

## **West Virginia Addendum to the Independent Contractor Agreement**

Real Broker, LLC (the “**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 West Virginia. This addendum supersedes all previous West Virginia 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 law that governs your profession is found in the Code of West Virginia in Chapter 30, Article 40 and the West Virginia Code of State Rules in Chapter 174. Failure to obey the standards set forth in the Code could result in separation from the Company and/or monetary penalties and/or the loss of your license.

The Code of West Virginia and applicable regulations are provided online by the West Virginia Real Estate Commission [here](#). The West Virginia Code of State Rules can be found [here](#).

### **LICENSE REQUIREMENTS**

*License Renewal:* The license year begins on July 1 and ends June 30 of each fiscal year. Applications for renewal must show satisfactory evidence of completion of the 7 hours of approved continuing professional education during the term of the previous license.

*Continuing Education:* All licensees shall complete 7 hours of continuing professional education for each fiscal year, with each hour equaling 50 minutes of instruction.

For brokers and associate brokers, 3 of the required 7 hours must be from the broker-level education curriculum approved by the Commission.

Courses taken to satisfy the then-current continuing education requirement shall not be the same as the courses taken for the previous license renewal.

*Company or Branch Requirements:* All brokers must have a definite place of business in West Virginia that is designated in the license certificate issued by the commission. The broker may not transact business at any other location, unless the location is properly licensed by the commission as a branch office.

Brokers must also conspicuously display the branch office license in each branch office, make an application to the commission before changing the address of any office or within 10 days after any change maintain custody and control of the license of each associate

broker and salesperson affiliated with them, and promptly return the license of any associate broker or salesperson whose affiliation with the broker is terminated.

Branch offices must have a designated associate broker or salesperson as manager of the branch office. A broker may act as the manager of a branch office if capable of adequately supervising all associate brokers and salespersons assigned to that branch office. If the broker chooses to appoint a manager of a branch office, the licensee must be an active licensee and have at least 2 years of actual experience.

### **DUTIES OF A LICENSEE:**

- Associate brokers and salespersons must conduct real estate brokerage activities only under the direct supervision and control of the affiliated broker
- Licensees must notify the Commission in writing of any change in name, personal address, and phone and email address of record within 30 days of the change or prior to June 30, whichever comes first. A name change must be submitted on the form issued by the Commission and accompanied by the fee.
- At the time of securing any contract where the broker is obligated to represent a principal to a real estate transaction, every licensee shall supply a true legible copy of the contract to each person signing the contract.
- Any contract in which a broker is obligated to represent a principal to a real estate transaction shall contain a definite expiration date, and no provision may be included in any contract where the principal is required to notify the broker of his or her intention to cancel the contract after the definite expiration date.
- No provision may be inserted in any contract for representation that would obligate the person signing the contract to pay a fee, commission, or other valuable consideration to the broker, after the contract's expiration date, if the person subsequently enters into a contract for representation with a different broker.
- Every licensee shall disclose in writing, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, the buyer, the seller and the buyer, the landlord, the tenant, or the landlord and the tenant. The disclosure shall be made prior to any person signing any contract for representation by a licensee or a contract for the sale or purchase of real estate.
- Every licensee must promptly deliver to his or her principal, every written offer received.
- Every licensee must make certain that all the terms and conditions of a real estate transaction are contained in any contract prepared by the licensee.
- At the time of securing the signature of any party to a contract, the licensee shall deliver a true copy of the contract to the person whose signature was obtained.
- Upon the final acceptance or ratification of any contract, the licensee shall promptly deliver a true copy to each party that has signed the contract.

### **Prohibited Activities Resulting in Revocation, Suspension, or Other Sanctions:**

- Obtains, renews, or attempts to obtain or renew a license, for himself, herself, or another, through the submission of any application or other writing that contains false, fraudulent, or misleading information
- Makes any substantial misrepresentation
- Makes any false promises or representations of a character likely to influence, persuade, or induce a person involved in a real estate transaction
- Pursues a course of misrepresentation or makes false promises or representations through agents or any medium of advertising or otherwise
- Uses misleading or false advertising
- Uses any trade name or insignia of membership in any organization in which the licensee is not a member
- Acts for more than one party in a transaction without the knowledge and written consent of all parties for whom he or she acts
- Fails, within a reasonable time, to account for or to remit moneys or other assets coming into his or her possession, which belong to others
- Commingles moneys belonging to others with his or her own funds
- Advertises or displays a "for sale", "for rent", or other such sign on any property without an agency relationship being established or without the owner's knowledge and written consent
- Advertises any property on terms other than those authorized by the owner
- Fails to disclose, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, buyer, or both
- Fails to voluntarily furnish copies of the notice of agency relationship, listing contract, sale contract, lease contract, or any other contract to each party executing the same
- Pays or receives any rebate, profit, compensation, commission, or other valuable consideration, resulting from a real estate transaction, to or from any person other than the licensee's principal: Provided, That this subsection may not be construed to prevent the sharing of compensation or other valuable consideration between licensed brokers
- Induces any person to a contract to break the contract for the purpose of substituting a new contract with a third party
- Accepts compensation as a salesperson or associate broker for any act specified in this article from any person other than his or her broker
- Pays compensation to any person for acts or services performed either in violation of this article or the real estate licensure laws of any other jurisdiction
- Pays compensation to any person knowing that they will pay a portion or all of that which is received, in a manner that would constitute a violation of this article if it were paid directly by a licensee of this state
- Violates any provision of this article, any rule, or any order or final decision issued by the commission

- Procures an attorney for any client or customer, or solicits legal business for any attorney-at-law
- Engages in the unlawful or unauthorized practice of law as defined by the Supreme Court of Appeals of West Virginia
- Commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or other device whereby any other person relies upon the word, representation, or conduct of the licensee
- Continues in the capacity of, or accepts the services of, any broker, associate broker, or salesperson who is not properly licensed
- Fails to disclose any information within his or her knowledge or to produce any document, book, or record in his or her possession for inspection of and copying by the commission or its duly authorized representatives
- Accepts payment other than cash or its equivalent as earnest money or other deposit unless this fact is disclosed in the contract to which the deposit relates
- Accepts, takes, or charges any undisclosed compensation on expenditures made by or on behalf of the licensee's principal
- Discriminates against any person involved in a real estate transaction which is in violation of any federal or state anti-discrimination law, including any fair housing law
- Fails to preserve for five years following its consummation, records relating to any real estate transaction
- Fails to maintain accurate records on the broker's trust fund account; (30) If a broker, fails to supervise all associate brokers and salespersons affiliated with him or her
- Breaches a fiduciary duty owed by a licensee to his or her principal in a real estate transaction
- Directs any party to a real estate transaction in which the licensee is involved, to any lending institution for financing or to any affiliated business with the expectation of receiving a financial incentive, rebate, or other compensation, without first obtaining from his or her principal the signed acknowledgment of and consent to the receipt of the financial incentive, rebate, or other compensation: Provided, That this subsection may not be construed to prevent the sharing of compensation or other valuable consideration between licensed brokers
- Represents to any lending institution, or other interested party either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon
- Fails to disclose to an owner the licensee's true position if he or she directly or indirectly through a third party, purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase the property
- Lends a broker's license to any person, including a salesperson, or permits a salesperson to operate as a broker

- Has been convicted in a court of competent jurisdiction in this or any other jurisdiction of forgery, embezzlement, obtaining money under false pretense, bribery, larceny, extortion, conspiracy to defraud, any other similar offense, a crime involving moral turpitude, or a felony
- Engages in any act or conduct which constitutes or demonstrates bad faith, incompetency, untrustworthiness, or dishonest, fraudulent, or improper dealing
- Induces any person to alter, modify, or change another licensee's fee or commission for brokerage services, without that licensee's prior written consent
- Negotiates a real estate transaction directly with any person that is represented exclusively by another broker, unless the conduct is specifically authorized by the other broker
- Obtains, negotiates, or attempts to obtain or negotiate a contract whereby the broker is entitled to a commission only to the extent that the sales price exceeds a given amount, commonly referred to as a net listing
- Fails or refuses, on demand, to furnish copies of a document to a person whose signature is affixed to the document
- In the case of an associate broker or salesperson, represents or attempts to represent a broker other than his or her employing broker
- Fails to reduce a bona fide offer to writing
- Guarantees, or authorizes or permits another licensee to guarantee, future profits which may result from a real estate transaction
- Is disciplined by another jurisdiction if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline in this article
- Engages in any other act or omission in violation of professional conduct requirements of licensees established by legislative rule of the commission. (b) The provisions of this section shall be liberally construed in order to carry out the objectives and purposes of this article.

Every person licensed by the commission has an affirmative duty to report, in a timely manner, any known or observed violation of this article or the rules, orders, or final decisions of the commission.

The revocation of a broker's license shall automatically suspend the license of every associate broker and salesperson affiliated with the broker, however, the commission shall issue a replacement license for any licensee so affected to a new broker, without charge, if a proper application is submitted to the commission during the same license term

### **TRUST ACCOUNTS:**

- Every person licensed as a broker who does not immediately deliver all funds received, in relation to a real estate transaction, to his or her principal or to a neutral escrow depository shall maintain and reconcile one or more trust fund accounts in

a recognized financial institution and shall place all funds therein, provided that a broker is not required to maintain a trust fund account if the broker does not hold any money in trust for another party.

- Funds that must be deposited into a trust fund account include, but are not limited to, earnest money deposits, security deposits, rental receipts, auction proceeds, and money held in escrow at closing.
- Each trust fund account must be established at a financial institution which is insured against loss by an agency of the federal government and the amount deposited therein cannot exceed the amount that is insured against loss.
- Each trust fund account must provide for the withdrawal of funds without notice.
- No trust fund account may earn interest or any other form of income, unless specifically authorized by commission rule.
- The broker may not commingle his or her own funds with trust funds and the account may not be pledged as collateral for a loan or otherwise utilized by the broker in a manner that would violate his or her fiduciary obligations in relation to the trust funds, however, brokers are permitted to deposit a maximum of \$100 of his or her own money in the trust fund account to maintain a minimum balance in the account.
- The broker must be the designated trustee of the account and shall maintain complete authority and control over all aspects of each trust fund account, including signature authority, provided that only one other member or officer of the Company who is licensed under the provisions of this article, may be authorized to disburse funds from the account. However, if disbursements from a trust fund account require two signatures, one additional member or officer may be a signatory.
- Every salesperson and associate broker who receives any trust funds must immediately or by the next business day following receipt pay over or deliver the trust funds to the responsible broker. No salesperson or associate broker shall collect any money in connection with any real estate transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the responsible broker.
- The broker shall, at a minimum, maintain records of all funds deposited into the trust fund account, which shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, to whom the money belongs, for whose account the money was received, and other pertinent information concerning the transaction. All records shall be open to inspection by the commission or its duly authorized representative at all times during regular business hours at the broker's place of business.
- The broker must require that the financial institution wherein a trust fund account is maintained to execute a statement, prepared by the commission, which shall include, but is not limited to: (1) Exact title of the account as registered by the financial institution; (2) The account number of the trust fund account; (3) Identification of all persons authorized to make withdrawals from the account; (4)

Name and address of the financial institution; (5) Title of the person executing the statement on behalf of the financial institution; (6) Date the statement was executed; and (7) Certification that the financial institution will notify the Real Estate Commission if any checks drawn against the account are returned for insufficient funds and that the financial institution does not require a minimum balance in excess of the amount authorized in subsection (f) of this section.

- The broker must execute a statement authorizing the commission, or its duly authorized representative, to make periodic inspections of the trust fund account and to obtain copies of records from any financial institution wherein a trust fund account is maintained. A copy of any 26 authorization shall be accepted by any financial institution with the same force and effect as the original. (k) The broker shall notify the commission, within 10 days of the establishment of or any change to a trust fund account.

### **RECORD MANAGEMENT:**

Brokers must maintain all records required by the Commission for a minimum of 5 years. Required records include, but are not limited to: books, contracts, closing documents, trust account records, and other documents necessary for the Commission to conduct its audits and investigations.

These records may be kept in any electronic format that is accessible to the Commission. The records shall be provided to the Commission upon request and shall also be open to inspection by the Commission through its duly authorized representative(s) at the broker's usual place of business and at all times during regular business hours. The broker shall provide sufficient space to permit the Commission's inspection of the records without interference by other users of the property.

### **ADVERTISING:**

Advertisements must include: the company name, the name of the responsible broker and the term "Broker," the physical address of a licensed office location, and phone number. Names of associate brokers and salespersons should not be included in the advertising unless they are clearly identified as such.

No salesperson can advertise any property under their own name without the name of the responsible broker. All advertising by a salesperson must be under the direct supervision of and in the name of the responsible broker.

An advertisement for specific property or service by a team is not required to include the name of each team member, or the name of each team member whose photograph may be included in the advertisement, but shall include all of the following information: the company name, the name of the responsible broker, the term "broker" displayed in equal prominence with the team name and the salesperson in the advertisement, the name of at least one salesperson who is a team member and the term "salesperson to

identify them if they are included in the advertisement, the term “non-licensed” to identify any team members who does not hold a current valid license and whose name is included in the advertisement, and a phone number.

Any advertising which is not for a specific property or service, like business cards or other promotional items, must include the licensee name, company name, and contact information.

The company name, the name of the responsible broker and the word “Broker,” the physical address of a licensed office location and phone number must be included on the home page or the first screen seen by a viewer for internet advertising. The information must be accessible with no more than 2 mouse clicks when advertising on social media.

### **UNLICENSED ASSISTANTS**

Unlicensed Assistants may do the following tasks:

Disseminate brokerage preprinted and predetermined real estate sales and rental information;

Accept and process rental reservations or bookings for a period not to exceed thirty consecutive days in a manner and procedure predetermined by the broker;

Collect predetermined rental fees for the rentals which are to be promptly tendered to the broker;

Make appointments on behalf of the broker or licensed salesperson with buyers and sellers of real estate and potential buyers and sellers of real estate.