

## **MARYLAND STATE ADDENDUM TO REAL BROKER NATIONAL POLICIES AND PROCEDURES MANUAL**

Real Broker, LLC (Company) makes this addendum a part of the Independent Contractor's Agreement to set forth state specific policies and procedures for an agent affiliating with the Company in the State of Maryland (Agent). This addendum supersedes all previous Maryland state addendums. The Company reserves the right to modify, suspend, or discontinue any of the terms, policies, procedures and/or benefits described in this addendum with proper notice.

The Code of Maryland Regulations Title 09. Maryland Department of Labor Subtitle 11.

Maryland Real Estate Commission:

[http://mdrules.elaws.us/comar/09\\_11](http://mdrules.elaws.us/comar/09_11)

The Code of Maryland Regulations (COMAR):

<http://www.dsd.state.md.us/COMAR/ComarHome.html>

The Maryland Real Estate Commission (MREC) Regulations:

<https://www.dllr.state.md.us/license/law/mreclaw.shtml>

The Maryland Code of Ethics:

<http://mdrules.elaws.us/comar/09.11.02>

### **Advertising by licensees.**

**§17–527.2.** (2) “Advertise” means the use of any oral, written, or visual advertisement by a licensed real estate salesperson, licensed real estate broker, licensed associate real estate broker, or other person on behalf of a licensed real estate salesperson, licensed real estate broker, or licensed associate real estate broker. (3) (i) “Advertisement” means, unless the context requires otherwise, any oral, written, or printed media advertisement. (ii)

“Advertisement” includes any correspondence, mailing, newsletter, brochure, business card, for sale or for lease sign and sign rider, promotional item, automobile signage, telephone directory listing, television announcement, radio announcement, telephone solicitation, and World Wide Web and Internet voice-overs.

Maryland law requires that **all** advertisements include your name (as listed on your license) and the name of the company with which you are affiliated (not simply the company logo). Both names must be meaningfully and conspicuously placed in the ad.

### **§17–322. Maryland Code of Ethics Sec. 09.11.02.01. Relations to the Public**

An associate broker or salesperson may not use an individual telephone number or email address in an advertisement unless the identified telephone number of the broker or branch office manager also appears in the advertisement."

The law also requires that a Licensee who offers to buy or sell property for his or her own account must disclose that they are licensed by the Commission in advertising relating to such properties. The law says; “the name of the advertiser and the fact that the advertiser is a real estate broker, an associate real estate broker, or a real estate salesperson.” **§17–322.** Please, see MREC advertisement checklist at:

<https://www.dllr.state.md.us/forms/mrecadchecklist.pdf>.

Furthermore, Maryland Commercial Law Code § 13-301, Title 13. Consumer Protection Act. Subtitle 3. Unfair or Deceptive Trade Practices: Lists a number of unfair or deceptive trade practices that must be avoided by real estate professionals, including, but not limited to, failure to state a material fact, misrepresentation and making false or misleading statements that have the capacity to deceive or mislead the public.

[https://www.marylandattorneygeneral.gov/CPD%20Documents/Home%20Builder/laws/c\\_pa.pdf](https://www.marylandattorneygeneral.gov/CPD%20Documents/Home%20Builder/laws/c_pa.pdf)

**You are required to seek Broker review and approval for all advertising materials, to include business cards, mailing materials, newspaper and online ads, social media, websites, exterior or interiors signage and everything else that is used to promote your professional services or listings.**

### **Fair Housing.**

Beyond Federal Fair Housing Laws, the state of Maryland has its own laws that address fair Housing. Pursuant to State Government Article, §20-702, Annotated Code of Maryland, it is the policy of the State of Maryland to provide for fair housing throughout the State, to all its citizens, regardless of race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, disability, or source of income. Furthermore, counties, such as Montgomery County (§17-526.), Baltimore County (§17-525.) and Baltimore City may have additional protections. Article § 29-2-101 of the Baltimore County code prohibits discrimination in the transfer or rental of a dwelling because of the person's race, creed, religion, color, sex, age, national origin, marital status, or physical or mental disability. It is your responsibility to ensure that you are following Fair Housing laws and using the appropriate association forms provided per jurisdiction.

The Company and the Broker will not tolerate any violations of Fair Housing laws. Breaking those laws will be cause for separation from the Company. Agent hereby agrees to abide by all federal, state and local Fair Housing Laws. More information can be found at:

<https://mccr.maryland.gov/Pages/Housing-Discrimination.aspx>.

### **Escrow Funds.**

Maryland has very specific guidelines for handling of escrow funds; however, Real Broker, LLC and Mirtes Happy do not hold escrow funds. Our agents are **prohibited** from receiving, transporting, delivering, depositing or managing the handling of escrow funds on behalf of any party. Agents are instructed to advise clients that it is the client's responsibility to ensure delivery of any required escrow funds to the appointed escrow agent as required by the contract. Agents are instructed to recommend that clients seek legal advice to review the contract and forms and assist in deciding the best approach regarding escrow funds/deposit. (§ 17-502.).

Effective October 1, 2019, Maryland Annotated Code Real Property Article Section 10-802 started requiring that when an escrow agent agrees to hold a purchaser's deposit(s) or down payment(s) in escrow for a real estate transaction involving the purchase and sale of residentially improved or unimproved, but residentially zoned property, the escrow agent must enter into a written escrow agreement with the purchaser and seller.

The law may not be construed to prohibit an escrow agent from transferring trust money to another escrow agent, if the purchaser of the residential real estate for whom the trust money is held, chooses a different escrow agent to hold the funds.

The law does not apply to:

- (1) Banks, trust companies, savings and loan associations, savings banks, or credit unions
- (2) Registered home builders
- (3) Real estate salesperson, associate real estate broker, or real estate broker licensed under the Business Occupations and Professions Article.

Please, use the MDR (MAR) Escrow Agreement form available online at:

<https://www.mdrealtor.org/SiteLogin?returnurl=%2fPublications%2fForms%2fStatewideForms>

### **HUD Earnest Money Deposit Notice to Licensees:**

A licensee alerted the Commission to the fact that they had received notification from HUD, through their vendor, that an earnest money deposit was due immediately after the real estate transaction failed to close. HUD's request, and similar requests, presents a conundrum for licensees, who are forced to choose between either complying with the Real Estate Brokers Act and losing their status as a HUD-qualified real estate broker, or complying with HUD's request and risking disciplinary action by the Commission.

The Commission engaged HUD to highlight the conflict between HUD's Earnest Money Policy and Maryland law. As a result, HUD has agreed to change its policies to give Maryland buyers additional time to submit documentation as to why a refund of the deposit is warranted. This change allows licensees to immediately notify the buyer and direct the buyer to submit any documentation regarding the failure to close to HUD within 30 days of such a failure.

HUD also stated that it retains the ultimate discretion to approve or deny the request for a refund according to the terms of HUD's policy, which the buyer must agree to as a condition of entering into a contract of sale for a HUD-owned property. The Commission has been advised by counsel that HUD's policy preempts Business Occupations and Professions §17-505 to the extent that the statute requires the broker, prior to distributing the trust money, to either (1) obtain the written agreement of both parties or (2) follow the procedures in BOP §17-505(3) or (4). The practical result of this determination is that the Commission will not bring a disciplinary action against brokers who distribute a deposit to HUD without the written agreement of the buyer who has Real Broker, LLC Policy & Procedures Manual Addendum – Maryland 4 failed to close. In the event of a dispute, the ultimate determination as to whether a refund is warranted will be made by HUD, rather than by the broker or a circuit court.

Licensees must advise clients or potential clients of the risk associated with entering into a contract of sale on a HUD-owned property. More specifically, it is recommended that licensees advise clients or potential clients of the fact that, except under limited circumstances, the buyer will lose the earnest money deposit for failure to close on the HUD-owned property. It is recommended that this advice be separate and apart from the borrower's written execution of HUD's earnest money policy. It is in the buyer's best interest to receive this notice from the licensee prior to entering into a contract of sale on a HUD-owned property.

### **Disclosure of Brokerage Relationship.**

Maryland enacted brokerage-relationship laws to protect both the consumer and the licensee alike. §17-530. (a) (1) Except as provided in paragraphs (2) and (3) of this subsection, a licensee who participates in a residential real estate transaction as a seller's agent, buyer's agent, or a subagent shall disclose in writing that the licensee represents the seller or lessor or the buyer or lessee as provided in this section. (2) The disclosure required under this section does not apply to a seller, lessor, buyer, or lessee with whom a broker has entered into a written brokerage agreement.

(3) In addition to the written disclosure required under subsection (b) of this section: (i) if the first contact between a seller's agent and a prospective buyer or lessee is not a face-to-face contact, the seller's agent shall disclose, through the medium in which the contact occurs, that the seller's agent represents the seller or lessor; and (ii) if the first contact between a buyer's agent and a prospective seller or lessor is not a face-to-face contact, the buyer's agent shall disclose, through the medium in which the contact occurs, that the buyer's agent represents the buyer or lessee. (b) (1) Except as provided in paragraph (2) of this subsection, the disclosure shall occur not later than the first scheduled face-to-face contact with the seller or lessor or the buyer or lessee. (2) (i) If a licensee is holding a property open to the public, the licensee complies with the disclosure requirements of this section if the licensee displays, in a conspicuous manner, a notice to prospective buyers or lessees that the licensee present on the property represents the seller or lessor. (c) In any residential real estate transaction involving a subagent, the subagent shall disclose in writing to the buyer or lessee as required under this section that the subagent represents the seller or lessor. (d) In any residential real estate transaction that does not involve a subagent or buyer's agent, the seller's agent shall make the written disclosure to the buyer or lessee required under this section that the seller's agent represents the seller or lessor. (e) In any residential real estate transaction that does not involve a seller's agent, the buyer's agent shall make the written disclosure to the seller or lessor required under this section that the buyer's agent represents the buyer or lessee.

Clarification of this requirement can be found here:

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<https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gbo&section=17-530.1&enactments=False&archived=False>

**Disclosure at Open Houses;** The MREC provides brokerage relationship disclosure signs that listing agents can display in a prominent location at all open houses. It does the work of disclosure for you, providing information about your representation. This form advises consumers that the agent conducting the open house represents the seller and the seller's interests, and anything that's disclosed to the agent isn't confidential and therefore may be shared with the seller. In addition, the form states that the buyer is entitled to representation that can be provided by a buyer's agent. The MREC provided Disclosure Form may be found at: <https://www.dlr.state.md.us/forms/mrecopenhouse.pdf> - This Document May Not Be Altered, Must Be Displayed In At Least 8.5" X 11" Size, In Color, And Remain On The Maryland Real Estate Commission Letterhead. The "Understanding Brokerage Relationships" brochure by the MAR is a helpful tool both for licensees as well as to share with clients:

<http://www.mdrealtor.org/Portals/0/adam/Content/zQqLmRTjx0O627gO98GNJQ/Link/FI>

**Agency.**

Agency is the relationship where a licensee acts on behalf of, or represents a client (with the client's authority). §17-530.1.

(a) Except as otherwise provided in subsection (b) of this section, a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson may not act as a dual agent in this State (Remember, dual Agency here requires 3 Licensees).

(b) (1) (i) If a licensed real estate broker obtains the written informed consent of all parties to a real estate transaction, the real estate broker, or a branch office manager described in § 17-518(d) of this subtitle who has been designated by the licensed real estate broker, may act as a dual agent for both the seller and the buyer or the lessor and the lessee in the same real estate transaction. (ii) The dual agent in a real estate transaction shall assign a licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intra-company agent on behalf of the seller or lessor and another licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intra-company agent on behalf of the buyer or lessee. (iii) 1. Except as otherwise required by this title and except to the dual agent, an intra-company agent may not disclose confidential information. 2. Except as otherwise required by this title, the dual agent may not disclose confidential information to the buyer or seller or the buyer's or seller's intra-company agent in the same real estate transaction. (4) that a licensee is qualified to advise only on real estate matters and that legal or tax advice should be obtained from a licensed attorney or accountant; (5) unless authorized by the seller, neither an intra-company agent nor a dual agent may tell a buyer that the seller will accept a price lower than the listing price or accept terms other than those contained in the listing agreement or suggest that the seller accept a lower price in the presence of the buyer; (6) unless authorized by the buyer, neither an intra-company agent nor a dual agent may tell a seller that the buyer is willing to pay a price higher than the price the buyer offered or accept terms other than those contained in the offer of the buyer or suggest that the buyer pay a higher price in the presence of the seller.

Understanding whether someone is a "client" is important. A client is a person who enters into a brokerage agreement with a broker under a brokerage relationship. Someone a licensee is assisting but doesn't represent is considered a customer. When no written agency agreement exists, an agent assisting a prospective buyer to purchase is either the seller's agent or a sub-agent of the listing agent—which must be disclosed to the buyer. Buyers who would be more comfortable having an agent who represent the buyer's interest may decide to enter into a written brokerage relationship agreement for a licensee to serve as a buyer's agent and represent the buyer's interests. Maryland Code of Ethics Sec. 09.11.02.01. Relations to the Public; "H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed. I. All real estate documents shall be signed by a licensee in the licensee's own name, and may not be signed in the name of a group or team." Likewise, it says in the Maryland Code of Ethics Sec. Sec. 09.11.01.10. Residential Listing Contracts; "All residential listing contracts,

listing real property for sale, rental, lease, or exchange, either exclusive or open, shall be in writing and signed, and a copy of the contract shall be given to the seller or owner before the licensee advertises, shows, or offers the property."

All forms, including the Consent for Dual Agency, Dual Agency within a Team and Whom Real Estate Agents Represent are available online through the MREC or the MAR and/or local associations' forms library.

## **Teams**

### **§17-547**

(a) The name of the team may not contain the terms "real estate", "real estate brokerage", or any other term that would lead the public to believe that the team is offering real estate brokerage services independent of the real estate broker.

(b) All advertising by the team must contain: (1) the name of the brokerage displayed in a meaningful and conspicuous way; (2) the name of at least one of the licensee members of the team; and (3) the telephone number of the real estate broker or branch office manager of the real estate broker.

(c) The team name in the advertisement must be directly connected to the name of the brokerage. Furthermore, a licensed real estate broker may NOT be a member of a team.

For more information on the MREC's Do's & Don't of Teams and Groups:

<https://www.dlr.state.md.us/license/mrec/mrecteams.shtml>.

## **Material facts**

A material fact is defined as anything that would affect 1) the value of the property or 2) a buyer/tenant's decision to purchase/lease the property or how much to offer to purchase or lease the property. Section 17-322(b)(4) of the Maryland Real Estate Brokers Act provides that it is the obligation of a real estate licensee to ascertain and disclose all material facts to all parties of which the licensee has actual knowledge or those which the licensee should have known that relate to the property. The Maryland Code of Ethics Sec. 09.11.02.01. Relations to the Public; "... C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State. D. The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts. Material facts disclosure may be included as an attachment to the disclosure and disclaimer statement. This disclosure must always be in writing, and under the law, the material fact disclosure must be provided to buyers prior to the time a buyer submits an offer. When you disclose, you put the buyer on notice to make a further investigation. You also minimize your own liability and that of your seller.

## **Short Sales.**

Increasingly, real estate licensees are involved in short sales, where the sales price agreed upon is less than that owed to lenders by the seller. The listing agent is often called upon to communicate between the lender/servicer and the seller regarding financial obligations. Licensees need to be fully aware of the Maryland laws that regulate the activities of those who assist homeowners under these circumstances, laws beyond those that govern real estate brokerage activities.

The Credit Services Businesses Act (MCSBA) requires that a person who advises a consumer with regard to the extension of credit must be licensed by the Commissioner

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of Financial Regulation. There is a licensing exemption for a person licensed as a Maryland real estate broker where that person is acting within the course and scope of that license.

Since the scope of a real estate license is limited by definition to assisting in the purchase or sale of property, the exemption would not extend to negotiation of a deficiency note that is independent of the sale of the property.

The Protection of Homeowners in Foreclosure Act (PHIFA) applies when a homeowner's mortgage is at least 60 days in default. The law sets forth the activities that constitute foreclosure consulting services offered to a homeowner in that situation. An individual who engages in those activities must follow specific requirements regarding written agreements with the consumer. PHIFA provides an exemption (or "safe harbor") for real estate licensees when they are engaged in an activity for which they are licensed by the Real Estate Commission. For example, one of the activities defined in the PHIFA law as a foreclosure consulting service is "arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title." This activity is one included in the definition of the provision of real estate brokerage services, and therefore may be provided by a real estate licensee without the need for compliance with PHIFA (or additional licensing under MCSBA).

The PHIFA law requires, among other provisions, that:

- The homeowner and the foreclosure consultant enter into a foreclosure consulting contract that includes all the specific terms set out in Section 7-306 of the Real Property Article.
- The foreclosure consultant refrain from engaging in any of the prohibited activities set forth in Section 7-307, including charging or collecting any compensation until all the foreclosure consulting services have been performed.
- A real estate licensee who provides real estate brokerage services under a foreclosure consultant license present the homeowner with a copy of the real estate license no later than when the foreclosure consulting contract is signed.
- The foreclosure consultant may not receive a commission, regardless of how it is described, for the sale of a residence in default that exceeds 8% of the sales price.

The difficulty arises when the licensee is called upon to be the go-between for the lender and the seller, and/or where the transaction results in a new debt being incurred by the seller in the form of a deficiency note. If one or both of these circumstances arises, the licensee must take great care in not crossing the line between the provision of real estate brokerage services and activities that would require additional licensing.

At a minimum, in order to qualify for the statutory "safe harbor" protection under PHIFA, the

licensee must ensure that the residence in default is (1) listed in the multiple list service, and (2) is sold or transferred through a settlement, including the conveyance or transfer of deed, title, or establishment of equitable interest.

If those basic requirements are met, a licensee may work with a seller under a valid listing agreement to request a short sale or other foreclosure alternative from a lender or servicer under PHIFA. The seller must voluntarily sign the appropriate authorization for the lender, indicating that the listing agent may submit the required short sale or loss mitigation documentation on the seller's behalf. With that authorization, the agent may transmit documentation by computer in a format specified by the lender (e.g., "platforms" or "loan portals" such as Equator or ResNet or HOPE loan portal).

Beyond submitting the requested documentation to the lender or services, the licensee's conduct must meet the following standards in order to comply with the applicable laws.

## **DO**

A real estate licensee:

- May conduct a Comparative Market Analysis (CMA), which an out-of-state lender/servicer may refer to as a Broker's Price Opinion (BPO).
- Must refer a client to an individual licensed under the Credit Services Businesses Act, or otherwise exempt under that law, to negotiate on issues such as deficiencies and relocation allowances as soon as those issues arise. The licensee may serve as a conduit of information from the MCSBA licensed individual to the seller, but may not negotiate on those issues with the lender/servicer.
- Must refer a client to an accountant to explain to the seller the potential income tax consequences of a short sale and the applicability of the Mortgage Forgiveness Debt Relief Act of 2007.
- Must refer a client to a housing counselor for discussions about alternatives available to avoid foreclosure. Free housing counseling is available through the Maryland HOPE Program at 1-877-462-7555.
- Must refer any requests from the lender/servicer for reductions in real estate brokerage commissions on a short sale to the licensee's broker.

## **DON'T**

A real estate licensee may not:

- Collect any monies in addition to the real estate brokerage services commission from a client unless the licensee holds an additional license under the MCSBA.
- Assist a seller in negotiating with the lender/servicer to obtain a loan modification or a promissory note for the deficiency amount, or to otherwise prevent foreclosure.
- Use direct mail solicitations or advertisements targeted to a homeowner in default (or imminent default or "underwater" on the mortgage) that indicate that the licensee (1) can assist in preventing foreclosure; (2) is an "expert" in short sales; (3) can arrange refinancing; or (4) will contact creditors on the owner's behalf.
- Make representations to a homeowner that the licensee can save the owner's home, stop foreclosure, or obtain a short sale.
- Provide advice to a homeowner regarding the benefits of a strategic default.
- Predict or



suggest credit score consequences of one loss mitigation strategy over another.

- Make any predictions with regard to the likelihood of the waiver of deficiency judgments or the payment of relocation costs in a short sale.

A licensee who serves as more than a conduit of information between the seller and the lender/servicer regarding deficiencies, or who engages in any of the "Don't" activities, no longer has the protection of the "safe harbor" provision, and must follow the strict terms of the PHIFA law, if the mortgage is in default, as well as obtain a license from the Commissioner of Financial Regulation under the MCSBA.

More guidance for Licensees is available from the MREC at;  
<https://www.dlir.state.md.us/license/mrec/mrecshortsalesguide.shtml>.

### **Incentives and Rebates.**

The Real Estate Commission and the Attorney General's Office receive inquiries from time to time about the payment of rebates to a party to a transaction or the use of incentives to induce a consumer or a licensee to deal with a particular real estate agent or broker. There are several provisions of the licensing law that address these issues.

**Incentives. Section 17-322(b)(9)** provides that a licensee may not offer a prize or conduct a contest in order to influence a party in the sale of real property. This provision has been interpreted by the Attorney General's Office to mean that if a licensee uses inducements to obtain a listing or a buyer/broker agreement, or to motivate a buyer to purchase certain property, those inducements must be offered to all consumers on the same basis. There cannot be a contest where a seller or buyer is offered a chance to receive a prize or a cash payment. If an offer of inducements is made, it must be available to all.

The law would allow the licensee to offer inducements related to price, that is, the offer could be for a rebate/payment as a percentage of price. In this way, the offer would be the same for all those whose purchase or listing price fell within a certain price range.

The Commission has also reviewed proposals of licensees who offer a drawing for a prize among attendees at an open house. As long as the only action a consumer has to take is to attend the open house, the Commission does not view this as a contest used to influence a party to purchase property.

There have also been questions about whether unlicensed individuals who refer consumers to a licensee may be compensated in some way or may participate in a drawing. The licensing law considers the act of referral to be the provision of real estate brokerage services, and thus an activity that requires a license if compensation in any form is involved. The Commission views the possibility of winning a prize as a form of

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compensation. Therefore, under Section 17-604(a), a drawing may not include an individual based on referrals he or she has made to the licensee.

**Rebates/Cash Payments.** Section 17-604 provides that a licensee may not pay compensation in any form for the provision of real estate brokerage services to an individual who is not licensed. A person who is simply a party to a real estate transaction is not providing real estate brokerage services within the definitions in Section 17-101, and therefore may

receive monies from a licensee. If the monies are used to pay settlement charges, that should be reflected on the HUD-1 form.

The agreement to pay compensation to a buyer in the form of a rebate of commission, or to compensate the seller either through a cash payment or a reduction of the commission rate must be in writing as required by the Code of Ethics, COMAR 09.11.02.01H. The Real Estate Commission has also taken the position that financial payments by a licensee to a party should be disclosed to the other party to the transaction, even if they are not required to be recorded on the HUD-1 form.

Office of the Attorney General  
Counsel to the Real Estate Commission  
12/14/10

### **Competitive Market Analysis.**

To address confusion that could arise under current regulations that address both opinions of value and competitive market analyses prepared by a real estate licensee, the Commission has repealed those regulations (Code of Ethics 09.11.02.02 F and G) and adopted a new one entitled "Competitive Market Analysis." The regulation, which went into effect on July 19, 2004, provides that a licensee may prepare a competitive market analysis of a specific property for a client, prospective client, or customer. The analysis must include the following language printed conspicuously and without change on the first page:

**MANDATORY COMPETITIVE MARKET ANALYSIS DISCLOSURE** This analysis is not an appraisal. It is intended only for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property.

The regulation also provides that a licensee must disclose to the client, prospective client, or customer any interest the licensee has in a property included as a comparable in the analysis.

### **Nick Names.**

As a result of the enactment of House Bill 704 during the 2002 session of the Maryland General Assembly, licensed real estate associate brokers and salespersons are eligible to register a nickname with Real Estate Commission and thereby hold themselves out to the public by that nickname. Accordingly, a licensee named William Salesperson may register the nickname "Bill" with the Commission and trade under the name Bill Salesperson. The licensee will receive a new license with the authorized nickname in parenthesis on the name line of the license. This authorization is limited strictly to the use of nicknames. Consistent with the action of the General Assembly, the Commission will not register the name of a joint venture, partnership, corporation or some other entity under this provision. **How to apply:**

<https://www.dllr.state.md.us/cgi-bin/ElectronicLicensing/RE/interim/REInterim1.cgi>

### **Specific Lender or Settlement Company.**

The Real Estate Commission has received several complaints about salespersons who attempted to require a buyer to use a specific lender or settlement company. These complaints involved the sale of new homes as well as the sale of existing homes. Section 17-607 of the Maryland Real Estate Brokers Act states that, in a real estate transaction involving a

single-family dwelling, a licensee may not require a buyer, as a condition of settlement, to employ a particular title insurance company, settlement company, escrow company, mortgage lender, or title lawyer.

The only exception is that a seller may not be prohibited from offering owner financing as a condition of settlement. Violation of this provision of the law is a misdemeanor crime, and could lead to a fine not exceeding \$5,000, imprisonment not exceeding one year, or both. Under Section 17-322(b)(29), these actions could also be the basis of a disciplinary action before the Commission which could result in the suspension or revocation of the license and/or a fine of up to \$5,000.

### **Required Property Disclosures**

Code of Maryland Regulations (Last Updated: February 24, 2021) Title 09. Maryland Department of Labor Subtitle 11. Real Estate Commission Chapter 09.11.07. Residential Property Disclosure/Disclaimer Statement; Chapter 09.11.07. Residential Property Disclosure/Disclaimer Statement; "In accordance with the provisions of the Real Property Article, §10-702, Annotated Code of Maryland the disclosure/disclaimer statement form provided by the Maryland Real Estate Commission shall be used in all applicable real property transactions."

#### **Sec. 09.11.07.02. Guidelines;**

A. A licensed broker, associate broker, or salesperson acting as a seller's agent should obtain a written residential property condition disclosure statement or a written residential property disclaimer statement at the time the licensed broker, associate broker, or salesperson obtains the listing on the property.

B. The seller's agent should provide the disclosure statement or disclaimer statement to the prospective purchaser or to the buyer's agent assisting the purchaser promptly upon notification that an offer is going to be made. If the seller's agent does not know in advance that an offer is to be made, the seller's agent should provide the disclosure statement or disclaimer statement at the time the seller's agent receives the written offer.

C. The buyer's agent should make every effort to ensure that the prospective purchaser has the disclosure statement or the disclaimer statement in hand before submission of the offer to purchase the property. – We recommend that the disclosure signed by the Seller be uploaded to the MLS for Buyer Brokers to access prior to offer submission.

Other mandatory county/city centric disclosures may be required. Please, refer to the checklist in your SkySlope for reference and/or ask the broker for assistance.

Lead Based & RRP Rules.

As you are aware, Lead Based Paint Disclosure is required by federal law with the sale of property built prior to 1978. Under the Maryland Lead Poisoning Prevention Program, any leased residential dwelling constructed prior to 1978 is required to be registered with the Maryland Department of the Environment. Maryland REALTORS® Maryland Lead Poisoning Prevention Program Disclosure form is not required by law. However, we require that it be included among the disclosures in transactions involving properties constructed prior to 1978 to alert buyers acquiring property of requirements of the Maryland Lead Poisoning Prevention Program should the property become a rental property in the future. For additional information concerning the requirements under the Maryland Lead Poisoning Prevention Program:

<http://www.mde.state.md.us/programs/Land/LeadPoisoningPrevention/Pages/Programs/LandPrograms/LeadCoordination/index.aspx>

Licensees should also make themselves aware of the requirements in the RRP Rule. Under the RRP rules, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. Property owners who renovate, repair, or prepare surfaces for painting in pre-1978 rental housing or space rented by child-care facilities must, before beginning work, provide tenants with a copy of EPA's lead hazard information pamphlet *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*. Owners of these rental properties must document compliance with this requirement. Property owners who perform these projects in pre-1978 rental housing or space rented by child-care facilities must be certified and follow the lead-safe work practices required by EPA's Renovation, Repair and Remodeling rule.

Read the EPA's Small Entity Compliance Guide to Renovate Right:

<https://www.epa.gov/lead/materials-and-downloads-renovators-renovation-repair-and-painting>

Read the EPA's Steps to Lead Safe Renovation, Repair and Painting:

<https://www.epa.gov/lead/steps-lead-safe-renovation-repair-and-painting-october-2011>

### **Personal Assistants.**

Keep in mind that just because you sign an agreement with personal assistants stating that they are independent contractors doesn't mean that the IRS will agree with you. For more information on rules for determining if a worker is an employee, download the Employer's Supplemental Tax Guide at <https://www.irs.gov/publications/p15a>. You can also submit your job description to the IRS for a ruling using Form SS-8. If you determine that the assistant is an independent contractor, the assistant must sign an Independent Contractor Agreement. A copy of the agreement must be provided to the Broker through our document submission system, SkySlope. All office policies and rules must apply to personal assistants just as they apply to the licensee.

#### Typical Duties of an Unlicensed Assistant

- A. Deliver documents and pick up keys.
- B. Answer the telephone and forward calls.
- C. Secure public information from courthouse, utility companies, etc.
- D. Provide courier services.
- E. Schedule appointments with other offices, existing clients, or customers.
- F. Place signs on property.
- G. Type forms for approval by licensee and Supervising Broker.
- H. Write ads for approval of licensee and supervising broker, and place classified advertising.
- I. Assemble documents for closing.
- J. Hand out objective, written information on a listing.
- K. Transmit listings and changes to a multiple listing service.
- L. Follow up on loan commitments after a contract has been negotiated.
- M. Assemble documents for closing.
- N. Have keys made for company listings.
- O. Record and deposit earnest money and other trust funds (if allowed).
- P. Order

items of routine repair as directed by licensee and/or supervising broker.

**Duties that Cannot be Performed by Unlicensed Assistants**

- A. Host open houses, kiosks, home show booths, or fairs.
- B. Show property.
- C. Answer any questions on listings, title, financing, closing, etc.
  - Real Broker, LLC Policy & Procedures Manual Addendum – Maryland 15
- D. Discuss or explain a contract, agreement, listing, or other real estate document with anyone outside the brokerage company.
- E. Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings or sales.
- F. Negotiate or agree to any commission, commission split, or referral fee on behalf of a licensee.
- G. Solicit by telephone or in person potential sellers, purchasers, tenants, or landlords.
- H. Give additional information not included in prepared written promotional material that has been distributed to the public.
- I. Represent himself or herself as an agent for a real estate broker or the owner/seller of a property.
- J. Negotiate or discuss the terms of a sale.
- K. Act as a go-between with a seller and a buyer.
  - L. Answer questions concerning properties listed with the firm, except to confirm that the property is listed and identify the listing broker or salesperson.
- M. Contact clients or prospective clients using online communication methods such as web-based chat in order to solicit customers with respect to a specific property.
- N. Contact clients using online communication methods such as web-based chat without first disclosing the broker's name or the company name as it appears on the license at the beginning of the chat session or in text visible on the same web page that contains the chat session.

For questions or assistance, please contact the Maryland state Principal Broker:

Mirtes Happy

Direct: 202-335-7325

Mobile: 703-568-5939

[MDBroker@TheRealBrokerage.com](mailto:MDBroker@TheRealBrokerage.com)