

## New York Addendum To The Real Broker, LLC Independent Contractor Agreement

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## DEFINITIONS

**The following terms are used in this manual:**

<b>Agent:</b>	an Associate Broker or a Sales Agent acting on behalf of a Principal.
<b>Broker:</b>	a person or entity holding a real estate broker license issued by NYREC.
<b>Principal:</b>	a person or entity who has authorized an Agent to act on his/her behalf.
<b>Sales Agent:</b>	a person holding a real estate Sales Agent license issued by NYREC.
<b>Associate Broker:</b>	A person holding real estate Broker's license issued by NYREC sponsored by Real
<b>Sales Associate:</b>	a Sales Agent or Associate Broker who works for the Sponsoring Broker as an independent contractor or employee.
<b>State Broker:</b>	The Designated Managing Broker, responsible for all brokerage activities for Real Broker, LLC in NY, Real Broker LLC and .
<b>NYREC:</b>	New York Real Estate Commission.

## NOTICE TO SALES ASSOCIATES

**ANY OF A SALES ASSOCIATE'S ACTIONS THAT VIOLATE THE PROVISIONS OF THIS POLICIES AND PROCEDURES MANUAL ARE UNAUTHORIZED AND OUTSIDE THE AUTHORITY OF THE STATE BROKER – SALES ASSOCIATE RELATIONSHIP. ALL EXPENSE OR LOSS ARISING OUT OF A SALES ASSOCIATE'S ACTS SHALL BE BORNE SOLELY BY THE SALES ASSOCIATE. ALL EXPENSE OR LOSS SUFFERED BY SPONSORING BROKER AS A RESULT OF A SALES ASSOCIATE'S ACTS SHALL BE REIMBURSED BY THE SALES ASSOCIATE. ANY WAIVER OF THIS PROVISION BY THE STATE BROKER WITH RESPECT TO ANY ACTIONS WILL NOT BE CONSTRUED AS A WAIVER WITH RESPECT TO ANY OTHER ACTION**

## GENERAL COMPANY POLICIES

All sales agents and brokers doing business in the State of New York with Real Broker, LLC/ Real Broker NY LLC and are expected to abide by the Real Broker Agent Policy and Procedures Manual. If this document conflicts with Real Broker, LLC, Real Broker NY LLC and general company policies, due to specific New York laws, this document will govern. If there are any questions about this policy document or Real Broker, LLC Real Broker NY LLC and policies in general, contact the State Broker or designated supervisors below. This policy document may change from time to time, but associates will be notified if any changes occur.

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 New York (Agent or Licensee). This addendum supersedes all previous New York 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.

## **SECTION 1: ADVERTISING AND MARKETING**

### **1.1 DEFINITION**

As defined in NY REC 175.25, The term "Advertisement" is any form of communication by or on behalf of a license holder designed to attract the public to use real estate brokerage services and includes, but is not limited to, all publications, brochures, radio or television broadcasts, all electronic media including email, text messages, social media, the Internet, business stationery, business cards, displays, signs and billboards.

### **1.2 EXCLUSIONS**

Advertisement does not include:

A communication from a license holder to the license holder's current client; and a directional sign that may also contain only the broker's name or logo.

### **1.3 PROHIBITIONS**

Sales Associate is prohibited from advertising in a way that is materially inaccurate or misrepresents the property, terms, values, services, or policies

## **ADVERTISING REQUIREMENTS**

All advertising must comply with the following, including, but not limited to:

- (a) All advertising must be approved by the managing Broker before placement or use. Anytime you advertise property you must include the term "Broker," "Agent," "licensee" or "REALTOR®."
- (b) As an associate and licensee, you have both a legal and ethical obligation to be truthful when advertising property or services. All advertising must comply with all state and federal advertising requirements as well as the NAR Code of Ethics. Any false or misleading advertisement will immediately be withdrawn by the Company. Legally, you may be held liable for fraud, intentional misrepresentation, or negligent misrepresentation if you make material false statements or material omissions in an advertisement. Additionally, you may face disciplinary action from the NY Real Estate Commission.
- (c) The Company's name and/or logo, and Broker's phone number must be included in all advertisements and signs and conform to the Company's graphic standards regarding the style, color and uses of the name and logo.
- (d) The use of the term REALTOR® must be used in compliance with the National Association of REALTORS® guidelines governing the use of that name and mark. Those guidelines are available on-line at: [www.realtor.org](http://www.realtor.org). Don't use it if you didn't

pay for it.

- (e) You are required to comply with the do-not-call laws which generally prohibit "telephone solicitations" to residential and cell phone numbers registered on the National Do-Not-Call Registry.
- (f) There are state and federal laws prohibiting faxing to recipients with unsolicited commercial advertisements or solicitations. Exemptions include prior permission or an established business relationship.
- (g) The Company is committed to equal opportunity and fair housing in all of its advertising. Be aware that the selective use of words, phrases, symbols, visual aids and media in the advertising of real estate may indicate preferences held by the advertiser and lead to allegations of discriminatory housing practices. Words in a real estate advertisement which indicate a particular race, color, sex, handicap, familial status or national origin are considered likely violations of the Federal Fair Housing Act and may not be used in Company advertisements

#### **Identification and Display:**

- (a) All advertising (see definition) must clearly and conspicuously identify and display the name of the brokerage, "Real" or " Real Broker, LLC ", in addition to any authorized logo used.
  - (i) The brokerage's name must be no smaller than fifty percent (50%) of the size of the largest item of contact information.
  - (ii) Advertising may not, in any way, imply that a Sales Agent is responsible for the operation of Real Broker, LLC.
- (b) Advertising may identify the associate as "Sales Agent," "Broker Associate" or "REALTOR®" to identify the advertiser as a real estate agent. Agent may not use any other titles such as CEO, COO, Owner or another similar title, email or website address that implies a sales agent is responsible for the operation of the brokerage.
- (c) The name of license holder or team placing the advertisement along with the name of the sponsoring broker must be in a "readily noticeable" location.
- (d) Sales Associate's use of alternate names, team or group names must comply with the following:
  - (i) Alternate names, Team or Group names, must comply with NY REC rules.
  - (ii) Alternate names, Team/Group names must be properly registered with NYREC
  - (ii) Sales Associates must determine the requirements for filing their team or group names with all applicable governmental entities and comply with those requirements (e.g. Secretary of State and County Clerks).
- (e) No terms may be advertised other than those authorized by the property owner.
- (f) Each page of all Internet, electronic bulletin board, social media or similar displays must comply with advertising requirements.
- (g) Associates of Real Broker, LLC and Real Broker NY LLC wishing to promote another Real associate's listing may do so with written permission of that Real associate.

- (h) Associates of Real Broker, LLC and Real Broker NY, LLC shall not intentionally solicit business from another agent's active listing.
- (i) Any offer to rebate a portion of a commission in an advertisement must disclose that payment of the rebate is subject to the consent of the party represented.

#### 1.4 Registration and Use of Team or Group Names

- (a) A team or group of one or more sales associates that performs real estate activities under an exclusive collective name other than the broker's licensed name or assumed name must register that name with Real Broker, LLC or Real Broker NY, LLC and the New York Real Estate Commission. Real Broker support will file the Team/Group names with NY REC. Agents should send their request to [support@therealbrokerage.com](mailto:support@therealbrokerage.com)
- (b) A team or group must identify all the members of the team or group to the State Broker by email to [NYbroker@therealbrokerage.com](mailto:NYbroker@therealbrokerage.com).

#### 1.5 Registration of Team Leads as Designated Supervisor

A team or group sales associate who leads, supervises, directs, or manages a team must be delegated as a supervisor by the state broker.

- (i) Each team lead must take the NY REC Broker Responsibility Course each Renewal.
  - (ii) Team lead shall notify the broker within (15) days of starting the duties of supervision.
  - (iii) Likewise, if the team lead is no longer supervising any sales agents, the team lead will notify the broker within (15) days of stopping all duties of supervision.
- (b) Team or group leads named as delegated supervisors with the New York Real Estate Commission to comply with NYREC Rule **shall not** be named as delegated supervisors on the Information About Brokerage Services, unless they are staff members of Real Broker, LLC and Real Broker NY, LLC.

#### 1.6 Registration of Alternate Name

- (a) An Alternate Name (Commonly known as an alias) means a name used by an individual license holder other than the name shown on the license issued by the Commission (NYREC), such as a middle name, maiden name, or nickname. It does not include a common derivative of a name.
  - (i) Prior to using an alternate name the license holder must register the name with NYREC on a form approved by NYREC.
  - (ii) The Sales Agent must notify the broker and NYREC no later than the 10th day after the date the license holder stops using the alternate name.

## SECTION 2: WORK AGREEMENTS AND COMPENSATION

### 2.1 WORK AGREEMENTS

#### (a) Independent Contractor Agreements

The relationship between Real Broker, LLC; Real Broker NY, LLC and Sales Associates will be governed by the Real Broker, LLC Independent Contractor Agreement. Prior to commencing work with Real Broker, LLC or Real Broker NY, LLC each independent contractor Sales Agent or Broker Associate will sign the Real Broker, LLC Independent Contractor Agreement (ICA). Addendums to the ICA must be signed before the associate commences work with Real Broker, LLC or Real Broker NY, LLC.

### 2.2. COMPENSATION

Any and all compensation paid to Sales Associate must comply with all applicable laws, including, but not limited to, the New York Real Estate License Act, NYREC rules and the Real Estate Settlement Procedures Act (RESPA).

#### (a) Receipt of Commission

All compensation received or earned by Sales Associate for performing licensed activities must be paid directly to Real Broker, LLC and Real Broker NY, LLC. Should Sales Associate expect to receive any compensation from anyone, other than the party represented, Sales Associate must disclose this in writing and obtain written consent from the party represented to receive such compensation. Sales Associate must provide State Broker a written copy of such disclosure and consent.

#### (b) Payment Of Commission

All compensation earned by Sales Associate will be paid by Real Broker, LLC and Real Broker NY, LLC directly to the Sales Associate in their individual capacity. Upon written request Real Broker, LLC will pay compensation to a Sales Associate's entity when properly registered and licensed with the New York Real Estate Commission. It is the sole responsibility of the Sales Associate to ensure their entity is properly registered and is in compliance with New York Real Estate Commission Rule.

#### (c) Disclosure Of Real Affiliated Business

Sales Associate will provide disclosures of all Real Broker, LLC and Real Broker NY, LLC affiliated businesses, if any.

## **SECTION 3: ESTABLISHING COMPETENCY**

### **3.1. Authorization To Act**

Sales Associate is authorized to act on behalf of Real Broker, LLC and Real Broker NY, LLC only in areas that the Sales Associate is competent to engage in. This includes but is not limited to geographic areas and types of business such as Commercial, Short Sales and Farm & Ranch. Sales Associates are not to engage in types of business without being knowledgeable, educated, trained and experienced, either through previous transactions or through the assistance of a seasoned mentor in that specialty.

### **3.2. Newly Licensed Sales Agents**

When a sales agent performs a real estate brokerage activity for the first time the sales agent is REQUIRED to receive additional coaching, assistance, mentoring from an experienced licensed holder competent for that activity.

### **3.3. Designations At State Managing Broker's Discretion**

The decision to authorize a Sales Associate as competent to act is solely at the discretion of the State Broker and may be changed or altered by the State Broker at any time.

### **3.4. Notification of NYREC Changes**

State Broker will endeavor to give each Sales Associate notice of any changes to the New York Real Estate Licensing Act, NYREC rules or NYREC promulgated contract forms before the effective date of the changes, however, it is the responsibility of each associate to remain educated and commit themselves to the highest standards of professionalism through continuing education.



## SECTION 4: RECORDS MANAGEMENT

### 4.1. Records Defined

Real Broker, LLC and Real Broker NY LLC will maintain the following (the "Records"):

- (a) Disclosures;
- (b) Compensation agreements (including listing agreements, buyer representation agreements and other written commission and compensation agreements);
- (c) Substantive communications with parties to the transaction;
- (d) Offers, contracts and related addenda;
- (e) Receipts and disbursements of compensation for services;
- (f) Appraisals, broker price opinions and comparative market analyses;
- (g) Agreements between Real and Sales Associates, including independent contractor and employment agreements.

### 4.2. Duration of Maintenance

Real Broker, LLC and Real Broker NY, LLC will maintain the Records in an easily accessible format for at least four years from the: (i) date of closing, (ii) termination of the contract, or (ii) end of a real estate transaction.

### 4.3. Ownership Of Records

All Records created or maintained during the relationship between Real Broker, LLC or Real Broker NY, LLC and a Sales Associate are the property of Real Broker, LLC and Real Broker NY, LLC.

### 4.4. Costs of Creation And Delivery

Each Sales Associate is responsible for the payment of any expenses or costs incurred in connection with the creation and delivery of the Records relating to the Sales Associate's activities.

### 4.5. Verification Upon Termination

Upon termination of the relationship between Real Broker, LLC or Real Broker NY, LLC and a Sales Associate, the Sales Associate will verify that Real Broker, LLC and Real Broker NY, LLC have copies of all records created while that associate was representing Real Broker, LLC or Real Broker NY, LLC in the associate's possession.

## **SECTION 5: FIDUCIARY DUTY OF AGENTS**

### **5.1. Relationships**

Brokers and Sales Agents may: (i) represent Principals, and (ii) assist others with whom no agency relationship exists. Sales Associates must provide all parties with a clear explanation of their relationship as being one of the following:

- (a) A client, being represented as a principal by the agent;
- (b) A customer, with no agency relationship, but receiving assistance;
- (c) An unrepresented party, with no agency relationship and receiving no assistance.

### **5.2. Disclosure of Status As Sales Agent Or Broker**

Sales Associate must disclose his or her status as a Sales Agent or Broker in writing, either before entering into any sales contract or lease or within the sales or lease contract itself, when engaging in a real estate transaction on behalf of:

- (a) Sales Associate;
- (b) A business entity in which Sales Associate is more than a 10% owner;
- (c) A trust for which Sales Associate acts as trustee or is a beneficiary; or
- (d) Sales Associate's spouse, parent or child, including situations in which they may be a beneficiary of a trust.

Sales Associate will also comply with the National Association of REALTORS® Code of Ethics requirements regarding disclosure of interest including, but not limited to, Articles 4 and 5.

### **5.3 Verification of No Existing Representation**

Before representing a party, Sales Associate must determine that the party is not currently represented. A Sales Associate may not interfere in any way with an existing exclusive agency relationship, or suggest to the party how to terminate the relationship.

### **5.4 Information About Brokerage Services**

At the first substantive dialogue between a Sales Associate and a prospective buyer, tenant, seller or landlord relating to specific real property, Sales Associate must present the NYREC Information About Brokerage Services disclosure form (IABS).

- (e) A substantive dialogue is defined as a meeting or written communication, excluding conversations at an open house. A substantive dialogue can occur when communicating by email, texting or other electronic communication.
- (f) The Sales Associate must document, in writing, the nature of the relationship with the person and attempt to obtain his or her initials on the IABS form. In the event the person refuses to initial the IABS, the Sales Associate will note the refusal in writing, preferably on a copy of the IABS form.
- (g) Sales agent is responsible for ensuring a fully completed IABS and Consumer Protection Notice is placed on all business website homepages in a readily noticeable place in at

least 10 point font.

### **5.5 Explain Agency Concepts**

As soon as an agency relationship between a Principal and an Agent appears likely to exist, the Agent will inform the Principal of the following:

- (a) The agency relationship will be a special agency. The Agent cannot bind the Principal. The Principal will be required to approve, in writing, all materials terms and conditions of any transaction documents;
- (b) The terms and conditions under which the agent expects to receive compensation;
- (c) The date and, if relevant, the time when the agency relationship begins;
- (d) The authority Agent is granted including, but not be limited to:
  - (i) The creation and use of marketing, advertising or other promotional displays related to the property and its owner; and
  - (ii) Access to the property for the Agent and others, including Brokers, Sales Agents, inspectors and the public;
- (e) The terms and conditions under which confidential information may and should be disclosed to others;
- (f) The efforts the Agent will use to market or locate a property;
- (g) The duties of the Agent to disclose information that might affect a buyer's or seller's decision; and
- (h) The duties of accounting for monies or other things of value by the Agent. Sales Associate will comply with the National Association of REALTORS® Code of Ethics requirements regarding the necessity of written agreements including, but not limited to, Article 9.

### **5.6 Disclosure of Representation**

Sales Associates must disclose who they represent at the first contact with another party, or with a Broker or Sales Agent who represents a different party (including at open houses). The disclosure of representation may be made orally or in writing. If the disclosure is made orally, it must be confirmed in writing in the contract or lease or other written document not later than the time of execution of the contract or lease.

### **5.7 Presentation of Offers**

Sales Associates will present all offers received to buy, sell, lease or rent property as quickly as possible to the client, and will present subsequent offers after the client has accepted an offer, unless the client has agreed otherwise in writing.

### **5.8 Broker Price Opinions**

In the process of negotiating a listing, Sales Associates may prepare a broker price opinion or comparative market analysis on the property to provide to the client. The broker price Opinion or comparative market analysis must include the following written statement:

"This represents an estimated sale price for this property. It is not the same as the opinion of value in an appraisal developed by a licensed appraiser under the Uniform Standards of Professional Appraisal Practice."

### **5.9 Disclosure To Principals**

Agents will convey to their Principals all known information that would affect the Principal's decision on whether to make or not make, accept or reject offers, and all other significant information applicable to the transaction.

#### **5.10 Disclosure To Buyers**

Sales Associates will disclose, in writing, any known significant defect to the property to a potential buyer that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase the property.

#### **5.11 Consent For Intermediary Relationship**

Before representing both parties to a transaction, both parties must be Principals, and written permission must be obtained from both Principals. In order to obtain written consent, Sales Associates will provide the appropriate listing agreement or buyer/tenant representation agreement to the respective parties and will obtain the appropriate signatures. Both parties to a transaction may be represented only as an intermediary.

Without the consent of both parties, only the initial client may be represented.

#### **5.12 Intermediary Relationships Optional**

State Broker has no obligation to agree to enter into an intermediary relationship. However, without an intermediary relationship, Principals on both sides of the transaction may not be jointly represented. An intermediary relationship is the only method available to jointly represent Principals on both sides of the transaction.

#### **5.13 Authorization Of Intermediary Relationships**

Sales Associates will consult with State Broker to determine if an intermediary relationship will be permitted in connection with any given transaction.

#### **5.14 Limitation of Intermediary Actions**

State Broker's and all Sales Associates' actions are limited as an intermediary.

- (a) Intermediaries may not disclose:
  - (i) That the seller will accept a price less than the asking price, unless the disclosure is authorized in writing by the seller;
  - (ii) That the buyer will pay a price greater than the price submitted in a written offer, unless the disclosure is authorized in writing by the buyer; or
  - (iii) Any confidential information of either the buyer or the seller unless: (i) authorized by the buyer or the seller in writing, (ii) required by law, (iii) required by the New York Real Estate License Act, (iv) required by a court order, or (v) the information materially relates to the condition of the Property;
- (b) Intermediaries may not treat either party dishonestly or violate the New York Real Estate Act.

#### **5.15 Appointments To Expand Intermediary Relationship**

State Broker may elect to expand the intermediary relationship by appointing separate Sales Associates to offer opinions and advice to each of the parties. In the event State Broker makes the appointments, written notice of the appointments and the identity of the specific Sales Associates must be given to the parties.

**5.16 Intermediary Without Appointments**

If no appointments are made, State Broker and all Sales Associates remain as intermediary. However, no opinions or advice may be provided to any party.

**5.17 Failure To Comply With Intermediary Requirements**

Failure of the intermediary sales agent/broker to comply with the Intermediary Provisions may subject them to disciplinary sanctions by the NYREC, including but not limited to, revocation, suspension, reprimand and/or an administrative penalty. All Sales Associates agree to be well educated and have a deep understanding of the intermediary relationship prior to entering into such a relationship.

**5.18 Confidentiality Required**

All Sales Associates must maintain all confidential information of all parties. Only the appointed Sales Associate may offer opinions and advice to the party to whom appointed.

**5.19 Decisions To Terminate Representation**

Sales Associates must consult with the State Broker in response to a Principal's request or Sales Associate's desire to terminate an agency relationship. State Broker's decision will control with respect to any action to be taken, including any demand for compensation or reimbursement owed by the Principal.

**5.20 Actions Upon Termination Of Representation**

Upon the termination of the agency relationship with the client, Sales Associate must immediately cease acting as the client's representative and comply with the following:

- (a) Cease all advertising about the property.
- (b) Remove all signs and lockboxes from the property.
- (c) Remove all MLS listings concerning the property.
- (d) Remove all information about the property from websites controlled by Sales Agent or State Broker; and
- (e) Cease publication of all other communication in any form about the property.