ask them to specifically indicate whether they can be called and, if so, at what number. This can be accomplished by e-mail or by a point to click on your website.
- (d) If your cell phone indicates a call from an unknown number, do not call that number without checking the DNC Registry and the Company DNC except to indicate that your cell phone had indicated a call from that number and that you were responding to determine what was needed. If there is an indication that no assistance is required, then the call should be broken off at that point, without discussing your brokerage services or inventory.
- (e) (Other examples of company policies on particular fact situations can be added by your company in this area).

### **Responsibility**

1. The Act and the DNC Registry are entity based provisions. This means that the Company will generally be the party against which a complaint will be filed or a suit brought for violation of the Act, the DNC Registry or the Company DNC.
2. Fines under the Act can be up to \$16,000 per incident or private litigation can be brought by an individual resulting in fines plus attorney's fees, costs, and any actual damages.
3. (Insert any policy the Company may have concerning the responsibility of a sponsored licensee, employee or representative).

## **SAMPLE OFFICE POLICY MANUAL**

### **BUSINESS ITEMS LIST**

The member may consider the following business items for inclusion in an Office Policy Manual. Too many possible variations are possible for appropriate inclusion in the main body of the manual. In addition, these items generally do not impact risk and risk reduction methods of the company to a significant extent.

1. List of expenses borne by agent.
2. List of expenses borne by company.
3. Training schedule
4. Sales meetings/property inspection tour procedures
5. Telephone protocol and opportunity time – (include Do Not Call Policy) for office
6. Opportunity time desk procedures
7. Message Procedures
8. "How-to" Market analysis procedures
9. "How-to" Listing procedures
10. "How-to" Qualifying procedures
11. "How-to" Sale contract procedures
12. "How-to" Negotiation procedures
13. Advertising procedures
14. Open house procedures
15. Follow-up after closing procedures

The basic risk reduction techniques in this manual can contribute significantly to the safe and successful practice of the real estate business for SSS, REALTORS<sup>®</sup> and each of its agents. The Company appreciates each agent's and staff member's enthusiastic endorsement of these concepts.

### **ACKNOWLEDGMENT AND AGREEMENT**

The undersigned agent or employee of SSS, REALTORS<sup>®</sup> acknowledges receipt of a copy of SSS, REALTORS<sup>®</sup> Office Policy Manual.

The Company reserves the right to modify, amend, or change this policy in any manner at any time. Violation of this policy will subject you to discipline as provided for in this Policy Manual.

As a condition of his/her association or employment with SSS, REALTORS<sup>®</sup>, the agent or employee agrees to abide by the terms of this Manual as presently adopted and as amended in the future by publication from management of any changes.

Failure to abide by the terms of this Manual as adopted and amended will be grounds for disciplinary action of the agent or employee, including termination of association or employment.

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Agent or Employee

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Date

**DO'S AND DON'TS FOR BUYER'S AGENTS**  
**Buyer's Agent "DO's"**

**DO** Explain designated agency to the buyer.

**DO** Have a specific buyer interview session. Explain how buyers' agents are paid. Explain the buyer agency contract.

**DO** Tell the buyer of any potential for dual agency. Explain to the buyer the Consent to Dual Agency form and ask if the buyer is willing to sign it.

**DO** Disclose your agency status orally to the seller, if not represented by another agent, preferably when first showing the property and confirm it in writing not later than the presentation of the offer.

**DO** Ask the buyer whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you should not interfere with the agency of another agent. You may enter into another agreement with them upon release from the other agreement. If non-exclusive, you may enter into another non-exclusive agreement, but do not enter into an exclusive agreement.

**DO** Represent the buyer, acting according to your agreement with the buyer and the duties of the Illinois statutes.

**DO** Exercise reasonable skill and care for the buyer.

**DO** Seek a price and terms acceptable to the buyer.

**DO** Present all written offers to and from the buyer in a timely manner, regardless of whether the buyer is presently under contract to buy a property, unless the buyer otherwise instructs you in writing.

**DO** Disclose all adverse material facts to the buyer which you know. Adverse material facts include (1) environmental hazards affecting the property; (2) physical condition of the property; (3) material defects in the property; (4) material defects in the title to the property.

**DO** Advise the buyer to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

**DO** Account in a timely manner for all money and property received on behalf of the buyer.

**DO** Comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

**DO** Search for and present the buyer with the selection of properties specified in your buyer agency agreement. This could include MLS properties, FSBO's, REO property and unlisted property.

**DO** Recommend an appraisal and appropriate inspections such as building, termite, environmental, lead paint, radon, etc.

**DO** Work for the lowest amount of earnest money that is appropriate given the market, type of property and type of offer the buyer wants to present.

**DO** Point out good and bad features of a property, especially features affecting value such as poor floor plans or over improvement for the neighborhood.

**DO** Direct the buyer to objective sources for relevant information you know about the area, such as proposed roads, power lines, school changes, commercial developments, local tax increases, etc.

**DO** Complete a Competitive Market Analysis before an offer is made on a property. Make sure it is a thorough comparison of all properties, active, sold and pending. Analyze the data with the buyer and assist the buyer in formulating an offer price.

**DO** Prepare the offer with favorable and protective terms for the buyer, particularly in inspections, and recommend legal counsel when necessary.

**DO** Counsel with the buyer as to negotiating strategies on terms and price. Share your experience in negotiating with the buyer and give your recommendations, if appropriate.

**DO** Keep confidential information of the buyer confidential unless you have permission to disclose it. Go over with the buyer on the buyer interview this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the seller and other agents in a transaction.

**DO** Treat the customer, the seller, honestly.

**DO** Disclose all information you receive from the listing agent. This is especially helpful regarding the seller's negotiating position and intention.

**DO** Disclose buyer paid retainer fees to the seller if you are also getting commission from the seller and get the informed consent of your buyer to accept commission from the seller (this should be in the buyer agency contract).

**DO** disclose in writing of making contemporaneous offers on the same property for multiple buyers.

**DO'S AND DON'TS FOR BUYER'S AGENTS**  
**Buyer's Agent "DON'Ts"**

**DON'T** Disclose confidential information of your client, the buyer. This is information defined in Article 1 and discussed in Article 15 of the License Law. The Article 15 definition of confidential information refers to information being confidential if requested in writing by the client, if the information deals with the negotiating position of the client, or if disclosure of the information could materially harm the position of your client. This likely includes information such as the buyer's motivation to buy, the price or terms the buyer is willing to offer or that you and the buyer believe the property is underpriced.

**DON'T** Try to balance "fairness" between the seller and buyer. You represent the BUYER - your only obligation to the seller is to be honest and not to give the seller false information. If you learn important information about the seller's negotiating position, tell your buyer - don't make decisions about what to disclose in the interest of being "fair" to the seller.

**DON'T** Accept a bonus, prize, trip or incentive from a seller or listing broker without disclosure to and informed consent of your client, the buyer.

**DO'S AND DON'TS FOR SELLER'S AGENTS**  
**Seller's Agent "DO's"**

**DO** Explain designated agency to the seller.

**DO** Tell the seller of the potential for dual agency. Explain to the seller the Consent to Dual Agency form and ask if the seller is willing to sign it.

**DO** Explain to the seller how the listing agent is paid, the company's rate of compensation and the company's policy on splitting fees and the amount that it will pay to cooperating agents.

**DO** Ask the seller whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you should not interfere with the agency of another agent. You may enter into another agreement with them upon release from the other agreement. If non-exclusive, you may enter into another non-exclusive agreement, but do not enter into an exclusive agreement.

**DO** Represent the seller, acting according to your agreement with the seller and the duties of the Illinois statutes.

**DO** Exercise reasonable skill and care for the seller.

**DO** Seek a price and terms acceptable to the seller.

**DO** Present all written offers to and from the seller in a timely manner, regardless of whether the seller's property is presently under contract, unless the seller otherwise instructs you in writing.

**DO** Respond honestly and accurately to request for information concerning the property or the seller. If the information requested is confidential, indicate that to the buyer or buyer's agent instead of stating you don't know.

**DO** Advise the seller to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise. This includes recommending legal advice when needed.

**DO** Account in a timely manner for all money and property received on behalf of the seller.

**DO** Comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

**DO** Disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property that are known to you and which could not be discovered by a reasonably diligent inspection of the property by the customer. All of this information should already be on the disclosure forms prepared by the Seller.

**DO** Work for the highest amount of earnest money that is appropriate given the market, type of property and type of offer the buyer presents and consistent with reaching an agreement between the parties.

**DO** Complete a Competitive Market Analysis before listing the property.

**DO** Negotiate the offer with favorable and protective terms for the seller, especially in inspections and title examination. Recommend legal advice when needed.

**DO** Counsel with the seller as to negotiating strategies on terms and price. Share your experience in negotiating with the seller and give your recommendations, if appropriate.

**DO** Keep confidential information, as defined in the License Law, confidential unless you have permission to disclose it. Go over with the seller on the listing call this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the buyer and other agents in a transaction.

**DO** Treat the customer, the buyer, honestly.

**DO** Disclose all information you receive from the buyer's agent. This is especially helpful regarding the buyer's negotiating position and intention or the buyer's ability to perform.

**DO'S AND DON'TS FOR SELLER'S AGENTS**  
**Seller's Agent "DON'T"**

**DON'T** Disclose confidential information of your client, the seller. This is information defined in Article 1 and discussed in Article 15 of the License Law. Article 1 refers to information being confidential if requested in writing by the client, if the information deals with the negotiating position of the client or if disclosure of the information could materially harm the position of your client. This likely includes information such as the seller's motivation to buy, the price or terms the seller is willing to offer or prior offers and counter offers.

**DISCLOSED DUAL AGENCY DO's AND DON'Ts**  
**Disclosed Dual Agent "DO's"**

**DO** Discuss the possibility of Disclosed Dual Agency with **BOTH** buyer and seller at the earliest possible time in your relationship.

**DO** Obtain the signature of both buyer and seller on a Consent to Dual Agency form as soon as possible but no later than your beginning to act as a dual agent.

**DO** Represent the seller and the buyer, acting according to your agreements with the seller and the buyer and the duties imposed by Article 15 of the License Law.

**DO** Exercise reasonable skill and care for the seller and the buyer.

**DO** Seek a price and terms acceptable to both the seller and the buyer.

**DO** Present all written offers to and from both the seller and the buyer in a timely manner.

**DO** Disclose all adverse material facts to both the buyer and the seller which you know or should know. Adverse material facts include (1) Environmental hazards affecting the property; (2) Physical condition of the property; (3) Material defects in the property; (4) Material defects in the title to the property; (5) Material limitation on the seller's ability to perform under the terms of the contract; and (6) the buyer's financial ability to perform the terms of the transaction.

**DO** Advise both the seller and the buyer to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise. This includes legal advice when needed.

**DO** Treat all clients honestly.

**DO** Provide information about the property to the buyer or tenant.

**DO** Disclose all latent material defects in the property that are known to the agent.

**DO** Disclose the financial qualification of the buyer or tenant to the seller or landlord.

**DO** Explain real estate terms.

**DO** Help the buyer or tenant to arrange for property inspections.

**DO** Explain closing costs and procedures.

**DO** Help the buyer compare financing alternatives.

**DO** Provide information about comparable properties that have sold so both clients may make educated decisions on what price to accept or offer.

**DO** Account in a timely manner for all money and property received on behalf of the seller and the buyer.

**DO** Comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

**DO** Keep confidential information of both the seller and the buyer confidential unless you have permission to disclose it.

**DO** Give written disclosure of your agency status no later than the presentation of the offer. In the written disclosure, disclose your agency status and the sources of the compensation, usually the seller.

**DO** Conduct yourself with the knowledge that the brokerage (and therefore you) represent **BOTH** buyer and seller.

**DO** If **YOU** are both a buyer's agent and the listing agent, act only to "facilitate" the negotiations and transaction.

**DO** If **YOU** are both a buyer's agent and the listing agent, stay completely neutral.

**DO** Make sure that there is a confirmation of Consent to Dual Agency in the Purchase Contract which confirmation is initialed by the parties.

**DISCLOSED DUAL AGENCY DO's AND DON'Ts**  
**Disclosed Dual Agent “DON'Ts”**

**DON'T** Disclose confidential information that you may know about the clients, without that client's permission.

**DON'T** Disclose the price or terms the seller or landlord will take other than the listing price without permission of the seller or landlord.

**DON'T** Disclose the price or terms the buyer or tenant is willing to pay without permission of the buyer or tenant.

**DON'T** Recommend a suggested price or terms the buyer or tenant should offer.

**DON'T** Recommend a suggested price or terms the seller or landlord should counter with or accept.

**DON'T** Accept compensation from both parties unless disclosed to both parties and you get the informed consent of both parties. This includes nonrefundable retainer fees accepted from buyers.

**DON'T** Accept a bonus, prize, trip or incentive from a seller without disclosure to and informed consent of both clients, buyer and seller.

**DON'T** Act like you are the agent of only one of the parties, even after having made disclosure and obtained consent to act as a dual agent.

**DON'T** Take the position of one or the other parties. Remain neutral as to advising either party about aspects of the transaction whether it be pricing or other terms.

## Attachment A

Published on *Illinois Association of REALTORS®* (<http://www.illinoisrealtor.org>)

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### **Web Site Requirements Web Site and E-Mail Requirements**

#### **Illinois Real Estate License Act of 2000**

Each page (HTML document) of the Web site must include:

- Company name or assumed name as registered with the Department of Financial and Professional Regulation (DFPR)
- City and state of company's principal office
- Licensee's name, if it is the licensee's site
- If marketing property at the site it should also include the city and state where the property is located

If the broker (or broker's site) is not licensed in the state of the marketed property then where the broker is licensed If this information is on a frame that appears with each page on the Web site then it need not be on each page (HTML document) of the Web site.

Must keep updated so the information is accurate

Must include name of listing broker with each property shown unless behind a password protected firewall

The first or last page of any electronic communication from a sponsoring broker must include:

- Company name or the assumed name registered with DFPR
- City and state of the company's main office or the office from which the message originated

The first or last page of any electronic communication from a real estate licensee must include

- Licensee's name
- Name of the company with which the licensee is affiliated
- City and state in which the licensee's office is located

(The above information regarding electronic communications for both sponsoring broker and licensee does not apply if the communication is a message in response to a member of the public and the required information has previously been provided)

## **REALTOR® Code of Ethics**

ARTICLE 12. Applies to all forms of communication including communication by electronic means. This would include Web site advertising, e-mail messages, blog entries, social media, text messaging or any other electronic means of communication that relate to the practice of real estate brokerage

REALTORS® must:

- Disclose status as real estate professional in a “readily apparent” manner
- Make sure all communications are honest and truthful
- Truthful representations include the use of URLs and domain names that are not
  - Deceptive or framed in an unauthorized manner
  - Manipulated to produce a deceptive or misleading result
  - Deceptive in the way they direct Internet traffic (i.e. using metatags, keywords or other devices to divert traffic in a deceptive manner)
- Be sure the recipient knows the communication is from a real estate professional
- Include the company name in any advertising
- Ensure that information included on Web site is kept current and if not promptly take corrective action
- Disclose the state of licensure in a “readily apparent manner”
- Disclose if the REALTOR® will share or sell information gathered via the Internet
- Not use URLs or domain names that do not present a “true picture”

ARTICLE 15

- REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses or business practices
- These principles apply to electronic communications such as blogs, social media, e-mail messages etc.

## **Federal Can-Spam Requirements for Commercial E-mails**

Applies to “commercial electronic mail message(s)” defined as “any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (emphasis added) (including content on an Internet website (sic) operated for a commercial purpose)” and a commercial message does not include a transactional or relationship message

- All commercial e-mail messages must contain:
  - A legitimate return e-mail and physical address (which can include a post office box or a private mail box that the sender has accurately registered with the U.S. Post Office or a commercial mail agency that follows U.S. Postal Service regulations)
  - A conspicuous way to opt-out of receiving the commercial e-mail messages
  - The opt-out is available for at least 30 days after transmission

- A clear and conspicuous notice that the e-mail is an advertisement or solicitation
- The sender may not
  - Charge a fee to opt out
  - Require personal information to opt out
- The recipient must be able to opt out
  - By sending an e-mail message
  - By requesting to opt out through a Web site

Note: Senders of electronic commercial messages to wireless devices must check for wireless domain names that require express consent to receive these messages.

If you participant in a Multiple Listing Service (MLS) that has an Internet Data Exchange (IDX) Policy, you will also need to comply with your particular IDX policy requirements by virtue of your participation in your MLS. You should check your local/regional policy for those requirements.

Also Note: This information does not take the place of specific legal advice and only constitutes general rules without the rules being applied to specific factual situations. So, before establishing policies and procedures consult with your own attorney for specific legal advice.

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