RE/MAX Preferred

Office Policy Manual Guide

This Policy Manual contains the
policies and procedures of:

GREATER MADISON REALTY, LLC

d/b/a RE/MAX Preferred

Fifteenth Edition
2020 Wisconsin REALTORS® Association

WRA
Wisconsin REALTORS® Association

4801 Forest Run Rd., Suite 201
Madison, WI 53704-7337

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Introduction

This Office Policy Manual sets forth the policies and procedures of **Greater Madison Realty, LLC dba RE/MAX Preferred**. It is to be used as a guide for Associates to encourage cooperation, as a basis for avoiding or settling disputes, and to explain the firm's policies and procedures, thus eliminating misunderstanding between Associates and the Firm.

The Firm reserves the right to amend this policy and change procedures at any time. Amendments and changes shall be distributed in writing to all Associates and discussed at regular sales meetings or other meetings scheduled by the Firm. Each Associate is required to keep him or herself informed of such changes or amendments. Failure to attend such meetings shall not be an excuse for being uninformed. This Office Policy Manual does not constitute an employment contract in whole or in part.

Who We Are

At RE/MAX Preferred, we are proud to be an independently owned and operated franchise of RE/MAX LLC, driven by a team of exceptional agents who lead the way in professionalism, efficiency, and integrity.

Our mission is simple: *To inspire and guide fellow real estate professionals to consistently achieve greatness in both life and business.*

We've built a collaborative, supportive culture where passionate, goal-oriented agents thrive. Here, you are empowered to grow your business independently, while having access to full-time, full-service support and advanced systems.

As Broker Owners, our top priority is ensuring that every agent receives the attention, support, and recognition they deserve. We are committed to helping you continually improve, challenge yourself, and build a thriving business that keeps clients coming back and referring others.

At the heart of it all, real estate is about people, and our brokerage puts people first.

We can't wait to celebrate your unique strengths, cheer you on as you hit milestones, and support you in achieving your career goals.

Welcome to RE/MAX Preferred - where your success is our priority!

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Chapter 1

Firm and Associate

Definitions

"**Firm**" refers to the individual or entity which has engaged the Associates and under whose real estate license the Associates of a company practice. When the term is used in instances where the Firm is a licensed business entity and action by an individual is required, that authority shall be exercised by the supervising broker or by another broker to whom such responsibility has been delegated in writing. See Appendix IX for Firm delegations of supervisory authority.

"**Associate**" refers to a licensed real estate salesperson, real estate broker or licensed personal assistant providing real estate and related services to the Firm's clients and customers on behalf of the Firm and, as required by Wisconsin law, under the Firm's supervision.

Mutual Benefits

The Firm and the Associate shall best be able to obtain their goals and prosper if they each abide by the following policies:

Work for the Mutual Success of the Firm and Associate

The Associate and Firm each agree to conduct his or her business and regulate his or her habits and working hours so as to maintain and increase the goodwill, business, profits and reputation of the Firm and Associate.

The Associate agrees to use his or her best efforts to sell, exchange, option or lease all real estate and businesses listed with the Firm, to solicit additional clients and customers for the Firm, and otherwise promote the business of lawfully and ethically serving the public in real estate and business transactions to the end that the Firm and Associate may derive the greatest mutual profit possible.

As agent for the Firm, the Associate agrees to act on behalf of the Firm. Should the Associate be unable at any time to avoid a conflict between the Associate's self-interest and the Firm's interests, the Associate shall notify the Firm in writing of such conflict in advance so that appropriate steps may be taken to protect the parties in the transaction and the interests of the Firm and resolve the conflict.

Adhere to Wisconsin Law and Administrative Code, the Code of Ethics, and Local Association and MLS Bylaws

The Firm and Associate agree to conform to and comply with all laws, rules and regulations, and codes of ethics that are binding on, or applicable to, Wisconsin real estate firms, salespeople and licensed personal assistants. The Firm and Associate shall be governed by Wisconsin real estate laws and administrative rules, the Code of Ethics of the National Association of REALTORS® (NAR), the Constitution and/or Bylaws of the state and local Association of REALTORS®, the rules and regulations of any Multiple Listing Service in which the Firm participates now or in the future, and any other laws, ordinances, rules or regulations which are or may become applicable to the Firm and the Associate. The Associate acknowledges receipt of a copy of the REALTOR® Code of Ethics, the local REALTORS® Association Constitution and/or Bylaws, and the Rules and Regulations of the Multiple Listing Service. See Appendices II, III and IV.

Associate Responsibilities

The Associate shall comply with the following provisions, at the Associate's cost:

Real Estate License and Mandatory Continuing Education

The Associate shall maintain his or her own current real estate license. The Associate shall meet all Continuing Education (CE) requirements as established by the Real Estate Examining Board (REEB) for real estate licensees. Written evidence of CE compliance and license renewal shall be provided to Firm no later than **3** days prior to the applicable renewal date. The Associate is responsible for all licensing, CE and license renewal costs and fees.

Membership in the Association of REALTORS®

The Associate agrees to become a member of the local REALTORS® Association, the Wisconsin REALTORS® Association (WRA) and the National Association of REALTORS® (NAR) and to be responsible for all applicable dues and fees. These organizations provide valuable information about current legal, ethics and practice developments and best practices to serve clients and customers and avoid liability within the real estate business.

The Associate expressly understands that the Firm is a member of the South Central Wisconsin Association of REALTORS®, the WRA, the NAR, and Greater Milwaukee Association of Realtors, including Institutes and Societies of the National Association. The Associate agrees to comply with the rules and regulations of these organizations to which the Firm must adhere.

Each Associate must complete REALTOR® ethics training within the time frames set by the NAR. The Associate shall meet all REALTOR® training requirements in a timely manner and is responsible for all ethics training costs.

Member Marks

NAR is the proud owner of numerous marks including the terms REALTOR®, REALTOR-ASSOCIATE®, REALTORS®, the REALTOR® Logo and the Block "R" mark (collectively referred to as the "Marks"). It is important to use NAR's membership Marks carefully and correctly. Associates shall use the Marks to identify themselves as highly ethical real estate professionals according to the rules for proper use found in the *Membership Marks Manual* at http://www.realtor.org/membership-marks-manual.

Designations/Certifications

The Associate is encouraged to pursue designations and certifications reflecting additional education, real estate experience and enhanced professional skills. Whether the designation is obtained from NAR or individual institutes, societies or councils, the Associate shall assure that all advertising, business cards and communications proudly and accurately reflect the professional designations, certifications and credentials to which they are legally entitled.

Other Associate Expenses

The Associate shall pay all expenses relating to customer/client entertainment, personal promotion, and education required to maintain licensure and improve professional brokerage skills, unless otherwise approved in writing in advance by the Firm. The Associate shall provide all supplies for the Associate's personal files.

Vehicle

The Associate shall use his or her own vehicle during real estate transactions. The Associate shall pay all operating, maintenance, repair and other automobile expenses. The Associate shall keep his or her vehicle(s) clean, uncluttered and in good operating condition at all times for the safety of the Firm's clients and customers. The Firm will not provide transportation.

The Associate shall at all times carry liability insurance on his or her automobile(s) with coverage for personal injury of not less than **$250,000** per person and **$500,000** per accident, and coverage for property damage of not less than **$100,000**. Any change in required coverage limits shall become effective only upon prior written notice from the Firm. The Associate shall have the Firm named as an additional insured in the policy. Business pursuits liability coverage shall also be maintained with a limit of at least 250,000. This may be available as part of the Associate's personal liability or homeowner's coverage. See Independent Contractor Agreement, Item I.

At the signing of this agreement and at the time of each policy renewal, change in policy terms or coverage, or change of carrier, the Associate shall furnish the Firm with a certificate of such insurance or an endorsement from the carrier, as applicable. The Associate will comply with Wisconsin compulsory auto insurance law. The law requires that each person operating a motor vehicle must have auto insurance for the vehicle being operated and must have proof of compliance in in his or her possession while operating the motor vehicle.

Associates will refrain from texting while driving and comply with the Wisconsin law that prohibits composing or sending text messages while driving. Associates are encouraged to use "hands-free" headsets or speakerphones or avoid telephone conversations while driving.

In accordance with Wisconsin law, the Associate must require that all passengers wear a seat belt. Children must be properly restrained in a child safety seat until they reach age four (4), and in a booster seat until age eight (8), subject to the additional restrictions described online at http://www.dot.wisconsin.gov/safety/vehicle/child/laws.htm.

Items Made Available by Firm

Associates are encouraged to select and provide their own smartphones, laptops or personal computers, tablets and other mobile devices to suit their individual needs and maximize the Associate's productivity and efficiency. The Firm may make the items and services checked below available at the Firm's cost as a courtesy to the Associate. Items not checked are the responsibility of the Associate to provide and pay for.

1. Flex office space is available at all offices. Permanent spaces are available upon request and availability and must be approved by Management. Most offices have conference room space available. If you need a specific day and time, check with each office for availability.

2. MLS Subscriber access – MLS bills each agent individually

3. Administrative and Accounting assistance for the associate:
   a. Process earnest money
   b. Process listings and accepted offers
   c. Process closings and pay associates
   d. Provides monthly agent income and expense statements

4. Office equipment/business machines. The following office equipment and supplies, if made available to Associates, are for business use only:
   a. Computers (Laptops, tablets, etc.): Visiting agent desktop computer at each office.
   b. Copy Machine: The copy machine is available for Associates to use to reproduce real estate related documents in the quantities required. Associates are charged on a per copy basis.
   c. Facsimile Machine: The fax machine, located at some of our office locations for associates use.

   The Associate is responsible to turn off any office equipment used during times when the office is closed.

Dispute Resolution

It is inevitable that active, assertive, successful Associates will occasionally have misunderstandings about brokerage prospects or sales. Associates are encouraged to always agree in advance and in writing regarding responsibilities and commissions when cooperatively working together in the same transaction or with the same client or customer. In the absence of such an agreement, the following mechanisms shall be used to deal with disputes between Associates:

Definition of Dispute

Disputes are defined as disagreements between Associates regarding: (1) the right to work with a particular party, (2) the right to a commission split or fee when more than one Associate knowingly or unknowingly works with the same customer/client, (3) the amount of commission or fee earned by each Associate when two Associates have worked with the same customer/client, or (4) the interpretation of office policy or procedures as applicable to a particular property or transaction.

Resolution of Intra-Office Disputes between Associates

In the event of such a dispute between two Associates, they must first attempt to negotiate a mutually agreeable settlement.

If the Associates are unable to reach a satisfactory resolution, the Firm shall meet with the disagreeing Associates and hear each side. The Firm will then determine whether there is a legitimate dispute and, if so, attempt to determine the proper action to take.

If the Firm is unable to resolve the dispute, the Firm shall appoint a committee of three disinterested Associates to hear the facts from the disagreeing Associates and render a decision (based on the majority vote of the committee), which shall be final. All intra-office disputes must be reported promptly to the Firm.

Personal disagreements, not involving office policy or real estate law or rules, can be resolved without the Firm's participation, however, the Firm is available as needed to counsel Associates.

Disagreement with Firm

In the event of disagreement or dispute between an Associate and the Firm, arising out of, or in connection with their business relationship and dealings, commissions, office policy, real estate law or transactions, or anything else relating to their mutual relationship and real estate practice, which cannot be informally resolved by and between them, such disagreement or dispute shall be submitted to arbitration in accordance with the rules, regulations and procedures of a mutually agreed upon independent arbitrator. The Firm and Associate shall be bound by the decision of the arbitrator.

Independent Contractor

The relationship of the Associate to the Firm is that of an Independent Contractor. This relationship affords the Associate maximum freedom and flexibility. The relationship is established and described in a contract that must be signed by every Associate.

Statutory Independent Contractor Criteria

For federal tax purposes (see 26 U.S. Code § 3508) an Associate qualifies as a statutory independent contractor (also referred to by the Internal Revenue Service as a statutory nonemployee) if:

(1) the Associate holds a valid real estate license;

(2) substantially all of the Associate's remuneration for services performed as a real estate agent is directly related to sales or other output rather than to the number of hours worked (this has been interpreted to mean that at least 90 percent of compensation must come from commissions in an IRS letter ruling); and

(3) the Firm and the Associate have a written agreement which specifically states that the Associate will not be treated as an employee for federal and state tax purposes with respect to services performed as a real estate agent.

Statutory independent contractors (statutory nonemployees) are treated as self-employed for all federal income tax purposes.

For state tax purposes see Wis. Stat. § 452.38 an Associate qualifies as a statutory independent contractor if the real estate licensee:

(1) A written agreement between the firm and the licensee that provides the licensee shall not be treated as an employee for federal and state tax purposes.

(2) 75 percent or more of commission paid by the firm to the licensee during a calendar year is directly related to the brokerage services performed by the licensee on behalf of the firm.

The federal safe harbor will still apply for federal tax purposes because a state statute could not trump federal law. Under 26 U.S. Code § 3508, the services performed as a real estate agent must be those activities generally associated with the sale of real property, and the remuneration for the services must be directly related to sales or other output, including the performance of services. Such real estate services may include appraising property; advertising and showing property; closing sales; leasing property, and recruiting, training and supervising other agents. The federal law has been interpreted to say that services performed as a real estate agent do not include the management of property for these purposes. It is not clear to what extent these federal law interpretations might apply to the new Wis. Stat. § 452.38 safe harbor because there are differences in language.

Independent Contractor Agreement

Upon affiliation with this Firm, the Associate shall enter into a written Independent Contractor Agreement (ICA) with the Firm setting forth the duties and responsibilities of both parties. This agreement shall include, but shall not be limited to, provisions addressing the following:

1. The agent is an independent contractor and not an employee.
2. The terms under which the Associate will be compensated for work done while affiliated with the Firm.
3. The terms under which the Associate will be compensated for work begun, but not completed prior to the termination of the Associate's affiliation with the Firm.
4. Responsibility for paying various business costs and expenses.
5. All listings and buyer agency agreements secured by the Associate are the Firm's exclusive property.

6. The Associate must maintain confidentiality regarding clients, customers and the brokerage firm.
7. The extent of the Associate's authority to sign contracts on behalf of the Firm.
8. The disposition of the Associate's active listings, buyer agency contracts and pending sales after termination of the Associate's affiliation with the Firm.
9. A written accounting to the Firm, at the time of termination, of the names of all prospective purchasers, sellers, lessees and lessors, which the Associate encountered during affiliation with the Firm ("prospect lists").
10. The Associate's obligation to return to the Firm, at the time of termination, all transaction files and photographs, computerized files and software, keys, Firm signage, lockboxes and records of any kind used in connection with the listing and sale or leasing of property.
11. A specific statement that the Associate will not be treated as an employee for federal and state tax purposes with respect to services performed as a real estate agent.

An ICA address other costs such as errors and omissions insurance, auto insurance, association dues, MLS fees, Internet connection, URL fees, franchise fees, desk fees, advertising fees, postage, and signs. The responsibility for entering into and paying for various services agreements might also be addressed as well as how these agreements would be handled upon any termination of the Associate. The ICA may contemplate intellectual property issues as well and the termination provisions may indicate what effect the termination of the Associate has on any Associate websites, URL's owned by the Associate, and the ownership/copyright of photographs taken by the Associate during the term of the ICA.

A copy of the Associate's executed Independent Contractor Agreement with the Firm appears in Appendix V of this Manual.

Tax Status

Each Associate is responsible for maintaining the necessary personal financial records in order to report to the state and federal revenue services each year as required by law. The Firm's obligation in this regard is specifically limited to providing IRS Form 1099 when the Associate is paid commission and a yearly summary statement of earnings. The Firm is not liable for deduction of social security, or state or federal income taxes. No unemployment tax need be deducted unless Associate receives compensation from Firm other than commission.

Worker's Compensation

Firm is not required to provide Worker's Compensation Insurance for Associates who meets the Wis. Stat. § 452.38 independent contractor safe harbor test. The law does permit the Firm to choose to voluntarily carry worker's compensation insurance for Associates. The Firm will be required to provide Worker's Compensation Insurance for all employees of the Firm.

Authority to Contract

The Associate shall have no authority to bind, obligate or commit the Firm by any contract, promise or representation, unless specifically authorized by the Firm in writing; provided, however, that the Associate is authorized to execute real estate listing contracts, buyer agency agreements, closing statements, earnest money receipts and other approved real estate forms for and on behalf of the Firm so long as the commission involved in such transaction is not less than that approved by the Firm.

The Associate shall have no authority to terminate a listing contract, buyer agency agreement or other agency agreement, or to sign amendments to such contracts that change the amount of compensation established in the contract or alter the term of the contract. Any Associate's request for such an agency contract termination or amendment regarding compensation or term length must be presented

to Tim Krueger and/or assigns who is authorized to provide written consent to such terminations and amendments.

When signing any contracts on behalf of the Firm, any formal name of the Firm entity, for example "XYZ, Inc." or "AB Realty LLC," should always be stated. The formal name may be followed by any trade name to avoid confusing the parties. Then the Associate's name and capacity should be stated below or next to the Associate's signature, for example, "By Abe Jones, Agent." An Associate entering into a contract on behalf of the Firm may become personally liable on a contract if the entity status and the Associate's capacity as an agent are not clearly disclosed. The March 2006 *Legal Update*, "Brokerage Entities and Agent Signatures," at www.wra.org/LU0603 includes additional information, practice pointers and additional guidance for Associates regarding signatures for entities. Unless specified differently, Brokers must sign all listing amendments and Compensation Agreements.

Chapter 2

Basic Office Policies

Office Compliance with Americans with Disabilities Act

Real estate offices are open to the public and thus are public accommodations under the Americans with Disabilities Act (ADA). Accordingly, architectural barriers must be removed if the removal is "readily achievable." The ADA also requires that auxiliary aids and services must be provided to ensure effective communication and thus maximize access to offered goods and services.

Discrimination Prohibited

Fair Housing Practices

The federal Fair Housing Act makes it unlawful to indicate a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination. Wisconsin statutes add sexual orientation, marital status, lawful source of income, age, ancestry and victim of domestic abuse, sexual assault, or stalking, to the list of protected classes. The Associate shall not deny equal professional services to any person in violation of local, state or federal law nor shall the Associate be a party to any plan or agreement to illegally discriminate against any person(s). Chapter 3 of this Manual states the Firm's fair housing advertising guidelines.

Provision of Equal Services

Under the ADA, Associates have an obligation to effectively communicate with their clients and customers. The law states that effective communication includes furnishing appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This is also true with respect to clients and customers who speak languages in which the Associate is not fluent.

Unless an Associate can communicate effectively and accurately with a client, there is a serious risk of not understanding the client's or customer's requirements and incorrectly advising, disclosing or negotiating. Sign language interpreters, translators and written materials are examples of "auxiliary aids and services" that may be needed to provide effective services to a client or customer. The more complex the communication (e.g., contract negotiations), the more likely a qualified interpreter will be required. The cost of providing sign language interpreters for deaf clients is part of the cost of doing business; it is similar to the cost of a ramp, elevator, disabled parking place or other physical accessibility feature, which may not be passed on to the client with disabilities unless the costs constitute an undue burden. Associates must also engage qualified translators and try to provide forms and explanatory written materials in various languages to facilitate communication with clients and customers who speak languages in which the Associate is not fluent. For more information regarding effective communication, and practice pointers and additional guidance for Associates, see *Legal Update* 01.03 "Providing Good Services to Customers with Special Needs" at www.wra.org/LU0103.

Associate Accused of Discrimination

Should an Associate be accused of discrimination, the Firm shall conduct an investigation. If the investigation confirms the accusation, the Associate's actions will be reported to the Department of Safety and Professional Services (DSPS) for further investigation and necessary disciplinary action.

Fair Employment Practices

It is the Firm's policy that no Associate or other personnel shall be discriminated against on the basis of sex, race, color, creed, handicap, national origin, sexual orientation, gender identity, marital status, arrest record, conviction record, membership in the national guard, state defense force, or any other reserve component of the military forces of the United States or Wisconsin, lawful source of income, age or ancestry (Wis. Stat. § 111.31 and Article 10 of the NAR Code of Ethics).

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

Harassment

Verbal, physical, visual, and sexual harassment are strictly prohibited in all Firm offices and at other meetings or events. Verbal harassment includes jokes and insults based upon race, sex or another protected class category under applicable federal, state or local fair employment law, including age, creed, color, disability, marital status, national origin, ancestry, lawful source of income, sexual orientation, gender identity, arrest or conviction record, or membership in the national guard, state defense force, or any other reserve component of the military forces of the United States or Wisconsin. Physical harassment includes unwelcome touching, grabbing and pinching. Visual harassment includes suggestive pictures, posters, photographs or cartoons, and materials intended to reflect negatively on an individual's gender, race, national origin, ancestry, sexual preference, or membership in another protected class under fair employment law. Sexual harassment includes unwelcome sexual advances, unwelcome requests for sexual acts or favors, and other unwelcome verbal or physical conduct of a sexual nature, or possession or distribution of sexually explicit materials that have the purpose or effect of unreasonably interfering with an individual's work performance, creating an intimidating, hostile or offensive working environment, or creating a hostile environment for the conduct of real estate business with clients, customers and others.

If any Associate or any other staff member believes that he or she has been subject to any such harassment, the incident shall be immediately reported to the Firm or a supervising broker. The Firm shall promptly investigate all written complaints. If management is involved in the complaining person's allegations, then an outside investigator may be retained. A written report will be rendered within 30 days of receipt of the complaint. The identity of the complainant and the individual(s) accused of the harassment will be kept strictly confidential.

Company policy prohibits any retaliation against any person who has complained of harassment, or against any person who participates in this company's investigation of the complaint. Any Associate found to have engaged in harassment may be subject to termination.

Drama Free Office Policy

In an effort to maintain healthy collaboration with all personalities it is our policy to have a Drama Free environment.

No Drama is allowed that causes infighting, water cooler talk, etc. Positive communication and activity that is productive and sustains energy as consistently as possible is the goal.

In the event Drama or negative issues come up, we will do our best to:

1. Skillfully initiate difficult conversations and defuse dramatic moments.
2. Reduce dramatic tendencies.
3. Create and sustain an authentic professional and fun work environment.

General REALTOR® Safety Procedures

Maintaining Contact with the Office

By the very nature of the real estate business it is necessary for Associates to be away from the office for showings, open houses, inspections, appointments and related commitments, at times under circumstances that put the associate's well-being and safety at risk. It is very important that the Firm's office be able to monitor the whereabouts of Associates as a personal safety measure and provide procedures and processes to protect the Firm's most important assets: the Associates.

Associates should be particularly careful not to subject themselves unnecessarily to unsafe situations. The Firm requires that Associates comply with the following safety measures:

1. **CITO (Come into the Office) Rule**. Associates should always screen all new clients and customers at the office before meeting them anywhere else. Get a prospect's full name, address and telephone number at the first meeting. Ask to see and photocopy the prospect's driver's license or at least jot down the date of birth. People show their ID when they use their credit card, so there should be no hesitation when they're about to buy a house.
2. **Associate Information/Emergency Contact.** The Firm and supervising brokers should collect Associates' emergency contact information, as well as their medical information, a photograph, and vehicle make, model, and license plate, and update the records every six months.
3. **Buddy System**. If meeting a prospect for the first time, or if an Associate is otherwise concerned about a buyer or seller, the Associate should ask the Firm, another Associate or a personal assistant to go along. Never meet a prospect alone at a vacant property or at night. Associates should work in pairs with another person whenever possible.
4. **Separate Cars**. Associates should use their own cars or take separate cars. Never ride in the prospect's vehicle.
5. **Escape Routes**. Upon entering a house for the first time, Associates should check all rooms and determine several "escape" routes. Make sure all deadbolt locks are unlocked to facilitate a faster escape. While showing a property, Associates should unlock the door and allow the prospects to enter first and keep them in front of the Associate at all times. Direct them; don't lead them. Avoid attics, basements, and getting trapped in small rooms.
6. **Conservative Appearance**. Dress professionally and conservatively. Don't wear flashy or expensive jewelry because it might attract the wrong kind of attention.
7. **Alert Neighbors**. Associates should inform a neighbor that they will be showing the house or holding an open house and ask them to keep an eye and ear open for anything out of the ordinary.
8. **Locking Up**. Associates should not assume that everyone has left the property at the end of an open housing or showing session and should check all rooms and the backyard before locking up. Associates should be alert and prepared to defend themselves if necessary.
9. **Leave Schedule**. When leaving the office, an Associate should always let someone know where the Associate will be and how the Associate can be reached. Associates should leave a daily itinerary with a pre-determined person or in a pre-determined place. Minimally, this should include when, where, and with whom appointments will be, when the Associate is expected to return, and contact information.
10. **Trust Your Gut**. Use caution and judgment and trust your instincts. Associates should NEVER put themselves in an unsafe or compromising position. In situations that present a risk of personal injury, such as the tour of a construction site, Associates should not proceed without verifying the safety of the site prior to conducting the tour or other activity. If an Associate feels threatened in any manner the Associate should trust his or her gut and leave.

11. **Panic Button**. Create a coded distress signal for the office. If an Associate is in a potentially dangerous situation, he or she can call in an alert to the office by saying something like, "This is Jane. I'm at 123 Main St. could you please send over the **red file**?"
12. **Smart Advertising**. Eliminate descriptions, such as "quiet, secluded street" or "vacant property" from all ads. Never advertise an open house as vacant.
13. **Minimize Personal Information**. Eliminate personal information (phone numbers, addresses) from business cards and social media. Use only an office or cell phone on business cards and collateral materials.
14. **Your Cell Phone is Your Best Friend**. Carry cell phones at all times when away from the office.

Office Security

All Associates who have been issued office keys are responsible to safeguard the office and its keys. The last person leaving the office is responsible to ensure that all doors and windows are locked, that all office equipment, appliances and lights are turned off, and that the office security system has been armed, if applicable.

Conceal Carry Policies

A person with a Wisconsin Conceal Carry weapon license may carry a concealed weapon in Wisconsin. "Weapons" are defined to include handguns, stun guns, a knife other than a switchblade or a Billy club. Handguns do not include machine guns, rifles or shotguns. Associates are not required to carry weapons.

Firms should work with their company attorneys and decide what, if any, CCW policies are appropriate for the business and the safety of agents, clients and customers, such as whether a "weapons-free" notice will be posted. Policies should address different settings such as the office, open houses and showings.

Additional information as well as practice pointers and additional guidance for Associates is available on pages 3-7 of the August 2011 *Legal Update*, "Legislative Update 2011"at www.wra.org/LU1108, the Wisconsin Department of Justice FAQ resources at http://www.doj.state.wi.us/sites/default/files/dles/ccw/ccw-faq.pdf and the Wisconsin State Bar article in the July 2012 *Wisconsin Lawyer* at http://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?Volume=85&Issue=7&ArticleID=8710.

Firm Conceal Carry Policies

Concurrent with Wisconsin Conceal Carry Law.

Other Defensive Measures

The Firm encourages Associates to take other measures that will enhance Associate safety including taking self-defense classes, carrying self-defense sprays such as mace and pepper spray, or traveling to showings and appointments with a dog if a human companion is not available or practical. Associates also are encouraged to investigate the various apps and smartphone security products available in the marketplace to enhance safety.

The Firm will incorporate safety education periodically in office meetings, taking advantage of the NAR safety resources at http://www.realtor.org/topics/realtor-safety.

Office Cleanliness

An attractive office appearance is important for making a good impression on clients and customers. A cleaning service is provided by the Firm to maintain the general cleanliness of the entire building. Associates are also responsible to maintain the appearance of the work areas or conference rooms they use in an attractive and tidy manner.

Healthy Work Environment

The spread of colds, the flu, and infectious diseases like the H1N1 virus, can be contained by good hygiene, washing hands, and keeping equipment disinfected. Cleaning supplies and disinfectants are located in restrooms or under kitchen sinks. See the NAR article and additional resources at http://archive.realtor.org/article/swine-flu-legal-q-and.

Drug and Alcohol Use

Substance Use

No drugs or alcohol shall be present or used by the Associate while performing real estate services for clients and customers or during any real estate brokerage transaction other than those prescribed by and taken under the supervision of a health care provider and which do not adversely affect the Associate's ability to perform his or her real estate duties. Should the Associate have a medical problem that requires the use of prescription drugs that may hamper his or her ability to perform his or her real estate duties, the Associate shall notify the Firm.

Client or Customer Substance Abuse

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

Smoking

It is recommended that smoking be avoided in the presence of parties to the transaction, and is not permitted while on property tour or during any meeting conducted in the Firm's facilities.

Dress Guidelines

It is recommended that Associates dress in a professional manner when representing the Firm and serving the public in real estate transactions.

Parking

The designated parking spaces nearest the entrance to the office are reserved for clients and customers. Associates may use remaining spaces.

Name, Address and Telephone Number

The Associate will keep the Firm informed of the Associate's contact information including the Associate's address, email addresses, website URLs, Facebook page, X/Twitter account, telephone/cell phone numbers, fax numbers and other social media sites. The Associate will report any changes to any of this information to the Office Manager or Broker of Record who will make a record of the changes. The Associate will report these changes to the DSPS, the local Association of REALTORS® and appropriate office staff, as necessary and applicable.

Telephone Use

General

Firm assumes that Associates will make real estate business telephone calls primarily on their own smartphones, computers and other devices.

Messages for Other Associates

Messages for other Associates are very important; they should be taken carefully, accurately and with sufficient detail for the Associate to respond. This may include, but is not limited to:

1. The date and time of the call
2. The name of the caller
3. The telephone number
4. The message
5. The name or initials of the person taking the message

Computer Use Policy

The computer hardware, software programs and information systems in the office ("information systems") are vital business assets and their protection, maintenance and proper usage is the responsibility of every Associate. The hardware, software, and information including, but not limited to, all business, products and services of Firm; all market data, financial data, personnel data and computer programs; all client, customer, account and supplier lists, files and data; and all files, letters, memoranda, reports, records, data and other written materials that Associates prepare are the Firm's property. Associates shall not remove, destroy or modify these materials and records except within the scope of their real estate practice, nor retain that information after their affiliation with the Firm has ended.

This policy addresses Associate responsibilities for the Firm's information systems. Violations of this policy may warrant termination and possible civil liability.

Orientation and Passwords

All Associates who have been authorized to access the information systems will receive a user name or system password. For security reasons, Associates shall not share their user name or system password with other Associates, office staff or persons outside the office. If an Associate has any reason to believe that his or her user name or system password has become known to anyone else, the Associate must immediately notify the network administrator.

Associates must implement the following practices:

1. Memorize their passwords.
2. Use non-words such as combinations of numbers, characters and letters.
3. Change passwords frequently (example: every 60 days).
4. Use a new term each time an application password is formulated and do not repeat an application password within a 12-month period.
5. Avoid application passwords that can be easily associated with an individual, such as nicknames, family members, pets, or hobbies.

Protection of Information

Security software for the Local Area Network ("LAN") has been installed to protect the integrity of the system. The supervising broker or Network Administrator will familiarize Associates further with

the security software and give instructions for controlling access to information and the level of security required to protect Associate's and the company's information.

Proper security also entails physical protection of information. Hard copies of reports, diskettes, CDs, flash drives, tablets and all portable devices should be stored in a locked facility when not in use, and should not be carelessly left lying around when in use.

Gramm-Leach-Bliley Act

The Gramm-Leach-Bliley Act (GLB) established extensive new consumer privacy obligations for financial institutions. Under GLB, entities that engage in "financial activities" are "financial institutions," regardless of whether or not the entity would commonly be considered a financial institution. Associates should understand that GLB does not consider brokerage services or property management activities to be financial activities. However, if an Associate engages in any of the "financial activities" or "activities incidental to a financial activity" (in addition to the Firm's brokerage services or property management), the Firm may be considered to be a "financial institution" and would be required to comply with the privacy provisions of GLB. Associates must obtain the Firm's written consent before engaging in any real estate or financial activities or providing real estate or financial services other than real estate brokerage or property management.

Personal Use

Information systems in the Firm's office, including voicemail, email, computer hardware and software, Internet access and other systems, are business assets and are to be used only for business purposes. Unauthorized personal use of the information systems is strictly prohibited. Authorization for any limited personal use will be determined on a case-by-case basis and must be obtained in writing from an Associate's immediate supervisor. Periodic announced or unannounced audits of the information systems may be performed to maintain the integrity and proper operation of the information systems to determine compliance with this policy. Such audits may include, but are not limited to, reviewing email, computer and voicemail usage.

Remote Access and Computer Use

Security with regard to remote access is paramount. Associates may use hardware and software at home and through their smartphones and mobile devices and access the Firm's online resources and files for business purposes directly related to their work for the Firm. Associates must comply with all security requirements to ensure the security and integrity of the information systems. All data, programs and work products related to these activities are the property of the Firm. Each Associate agrees that upon termination of his or her affiliation with the Firm or demand by the Firm, that the Associate shall immediately return to the Firm all tangible and electronic property, including equipment, data programs, transaction files, prospect lists and work product belonging to the Firm that are in the Associate's possession or control.

Safety and Security Measures

In addition to adherence to the other required security measures discussed in this policy, all Associates who utilize the information systems must properly maintain all hardware, software and electronic information. All "anti-viral" and other safety precautions, and all backup, file maintenance, data security, and contingency and disaster recovery procedures must be followed. This requirement also includes keeping screen savers activated and keeping liquids, foods and other physical hazards away from computers, terminals and other equipment.

Associates should review the data security practice points and guidelines in the May 2013 *Legal Update*, "Safeguarding Personal Information," at www.wra.org/LU1305.

Harassment

Use of the information systems for harassment, in any form, will not be tolerated. The information systems are not to be used inappropriately to forward messages or information that will disparage individuals or groups based on their gender, race, national origin or other protected characteristic, or in any manner which might disrupt the workplace or damage morale. Accordingly, conduct including, but not limited to offensive comments, jokes/riddles, cartoons, pornography, profanity and offensive messages or information in any form is expressly prohibited. Any Associate who receives threatening, harassing or improper communications shall immediately report the situation to the Firm.

Origination of Voice and Electronic Mail

Associates are responsible for all electronic, text and voicemail messages they originate. Forgery, or attempted forgery email is prohibited. Accessing, deleting, copying or modifying (or attempting to do so) the email, text messages or voicemail of another Associate is prohibited.

Viruses

Unauthorized copying of games and other programs can expose the Firm to copyright infringement claims (discussed below), computer viruses and system overloads, as well as significant cost and downtime spent remedying the problems created as a result of such activity. Therefore, all Associates are required to adhere to the following "anti-virus" procedures. If Associates obtain non-proprietary software or files from an outside source, proper procedures for use of "anti-viral" software and the like, as determined by the network administrator's procedures, must be followed before they can be installed in the information systems. The introduction of a computer virus into the information systems by importation through the Internet, failure to adhere to security measures in connection with access to the Internet, copying software which contains a computer virus of any sort, including software licensed by an individual, shareware, use of mobile devices, or freeware, or any other means, is a violation of this policy.

Email is the most likely source of virus infection. Associates should be suspicious of all file attachments, especially from a source outside the Firm's company. Most legitimate and sophisticated companies do not use file attachments with email sent to large groups of people.

All Associates must adhere to the following practices regarding network and local virus protection:

1. DO NOT OPEN attachments unless you've personally requested or are expecting a specific attachment from someone, especially files that look odd or have an .exe extension. Delete messages that look "odd," have bad grammar or use unusual language. Several viruses propagate themselves by using the mailing lists found on an infected computer, so email from a close friend may in fact be a virus that will infect an Associate's computer when the Associate opens an innocent looking file attachment from an apparent trusted source.
2. When using flash drives be sure to scan it for viruses first.
3. Never disable, in part or in whole, the virus protection on a computer or other device. To minimize viruses, it is imperative to have current virus protection. All Associates must keep virus protection and operating systems up to date at all times.

Copyright

The Firm licenses the use of computer software from a variety of outside sources. The Firm does not own this software or its related documentation, and unless authorized by the software developer, does not have the right to reproduce it. Associates shall use the software only in accordance with the relevant license agreement.

Any duplication of copyrighted software, except for backup purposes, is a violation of the Federal Copyright Law. All software installed in the information systems must be pre-approved by the network administrator and non-proprietary or properly licensed. The Firm will not tolerate any Associate making or importing unauthorized copies of software or data. Likewise, the Firm will not tolerate any Associate conveying software or data to an outside third party, including clients, members or customers, without proper written authorization.

According to the United States copyright law, illegal reproduction of software can be subject to civil damages of as much as $100,000 per copyright violated and criminal penalties, including fines and imprisonment. Associates learning of any misuse of software on the information systems or in related documentation shall immediately notify the network administrator. See the Technology Policy Manual and the April 2014 *Legal Update*, "Avoiding Liability for Copyright and Patent Infringements," at www.wra.org/LU1404 for additional guidance for avoiding liability for copyright infringement.

Internet and Social Media

The Internet and social media should not be used for communications that require confidentiality or involve financial transactions without both ensuring the security of the communication via an accepted mechanism.

Use of the Internet and social media also requires conformance to certain etiquette. All Associates are to conduct themselves as "ambassadors" of the Firm and show consideration and respect to others when using the Internet and social media. Associates must not swear, use vulgarities or any other inappropriate language in their messages or social media sites. Transmission or importation of any material or data in violation of any federal or state law or regulation is prohibited, including, but not limited to, copyrighted material, pornography, threatening or obscene material, or information constituting trade secrets. All of the previous provisions of this policy apply to access to and use of the Internet and social media.

E-Commerce

When consumers are going to receive electronic documents via email, federal law – as adopted by Wisconsin law -- requires a disclosure and consent process if the parties wish to substitute electronic documents or signatures for written documents and signatures. A consumer (for these purposes) is an individual who obtains, in a transaction, real estate, real estate brokerage services or proceeds that are used primarily for personal, family or household purposes. If there is a consumer in the transaction, the electronic consent of the consumer must be obtained. The consent requirements apply to most transactions in which individuals are buying or selling residential properties because they will be using the property or the proceeds for personal, family or household purposes.

- Electronic Consent Required. The consumer must receive certain disclosures regarding the consumer's rights and affirmatively consent to the use of electronic documents, signatures and delivery. This consent must be given electronically (written consent is not sufficient) in a way that shows that the consumer can access, open and save the electronic documents.
- Email Delivery Language. Once the consumer(s) has given electronic consent, the offer, listing contract, buyer agency agreement or other transaction document should be modified to indicate that the consumer has authorized electronic documents, signatures and delivery. Some REEB-approved forms such as the WB-11 Residential Offer to Purchase and other offers as well as the WB-1 Residential Listing Contract Exclusive Right to Sell include a checkbox authorizing electronic delivery of transaction documents. Other forms do not, in which case an Addendum D may be completed and attached, or other email delivery language may be inserted into the contract.

See "A Legal Cheat Sheet" in the July 2014 *Wisconsin Real Estate Magazine at* https://www.wra.org/WREM/July14/CheatSheet/ as well as the Legal Talks regarding electronic consent at https://www.wra.org/LegalTalks/ElectronicDisclosure/. For e-commerce and E-Sign information about please see, "10 Things You Should Know about Email Delivery," in the July *2011 Wisconsin Real Estate Magazine* at https://www.wra.org/WREM/Jul11/10Things/. The "Best of the Legal Hotline" in the November 2008 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Nov08/ElectronicDelivery/ points out that when it comes to consumers, a party's consent to the use of email and electronic documents and signatures is a two-step process.

Summary

While this computer use policy is an attempt to meet some of the major issues that have been identified, it will likely grow and evolve as our experience grows with information systems. Associates with questions about the current policy, or suggestions as to how it might be improved, should contact the Firm. See the Technology Policy Manual for additional guidance.

Reporting Problems to the Firm

Associates should immediately report the following problems to the Firm or a supervising broker:

1. A party has complaints involving real estate transactions.
2. Automobile accidents occurring while the Associate is participating in real estate brokerage transactions.
3. Criminal charges against the Associate, and traffic offenses related to driving under the influence of alcohol or drugs.
4. Civil lawsuits or administrative actions involving real estate brokerage transactions.
5. REEB contacts concerning disciplinary actions or other issues.
6. Party default under an accepted contract.
7. Threatened legal or administrative actions involving the parties or a real estate transaction.
8. Acts of discrimination committed by Associates or parties to transactions.
9. Unresolved disputes between Associates, within or outside the office.
10. Physical injuries within the office or outside the office while in performance of services or duties in the name of the Firm.
11. Acts of harassment.

Whistle Blower Policy

Fraud prevention and detection within the company is everyone's responsibility. The Firm will take steps to assure Associates are committed to ethical business practices and will not engage in fraud. When an Associate becomes aware of, or suspects, fraud or illegal conduct within the company or in the local market, the Associate will communicate his or her observations and concerns to the Firm. The Firm will investigate and as appropriate report suspicious behavior to the appropriate law enforcement or regulatory agency. The Firm will keep the report and the Associate's identity confidential. Associates should report suspected activity to **Broker of Record and/or assigns**.

Reporting Convictions to the Real Estate Examining Board

A licensee who has been convicted of a crime (felony or misdemeanor) shall send to the REEB within 48 hours after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and a copy of the judgment of conviction in order that the REEB may determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a real estate broker or salesperson. Notice shall be made by mail (the licensee must have proof of the date of mailing) (Wis. Admin. Code § SPS 4.09(2) & § REEB 24.17).

A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. A crime punishable by imprisonment in the Wisconsin state prisons is a felony. Every other crime is a misdemeanor. Conduct punishable only by a forfeiture is not a crime (Wis. Stat. §§ 939.12 & 939.60)

Availability of the Firm

Access to Supervising Brokers

Associates should consult with the Firm, or any supervising broker designated by the Firm, per Wis. Stat. § 452.132, with respect to real estate practice issues. See Appendix IX for copies of written Firm delegations of supervisory authority to supervising brokers, a description of the area(s) of responsibility for each supervising broker, and contact information for supervising brokers.

Emergency Contact

The supervising broker(s) and the Firm shall generally be available to the Associate for advice and discussion of real estate matters during normal business hours. If emergency situations arise and the assigned supervising broker cannot be reached, the Firm may be contacted as follows:

Broker: Tim Krueger
Cell Phone: (608) 206 - 5850
Email: tim@preferredhomesteam.com

Broker: Nanci Jenks
Cell Phone: (608) 393 - 3330
Email: nancijenks@gmail.com

If neither the supervising broker nor the Firm can be reached, the Associate should not take any actions contrary to this Manual nor take any actions if the Associate is uncertain whether those actions meet the requirements of competent, lawful and ethical real estate practice until he or she is able to contact a supervising broker or the Firm, unless otherwise directed by the Firm. If the emergency pertains to the wording of a contract, an approved "attorney approval" contingency may be inserted in the contract.

Confidentiality

All records of this office, as well as conversations between Associates, Firm and Associates, and Associates and parties to the transaction, are considered confidential. No files shall be removed from this office without the permission of the Firm and no other information obtained while working for this company shall be used to the detriment of the Firm.

All Associates shall also honor the confidential information of any client or non-client party to any transaction as required by Wisconsin license law. Confidential information may be designated in writing in an agency contract, a Disclosure form or other document. All documents stating a party's confidential information shall be kept by the Office Manager in a special locked file to guard against any unauthorized sharing of this information. Access to this information shall be limited to the Associate working with the party.

Office Hours

The Firm's normal office hours are as follows for all locations unless otherwise specified:

Mondays - Fridays: 9:00 a.m. – 5:00 p.m.
Saturdays (Online / Remote Support): 9:00 a.m. – 1:00 p.m.
Monona Office (Mon-Fri, In-office Staffing): 9:00 a.m. – 4:00 p.m.
Baraboo Office (Mon-Thurs, In-office Staffing): 8:00 a.m. – 3:00 p.m.

Office hours are subject to current world situations and staff may possibly be working remotely.

The office will be closed on the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving & Christmas Day.

Associates are provided with office keys or door codes and may use office space for company business purposes at their own discretion.

Opportunity Time

Primary Purpose

The primary purpose of Opportunity Time is to provide back up for the receptionist in answering questions regarding current listings and handling real estate related inquiries and walk-ins. It is the policy of the Firm that real estate inquiries from prospective purchasers and sellers be answered by an Associate, whenever possible.

Sales Meetings

Purpose

Sales meetings are conducted once a month for the purpose of informing Associates of any changes in license law, ethical standards, real estate practices, company policy, changes in the market, new listings and sales, new financing procedures, etc. In general, sales meetings are used to keep Associates informed of all facets of real estate. They are training periods, in addition to being a gathering of Associates to discuss real estate practice problems, policies and new listings.

Attendance

All Associates are encouraged to attend sales meetings and to attend sales meetings covering real estate law and license law matters, unless excused by the Firm. Sales meetings shall be announced in advance to permit Associates to make necessary scheduling adjustments.

Leave Time for Associates

The Firm does not control the Associate's time off except that Associates must make themselves available for meetings covering real estate and license law matters and other commitments discussed in this Manual. However, if an Associate plans to be absent from the office (i.e., out of town) for any period of time, he or she must inform the Firm. Additionally, another Associate must be scheduled to cover for the Associate during this absence, preferably with a short written agreement delineating responsibilities, instructions and any commission opportunities. Failure to arrange coverage by another Associate will require the Firm to make necessary assignments and determine the appropriate commission split, if applicable.

No Legal or Tax Advice

Legal Advice

No Associate shall under any circumstances give legal advice to a party, including any advice or opinions regarding the legal rights or obligations of a party to a transaction, or their rights under the law to sue, cancel, terminate, or enforce a contract in court.

Associates may direct parties to review the default section in the offer to purchase and to consult with their own attorneys. Associates may also provide general explanations of the preprinted provisions of

the REEB listing contract, buyer agency agreement, offer to purchase and any other approved forms the parties may be asked to complete or sign. Associates may point out possible alternatives or refer parties to reputable resources that will assist the party in his or her decision making. All clients and customers, however, should always be encouraged to consult with a qualified attorney at their earliest opportunity because the attorney is the one who can recommend which decision is best for the party under the circumstances.

Tax Advice

No Associate shall give tax advice to a party to a transaction, including advice pertaining to deductions, exemptions or tax liabilities resulting from the purchase or sale of real estate. If a tax question beyond the scope of real estate practice is asked, the Associate should direct the party to consult an attorney, tax accountant or other appropriate expert. Associates may refer parties to reputable resources, such as those from the Internal Revenue Service, which may assist the party in his or her decision making.

Legal Assistance for Associates

Decision to Involve Legal Counsel

If a question arises during a real estate transaction and the Associate believes legal advice is necessary, the Associate shall tell the Associate's supervising broker or the Firm about the problem. That person shall decide whether consultation with an attorney is necessary.

If legal consultation is necessary because the Associate has failed to comply with the Associate's legal or ethical duties, or if the Associate has failed to follow these procedures, the Associate will be responsible for any legal expense incurred.

Threat of Lawsuit

If the Associate is sued or threatened with a lawsuit or administrative action in conjunction with a real estate transaction, he or she should immediately inform the Firm. The Firm will determine whether to report the situation to the Errors and Omissions insurance carrier. If there is a deductible in the policy, the Associate and the Firm will share responsibility for payment. The responsibility for payment of legal fees shall be the Associates expense.

Arbitration

In matters of local REALTOR® Association arbitration, an attorney may be employed at the discretion of the Firm. The respective responsibility of the Firm and Associate for payment of attorney's fees will be the Associates expense.

Mediation

The Firm will decide when to use local Association mediation prior to arbitration unless mediation is required by the local Association prior to arbitration.

Ombudsman

If an Associate is contacted by the REALTOR® association ombudsman, the associate will notify the Firm.

Code of Ethics & License Law Violations

In matters of alleged violations of the Code of Ethics or license law, an attorney may be employed at the discretion of the Firm. The respective responsibility of the Firm and the Associate for payment of attorney's fees shall be the Associates expense.

Transaction Contractor Payment Responsibility

The Firm shall not be liable to the Associate for any expense incurred by the Associate unless approved in writing in advance. All inspections and related services, such as well and septic inspections, water or radon testing, surveys, etc., are to be ordered in the name of, billed to, and paid by the seller or buyer; billings shall never be made to the Firm. See the May 2004 *Legal Update*, "Avoiding Liability When Signing and Making Referrals," at www.wra.org/LU0405 for practice pointers and additional guidance for Associates and a Model Service Request form.

Avoiding Liability When Referring Parties to Contractors

Referring clients and customers to contractors may lead to licensee liability if the referral is not handled properly. When helping parties find professional inspectors and contractors (such as contractors for inspections and repairs), Associates shall:

1. Prepare a list of at least three certified professional inspectors and contractors. Associates shall not recommend or endorse one particular contractor because a recommendation that does not present the party with options may result in liability. Instead, Associates shall maintain a list with the names of at least three professionals in each field, and include any available references from past users. Any contractor included on a list of contractors should be certified in his or her field, if at all possible, and at minimum should hold all applicable credentials for the type of work being performed. Any Firm or Associate affiliations with any of the listed contractors should be stated on the list or disclosed when the list is distributed. Associates are encouraged to put the list on a sheet of company letterhead, and must include a disclaimer that the Firm and Associates cannot personally endorse these professionals.
2. Avoid referral fees. Associates shall not ask for or accept a referral fee from any name on the referral list. Earning a fee just for referring business (except to other real estate brokers) violates the Real Estate Settlement Procedures Act (RESPA) if the contractor is a RESPA settlement service provider like a home inspector, appraiser or title company.
3. Let inspectors and contractors do their jobs. Associates should avoid accompanying an inspector throughout the property because this may imply that the Associate is supervising the inspector. Reinforce that the party hired the inspector and let the party deal directly with the inspector.

Records and Document Control

Document File

The Associate is responsible for promptly placing and maintaining all forms in the Agents SkySlope account and checked for review no later than **3** days of contracts being signed:

1. Listing contract or buyer agency agreement
2. Disclosure to Customers and Disclosure to Clients forms, as applicable
3. Deed, land contract or lease
4. Loan information obtained from lender currently holding loan on the property

5. Offer to purchase, option, exchange agreement or other conveyance contract (includes counter proposals and amendments)
6. Appraisal request
7. Loan pay-off letter
8. Closing disclosure and documents received
9. Deposit receipts, cancelled checks and trust account records
10. Any other written or electronic documents, including correspondence via letter, email, texting or other social media, that pertain to the transaction and were received or prepared by the Firm or any Associate.

The Firm will retain the files as required by statute and rule. Closed and expired files are maintained for a minimum of two years, unless required by federal law. E.g., federal law requires lead-based paint disclosures to be retained for three years.

Department of Safety and Professional Services Rules

A copy of the statutes and REEB and DSPS rules pertaining to real estate practice may be found online at http://dsps.wi.gov/Boards-Councils/Administrative-Rules-and-Statutes/Real-Estate-Administrative-Rules-and-Statutes/.

Disposal of Records Policy under the FACT Act

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) regulates the use and disposal of consumer report information in order to maintain consumer privacy, protect against unauthorized access to personal information, and protect against identity theft. The Federal Trade Commission's Disposal Rule regulates how individuals and businesses dispose of this sensitive consumer information when it is no longer needed.

The Disposal Rule allows organizations and individuals to determine what measures are reasonable based on the sensitivity of the information, the costs and benefits of different disposal methods, and changes in technology. Although the Disposal Rule applies to consumer reports and the information derived from consumer reports, the FTC encourages those who dispose of any records containing a consumer's personal or financial information to take similar protective measures.

Reasonable measures for disposing of consumer report information may include:

- Burning or shredding papers containing consumer report information so that the information cannot be read or reconstructed;
- Destroying or erasing electronic files or media containing consumer report information so that the information cannot be read or reconstructed;
- Hiring a document destruction contractor to dispose of material specifically identified as consumer report information consistent with the rule after conducting a due diligence review of the contractor's qualifications, reputation and integrity.

See pages 7-8 of the October 2006 *Legal Update*, "Protecting Against Identity Theft" at www.wra.org/LU0610 for additional information and practice pointers and additional guidance for Associates.

Associates will bring any consumer reports and other written documents containing private consumer information to the office shredder for disposal and will erase/delete all electronic files or media with such information to assure compliance with FACT Act disposal rules.

Review of Contracts

As required by Wisconsin law Wis. Stat. § 452.132, the supervising broker(s) for the Firm shall conduct a review of all listing contracts, buyer agency agreements, offers to purchase, leases, property management contracts, trust account records and any other related documents and records in the transaction file. This review shall be performed to confirm a written disclosure statement to a customer or client has been provided by the Associate in accordance with Wis. Stat. § 452, confirm any applicable form approved by the REEB has been used and forms have been completed by filling in blanks in a manner consistent with the structure of the form, and communicate to the Associate any errors in how the forms were completed that are apparent on the face of the document and known to the supervising broker. Associates shall be responsible for discussing with the party with whom the Associate is working with or representing any error communicated by the supervising broker and the party shall determine whether to requires any changes to address the error.

Associates shall be responsible to submit to the Firm of all such documents used or received by the Associated to **FDesk or SkySlope** within **3** days of the document's execution in order to assure compliance with the Firm's legal obligation.

Associates Buying, Selling, Leasing Personal or Investment Property

Disclosure of Licensee Status when Acting as a Party

Wis. Admin. Code § REEB 24.05(5) requires that a licensee acting as a principal in a real estate transaction disclose his or her license status and intent to act in the transaction as a principal, in writing, at the earliest of:

1) first contact with the other party or an agent representing the other party where information regarding the other party or the transaction is being exchanged;
2) a showing of the property; or
3) any other negotiation with the seller or listing firm.

Under this section, an Associate-owner of the property for sale would want to make certain that the appropriate written disclosure is made:

a) if contacted by a prospective buyer or an agent representing that buyer regarding the property; or
b) if personally showing the property to a prospective buyer (with or without another agent).

An Associate looking for property to purchase might give a typed written disclosure to the listing agent at a showing when the Associate shops for a vacation property, or the Associate can write on the back of her business card that she is a real estate broker and looking for a new home for herself when she stops at a FSBO yard sign to talk to the seller.

An Associate purchasing, leasing or selling property for personal use must disclose the Associate's licensee status and obtain the prior written consent of all parties to the transaction. This written consent should be obtained prior to or in the offer to purchase, option, lease or other transaction contract in order to achieve compliance with Article 4 of the REALTOR® Code of Ethics and Wis. Admin. Code § REEB 24.05(2).

Associates Selling or Buying Personal Properties

Personal properties are defined as property where the Associate, in his or her own name, purchases or sells the property. Investment property is property that is purchased or owned by an entity in which the Associate has an interest. For example, the Associate is a member of an LLC.

Associates selling their own personal property:

- must list the property and work through the Firm

Associates selling investment property:

- must list the property and work through the Firm

If property owned by an Associate is listed for sale or lease with the Firm, compensation by and between the Firm and Associate for such transactions shall be in accordance with the schedule attached to the Associate's Independent Contractor Agreement.
or
If an Associate buys or sells a personal property under the guidelines above they shall pay 0% commission to RE/MAX Preferred. In lieu of commission, a $295.00 transaction fee will be collected by the Firm. These sales will not count towards RE/MAX LLC Awards. Agents who sell 3 or less properties in the past 12 months are exempt from this arrangement and must pay firm in their agreed upon commission split.

Disclosures and Compensation for Associates Buying Property

Associates buying property for their own personal or investment purposes:

- may work independently in locating and purchasing such properties and need to work through the Firm for MLS sold comps when possible

Associates buying investment property purposes:

- may work independently in locating and purchasing such properties and must work through the company to inform the MLS sold comps when possible

Associates writing their own offers for the purchase of property for personal purposes (if allowed) shall not write an offer for themselves, as the buyer, and then also seek commission from the listing firm. Associates instead may write their own offers and negotiate a buyer's incentive or make a price adjustment in lieu of commission.

Such an offer to purchase shall contain the following disclosures:

1. Line 1 of the Offer shall be struck completely or modified to indicate the drafting licensee is the buyer. The line indicating the drafter of the contract shall contain the Associate's name (but not Firm's name or the firm name.)
2. The body of the Offer shall contain a disclosure that the Associate is a licensed real estate agent purchasing the property for personal use/investment/speculation/resale for profit (specify Associate's intended use of the property) and written consent of all the parties to the transaction.
3. The Offer must further state that the Associate is representing his or her own interests as the buyer and is not acting as an agent for the seller or the Firm.
4. If the Associate is seeking an incentive from the listing firm, this is a separate agreement between the Associate and the listing firm. The seller must consent in writing to this incentive.

5. If the Associate is seeking an incentive from the seller, the incentive agreement is included in the offer.

Any buyer's incentive should be properly documented in writing before the offer to purchase is submitted to the listing agent or seller. Under Wis. Admin. Code § REEB 24.05(4), the seller must consent in writing to any incentive paid by the listing firm to the Associate/buyer before the incentive can be paid, so a recitation in the offer regarding the incentive from the listing firm may be the most efficient way to meet this requirement and avoid REEB enforcement action.

An Associate/buyer's incentive agreement with the listing firm may be just a few sentences typed on a piece of paper identifying the parties and transaction, and indicating how the incentive is earned, when it is paid and who will pay it. An incentive agreement with the firm might provide that:

"As an inducement to _____ *(name of buyer/Associate)* to purchase the property at 123 Main Street, Salestown, Wisconsin, _____ _____ *(name of listing firm)* promises to pay to _____ *(name of buyer/Associate)* an incentive in the amount of $_____ *(insert dollar amount)*, payable at the time of closing, provided: _____ _____ _____ *(list conditions for the payment of incentive)*. This incentive agreement is being used because _____ (*insert buyer/Associate's name*) is acting as a principal in this transaction, not as a real estate agent, and will not receive a commission based on the MLS offer or any other compensation agreement."

If the incentive agreement is with the seller, this language may be inserted in the offer to purchase (replacing name of listing firm with seller's name). Once approved and signed, this incentive agreement shall be binding on the party who agreed to pay the incentive, either as an agreement with the listing firm and approved by the seller, or as a term of the offer to purchase negotiated with the seller.

Errors and Omissions - Personal Transactions

E&O policies are just like any other insurance policy, meaning there are things covered under the policy and things that are not. For instance, generally, E&O policies won't cover an agent for fraud, criminal acts, discrimination, libel, etc.

The company E&O policy may NOT cover real estate licensees acting as a principal in the transaction, this is also known as a licensee/principal. Therefore, agents who are selling or buying a property for themselves typically are not covered by their E&O policy.

Associate may wish to obtain coverage for personal transactions to cover their individual liabilities for these types of transactions. RE/MAX Preferred (the company) will not be liable for any legal matters derived from personal transactions.

Associate Offers to Purchase Property Listed by Firm

If the Firm has received any offers to purchase on any property listed by the Firm, even if they have not yet been presented to the seller, Associates must wait before submitting their own personal offers.

The Associate may not submit a personal offer, counter-offer, amendment, or secondary offer until the Associate has executed an affidavit and submitted it to the Firm swearing that the Associate does

not have knowledge of the terms and conditions of any third party offer(s); and the Firm has given written consent.

Transactions with Associate's Immediate Family or Firm

When an Associate acts as an agent in a real estate or business transaction to purchase, lease or sell property on his or her own or on behalf of a member of the Associate's immediate family or any combination of members of the licensee's immediate family, or firm, Wis. Admin. Code § REEB 24.05(2) requires that the Associate must have the prior written consent of all parties to the transaction. This written consent must be obtained in the offer to purchase, option, lease or other transaction contract. "Member of the licensee's immediate family" means any of the following: (a) A parent, stepparent, grandparent, foster parent, child, stepchild, grandchild, foster child, brother, sister, aunt, uncles of the licensee. (b) The spouse or domestic partner of the licensee or any person listed in par. (a).

Personal Assistants

An Associate cannot personally engage licensed persons to perform brokerage services on behalf of the Associate or Firm. All personal assistants, whether licensed or unlicensed, shall be engaged, compensated and supervised according to the terms and conditions set forth in the respective personal assistant's agreement. All unlicensed personal assistants are required by Wis. Stat. § 452.34 to enter into a written Unlicensed Personal Assistant Agreement. A sample agreement is contained as Appendix VII.

Unlicensed Assistants

Unlicensed assistants cannot provide brokerage services or negotiate. Unlicensed assistants may distribute written information provided by the Firm or Associate, which describes a property or transaction, or may verbally give out information taken from such written materials. Unlicensed assistants may engage in telemarketing activities based upon a script provided by the Associate (the script must be approved in advance by the Firm) or the Firm, and may schedule appointments for the Associate. Unlicensed assistants may perform other administrative tasks agreed upon by the Associate and the Firm which do not involve negotiation and which do not require a real estate license as set forth in the agreement between the Firm, the Associate and the personal assistant. Unlicensed assistants are prohibited from hosting open houses but may assist licensees (not including negotiation) at such times as the licensee is at the open house.

Prior to retaining an unlicensed personal assistant the Associate must enter into a written agreement with the Firm setting forth the duties of the unlicensed personal assistant, the manner in which the unlicensed personal assistant will be compensated for his or her service and the responsibilities of the Associate and Firm with respect to the supervision of the unlicensed personal assistant.

Licensed Assistants

Licensed assistants may provide brokerage services and engage in activities which constitute negotiation according to the independent contractor or licensed assistant agreement with the broker provided that they are properly authorized, supervised and monitored by the Firm and/or the Associate. Licensed assistants must be in the RE/MAX system and join the local Association of REALTORS®, WRA and NAR. Membership dues shall be the responsibility of the assistant or the Associate, per their mutual agreement.

Chapter 3

Advertising and Marketing Policies

Real Estate Advertising

Advertising Media

Our firm utilizes a variety of advertising platforms to promote our services and enhance our brand visibility. This policy governs the use of advertising media, including but not limited to company websites and social media channels.

The firm regularly advertises through the following avenues:

- **Company Websites:** Our official websites serve as primary platforms for promoting our services, sharing updates, and engaging with potential clients.
- **Social Media Platforms:** The company maintains active profiles on social media networks such as LinkedIn, Facebook, Instagram, and Google My Business. These platforms are used to share branded content, company news, real estate topics, and promotional materials.

Mandatory Ad Content

Associates shall have their general marketing and advertising plans approved by the Firm. Associates shall advertise only with the consent of the seller and at the price agreed upon with the seller. Per Wis. Admin. Code § REEB 24.04, all advertising shall be in the name of and under the supervision of the Firm. The Associate is responsible for composing his or her advertising.

Basic Advertising Rules

Under Wis. Admin. Code § REEB 24.04(1) Associates are prohibited from advertising in a manner that is false, deceptive, or misleading. These standards are interpreted on a case-by-case basis and are somewhat subjective.

Article 12 of the REALTOR® Code of Ethics similarly requires members to be honest and truthful in all real estate communications, including communications made electronically. Electronic communications include, but are not limited to, the Internet, websites, all forms of Internet communications, email, facsimile correspondence, texts or other smartphone messages and other forms of electronic or social media networking or communication.

Under Wis. Admin. Code § REEB 24.04(2) Associates must advertise under the supervision of and in the name of the Firm. All advertising must include the Firm's name exactly as printed on the licensed individual broker or licensed broker business entity license or a trade name for the Firm on file with the REEB.

Exceptions:

(a) When an Associate is advertising his or her own real estate for rent, there are no restrictions: the Firm's name does not have to be included in the advertisement.

(b) Under Standard of Practice 12-5 the advertising of real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) must include the name of that REALTOR®'s firm in a reasonable and readily apparent manner. When disclosing the name of the firm may not be practical in electronic displays of limited information (e.g., "thumbnails," text messages, "tweets," etc.), such displays are exempt from the disclosure requirement if linked to a display that includes all required disclosures."

Per Wis. Admin. Code § REEB 24.04 Associates must obtain the consent of the owner before advertising the owner's property. Standard of Practice 12-4 also prohibits REALTORS® from advertising a property without authority.

Wis. Admin. Code § REEB 24.04(4) provides that Associates can advertise a property only at the price agreed upon with the owner.

ATTRIBUTING THE SOURCE**:** When an Associate receives data from the seller, the city treasurer's office, or another third-party source and restates the information in the MLS data sheet or other advertising as if it were fact, the Associate may be liable if the information is not true. Accordingly, Associates are urged to specifically attribute data used in advertisements, such as acreage, square footage or assessed values, to the source. For example, 3,000 square feet *per the city assessor's records*.

Associates shall at all times to present a true picture in their advertising and all representations to the public regardless of the media format and ensure that their professional status (e.g., licensee, appraiser, property manager, etc.) and/or status as a REALTOR® is clearly identifiable in any such advertising.

Fair Housing Considerations

Equal Opportunity

- Associates shall use the Equal Opportunity slogan or logo in all advertising, except in classified advertising where the ad is less than six column inches or where the HUD Publisher's Notice appears at the beginning of the classified section of the newspaper or magazine.
- Associates shall not limit their advertising to publications that are available to only a selected audience or only one segment of the community, or in a limited geographic area.
- The persons depicted in any photos or drawings used shall fairly represent the racial and ethnic composition of the community where the advertised properties are located.
- Do not use only particular publications or editions of newspapers or small-circulation publications that are designed only for certain religious or ethnic groups.
- Do not give the impression that one group is preferred over another. Avoid catchwords such as "restricted," "exclusive," "private," "board approval" or "traditional."
- When stating directions, try to avoid referencing racial, ethnic or religious landmarks. Do not use "crippled," "mentally ill," "deaf," "retarded," "blind," "singles" or "mature persons."

Advertising Language

Advertising copy used by Associates must DESCRIBE THE PROPERTY, NOT THE DESIRED BUYER OR TENANT. Real estate advertising cannot intentionally or unintentionally state an exclusion, limitation or a preference based on membership in a protected class. Examples of prohibited advertising language are:

1. Race, color, national origin: Real estate advertisements may not state a discriminatory preference or limitation on account of race, color, national origin or any other protected class, and shall not describe the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms. However, Associates may use phrases such as "master bedroom," "rare find" or "desirable neighborhood."

2. Religion: Associates shall not use advertisements that contain an explicit preference, limitation or discrimination on account of religion. Advertisements that use the legal name of an entity containing a religious reference (i.e., Roselawn Catholic Home) or a religious symbol (such as a cross) must contain an appropriate disclaimer against any religious preference or limitation. Associates may use descriptions of the property (apartment complex with chapel) or the services (kosher meals available), and terms (Merry Christmas or Happy Easter) or symbols (Santa Claus or Easter Bunny) relating to certain religious holidays.

3. Sex: Associates shall not advertise single-family dwellings or separate dwelling units in multifamily housing in a manner, which explicitly indicates a preference, limitation or discrimination on the basis of sex. Associates may, however, use terms such as "primary bedroom," "mother-in-law suite" and "bachelor apartment" which describe a property type.

4. Disability: Associates' real estate advertisements shall not contain exclusions, limitations or other indications of discrimination based on disability. Associates may describe the property (great view, fourth-floor walk-up, walk-in closets), the services or facilities (jogging trails), the neighborhood (walk to the bus stop), the conduct required of residents (nonsmoking), and accessibility features, such as a wheelchair ramp.

5. Familial Status: Associates shall not place advertisements that contain limitations on the number or ages of children or state a preference for adults (unless the property meets the housing for older persons exemption) couples or singles. Associates may use descriptions of the property (two bedroom, cozy, family room), services and facilities (no bicycles allowed), or neighborhoods (quiet streets).

Accessibility Features Disclosure Statement

Associates shall encourage sellers to complete an Accessibility Features Report whenever they list a property that has potential for a person with disabilities to make it easier for persons seeking homes suitable for persons with disabilities. When working with a buyer or renter with disabilities, Associates shall encourage the use of the Buyer's Accessibility Features Report to identify and prioritize features they need or are most interested in. The Sellers' Accessibility Features Report is available for use as an associated document on many MLSs. The Accessibility Features Report forms and instruction sheets are available at www.wra.org/Disabilities.

Sign Policy

Signage

The Firm requires that all Associates use a RE/MAX Preferred supplier and abide by all RE/MAX marketing guidelines for all signage, not limited to but including sign panels, riders, directional and open house signs. These signs are at the expense of the Associate and the associates responsibility for installing and removing.

Sold and Offer Pending Signs

"Sold" signs shall be posted on properties listed by Associates only after all offer contingencies have been waived or satisfied and after obtaining the seller's permission.

In transactions where the Associate was the cooperating agent, sold signs may be posted prior to closing only with the consent of the listing firm, and after closing, only with the consent of the new owner at Associate's expense.

Expired Listings Signs

Signs may not be kept on a property without a current listing contract. Signs must be removed from expired listings within 1 day after expiration or closing.

Allocation and Costs of Advertising

All advertising shall be designed to provide maximum benefits to the Firm and the Associates. The Associate is responsible to pay for the Associate's approved advertising, unless otherwise agreed.

Description of Internet Data Exchange (IDX) and Virtual Office Website Policies

The MLS in which the Firm participates may have adopted an Internet Data Exchange (IDX) policy. IDX, also referred to as "Firm Reciprocity," gives MLS Participants the tool they need to display each others' listings on their websites as well as when using applications for mobile devices that the Participant controls. Under IDX brokers exchange consent to display each others' listings on the Internet subject to the IDX rules.

A Virtual Office Website (VOW) is a Participant's Internet Website, or a feature of a Participant's website, though which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a Firm-consumer relationship, as defined by state law, where the consumer has the opportunity to search the MLS Listing Information, subject to the Participant's oversight, supervision, and accountability. A non-principal Firm or sales licensee affiliated with a Participant may, with his or her Participant's consent, operate a VOW. Any VOW of a non-principal Firm or sales licensee is subject to the Participant's oversight, supervision, and accountability.

The Associate shall strictly observe any and all applicable MLS rules and the Firm's company policy for the display of listings on the Internet.

Associates should remember that:

- Firms must have the consent of the listing firms before they can display MLS listings on their Websites or in any other advertising
- MLS policy is a local matter each MLS has its own rules
- IDX policy and rules provide the means for obtaining the consent of listing firms whose listings will be displayed, as required by Wisconsin law

Use of Photographs and Videos

Associates must be sure to get the creator's permission to reproduce any photographs or use any videos in their advertising. If an employee of the Firm took the picture in the normal course of his or her work duties, the photograph is under the copyright ownership of the Firm. When an Associate provides photographs the Associate has taken to the Firm for reproduction on the Firm website or other media, this constitutes authorization for the Firm to use and publish the photographs and waives any claim the Associate may have under copyright law. Associates shall never use photographs from sellers, other Associates or real estate agents, appraisers, or that are copied from the MLS, Internet or other social media without advance written permission from the creator or author.

Any Associate who violates any of the exclusive rights of a copyright owner is an infringer. A copyright owner can recover damages as high as $150,000 in some cases of willful infringement. The federal Digital Millennium Copyright Act (DMCA) heightens the penalties for copyright infringement on the Internet and it makes the owners of websites, blogs and other online platforms responsible for any images

or works appearing on the site that are protected under copyright law and used without permission. See the Technology Policy Manual and the April 2014 *Legal Update*, "Avoiding Liability for Copyright and Patent Infringements," at www.wra.org/LU1403 for more information and practice pointers and guidance for Associates.

Use of Drones

If the Federal Aviation Administration (FAA) authorizes the use of drones for commercial purposes at some point in time, Firm does authorize the use of drones by Associates for creating or obtaining pictures and videos of listed properties. For more information and practice pointers, see "Flight Tracker: Are Drones Coming to A Real Estate Market Near You?" in the September 2014 *Wisconsin Real Estate Magazine* at https://www.wra.org/WREM/Sep14/Drones/. See the Technology Policy Manual for more information as to the use of drones.

Providing Information – Unlicensed Staff

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

Wisconsin Do–Not-Call Rules

Under Wisconsin law, a "telephone solicitation" is defined by DATCP as an unsolicited telephone call to a residential or cell phone number that encourages the consumer to purchase property, goods or services, or a call that is part of a plan or scheme to encourage the consumer to buy property, goods or services. These "telephone solicitation" calls include not only traditional telemarketing activity but also telephone calls an Associate makes to his or her clients or customers to remind them to order the septic test required by the offer contingency or to obtain an insurance binder for closing. Effective April 17, 2012, Wis. Stat. § 100.52 (1)(i) was amended to include texting into the definition of "telephone solicitation." Wisconsin "No Call" information is found at http://farmersresourceguide.wi.gov/(X(1)S(fyrch0s0ehu03qcvh2ssn0ej))/Consumer/No_Call/index.aspx?Id=163 and in the Wisconsin Do Not Call Registry FAQ brochure at https://datcp.wi.gov/Pages/Publications/NoCallConsumerFAQ286.aspx.

Registration on the Wisconsin Do Not Call Registry is permanent. Wisconsin residents no longer have to sign up every two years. Wisconsin no longer uses the federal Do Not Call list and numbers that were on the Wisconsin No Call List before August 1, 2014 were automatically transferred to the federal list. The Federal Trade Commission (FTC) National Do Not Call Registry is found at https://www.donotcall.gov/.

NO ASSOCIATE CAN LEGALLY MAKE A "TELEPHONE SOLICITATION" CALL OR SEND A TEXT SOLICITATION MESSAGE UNLESS THE FIRM IS REGISTERED WITH DATCP AS A TELEPHONE SOLICITOR OR UNLESS THE CALL IS EXEMPT. Exempt calls include calls made in response to the consumer's request for the call.

Cold calling requires compliance with the DATCP telephone solicitation registration requirements and fees. Registration requires the Firm to provide DATCP with proof of registration with the FTC and the ability to obtain updated do-not-call registry information from the National Do Not Call Registry at least once every 31 days. The broker's federal Subscription Account Number (SAN) serves as proof of registration with the FTC. If the Firm is registered, then the Associate can make "telephone solicitation" calls.

The Firm is registered for the Wisconsin Do-Not-Call list. No Associate may make a "telephone solicitation" call to any telephone number shown on the Do-Not-Call list, even if the Associate is making a follow-up call to a party in a transaction, unless the call falls under one of the "telephone solicitation" exemptions.

National Do-Not-Call Registry

The rules for the use of the national "Do-Not-Call registry come from both the Federal Trade Commission (FTC) and the Federal Communication Commission (FCC). The FTC rules apply to interstate (between states) calls while the FCC regulations apply to both intrastate (within the state) as well as interstate calls (but only if state law is not more restrictive), and include mobile and cell phones, not just residential telephone numbers. Calls to a consumer's residence or cell phone that encourage the purchase, rental or investment in property, goods or services are regulated. This generally includes cold calling, calls to owners with cancelled or expired listings, calls to FSBOs and calls to consumers referred by others. Associates placing these calls must check whether the phone number is on the National Registry unless an exception applies. The exceptions to the federal Do-Not-Call rules include established business relationships, prior written permission and personal relationships. Information for businesses regarding the national do Not Call Registry is found at http://business.ftc.gov/documents/alt129-qa-telemarketers-sellers-about-dnc-provisions-tsr.

If Associates or other staff with the company engage in cold calling -- within or outside of Wisconsin — the Firm must access the national "Do-Not-Call" registry and download the numbers for the area codes the company calls. Real estate firms can register and provide the account number to their agents.
Wisconsin Firms and Associates who abide by the Wisconsin "Do-Not-Call" laws and regulations will be in substantial compliance with the federal rules. Associates should always obtain a signed written consent from clients and customers before calling any residential or cell phone numbers. The consent must state that the consumer agrees to be called, give the residential and cell phone numbers that may be called, and be signed by the consumer. See the Technology Policy Manual for more information.

If an Associate wants to call someone who is on the "Do-Not-Call" list, the Associate may contact the person in the following ways:

- Call the person at home or on the person's cell phone if the Associate has the person's affirmative consent in writing.
- Call the person at work.
- Email the person provided the Associate complies with the CAN-SPAM Act and includes the required information, including the mandatory opt-out provisions.
- Fax the person provided the Associate complies with the Junk Fax Prevention Act (*i.e.*, has an established business relationship (EBR) or express permission to fax and includes the mandatory opt-out information on the first page of the fax).
- Use the mail.
- Meet with the person face-to-face.

Internal Do-Not-Call List

Portions of the Telephone Consumer Protection Act of 1991 include provisions requiring those who engage in any telephone solicitation to home telephone numbers to maintain a company specific or internal do not call list. The company must maintain a list of persons who ask not to receive telemarketing calls and also must have a written policy available "upon demand," explaining the companies procedures for maintaining the list. This rule applies to REALTORS® even if the company does not do cold-calling or traditional telemarketing. This rule is discussed on Page 4 of *Legal Update 03.08*, "Federal 'Do-Not-Call' and 'Do Not Fax' Regulations," at www.wra.org/LU0308.

If any person asks to not receive any telemarketing calls or to be placed on the company-specific or internal "Do-Not-Call" list, refer the request to the Firm immediately.

If anyone asks for a copy of the company's written policy for maintaining the internal "Do-Not-Call" list, refer the request to the Firm immediately.

An outline of a sample "Do-Not-Call" compliance policy is available on the NAR website and item #3, in turn, outlines a company-specific do-not-call policy. See "Creating an Office Policy for DNC Rules," at http://www.realtor.org/letterlw.nsf/pages/1203officepolicy. For additional information and compliance tools, see the NAR Field Guide to Do-Not-Call and Do-Not-Fax Laws at http://www.realtor.org/field-guides/field-guide-to-do-not-call-and-do-not-fax-laws .

CAN SPAM Rules

The federal CAN-SPAM Act applies to all solicited and unsolicited commercial emails, defined as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service." This includes emails that promote or sell a product or service for a fee, such as Associate emails offering properties or brokerage services. CAN-SPAM requires all commercial emails to include these elements:

- A legitimate return email address and a valid physical postal address.
- A clear and conspicuous notice of the recipient's opportunity to "opt out" of any future commercial email.
- A mechanism or an active email address that the recipient may be use to ask to not receive further email.
- A clear and conspicuous notice that the message is an advertisement or a solicitation.
- Clear notice in the subject heading if a message includes pornographic or sexual content.

Additional information for businesses regarding the CAN_SPAM Act is found at http://business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business.

All Associates must use the email format designated by the Firm to ensure CAN-SPAM compliance.

CAN-SPAM Rules for Wireless Devices

Associates who send commercial emails to cell phones, smartphones and other wireless or mobile devices must first check the FCC list of wireless domain names. Consent can be obtained verbally or in writing. The FCC list of protected domain names is available online at http://www.fcc.gov/cgb/policy/DomainNameDownload.html.

Federal Fax Regulation

The Junk Fax Prevention Act allows Firms and Associates to send unsolicited commercial faxes advertising the commercial availability or quality of any property, goods, or services to their clients and customers without express advance permission if they have an established business relationship (EBR). An EBR is a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential or business subscriber, with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity, which relationship has not been previously terminated by either party. See the FCC Fax Advertising Guide at http://www.fcc.gov/guides/fax-advertising and for additional do-not-fax information.

Associates must use the company’s fax cover page approved by the Firm for all outgoing faxes to ensure compliance with the Act. The opt-out instructions must clearly indicate that the recipient has the right to opt out of future unsolicited advertisements faxed to specified facsimile numbers and that the sender's failure to comply within 30 days. The opt-out message must provide (1) a telephone number and a facsimile number to which the recipient may send its opt-out request, and (2) a no-cost means for recipients to use to opt-out, all which must be available 24/7. Examples of a cost-free opt-out mechanism include a local or toll-free telephone number, an email address or a website.

Chapter 4

Commissions and Compensation

Commission and Fee Rates

The commission and fees charged by the Firm are the result of unilateral independent business decisions based upon competitive market forces and other factors for the following property types:

1. Residential single family
2. Residential income
3. Vacant land
4. Business/commercial/industrial
    a. Must be referred to commercial division unless associate has experience with commercial and is recognized as a certified commercial specialist.
5. New construction
6. Buyer brokerage
7. Referral fees
8. Bonuses

Associate Compensation

Compensation Defined

Compensation shall be defined to include commissions, buyer agency fees, referral fees, fees for referring customers to builders, bonuses, incentives received while buying property for personal use or investment) or any other thing of value received in connection with the Associate's real estate brokerage services.

Payment to Associates

Associate compensation checks are issued by the Firm to Associates within 3 days or less, if file is complete, following the closing or the Firm's receipt of payment, whichever is later. Special situations or special requirements for compensation checks will be handled through the Firm on a case-by-case basis.

Partial Receipt of Commissions

If a partial commission is paid by a party to the Firm the payment will be split proportionately between the Firm and the Associate, and the remainder, including interest, if any, will be split proportionately as it is received. Associates must obtain the advance written consent of the Firm before agreeing to accept a promissory note in lieu of a cash commission or any other arrangement to defer receipt of commission.

Reduction of Commissions and Fees

Associates do not have the authority to reduce or modify the commission paid by the seller pursuant to a listing contract, the fee paid by a buyer pursuant to a buyer agency agreement, nor any other fee payable to the Firm without the prior written consent of the Firm or supervising broker. Any unauthorized reduction of commissions or fees by an Associate, either directly or indirectly, through negotiations or the assumption of various charges, expenses, fees or otherwise, shall be reimbursed by the Associate to the Firm.

Firm Commission Liens

Associates shall (obtain the prior written consent of the Firm or supervising broker before establishing a broker lien in a transaction. A broker commission lien cannot be put on a property for a residential transaction. The types of real estate that can be made subject to a broker commission lien are categorized in Wis. Stat. § 779.32(1)(b) as commercial real estate. Commercial real estate includes all real estate except "real property containing 8 or fewer dwelling units, real property that is zoned for residential purposes and that does not contain any buildings or structures, and real property that is zoned for agricultural purposes."

To put a lien on commercial real estate the following steps must be taken:

1. Notice of broker lien rights language must be included in the agency agreement: sales listing contract, buyer agency agreement, lease listing contract, property management agreement or tenant representation agreement.
2. For sale and purchase transactions, a notice of interest must be recorded at least 30 days before closing and a commission lien must be recorded no later than 30 days after the recording of the closing documents.
3. For lease and property management transactions, a commission lien must be recorded no later than 90 days after the commission is earned or the broker receives notice that the commission is earned.
4. A copy of the commission lien must be mailed to the property owner or acquirer within 72 hours of recording.

Information, practice pointers and additional guidance for Associates about commission liens for commercial property is found in the June 2010 *Legal Update*, "Improved Broker Commission Lien," at www.wra.org/LU1006.

Referrals

When an Associate and a cooperating firm negotiate a referral, the Associate must immediately put the referral agreement in writing and provide to the firms accounting department prior to an agent being paid. All payments for referrals or bonuses shall be made payable to the Firm, as required by Wis. Stat. § § 452.14(3)(f) and 452.19 and the Associate shall be compensated on the basis of the compensation schedule attached to the Associate's Independent Contractor Agreement (see Appendix V).

Associates preparing referral agreements shall either use the Firm's RE/MAX referral fee agreement format or ensure that the following points are addressed:

1. Referred party - The full names and contact information for the referred party.
2. Referring and Receiving Agents and Companies - The full names and contact information for the referring and receiving agents and companies.
3. License Confirmation - Written confirmation that the referring agent holds a current Wisconsin real estate license or an active license from the appropriate state real estate commission where the referring agent practices.
4. Agent or Company Referral - An explanation of whether the referral is from the referring agent personally or from the referring agent's company. In other words, if the referring agent goes to another company before the referral fee is paid; does the fee follow the agent or stay with the company? This may depend on the referring agent's company policy - are referrals personal to the agents in that company or are they considered part of the company's business?
5. Exclusive or Multiple Referrals - Is the referral being made only to the receiving company or are referrals being made to other companies as well? If the latter is the case, address how to decide which receiving agents/companies are responsible for paying the referral fee.

6. Referral Fee Computation - A clear and precise statement of the basis for computing the fee. If the fee will be based on a percentage of commissions actually collected, specify if this is the gross or net commission received by the company or the agent. Business practices vary from market to market, so it is necessary to spell out exactly how the fee will be determined.
7. Payment Details - State exactly who is responsible to pay the fee, exactly to whom the fee should be paid, and when the fee will be paid.
8. Standard of Performance - Indicate the performance standard that must be met before the fee is earned. For example, the fee may be due if there is an accepted offer that closes. It should also be stated if there are any restrictions or limitations with respect to types of properties or transactions, geographic areas, etc.
9. Time Limits - Indicate the duration of the referral agreement. If the referred party buys or leases a property with the receiving agent ten (10) years after the referral was made, is the fee still due?

Commission Arrangements and Disputes

Entitlement to Commission

Entitlement to compensation shall be documented in writing in all transactions where anything other than the compensation offered from the selling firm. Associates shall obtain a written compensation agreement specifying the commission or fee to be paid to the Firm for all non-MLS transactions before beginning any cooperative efforts, and absolutely before the submission of any offer to purchase or other contract to convey.

The following points should be addressed in any compensation agreement:

1. Describe or identify the property
2. Name the parties
3. Name the firms
4. Identify agency relationship (e.g., buyer's agent, sub-agent)
5. State the offer and acceptance of cooperation
6. State the amount of the commission or fee in clear, specific terms (or the way the same shall be calculated, e.g., by a percentage of purchase price)
7. Indicate when compensation shall be paid
8. State the standard of performance (what must be done to earn compensation, e.g., write an offer that closes, procure the buyer)

Interoffice Commission Disputes

Any Associate becoming aware of any commission dispute with another company shall promptly inform the Firm or a supervising broker. Management shall make all decisions regarding negotiation of settlements, retaining legal counsel, participating in mediation, filing arbitration or litigation.

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

Intra-Office Commission Disputes

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

Antitrust Compliance Policies

The Firm's commission rates are based upon the cost of the services the Firm and Associates provide, the value of these services to clients and competitive market conditions. The Firm's commission rates are not determined by agreement with, or recommendation or suggestion from, any person not a party to an agency agreement.

Associates shall not participate in any discussion with any person affiliated with, or employed by, any other real estate firm concerning the commission rates and fees charged by this firm, or any other real estate firm in our community.

When soliciting or negotiating a listing contract or a buyer agency agreement, no Associate shall make any reference to a "prevailing" commission in the community, the "going rate" or any other words or phrases which may suggest that commission rates or fees are uniform or "standard" within the market area.

The amount of cooperative compensation, or "commission split" offered by Firm to cooperating firms is determined by the level of service a cooperating office is expected to perform, and the amount of compensation necessary to induce cooperation under prevailing market conditions. Cooperative compensation, or commission splits, are not intended and may not be used, to induce or compel any other real estate firm in the market area to raise or lower the commissions they charge to their clients.

When soliciting or negotiating a listing contract or buyer agency agreement, no Associate shall disparage the business practices of any other real estate firm, nor suggest that Firm, or any other company, will not cooperate with any other real estate firm. Listing presentations shall focus exclusively upon the level of service and professionalism provided by the Firm, the results achieved for other clients, and the value the client can expect to receive for the fees charged. Potential clients should be invited, and encouraged to compare the value of Firm's services to those of any other real estate firm in our marketing area. Likewise, any Associate who is invited by a potential client to compare Firm's services with those of any other real estate firm should do so by emphasizing the nature and quality of the services Firm provides.

Whenever an Associate is unsure about the proper way to respond to the concerns of an actual or potential client or customer, or whenever an Associate has been present during an unauthorized discussion of fees or commission, he or she should contact the Firm immediately. If necessary, the Firm will consult the company attorney.

For further antitrust pointers and additional guidance for Associates see the March 2004 *Legal Update*, "Antitrust Primer for Real Estate Practice," at www.wra.org/LU0403.

Chapter 5

RESPA Policy

Associates are required to comply with the Real Estate Settlement Procedures Act (RESPA) requirements at all times. Additional information on RESPA law can be obtained from the Firm or the RESPA website (http://portal.hud.gov/hudportal/HUD?src=/hudprograms/respa).

Prohibition against Kickbacks and Unearned Fees

RESPA, which prohibits anyone from giving or accepting a fee, kickback or anything of value in exchange for referrals of settlement service business related to a federally related mortgage loan. Section 8(a) of RESPA prohibits any person from giving or accepting any fee, kickback or *thing of value*, pursuant to any *agreement or understanding*, for the referral of settlement service business involving a federally related mortgage loan. Receiving compensation simply for referring a buyer, seller or other person to a *settlement service provider* is prohibited – the referral of a settlement service is not a compensable service. There is one very critical exception to this rule: RESPA does not prohibit the payment of referral fees between real estate licensees, so licensee-to-licensee referrals are acceptable and legal. As a reminder Wis. Stat. § 452.19(2) states, "If a licensee is associated with a firm, all fees or commissions and any part thereof for performing any act specified in this chapter and all compensation for a referral or as a finder's fee shall be paid to the firm."

Settlement Service Providers (SSPs): one who provides services in connection with the purchase or sale of a property that is paid for, directly or indirectly, out of the funds at settlement. RESPA regulates all settlement service providers involved in the home buying process. Settlement service providers include real estate brokerage firms, title insurance companies, lenders, appraisers and home inspection services. A settlement service is defined as "any service provided in connection with a real estate settlement" including, but not limited to:

1. The origination, processing or funding of a federally related mortgage loan
2. Mortgage broker services such as counseling, taking applications, obtaining verifications and appraisals, lender-borrower communications, etc.
3. Title searches, title examinations, title commitments, title insurance, abstracts and other related services
4. An attorney's legal services
5. Closing document preparation
6. Credit reports
7. Appraisals
8. Property inspections
9. Pest and fungus inspections
10. Property surveys
11. Conducting the closing or settlement
12. Mortgage insurance
13. Hazard, flood or casualty insurance; and home warranties
14. Flood zone certification
15. Mortgage life, disability or similar insurance
16. Real property taxes and assessments
17. Real estate brokerage services

This list is broad but not all-inclusive. Services that occur at or prior to the purchase of a home are typically considered settlement services. Anything listed on a Closing Disclosure form and paid for by the buyer or seller could be a settlement service, and the company providing it a settlement service provider. Services that occur after closing usually are not considered settlement services. This generally, but not always, includes moving companies, gardeners, painters, interior decorators and home improvement contractors.

Thing of Value: "any payment, advance, funds, loan, service, or other consideration." It can be an item of personal property, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing money that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another's expenses or the reduction in credit against an existing obligation.

Agreement or Understanding: any agreement or understanding that a "thing of value" will be given in exchange for a settlement service referral does not need to be written or verbalized. Such an agreement can be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

Similarly, Reg. X also prohibits the splitting of any settlement charge except for paying for actual services rendered. If no or nominal services are performed or if duplicative fees are charged, an unearned fee exists and payment of this fee violates Section 8.

Reg. X specifically does permit payments for services actually rendered by attorneys, title companies, lenders, and real estate brokers, and also for real estate agents "pursuant to cooperative brokerage and referral arrangements or agreements." RESPA also allows settlement service providers (SSPs) to conduct normal promotional and educational activities, as long as the activities do not defray the normal expenses of another SSP and as long as they are not tied to referrals.

Key Referral Fee Reminders

Firm and Associates shall not pay referral fees to providers of settlement services other than pursuant to a referral agreement with another real estate firm. RESPA generally forbids paying someone for the mere referral of business. This means no "gifts" or fees may be given to individuals who refer business to SSPs. When someone performs a service, that party should be paid a fee that is reasonably related to the benefit received. He or she should not be given an excessive payment that blatantly announces itself as a reward for steering business in the direction of a certain company.

Firm and Associates shall not ask for or receive fees for referring business. There is a statutory exemption for firm-to-firm referrals and agreements between firms and agents. An Associate should never ask to receive or accept fees for referring business unless he or she has an established written firm-to-firm or firm-to-agent fee arrangement.

Home Warranty Program Referral Fees

HUD has indicated that Home Warranty Companies (HWC) may only compensate real estate agents and brokers/firms for services not related to marketing, such as conducting inspections of items to be covered by a warranty or recording serial numbers of items to be covered. HUD has concluded, in an

interpretative rule published in the Federal Register (http://edocket.access.gpo.gov/2010/pdf/2010-15355.pdf) that marketing performed by a real estate broker/firmor agent on behalf of a home warranty company to sell a warranty to a particular homebuyer or seller is a "referral" to a settlement service provider and violates RESPA's anti-kickback provisions. Associates will not enter into referral agreements or marketing agreements with any HWC without the Firm's prior written consent.

Affiliated Business Arrangements

An SSP that has an interest in another SSP company may refer customers to the affiliated company without violating the RESPA anti-kickback prohibition if they comply with the RESPA Affiliated Business Arrangement (AfBA) rules. A referral to an affiliated settlement service provider is not an illegal kickback under RESPA if the following conditions are met:

(1) The broker/firm or other party who refers business to an affiliated or owned settlement service provider must provide a written disclosure statement to each consumer who is being referred. The disclosure must be in the RESPA AfBA Disclosure Statement format and must disclose the nature of the relationship, explaining the ownership and financial interest between the referring party and each settlement service provider being referred. The disclosure statement must also give an estimated price or range of prices generally charged by the affiliated settlement service providers. The disclosures must advise that the consumer is not required to use the listed provider and that a better rate may be available if the consumer shops around. The disclosures must be on a separate piece of paper and be given no later than the time of the referral. See the copy of the mandatory AfBA Disclosure Statement at www.consumerfinance.gov/eregulations/1024-D/2015-18239 (CFPB Consumer Laws and Regulations) or at www.wra.org/LU1407 on page 12.

The Firm participates in an Affiliated Business Arrangement (AfBA), which includes the following other settlement service providers:

_____

_____

_____.

Any party who is referred to the affiliated business or who may choose to utilize the services of the affiliated business must sign a properly completed AfBA form prior to or at the time of any possible referral to acknowledge that the form has been read and understood. This is designed to protect the Firm and the Associate from charges that they failed to inform the consumer of the AfBA. If there is more than one consumer (e.g. husband and wife), only one signature is required.

For further RESPA information, practice pointers and additional guidance for Associates see the July 2014 *Legal Update*, "RESPA Enforcement," at www.wra.org/LU1407 and the November 2006 *Legal Update*, "RESPA and the Real Estate Firm," at www.wra.org/LU0611

Chapter 6

Listing Policy

A. Listing Policy - Agency

Disclosure to Clients

Prior to the seller's signing of the listing contract, the Associate shall discuss the different types of agency relationships with the seller, explaining the responsibilities of listing agents, buyer's agents and subagents. The Associate will carefully review the Disclosure to Clients incorporated into the REEB-approved listing contract or a separate Disclosure to Clients if the listing contract used does not include this language.

In a multiple representation relationship, a client is contemplating a possible situation where the seller has a listing contract and the buyer has a buyer agency agreement, both with the Firm. Associates shall encourage owners to consider designated agency or multiple representation and to include any confidential or non-confidential information in the Disclosure section of the listing contract. If both parties do not consent to a multiple representation relationship (either with or without designated agency), Associates are not able to show buyer clients the listings of Firm's seller clients.

Multiple Representation

In multiple representation (without designated agency), or "dual agency," the Associates working with the buyer and seller take on a neutral role in negotiations. Each Associate working with the parties prepares contract proposals as directed by the client, but may not provide either party with advice about how to gain an advantage over the other. A multiple representation without designated agency may limit the services provided to a particular client. If there is only one Associate working with both the buyer and the seller, multiple representation (without designated agency) is appropriate if both parties consent.

Multiple Representations with Designated Agency

In a designated agency relationship, one Associate may represent the seller as a seller's agent, and one Associate may represent the buyer as a buyer's agent. Each Associate provides full negotiation services to the respective client, offering advice and opinions to assist that client even if that advice favors the interests of that client over the firm's other client. Each Associate also keeps the confidential information of each client private. Both parties must consent in writing to create designated agency.

Both the buyer and the seller must consent in writing to the multiple representation with designated agency relationship. If one of the parties selects multiple representation with designated agency while the other selects multiple representation (without designated agency), multiple representation (without designated agency) will apply.

Changing the Agency Relationship Consent

If a party wishes to change his or her agency relationship consent, the preferred method would be to use the Disclosure to Clients form. The party should make his or her new selection and execute the form. A copy should be given to the client and included in the Firm's file. The Associate also may use an amendment to the listing contract (WB-42) or buyer agency agreement (WB-47) to document the change.

Any time a party will not receive brokerage services at the level the party selected in his or her agency contract, the Associate must explain this to the client. If the other party will not accommodate the agency relationship chosen by the client, best practice is to have a conversation with the client and amend the client's agency agreement to document any agency relationship changes made for the particular transaction.

Company Policy Regarding Multiple Representation and Designated Agency

Amendment per client agency relationship change per transaction.

Disclosure of Compensation Policy

The Associate must disclose the company's cooperation policies and the compensation amounts that will be offered to cooperating firms when entering into a listing contract, as required by Standard of Practice 1-12 and the provisions of the REEB listing contracts.

Associates should avoid any disparaging comments about other real estate firms or agents or their policies, and must avoid comments that might infer boycott conspiracies such as: "Before you list with ABC Realty, you should know that nobody works on their listings" or "the MLS will not accept their listings because they charge a flat fee."

Disclose Transaction Fees

Associates must make sure that any transaction fee charged by the Firm/company is fully disclosed to the seller prior to the seller entering into the listing contract or to the buyer prior to executing a buyer agency agreement. The REEB requires that any fees be disclosed to the client and agreed upon in writing before or when the client enters into a real estate agency agreement.

Disclosure of Other Offers

Standard of Practice 1-15 states that, "REALTORS®, in response to inquiries from buyers or cooperating firms shall, with the sellers' approval, divulge the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating firm." Therefore, if the seller authorizes disclosure of unaccepted offers, then the Associate must also disclose what category of agent submitted the offer.

In addition, if disclosures regarding the existence of other offers are authorized, Wis. Admin. Code § REEB 24.12(1) provides that a licensee may, but is not required to, disclose that there are other offers which have been submitted on the property, that the seller has accepted an offer, that an accepted offer is subject to contingencies, and that an accepted offer has a bump clause. The licensee is prohibited from disclosing any terms of a submitted or accepted offer other than that an accepted offer may be subject to contingencies and may contain a bump clause. Thus, a licensee cannot tell a potential secondary buyer, for example, that the primary offer is for $2,000 less than the listing price.

When a property is listed, Associates should discuss with sellers whether they want the existence of submitted offers disclosed to buyers. If they do, Associates should obtain the seller's written authorization in the listing contract (or an addendum or amendment thereto). The authorization may specify whether the disclosure is authorized only when the firm is asked or whether the firm should volunteer the information.

Disclosure of Accepted Offers

If a seller instructs that the existence of an accepted offer is confidential, that instruction would have to be heeded per Wis. Stat. § 452.133(1)(d). However, cooperating REALTORS® rely on Standard of Practice 3-6 in the MLS. Standard of Practice 3-6 provides, "REALTORS® shall disclose the existence of accepted

offers, including offers with unresolved contingencies, to any firm seeking cooperation." If an Associate failed to do so, the buyers or cooperating agent may file a complaint with the MLS for violation of MLS rules.

Accordingly, Associates should advise cooperating firms if they are under instructions from their seller/clients to treat the existence of accepted offers as confidential and that no information about accepted offers will be forthcoming. In the absence of a confidentiality directive, Standard of Practice 3-6 controls for REALTORS®. Seller directives requiring the listing firm to not disclose accepted offers may violate MLS rules and may make the listing ineligible for inclusion on the MLS. Associates should advise sellers at the time of the listing that the inclusion of such provisions could have that effect so that the seller may make an informed decision.

Listing Contracts

Whenever an Associate takes a listing, the Associate must ask the seller about any prior listings, offers and showings, and whether the seller has received any lists of protected buyers. Request a copy of all protected buyer lists the seller has received and request a list of protected buyers from any prior listing firm.

The Associate shall complete only REEB-approved listing contracts and shall ask that all owners and spouses sign the listing. The Associate, however, may sign a listing contract provided by the seller (e.g., a relocation company, REO) or may accept a listing with the signatures of less than all of the owners and spouses, with the prior approval of the Firm. The Associate shall review any listing contract in detail with the owners and leave a copy of the signed listing with them.

If owners refuse MLS or Internet advertising, the listing contract must so state. The listing must specify other firms, if any, who the seller wishes to exclude from cooperation in the Cooperation, Access to Property or Offer Presentation section in the approved listing contract forms. This section of the listing should also include any specific written instructions from the seller as to any buyers or licensees who are not to be given access for showings, or from whom no offers to purchase are to be submitted, as well as any specific contract terms that the seller finds unacceptable such that the seller does not want the Associate to draft or submit any proposals containing those terms.

Processing Listings

Listing contracts and the appropriate supporting forms (MLS profile sheets, seller property condition report, Addendum D (for electronic delivery), AFR (accessible features report), etc.) shall be turned in no later than 3 working days after execution to the office manager/person in charge of processing listing information for dissemination.

Listing Pre-Foreclosure or Foreclosure Properties

Associates shall:

- Refer the owner to accredited credit counseling services if assistance is needed, for instance, the Homeownership Preservation Foundation, a HUD-recommended program that helps borrowers avoid foreclosure. Visit www.995hope.org/ or have the party call 888-999-HOPE, a toll-free number answered 24 hours a day by highly trained, compassionate credit counselors.
- Order a search and hold from the title company to identify what judgments or liens are of record. Use the "Listing Questionnaire Regarding Title Issues" form (see sample on page 16 of www.wra.org/LU1306 or on zipForm) to identify potential title issues not of record.
- Determine how much money is needed to give clear title to a buyer and whether the property can sell for enough money to satisfy all liens and give clear title or is this a short sale situation?

- Confirm that foreclosure proceedings have been started and find out the timeline: how long until the sheriff's sale? Can the property be sold and closed before judicial confirmation of the sheriff's sale?

The fact that the property is in foreclosure may not have to be disclosed if a buyer can close before judicial confirmation of the sheriff's sale. On the other hand, the listing agent will need to disclose the foreclosure to prospective buyers if the seller cannot transfer clear title or the transaction will not close before confirmation of the sheriff's sale. See the March 2009 *Legal Update*, "Working with Distressed Sales," at www.wra.org/LU0903 for additional practice pointers and guidance for Associates.

Listing Short Sale Properties

A short sale means that the proceeds from the sale will not be enough to satisfy all of the liens on the property and to pay all of the closing expenses, possibly including the firm's commission. Associates assisting sellers in arranging the terms of a short sale must remember two things: 1) Do not provide the seller with legal advice, and 2) Be prepared to negotiate. Take advantage of the WRA-SSC Short Sale Checklist, designed to help gather the necessary information and assess the seller's situation so that the seller can decide if a short sale is a good solution. The Associate shall:

1. Find out how far behind the seller is with mortgage payments and whether they have discussed this with the lender.
2. Find out what liens are outstanding and how much money is needed to clear the liens from title. Order a search and hold from the title company to see what liens appear of record, and use the "Listing Questionnaire Regarding Title Issues" form (see sample on page 16 of www.wra.org/LU1306 or on zipForm) " to identify potential title issues not of record.
3. Determine who at the bank has the authority to authorize a short sale by contacting the bank's loss mitigation department.
4. Use the WRA Addendum SSL to the Listing Contract – Short Sales or similar form with the listing contract
5. Obtain a letter from the seller, authorizing the Associate to speak with the seller's lender (privacy laws otherwise prevent the lender from even discussing the situation with you).
6. Obtain a hardship letter from the seller explaining why the mortgage is delinquent (i.e., loss of job, divorce, hospital bills, etc.), if required.
7. Have the seller prepare a current financial statement.
8. Obtain sale comparables and information regarding market conditions; prepare a CMA or obtain an appraisal.
9. Find out if the lender will expect the seller to still pay the delinquent balance due after the short sale. Have the seller to talk with his or her tax advisors because the amount forgiven might be taxable. The Mortgage Forgiveness Debt Relief Act of 2007 does provide some income tax relief to taxpayers who will lose their homes through foreclosure or short sales in 2007-2013 (unless further extended by Congress).
10. If the seller cannot provide clear title without lender approval of a short sale, this is a material adverse fact, requiring timely disclosure to the buyer in writing: note that this is a short sale in the MLS.
11. Include in the offer to purchase a short sale or "subject to lender approval" contingency providing that the offer is contingent upon approval by the seller's lender(s). Counter the offer to insert a WRA Addendum SSO to the Offer to Purchase – Short Sale or comparable form if not included in the buyer's offer.
12. Advise the parties that they should be prepared to wait and draft closing dates, accordingly. It may well be 60 to 90 days before a bank makes a decision regarding the proposed short sale.

13. Recognize that a bank may ask the listing firm to reduce commission, since they are agreeing to a reduced amount. Where a listing firm discloses a potential short sale in the MLS, the listing firm may also be permitted to communicate how any reduction in the gross commission required by the lender will be apportioned between listing and cooperating firms. All confidential information related to short sales must be communicated through dedicated fields or confidential "remarks" available only to participants and subscribers (and not to consumers).

Review the June 2013 *Legal Update*, "Short Sales Streamline," at www.wra.org/LU1306 for additional practice pointers and guidance for Associates.

Listing REO Properties

The acronym REO stands for "Real Estate Owned" properties, often held by a lending institution as a result of a borrower's foreclosure. Associates shall:

1. EXPECT DELAYS: While there are some REO asset managers who are fairly prompt with their responses, the wait for a response to an offer can be from five to ten days up to six weeks.
2. ASSET MANAGERS: REO properties are handled by regional or national asset managers who are not located in Wisconsin and are generally unfamiliar with Wisconsin law. Determine the proper contact person with the authority to bind the seller when a buyer submits an offer. Be sure to know who holds title, who has the authority to sell and signatures need to bind the contract.
3. LISTING CONTRACT: Review the REO listing contract to make sure the contract meets the Wis. Stat. § 240.10 requirements for an enforceable listing for the payment of commission and forward the state-required Disclosure to Clients form to the asset manager.
4. REO ADDENDA: Understand that a buyer's initial offer to purchase may be submitted on a familiar Wisconsin form, but the written response from the asset manager will invariably be a lengthy non-negotiable REO addendum that overrides most of the offer to purchase provisions.
5. VERBAL NEGOTIATIONS: Expect that asset managers will provide verbal responses and won't counter offers in writing. A lender may "Okay" a sale, only to turn around and indicate that they have accepted another offer.
6. CLOSING DELAYS: Recognize that closings are often delayed days or even weeks due to lender/asset manager problems in getting the deed, the final signed HUD, title work and other closing documentation to closing on time. Prepare the parties for that eventuality.
7. AS IS, WHERE IS: Understand that the seller will not provide a Real Estate Condition Report (RECR) or give any other property condition disclosures and will rarely make any repairs from the lender/seller's funds. A RECR and an Addendum S (LBP disclosures) may be forwarded to the asset manager with the request that they be completed, but they may not comply because the sale is "as is/where is."

For additional pointers see "A Cautionary Tale for REO Buyers," in the March 2011 *Wisconsin Real Estate Magazine* at https://www.wra.org/WREM/Mar11/CautionaryTaleREOBuyers/ (also see the link to the disclosure form therein).

Early Listing Contract Terminations

The seller always has the power to cancel the listing contract but may not have the right to do so. Canceling the listing before its expiration date, however, will typically constitute a breach of the contract terms and thus violate the Firm's rights. The Firm may then demand compensation for any damages sustained as a result of the early termination of the listing. The Firm cannot, however, sue the seller for specific performance because of the agency relationship. Any early termination of a listing contract by either the seller or the Firm before the end of the listing contract term must be indicated in writing and is not be effective until delivered to the other party in accordance with the delivery methods authorized in the listing contract.

Associates do not have the authority to cancel a listing contract nor agree to an early termination or a commission modification without the written consent of the Firm or a supervising broker. If a seller wants to terminate a listing contract, the Associate must notify the Firm immediately. Any written request from the seller to "cancel," "terminate," "revoke," "withdraw," etc. shall be honored provided the written termination notice is properly delivered as per the contract.

Depending on the nature of the termination, a notice, an amendment or a cancellation agreement and mutual release may be the appropriate form to use to confirm the termination. The WB-42 Amendment to Listing Contract is appropriate if the seller and Firm have an agreement to change the expiration date to shorten the term of the listing contract. If the only acknowledges the seller's termination, a WB-41 Notice (modified for use with a listing) may be appropriate. If the seller and the Firm are agreeing to terminate all rights and interests under the listing, including listing protection, damages for bad-faith termination, and the right to collect commission if earned, a WB-45 Cancellation Agreement and Mutual Release may be appropriate. The Firm's or supervising broker's written consent to terminate shall specify what form and any particular language the Associate shall use.

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

Listing Protection

Whenever a listing contract expires per its terms, or is terminated early, the Associate shall, in a timely manner, prepare and deliver to the seller a list of buyers who have attended individual showings or who have discussed potential purchase terms with the Associate or another licensee involved with a prospective buyer. This list must be delivered to the seller, in a manner authorized for delivery in the listing contract, no later than three days after the expiration date or date of early termination. If the Associate later becomes aware that the property is listed with another firm and the seller or the new listing firm makes a written request for a list of protected buyers, the Associate shall deliver to the seller a complete list of names of all buyers who attended individual showings, discussed potential purchase terms with licensees, negotiated directly with the seller, viewed the property with the seller or submitted offers during the term of the Associate's listing.

The Associate will monitor activity regarding any properties with protected buyers and alert the Firm if any active protected buyer fails to work with the Associate during the listing protection period.

Co-Brokerage

It is the policy of the Firm to offer maximum exposure for the properties listed by its clients. Therefore, cooperation relative to all listed properties shall be offered to all other selling and buyer's firm unless otherwise specifically directed in writing by the client. Co-Listing a property between RE/MAX Preferred and another Real Estate Firm may be approved with written permission of both company Broker of Record or Broker Owners and Agent signatures prior to taking the Listing Agreement. Compensation between the two companies is 50/50 (unless otherwise agreed) and equal performance, ethical and legal standards of practice are required of all licensees named in the Co-Listing Contract.

B. Listing Policy – Firm Tasks

Inspection/Disclosure

Property Inspection

In accordance with Wis. Admin. Code § REEB 24.07, the Associate shall conduct a reasonably competent and diligent inspection of all accessible areas of the property to be listed. Basic data and any certain or potential material adverse facts shall be noted on the WRA Listing/Selling Agent Visual Inspection Form or other inspection checklist approved by the Firm, and placed in the listing file. Significant items shall be noted on the listing contract and property data sheets.

Disclosure of Material Adverse Facts

An "adverse fact" means a condition or occurrence that is generally recognized by a competent licensee (the Associate) as (1) significantly and adversely affecting the value of the property, (2) significantly reducing the structural integrity of improvements to real estate, (3) presenting a significant health risk to occupants of the property; or (4) information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction. A "material adverse fact" means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement. If a fact is both adverse and material, then Wis. Admin. Code § REEB 24.07(2) requires the Associate to timely disclose the fact in writing to all parties to the transaction, even if the party would direct the Associate not to disclose.

If the Associate knows or is aware of information suggesting the possibility of a material adverse fact, per Wis. Admin. Code § REEB 24.07(3) the Associate will be practicing competently if the Associate makes timely written disclosure of the information suggesting the material adverse fact to all parties to the transaction, recommends the parties obtain expert assistance to inspect or investigate for the possible material adverse fact, and, if directed by the parties, drafts appropriate inspection or investigation contingencies. The duty to disclose has priority over any duty owed to the client.

The Associate shall disclose to the parties, in writing, any material adverse facts – or information suggesting the possibility of material adverse facts -- that are materially inconsistent with the seller's disclosures on the seller's property condition report or the inspection or investigation report of a qualified third party. All such seller property condition reports and qualified third-party inspection and investigation reports may be relied upon only if copies of the reports are distributed to the parties. Written disclosures must be given as soon as is reasonably possible and always before the writing of any offers to purchase if at all possible. Disclosures may be made on the property data sheets, in a memorandum handed out to buyers along with the seller's property condition report and/or third-party inspections report, in the offer if necessary, or in a letter or memorandum using the following format:

Disclosure of Material Adverse Facts Format

A sample material adverse fact disclosure letter is available in on page 26 of the October 2009 *Legal Update*, "Diligent Disclosure," at www.wra.org/LU0910.

Tour of Homes

The purpose of this tour is to familiarize Associates with new listings and to assist them in describing these listings to prospective purchasers. All Associates are encouraged to participate in the weekly tour of homes. Drivers for the tour of homes are scheduled through the use of a roster to assure equity.

Security of Listed Property

It is the Associate's responsibility to exert as much effort and influence as possible to assure that listed properties are secure. The Associate must check as frequently as deemed appropriate to ensure that other Associates using the lock box have not left lights on and doors open or unlocked. If the house is in an area where robbery and vandalism occur frequently, the owner should be advised to consider whether to use a lock box in light of these conditions.

C. Listing Policy – Seller Disclosures

Seller Real Estate Condition Report

Wis. Admin. Code § REEB 24.07 requires an Associate working as a listing agent to make inquiry of owners as to the condition of the structure, mechanical systems and other relevant aspects of the property. The Associate shall request that the owner's responses be in writing. Associates shall furnish the owner with an appropriate property condition report for this purpose and request that the owner complete it to the best of his or her ability. For properties that contain one- to-four dwelling_units (excluding property that has not been inhabited), the Associate must use a Real Estate Condition Report (RECR), which complies with Wis. Stat. § 709.03. For property that does not include any buildings, the Associate must use a Vacant Land Disclosure Report (VLDR), which complies with Wis. Stat. § 709.033. A WRA Seller Condition Report - Commercial shall be used for commercial, a WRA Business Disclosure Report shall be used for business listings, and a WRA Real Estate Condition Report - Farm shall be used for farm listings.

All sellers subject to Wis. Stat. Ch. 709, including most sellers of one- to-four family residential dwelling units and sellers of vacant land -- whether Firm-assisted or FSBO -- must complete the appropriate Ch. 709 report no later than 10 days after acceptance of the offer or risk rescission of the offer to purchase. The Associate shall request the seller to complete the report when the listing contract is executed. In the event a seller refuses to complete the report, the seller shall be asked to sign the Seller's Refusal to Complete Condition Report form, which acknowledges the seller's receipt of the report and the seller's understanding of the operation of Ch 709.

1. Associates should not complete the RECR or VLDR and should never answer report items for the seller.
2. Associates may give the seller a general explanation of the seller disclosure law and the report form, but cannot give sellers legal advice. Sellers with questions about whether a specific item constitutes a defect must be referred to legal counsel.
3. If the seller has already completed an RECR or VLDR and then obtains information or becomes aware of a condition which would change a response on the completed report, and if this occurs before acceptance of a buyer's offer to purchase, then the report must be amended and submitted to the buyer. The report may be amended by completing either a new report form or an RECR amendment form. The seller has no duty to amend the RECR or VLDR after acceptance of the buyer's offer.

Lead-Based Paint Disclosure Requirements

It is imperative that all Associates fully comply with the requirements of the federal lead-based paint (LBP) disclosure laws. Penalties under the law include fines up to $11,000, triple damages and attorney fees.

Disclosure Requirements

The federal disclosure rules specifically require that sellers and landlords of most residential housing built before 1978 must: 1) disclose the presence of known LBP and LBP hazards; 2) provide buyers and tenants with any available records or reports about any LBP present in the housing and 3) provide buyers and tenants with a federally-approved lead hazard information pamphlet. Offers to purchase and leases must contain certain disclosures and acknowledgments. Sellers must also provide buyers with an opportunity to inspect for LBP. Finally, real estate agents must ensure compliance with these requirements.

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

Covered Properties

The EPA/HUD requirements for the disclosure of LBP apply to all transactions to sell or rent target housing. “Target housing” means any housing constructed prior to 1978, except for the following:

a. Housing for the Elderly (No Resident Children Under 6). Housing for the elderly means retirement communities or similar types of housing designed specifically for households where at least one person is 62 years of age or older at the time of initial occupancy.

b. Housing for Persons with Disabilities (No Resident Children Under 6). With both housing for the elderly and housing for persons with disabilities, the exclusion from the LBP disclosure rules is lost if children under the age of six live there or are expected to live there. The parties to any sales or lease transaction involving housing for the elderly or for persons with disabilities where children under six live or are expected to live would need to comply with the federal LBP disclosure rules.

c. “0-Bedroom” Dwellings. “0-bedroom” dwellings mean residential dwelling units where the living area is not separated from the sleeping area. This includes efficiencies, studio apartments, lofts, dormitory housing, military barracks and rentals of individual rooms in residential dwellings.

Covered Transactions

Both sales and rentals are covered. Rentals include leases, subleases, and oral rental agreements. Subleases are included so that the subtenant or sublessee (i.e., the new tenant) receives the LBP disclosures and information. Informal rental agreements not involving a written lease, for example, oral leases, are included despite the difficulties in complying with the rule’s requirements during a process handled verbally without written documentation.

Exempted Transactions

a. Foreclosure (sheriff) sales. Sales of REO (real estate owned) properties are not exempt.

b. Leases of Housing Found to be Lead Free. Leasing transactions involving target housing that has been found to be LBP free by a certified inspector are excluded. “LBP free housing” means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

c. Short-Term Leases of 100 Days or Less (No Renewals or Extensions).

d. Lease Renewals if Disclosures Already Done and no New Information. LBP disclosures need not be repeated for the renewal or extension of existing leases where the landlord previously disclosed all information required by the rules and no new information concerning LBP on the premises has come

to the attention of the landlord. In situations with no formal renewal process involved, i.e., a month-to-month holdover after the expiration of a one-year lease term, "renewal" shall be interpreted to occur at the point where the parties agree to a significant written change in the terms of the lease such as a rent rate adjustment. Then disclosure would be required as to any new LBP information not previously disclosed to the tenant.

e. Purchase, Sale or Servicing of Mortgages.

Agents Covered

"Agent" is defined as any party who enters into a contract with a seller or landlord for the purpose of selling or leasing target housing. For real estate agents in sales transactions this means all listing, selling, cooperative and buyer's agents (except those paid only by the buyer). In rental transactions, this means property managers, and leasing and rental listing agents.

Buyer Opportunity to Inspect for LBP

The LBP disclosure rules require that sellers provide buyers with a 10-day opportunity to conduct an LBP risk assessment or inspection of the target housing before becoming obligated under the offer to purchase. The 10-day period may be shortened or lengthened by mutual agreement of the parties.

This requirement may be met by having an LBP inspection contingency in the offer. There is no mandatory language or provision for this purpose. A LBP inspection contingency is included in the WRA Addendum S. Buyers may choose to waive their opportunity to inspect for LBP. The rules do not contain any requirement for providing tenants with the opportunity to conduct an LBP inspection.

Sellers may not counter an offer to delete a lead inspection contingency or reject an offer based on the buyer's inclusion of a LBP inspection contingency.

Timing of LBP Disclosures

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

Associate Responsibilities

To ensure compliance, the Associate must inform the seller or landlord of his or her duties to disclose known LBP on the target housing, and furnish LBP records and reports and the EPA-approved lead hazard information pamphlet to buyers and tenants. The Associate must also advise the seller that he or she must permit the buyer 10 days in which to conduct an inspection or evaluation of the premises with respect to LBP. The seller and landlord must also be told about his or her duty to certify compliance with these obligations and retain a copy of a signed LBP disclosure and acknowledgment addendum, such as the WRA Addendum S.

The Associate then must ensure compliance with all of these requirements. This may be done by making sure that the seller or the landlord has performed all of these required activities, or by personally performing these activities on behalf of that party.

If the Associate has informed the client about all of his or her obligations under the federal LBP disclosure rule, the Associate shall not be liable for a failure to disclose LBP to a buyer or tenant if the LBP is known by the seller or landlord but not disclosed to the agent. The LBP disclosure rules require that sellers and landlords disclose to agents the presence of any known LBP as well as any additional information about the basis for the determination that LBP exists on the property, the location of any LBP on the premises, and the condition of painted surfaces. Sellers and landlords

must also disclose to agents the existence of any available records or reports pertaining to LBP on the premises.

Associates working with owners of residential rental properties built before 1978 should inform the owner about the Wisconsin Supreme Court's holding in the *Antwaun A.* case: an owner of residential rental property built before 1978, who has knowledge of, or in the use of ordinary care should know that there is peeling, chipping or flaking paint, has a common law duty to test the paint to determine if the paint is LBP. Wisconsin law requires LBP testing in residential rental properties to be performed by certified personnel in most situations. Owners of residential rental properties built before 1978 should be referred to legal counsel for advice on LBP issues.

Listing Residential Property

An Associate shall:

1. Determine if the property is target housing.
2. Look for painted surfaces in bad condition while inspecting the property.
3. Advise the seller of his or her obligations under the LBP rules.
4. Ask the seller if he or she has any knowledge of LBP or LBP hazards on the property.
5. Obtain copies of any available LBP records pertaining to the property.
6. Have the seller complete and sign Addendum S or another lead-based paint addendum.
7. Sign Addendum S and make it available to buyers writing offers.

Selling Agent Initiation of Addendum S

If an Associate working as a selling agent does not have a copy of an addendum prepared by the seller and has learned from the listing agent that the seller has no LBP information or reports to disclose, the Associate may wish to initiate the Addendum S. The Addendum S may be completed to indicate the seller has no LBP disclosures. After the Associate has given the buyer an EPA-approved LBP information pamphlet and reviewed the Addendum S with the buyer, the Associate and the buyer may sign the Certification section of the Addendum S and incorporate it into the buyer's offer. A condition of the seller's acceptance of the offer will have to be that the seller and listing agent sign the Certification section of the Addendum S. If it turns out that the seller does have LBP disclosures, the offer will have to be countered by the seller or withdrawn by the buyer until the disclosures have been properly completed. However, a buyer may refuse to complete Addendum S before the Seller Disclosure and Certification section is completed.

For more information, practice tips and guidance for Associates about LBP disclosure obligations, see the May 2010 *Legal Update*, "Lead-Based Paint in Target Housing," at www.wra.org/LU1005.

Use-Value Assessments

Under the use-value assessment method of assessing Wisconsin agricultural land for property tax purposes, farmland is assessed based upon its agricultural productivity rather than its potential for development or fair market value. If the use of land assessed under the use-value system is changed to a nonagricultural use, the then-current owner must pay a "conversion charge" (previously referred to as a penalty). In other words, if a buyer changes the use of the land assessed under the use-value system, the buyer may have to pay a conversion charge that captures between 5 and 10 percent of the property tax savings that occurred when the land was taxed as agricultural land in the year before the conversion. If the use changed before the sale, the seller would be responsible for the conversion charge.

Sellers Must Disclose Use-Value Assessments

Sellers must disclose if the property has been assessed as agricultural land under the use-value system, if the seller has been assessed a conversion charge under the use-value system, and if any

assessed conversion charge has been deferred. Sellers and Associates should also disclose that buyers who purchase and change the use of agricultural property assessed under the use-value system might be subject to a potentially substantial penalty.

The WRA residential RECR forms, as well as the Seller Condition Report – Commercial, Real Estate Condition Report - Farm and the Vacant Land Disclosure Report, each contain the required seller disclosure required by the use-value law.

If a buyer intends to buy and develop the farmland or otherwise change the use of the agricultural land being purchased, the buyer's offer to purchase should include an investigation contingency. The contingency should give the buyer ample time to confer with the local taxing authorities to determine the amount of any use-value conversion charge and obtain any other pertinent tax information.

Farmland Preservation Agreements

A property owner must pay a conversion fee under Wis. Stat. § 91.66 when a farmland preservation agreement is terminated prior to its expiration date or if land is released from a farmland preservation agreement. That conversion fee is equal to "3 times the per acre value, for the year in which the farmland preservation agreement is terminated or the land is released, of the highest value category of tillable cropland in the city, village, or town in which the land is located, as specified by the department of revenue under s. 73.03 (2a)."

Sellers Must Disclose Farmland Preservation Agreements

The seller must disclose if the property is subject to a farmland preservation agreement. The farmland zoning conversion fee is assessed if the property is released from a farmland preservation agreement or a farmland preservation agreement is ended early.

Wisconsin Department of Natural Resources Mitigation Plans

Under the Wisconsin's new shoreland zoning regulations (Wis. Admin. Code Ch. NR 115), a property owner wishing to exceed the 15% impervious surface limit or expand a nonconforming structure within the 75-foot setback must agree to perform some form of mitigation as determined by the county where the property is located. Mitigation may include activities such as restoring the primary buffer (the area between the water and 35 feet from the water) to its natural state, removing another nonconforming structure, or reducing some existing impervious surfaces. In most cases, a mitigation plan must be filed with the local register of deeds and will apply to all future owners of the property. Because this information could have a significant impact on a buyer's decision to purchase the property or the price he or she is willing to pay for it, this information should be disclosed.

Sellers Must Disclose Mitigation Plans

The Wis. Stat. ch. 709 RECR and VLDR forms, as well as the WRA disclosure reports, contain the required seller disclosure item asking the property owner to disclose whether the property is subject to a shoreland zoning mitigation plan required by the county.

Dam Disclosure

Sellers are now required to disclose whether a dam is totally or partially located on the property or if an ownership interest in a dam that is not located on the property will be transferred with the property because it is owned collectively by members of a homeowners association, lake district, or similar group. To ensure that dams are properly maintained and that the DNR knows who to contact if the dam maintenance requirements are not satisfied, both the seller of property on which a dam is located and the buyer of the property must cooperate to complete a dam transfer application. An inspection is required

prior to transferring the property and dam, as well as any repairs needed to bring the dam into compliance with safety standards. The buyer must show financial capability to maintain the dam, and a permit may be required. If dam transfer requirements are not met, the real estate transaction may be nullified. See the DNR information regarding the Wis. Stat. § 710.11 requirements for selling and transfers of dams at http://dnr.wi.gov/topic/Dams/sellingAndTranfers.html.

Managed Forest Law

Wis. Stat. § 710.12 requires sellers to provide buyers with a written disclosure, no later than 10 days after acceptance of the offer, if the property will continue to be subject to a Managed Forest Land (MFL) order after the sale. This disclosure explains that MFL orders remain in effect for 25 or 50 years and that the Department of Natural Resources (DNR) Division of Forestry monitors MFL management plan compliance. In addition, the seller must furnish Division of Forestry contact information and include mandatory language: "Changes you make to property that is subject to an order designating it as managed forest land, or to its use, may jeopardize your benefits under the program or may cause the property to be withdrawn from the program and may result in the assessment of penalties."

Sellers Must Provide Managed Forest Land Disclosure

The mandatory Managed Forest Law disclosure appears in the WB-13 Vacant Land and WB-12 Farm Offers to Purchase and the VLDR. The WRA has created a separate Managed Forest Law – Seller Disclosure form (WRA-MFL) on ZipForm as an alternate way for sellers to satisfy the § 710.12 disclosure requirement.

Conservation Reserve Programs

The Conservation Reserve Program (CRP) encourages farmers, through contracts with the U.S. Department of Agriculture, to stop growing crops on highly erodible or environmentally sensitive land and instead to plant a protective cover of grass or trees. CRP contracts run for 10 to 15 years, and owners receive an annual rent plus one-half of the cost of establishing permanent ground cover.

If land is sold and the new owner does not continue with the contract, the seller will be required to refund all annual rental payments with interest from the date of disbursement, cost-share payments with interest from the date of disbursement, and also will be charged liquidated damages which equal 25% of the annual rental payment on the acres involved.

Sellers Must Disclose CRP

Sellers must disclose if the property is subject to a CRP agreement. This disclosure is prompted in the WB-13 Vacant Land and WB-12 Farm Offers to Purchase, and in the VLDR.

Other Government Programs

Sellers must disclose all federal state, county and local conservation, farmland, environmental or other land use programs, agreements, restrictions or conservation easements, which apply to any part of that the property, as prompted in the WB-13 Vacant Land and WB-12 Farm Offers to Purchase, and in the VLDR.

Sex Offender Registry

The Wisconsin Department of Correction's (DOC) sex offender registry is available to the public via Internet (http://offender.doc.state.wi.us/public/) and by telephone (608-240-5830). Real estate licensees, landlords, property managers and sellers all have a duty, if asked by a person in connection with a real estate transaction, to disclose any known information concerning any sex offenders. However, the real estate licensee, owner or property manager has immunity relating to the disclosure of such information if he or she promptly gives the person requesting the information a written notice indicating that the person

may obtain the sex offender registry information by contacting the DOC via the Internet or by telephone. Instead of answering based upon what they have heard or read, the licensee, owner or property manager can instead just refer the person to the DOC's sex offender registry for factual and accurate information.

Associates must be sure that the following notice appears in the, listing contracts, property condition reports, buyer agency agreements, rental applications, leases and other forms used by the Associates such that every party routinely receives the notice:

> **Notice: You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at http://www.widocoffenders.org or by phone at 608-240-5830.**

CLUE Reports

Unbeknownst to most consumers, homeowners insurance risk evaluations consider not only the property condition, but also the claims history of the property, past insurance claims made by the buyer and the credit history of the buyer. The claims history information that insurance companies use often comes from the Comprehensive Loss Underwriting Exchange (CLUE) database that tracks claims on properties and property owners.

CLUE reports detail every claim and most inquiries made over the past five years. A property owner may obtain a CLUE report from the LexisNexis website at https://personalreports.lexisnexis.com/. Associates should encourage sellers to get a copy of their CLUE report when the property is listed so that it will be available if requested by buyers And will help jog the seller's memory when the seller completes the RECR.

Foreign Sellers of United States Property Need TIN Numbers

The sale of a United States real property interest by a foreign seller is subject to income tax withholding under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). Under FIRPTA, the buyer is the withholding agent. If the seller is a foreign person and the buyer fails to withhold, the buyer may be held liable for the tax. FIRPTA withholding does not apply to the purchase of a home for $300,000 or less, and there are additional exceptions discussed on the Internal Revenue Service website at www.irs.gov/Individuals/International-Taxpayers/FIRPTA-Withholding.

Foreign buyers and sellers of United States real property interests must have Taxpayer Identification Numbers (TINs) to report and pay any required withholding or to request reduced tax withholding when disposing of the property interest. Individuals who do not qualify for Social Security Numbers (SSN) may obtain Individual Taxpayer Identification Numbers (ITINs) to meet the requirement to supply a TIN. If a foreign seller or even the buyer does not have a TIN number, instruct him to begin the process of obtaining a TIN as soon as possible, so that he can have it prior to closing. The foreign seller must have a TIN in order to file his United States income tax return for the year of the sale and to obtain a refund, if any is due to him. Individuals can obtain a Social Security Number by filing Form SS-5 with the Social Security Administration (see the directions online at www.socialsecurity.gov/ssnumber/ss5.htm) or an ITIN by filing Form W-7 or W-7SP (in Spanish) with the IRS; see www.irs.gov/Individuals/Individual-Taxpayer-Identification-Number-(ITIN).

Specially Designated Nationals

Real estate brokers and managers are subject to executive order 13224, which expressly prohibits business transactions with individuals on the Specially Designated Nationals and Blocked Person List (SDN). Associates must periodically check the SDN to ensure they are not dealing with restricted individuals or entities. This is especially important in transactions involving commercial leasing and

multi-unit housing. The U.S. Treasury Department Office of Foreign Asset Control maintains the SDN list online at www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx. When it appears that a client or customer may be on the SDN list, Associates should report this immediately to the Firm.

Chapter 7

Buyer Brokerage

Criteria for Selecting Buyer Agency Status

Buyer agency is appropriate for buyers who are relatives, close friends, or business associates/partners of the Associate, companies or entities in which the Associate has an ownership or other interest, out-of-town buyers and all buyers desiring representation.

Associates Working as Buyer's Agents

Buyer Agency Agreement

The WB-36 Buyer Agency/Tenant Representation Agreement, the REEB-approved buyer agency contract, gives the buyer's firm the authority to provide brokerage services to the buyer/client as an exclusive buyer's agent. The WB-36, however, does not create an exclusive right-to-locate-and-negotiate agency relationship, which would be the counterpart of an exclusive right-to-sell listing contract. See the definitions of these terms in Wis. Admin. Code § REEB 16.02 at https://docs.legis.wisconsin.gov/code/admin_code/reeb/16.

Buyers Working with Other Agents and Owners

The WB-36 cautions the buyer that: "IF BUYER WORKS WITH OWNER OR AGENTS OF OWNER IN LOCATING AND/OR NEGOTIATING AN INTEREST IN PROPERTY, BUYER MAY BE RESPONSIBLE FOR FIRM'S FULL COMPENSATION IF BUYER'S CONTACTS WITH OWNER OR OWNER'S AGENT RESULT IN NO COMPENSATION BEING RECEIVED BY FIRM FROM OWNER OR OWNER'S AGENT." Associates shall point out this warning to clients and explain that they may be responsible for additional commission or fees if they sign a WB-36 and then work with the owner or other agents.

Disclosure to Clients

Prior to the buyer's signing of the buyer agency agreement, the Associate shall discuss the different types of agency relationships with the buyer, explaining the responsibilities of listing agents, buyer's agents and subagents of the listing firm. The Associate will carefully review the Disclosure to Clients incorporated into the REEB-approved WB-36 Buyer Agency Agreement or a separate Disclosure to Clients if the contract used does not include this language.

In a multiple representation relationship, a client is contemplating a possible situation where the seller has a listing contract and the buyer has a buyer agency agreement, both with the Firm. Associates shall encourage owners to consider designated agency or multiple representation and to include any confidential or non-confidential information in the Disclosure section of the listing contract. If both parties do not consent to a multiple representation relationship (either with or without designated agency), Associates not able to show buyer clients the listings of Firm's seller clients.

Multiple Representation

In multiple representation (without designated agency), or "dual agency," the Associates working with the buyer and seller take on a neutral role in negotiations. Each Associate working with the parties prepares contract proposals as directed by the client, but may not provide either party with advice about how to gain an advantage over the other. A multiple representation without designated agency may limit the services provided to a particular client. If there is only one

Associate working with both the buyer and the seller, multiple representation (without designated agency) is appropriate if both parties so consent.

Multiple Representations with Designated Agency

In a designated agency relationship, the Firm may assign two Associates to work with the
In a designated agency relationship, one Associate may represent the seller as a seller's agent, and one Associate may represent the buyer as a buyer's agent. Each Associate provides full negotiation services to the respective client, offering advice and opinions to assist that client even if that advice favors the interests of that client over the firm's other client. Each Associate also keeps the confidential information of each client private. Both parties must consent in writing to create designated agency.

Both the buyer and the seller must consent in writing to the multiple representation with designated agency relationship. If one of the parties selects multiple representation with designated agency while the other selects multiple representation (without designated agency), multiple representation (without designated agency) will apply.

Changing the Agency Relationship Consent

If a party wishes to change his or her agency relationship consent, the preferred method would be to use the Disclosure to Clients form. The party should make his or her new selection and execute the form. A copy should be given to the client and included in the firm's file. The Associate also may use an amendment to the listing contract (WB-42) or buyer agency agreement (WB-47) to document the change.

Any time a party will not receive brokerage services at the level the party selected in his or her agency contract, the Associate must explain this to the client. If the other party will not accommodate the agency relationship chosen by the client, best practice is to have a conversation with the client and amend the client's agency agreement to document any agency relationship changes made for the particular transaction.

Company Policy Regarding Multiple Representation and Designated Agency

Amendment per client agency relationship change per transaction.

Buyer Agency Disclosures

When acting as a buyer's agent for a buyer looking to purchase real estate used or intended to be used principally for one- to four-family residential purposes, Associates must give notice to the listing firm or to the seller if the seller is FSBO, of the buyer agency relationship. This may be done verbally and must be done at the earlier of:

1. First contact with the seller or the listing firm where information regarding the seller or transaction is being exchanged.
2. A showing of the property.
3. Any other negotiation with the seller or the listing firm.

Similarly, Standard of Practice 16-10 states, "REALTORS®, acting as agents of, or in another relationship with, buyers or tenants, shall disclose that relationship to the seller/landlord's agent or firm at first contact and shall provide written confirmation of that disclosure to the seller/landlord's agent not later than execution of a purchase agreement or lease."

Accordingly, Associates who are buyer's agents must tell listing agents and sellers at first contact that they are buyer's agents and later confirm that status in the offer to purchase. While the REEB notification rule is limited to one-to-four-family residential properties and listing firms with exclusive right-to-sell contracts, the Code of Ethics provisions apply to REALTORS® in all property transaction types. In all cases, the offer to purchase must indicate that the Associate is a buyer's agent.

If the seller is FSBO, Associates also shall give the seller a written Disclosure to Customers informing the seller that the Associate is a buyer's agent and asking the seller to sign the form to indicate receipt, before negotiation of the offer to purchase or other transaction contract begins if the Associate is going to provide any brokerage services to the seller.

Negotiations

The Associate, when acting as the buyer's agent, can expect that the listing agent will often be present on showings of listed properties. All information and negotiations concerning the transaction must be communicated to the seller through the listing agent, whether or not the listing firm is in attendance.

Collecting the Buyer's Firm's Fees

The Firm may collect the buyer's firm's fee from the buyer, the seller (if authorized in the WB-36), the listing firm (if authorized in the WB-36) or from a combination of these.

Associates should help the buyer understand how different compensation amounts and collection strategies might play out before setting the buyer's firm's compensation and before an offer to purchase is written. The Associate earns the success fee if the buyer, or any person acting on behalf of the buyer, acquires an interest in property or enters into an enforceable contract to acquire such an interest during the term of the WB-36. This is true even if the Associate did not help locate the property and was not involved in negotiations, provided that the property purchased is not a property excluded in the WB-36.

There is no one legally suggested method for the payment of a buyer's firm's fee. A buyer's firm's fee may be paid by:

a) The buyer directly. This may happen in some transactions when the seller declines to pay the fee on behalf of the buyer.

b) The seller (if authorized in the WB-36 Buyer/Tenant Representation Agreement). A buyer may ask the seller to pay the buyer's firm's fee as a term of the buyer's offer to purchase. The fee would be paid at closing from the seller's proceeds. A buyer's firm may ethically suggest that the buyer ask the seller to pay some or all the buyer's firm's fee. Because this request for payment is made between the parties to the offer – by the buyer to the seller – there is no Article 16 violation. The firms and agents are not parties to this agreement because they are not the parties to the offer to purchase. In conjunction with this option, the buyer's firm may need to waive the compensation offered by the listing firm in the MLS to avoid a double fee scenario. The seller may agree to pay the buyer's firm fee and ask the listing firm to amend the listing contract to reduce the listing firm's commission by a like amount so that the seller will come out even. Other sellers may choose to counter the offer and increase the purchase price to cover the buyer's firm's fees and preserve the seller's net proceeds. On the other hand, the seller may counter the offer to delete the buyer's firm's fee provision and try to convince the buyer's firm to accept the compensation offered by the listing firm.

Wis. Admin. Code § REEB 24.05(1) provides that the buyer's firm must have the prior written consent of the buyer and seller to collect the fee from the seller because the seller is not the buyer's firm's client. The WB-36 Buyer Agency Agreement provides a means for the buyer to authorize the

buyer's firm to accept compensation from the owner/seller. The seller's consent may be obtained in the offer.

c) The listing firm (again, if authorized in the WB-36). A commission split from the seller or listing firm arises from the buyer's firm's acceptance of the seller or listing firm's offer of compensation, or from a specific compensation agreement between the two brokers for the particular transaction. Payment in these situations is dependent upon the Associate/Firm meeting the standard of performance that entitles the Firm to compensation. Procuring cause is the standard.

d) A combination of these methods.

The buyer is ultimately responsible to pay the buyer's firm's fee, and therefore is the one entitled to choose the most effective manner of assuring the fee is paid.

Associates must remember that buyer's brokerage does not trump procuring cause. Buyer agency does not create an automatic result or advantage when firms seek to establish procuring cause at local association arbitration.

Working with Buyers under Buyer Agency Agreements

All of an Associate's dealings with buyers who are subject to a WB-36 Buyer Agency Agreement must be carried on with the buyer's agent, and not with the buyer, unless the buyer's agent consents or the buyer initiates the dealings with the Associate. Associates must then ask whether there is a buyer agency agreement before providing substantive services to the buyer. If there is a buyer agency agreement, the Associate may ask the buyer if he or she would like the Associate to perform services, for instance, write an offer to purchase, even though the buyer is subject to a WB-36. Associates approaching buyers under buyer agency agreements should caution the buyer to check the provisions of their buyer agency agreement to determine whether the buyer may work with other agents and whether the buyer will still be obligated to pay the buyer's firm's fees. Causing a buyer who is party to a WB-36 to work with another agent without cautioning the buyer about the possibility of extra costs may be calling into question the Wis. Stat. § 452.133(1) duties of good faith and fair and honest treatment.

Note that the only time that listing agents who are not REALTORS® are compelled to negotiate with the buyer's agent is when the buyer or the buyer's agent has made the listing agent aware that the WB-36 has been modified to provide for the exclusive right to negotiate. In addition, Wis. Admin. Code § REEB 24.13(5) does not obligate licensees to ask the buyer whether he or she has a buyer agency agreement or whether that agreement contains an exclusive right to negotiate.

Chapter 8

Transaction Policies and Procedures

Disclosure to Customers

Associates must provide buyer prospects who are not working with other firms and who do not enter into buyer agency relationships with Associates with the mandatory Disclosure to Customers form before conducting any negotiations. Negotiation means to assist the parties in developing proposals and agreements by acting as an intermediary in communications between the parties (providing information and advice to the party on real estate matters or showing a party real estate does not, in and of itself, necessarily constitute negotiation), facilitating or participating in the parties' discussion of the terms of a contract, completing appropriate REEB-approved forms to document the party's intent, and presenting the proposals of other parties and giving a general explanation of the proposal.

Wis. Admin. Code § REEB 24.07(8)(a) provides the Disclosure to Customers needs to be signed by the buyer for residential transactions. One copy of the Disclosure to Customers form, signed by the buyer shall be given to the buyer, and one copy shall be retained for the Firm's file. In addition, a copy of the form shall be submitted to the listing agent (if not the Firm) along with the Offer to Purchase, for all buyers who are customers.

Prior to negotiation, Associates may provide brokerage services to buyers without an agency relationship, including providing information and conducting showings, provided that the Associate does not place the interests of the Firm ahead of the interests of any party or give advice or opinions contrary to the interests of the seller. An Associate in pre-agency owes the duties owed to all persons.

Prospect Calls

Associates shall screen the prospect on the first call if possible. The prospect's name, contact information and consent to call shall be obtained (and confirmed in writing at the earliest opportunity), and the Associate shall try to determine their motives, needs, desires and ability to buy, as well as down payment capability, and record this information on a Buyer Worksheet (see Appendix VI). As the Associate continues to work with the prospect, the Associate will log information on properties shown, the dates and the prospect's comments.

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

Matching Prospects with Properties

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

Ask If There is a Buyer Agency

When working with any buyer, an Associate may not write an offer or provide other substantive services for that buyer prospect without first asking the prospect if he or she is a party to a buyer agency agreement. Even if the prospect says that he or she has a buyer agency agreement, the Associate may ask the prospect if he or she would like the Associate to write an offer to purchase and proceed to do so if the buyer responds affirmatively. Associates approaching buyers under buyer agency agreements should caution the buyer to check the provisions of their buyer agency agreement to determine whether the buyer may work with other agents and whether the buyer will still be obligated to pay the buyer's firm's fees. Causing a buyer who is party to a WB-36 to work with another agent without cautioning the buyer about the possibility of extra costs may be calling into question the Wis. Stat. § 452.133(1) duties of good faith and fair and honest treatment.

Buying Short Sale Properties

A short sale means that the proceeds from the sale will not be enough to satisfy all of the liens on the property and to pay all of the closing expenses, possibly including the firm's commission (check to see what is disclosed on the MLS).

1. The buyer should be prepared to wait. Draft closing dates, accordingly. It may well be 60 to 90 days before a lender makes a decision regarding approval of a short sale.
2. The buyer should decide whether contract deadlines such as the timeframe for the inspection contingency should run from the time the lender approves the sale or the acceptance of the offer.
3. The offer to purchase should contain a short sale or subject to lender approval contingency providing that the offer is contingent upon the approval of the seller's lender(s). Use the WRA Addendum SSO to the Offer to Purchase – Short Sale or a comparable addendum.
4. Buyers should also understand that when there are multiple offers, the lender may approve one of the secondary offers. The lender controls the decision-making because no offer can go to closing without lender approval.

Buying REO Properties

The acronym REO stands for "Real Estate Owned" properties, often held by a lending institution as a result of a borrower's foreclosure. One way to help prepare the buyer for the uncertainties and possible hazards of REO transactions is to use the Information for Buyers about Bank (Foreclosure) Property form available at https://www.wra.org/Resources/Transactional/RelatedDocs/Downloadable_Information_for_Buyers_about_Bank_(Foreclosure)_Property/ or on zipForm.

1. EXPECT DELAYS: While there are some REO asset managers who are fairly prompt with their responses, the wait for a response to an offer can be from five to ten days up to six weeks.
2. ASSET MANAGERS: REO properties are handled by regional or national asset managers often who are not located in Wisconsin and are generally unfamiliar with Wisconsin law.
3. REO ADDENDA: A buyer's initial offer to purchase may be submitted on a familiar Wisconsin form, but the written response from the asset manager will invariably be a lengthy non-negotiable REO addendum that overrides most of the offer to purchase provisions.
4. VERBAL NEGOTIATIONS: REALTORS® and buyers are frustrated when asset managers provide verbal responses and won't counter offers in writing. A lender may "Okay" a sale, only to turn around and indicate that they have accepted another offer. Understand that although REO asset managers negotiate verbally, under Wisconsin law there is never a legal binding contract until there is a writing signed by both parties – don't mislead buyers into thinking otherwise.

5. CLOSING DELAYS: Closings are often delayed days or even weeks due to lender/asset manager problems in getting the deed, the final signed closing disclosure document, title work and other closing documentation to closing on time.
6. TITLE PROBLEMS: The title companies used in REO transactions often are unorganized and unfamiliar with Wisconsin law and practice. Ask where the title company and attorney working on the transaction are located – if they are in Wisconsin, there should be fewer problems getting to closing. While it is true that about 95 percent of all foreclosures have properly included all lien holders so that the high bidder will take the property free and clear of liens, this is not a legal requirement. Always recommend that the buyer have the title company perform a search on the property and determine if all lien holders were properly joined before buying a REO property.
7. AS IS, WHERE IS: The seller will not provide a Real Estate Condition Report or give any other property condition disclosures and will rarely make any repairs from the lender/seller's funds. The buyer is responsible for determining the condition of the property– inspections are an absolute must.
8. INSPECT THE DISREPAIR: REO sellers often fail to disclose major ongoing problems like frozen or leaking pipes or a failed septic system so it is critical that the buyer inspect the property. One common obstacle is that the power or other utilities have been turned off.
9. MINIMIZE THE PAIN: The best approach to all this madness is to prepare the buyer to expect the worst and be happy if things work out more smoothly than predicted. Make sure the buyer knows to expect delays and the imposition of harsh REO addendum terms.

Loan Assumptions

Buyers may sometimes have the opportunity to assume the seller's loan when buying a property: the buyer adopts or takes over the seller's debt and obligations under the terms of the existing mortgage without having to find new financing. The interest rate on the seller's loan and rates available at market should be compared to see if this may be a good option for the buyer.

If an assumption with "novation" occurs, a new legal obligation is created for the buyer to perform and the seller is released from the liability. The lender qualifies the buyer as if they were applying for the loan because the lender will only have recourse against the buyer if the buyer defaults. Some of the costs of a new loan and transaction may be avoided. Alternatively, the buyer may assume the debt or take the property subject to the debt, but the seller still remains obligated to the mortgagee. The mortgage is not eliminated for the seller; the seller still owes the money and is still responsible for the payments to the lender if the buyer fails to perform. This must be arranged with the lender to ensure that the mortgage due on sale clause is not triggered, which would accelerate the debt owed and throw the property into foreclosure.

The buyer considering a loan assumption will want to know terms and conditions of the assumption, the amount of the seller's equity and payment schedule, and whether the buyer will need an additional loan for the down payment. Buyers considering an assumption must first be advised to consult with their attorneys.

Buying at Auction and at Sheriff's Sale

If a buyer wishes to buy a property at auction, the Associate should immediately contact the auction company to register and obtain the bidder's information packet and procedural information for the buyer – all terms and conditions stated in the packet should be reviewed with the buyer and followed precisely to ensure a successful auction bid. There may be an opportunity in advance of the auction to see the property and conduct inspections that the buyer should take advantage of because the sale to the successful bidder will be "as is" and without any contingencies. Find out the recent selling prices on neighboring homes as guidance for the buyer. The buyer should also be pre-qualified with a lender and should expect to pay a buyer's fee or surcharge that is added to the successful bid. Bidders also must

bring a 5-10% earnest money deposit—for instance, a certified check made payable to the bidder, to show that they are serious. See the July 2007 *Legal Update*, "Real Estate Auctions," online at www.wra.org/LU0707 for additional practice pointers and additional guidance for Associates.

Sheriff's sales mark the final stage of the foreclosure process. Sheriff's sales are open outcry sales with no sealed bids. The successful bidder, upon full payment and judicial confirmation, receives a sheriff's deed. There is no formal opportunity to inspect the property but a drive around the neighborhood maybe instructive. The sheriff's deed is a quitclaim and may not give clear title to the property – each property is sold subject to any restrictions not removed in the foreclosure action -- so Associates should recommend that the buyer obtain a title search before bidding. The highest bidder at the sale shall be the buyer, who must pay 10% of the total bid in cash or with a certified check or money order immediately after the sale. For more information about sheriff's sales, read *Legal Update 99.05*, "Mortgage Foreclosures," at www.wra.org/LU9905 and pages 12-15 of the March 2009 *Legal Update*, "Working with Distressed Sales," at www.wra.org/LU0903.

Credit Reports and Credit Scores

Credit scores have become more critical than ever. The higher the credit score, the lower the required down payment and the better the loan terms. Credit scores are based on credit report information and are used to predict whether a borrower will make loan payments on time. Before a buyer begins house hunting, the buyer should obtain a copy of his or her credit report and credit score from the national credit reporting agencies. See "Understanding You FICO Score" at www.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf. The Fair and Accurate Credit Transactions Act (FACT Act) allows an individual to get a free copy of his or her credit report information from each of the three national consumer reporting agencies once every 12 months. Visit http://www.ftc.gov/bcp/edu/microsites/freereports/index.shtml for more information and guidance for Associates may provide to buyers.

Pre-Qualification versus Pre-Approval

Try to ensure that a buyer is qualified to buy and determine the appropriate price range by encouraging the buyer to obtain a pre-approval or pre-qualification letter from a reputable lender.

- A pre-qualification is an unverified, free test run of the loan application process. The lender uses the person's income, monthly debts, credit history and assets information as well as electronic credit reporting to verify the person's credit worthiness and estimate what the person can afford for a mortgage payment.
- A pre-approval is a firmer commitment by the lender based upon a complete application with a fee, credit check and employment verification. A person who qualifies receives a letter that says that a mortgage loan is approved for a certain amount of money (or for a certain property) and for a certain amount of time, subject to appraisal of the property.

Predatory Lending

Predatory lending involves engaging in deception or fraud, manipulating the borrower through aggressive sales tactics, or taking unfair advantage of a borrower's lack of understanding about loan terms and their consequences. Predatory lending generally occurs in the sub-prime mortgage market, where borrowers use the collateral in their homes for debt consolidation, home improvements or other consumer credit purposes. The predatory nature of many loans typically does not stem from a single loan term or feature, but rather a series of features that, in combination, impose substantial hardships on the consumer.

One of the best things that Associates can do to help prevent predatory lending is to encourage buyers to educate themselves about consumer credit, mortgage loans and homeownership. It is not the role of the

Associate to provide financial counseling or advice, but encouraging buyers to seek the appropriate guidance will serve to enhance the possibility of a successful transaction and happy buyers, and help avoid a perilous financial outcome. Associates should encourage homebuyers, especially first-time homebuyers, to attend:

Credit Counseling Classes. This is helpful for homebuyers with no credit history or a marginal credit standing. Buyers who are educated about the basics of consumer credit and mortgage loans are less likely to be tricked by unscrupulous lenders. They will be more likely to shop around for the lender and the mortgage that best meets their needs.

Home Buying and Homeownership Education.
Associates shall recommend the consumer resources at https://www.wra.org/Fraud/ or otherwise recommended by Firm or available in the community

Homeowner's Insurance

Associates should encourage homebuyers to apply for insurance as soon as possible. Insurance companies evaluate a buyer's credit information and insurance claims history, and the claims history of the property when they consider homeowner's insurance applications.

Credit/Insurance Scores

Both lenders and insurance companies will consider the credit history and credit scores of the buyers. One of the most widely used credit scores are FICO® scores, prepared by Fair, Isaac & Company, Inc. Credit scores are intended to predict the likelihood that a person will make timely payments. Some insurance companies use insurance scores instead of credit scores. An insurance score is a credit-based statistical analysis of a person's likelihood to file an insurance claim within a given period of time. See the resources at http://www.myfico.com/CreditEducation/articles/.

CLUE Reports

Insurance companies also look at the buyer's insurance claims history and the insurance claims history of the property as reported in the Comprehensive Loss Underwriting Exchange (CLUE) database. A CLUE claims history report contains a record of all insurance claims made with respect to a property and all claims made by the property owner over the past five years. Consumers should be aware that contacting their company or agent to simply discuss the consumer's options regarding an actual loss is generally considered to be reporting a claim, even if the insurance company never pays out. A property owner may obtain a CLUE report from the LexisNexis Website at https://personalreports.lexisnexis.com/.

Buyer Checklist

Associates should strongly encourage homebuyers to follow these steps. Buyers should:

1. Get a copy of their credit report and correct any errors or problems at least six months before looking for a house.
2. Ask their insurance agent for homeowner's insurance information. Find out about application procedures and any property conditions or lifestyle issues that typically result in refusals to insure.
3. Get their credit score or insurance score.
4. Obtain their claims history (CLUE).
5. Ask the seller for the CLUE report on the property before writing an offer to purchase.
6. If the seller does not provide a property CLUE report, put a contingency in the offer to purchase requiring the seller to furnish this information.

7. If the house has 60-amp electrical service or fuses instead of circuit breakers and the insurance company won't provide coverage without an upgrade, put a contingency in the offer to purchase for an electrical service upgrade.
8. If the seller's CLUE report points to a property condition that may make it difficult to obtain reasonably priced homeowners' insurance, consider a contingency to address this issue.

Flood Insurance

Flood insurance is required for federally backed mortgage loans for structures located within a floodplain (100-year or regional floodplain), also referred to as the Special Flood Hazard Area (SFHA). Flood insurance can be purchased by any property owner or renter in a community participating in the National Flood Insurance Program (NFIP), including over 500 communities in Wisconsin. In 2012, the Biggert-Waters Flood Insurance Reform Act made significant reforms to make the NFIP self-sustainable and extended the program for five years. Biggert-Waters removed the flood insurance premium subsidies that had been paid by the Federal Emergency Management Agency (FEMA) for many years, and raised the rates for certain classes of properties to reflect the true actuarial flood risk. As a result, some property owners in SFHAs experienced staggering premium increases triggered when flood maps were revised, a policy lapsed or the property was sold.

Under the Homeowner Flood Insurance Affordability Act there will be no more premium increases triggered by a property sale or a remapping; any increases will occur when the flood insurance policy is renewed. Buyers should be able to assume the seller's current premium rate, which transfers with the property. When the policy is renewed, any premium increase is limited to a maximum of 18 percent annually for primary residences and 25 percent for second homes and commercial properties. The 2014 Act restored grandfathering so property owners who build and maintain to code in one flood zone aren't rated in higher-cost zones simply because the FEMA maps change.

Given the volatile nature of this legislation, changing and updated flood maps and the fact that large premium increases are still possible, Associates should urge buyers to include a flood insurance premiums contingency in their offers whereby the buyer can investigate and research the impact that flood insurance and flood insurance premiums may have upon the buyer if he purchases property deemed to be in the floodplain. It may be advisable for a buyer to conduct this investigation before making an offer, but this contingency provides an option when this is not feasible due to timing or other circumstances.

For more information and guidance, Associates may review the FEMA flood insurance manual athttp://www.fema.gov/media-library/assets/documents/97901, NAR's Homeowner Flood Insurance Affordability Act Frequently Asked Questions at http://www.realtor.org/topics/national-flood-insurance-program-nfip/homeowner-flood-insurance-affordability-act#implements, "Flood Insurance Premiums: Proceed with Caution," in the May 2014 *Wisconsin Real Estate Magazine* at https://www.wra.org/WREM/May14/Flood/ and "Flood Insurance Rate Adjustments: Helping property owners keep premiums in check," in the July 2013 *Wisconsin Real Estate Magazine* at https://www.wra.org/WREM/July13/FloodInsurance/.

Drafting Offers

All offers, counter-offers and any other forms used shall be completed and handled as per this manual, using forms from the Office Forms File found in Chapter 13 of this Manual. The Associate shall become familiar with the Office Forms File, as well as the REEB rules for the use of approved forms. Only forms from the Office Forms File or other office-approved forms may be used in any transaction. All offers, counter-offers and any other forms shall utilize office-approved provisions for contingencies, inspections, warranties, representations, disclosures, etc.

There is no designated amount of earnest money that is required with an offer. This is good faith money; consequently, deposits should be larger on loan assumptions, owner financing and all cash offers.

Associates must complete forms in a manner that accomplishes the intent of the parties and should adhere to the following rules when drafting contracts for the parties:

1. Parties' Intent. Make the agreement reflect the intent of the parties.
2. Fill in ALL Blanks.
3. Be Specific to assure that provisions and contingencies will be enforceable between the parties.
4. Define Important Terms to avoid headaches and legal disputes later on.
5. Incorporation by Reference. Make sure that all attachments are specifically referenced in the main contract form, such referencing all addenda in the offer to purchase in the Addenda section.
6. Counter-Offer vs. Amendment Usage. The WB-44 "Counter-Offer" form is used for negotiations when the offer has not yet been accepted. Regardless of the seller's action on the buyer's original offer, the buyer may use a counter-offer to modify the offer for the seller's consideration. The WB-40 "Amendment to Offer to Purchase" is used only after the offer is accepted.
7. Prior Counter-Offers Do Not Carry Forward. When using a counter-offer, only the terms that vary from the original offer are written out, and all terms remaining the same from the original offer are incorporated by reference. Provisions from a previous counter-offer are included by reproducing the entire provision in the subsequent counter-offer or by incorporating them by reference - refer to the number of the provision in the previous counter-offer or to the line numbers of the provision that is being carried forward.
8. Set Dates and Deadlines. If the contract fails to state a deadline, the court will assume that performance is to occur within a reasonable time considering the circumstances.
9. Clearly Mark Optional Provisions to be Included. Optional provisions are not part of the offer unless the box immediately preceding the respective optional provision is marked, such as with an "X." Optional provisions are not part of the offer if the box is marked "N/A" or left blank.
10. Line Out Conflicting Provisions to avoid confusion and contract unenforceability.

Combating Mortgage Fraud

Mortgage fraud occurs any time a participant in a real estate transaction misrepresents facts with the intent to bilk another party of money it is not entitled to. For example, fraud may occur when there are two sets of offers drafted, one representing the "real deal" and the other the fraudulent transaction, or when the parties have inflated the sales price by using a "forgivable" second mortgage or phony work orders. Mortgage fraud can be committed by any of the participants in a real estate or mortgage transaction including sellers, buyers, real estate brokers and salespersons, mortgage brokers, mortgage bankers, appraisers and loan originators.

How to Respond to Mortgage Fraud—Tips for Associates

1. Wis. Admin. Rule § REEB 24.085 directs, "no licensee shall draft or use any document which the licensee knows falsely portrays an interest in real estate." If the Associate is asked to rewrite an offer to purchase, prepare it in a 100 percent accurate and inclusive manner. Refer back to the original offer and the purchase price and dates therein. Specifically state that the new offer supersedes and replaces the original offer for $_____, dated _____, which offer is hereby withdrawn and cancelled. The replacement offer must use the current dates, including the dates on the signature lines. To do otherwise would be leading the Firm's clients and customers down the road to committing fraud, a fraud to which the Firm would be a party.
2. If the mortgage broker or lender is asking for something that seems suspicious or improper, ask for the request in writing.

3. If the lender or others persist with a fraudulent scheme, issue a written memo or letter warning the parties, the lender and other involved providers of the fraud and urging them to consult with their attorneys and rectify the fraud. If they do not, cease participation in that transaction until the Associate has consulted with the Firm or Supervising Broker.
4. Report apparent fraud situations to the Department of Financial Institutions (DFI) or other appropriate agencies. Provide extensive detail and copies of relevant documents.

    - To report mortgage fraud committed by licensed and certified real estate appraisers, real estate brokers or salespersons, call the Department of Safety and Professional Services at (877) 617-1565 or go to http://dsps.wi.gov/Complaints-and-Inspections/Complaints.
    - To report mortgage fraud committed by mortgage bankers, mortgage brokers or loan originators, call the Department of Financial Institutions at 608-261-7578 or go to http://www.wdfi.org/fi/mortbank/complaints.htm.
    - To report any other person engaged in mortgage fraud, call the U.S. Department of Justice, the U.S. Attorney's Office or the FBI (Milwaukee) at 414-276-4684 or https://www.fbi.gov/investigate/white-collar-crime/mortgage-fraud..

Confidentiality of Offers

Intra-Office

AVOID PROBLEMS: Do not discuss the possibility of getting an offer with any Associate prior to obtaining a signed offer. Do not discuss the details of an offer you have drafted or presented with anyone other than the listing agent or the Firm. Do not ask any Associate about his or her offer unless you are the listing agent.

Cooperating Firms

Wis. Admin. Code § REEB 24.12 prohibits disclosure of any terms of one prospective buyer's offer to any other prospective buyer or any person with the intent that this information be disclosed to another prospective buyer. Buyers should always be encouraged to submit their highest and best offers.

Timely Presentation of Offers

Associates must promptly present all offers, counter-offers and other written proposals. Although an offer may allow two, three or four days for acceptance, the Associate must make every effort to present all written proposals as soon as possible. If timing, distances or other circumstances make personal presentation impractical, presentation by fax, email, express mail or verbal presentation over the telephone may need to be done. Any verbal presentation should be followed as soon as possible with a hard copy forwarded via the most expedient means of communication under the circumstances.

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

Associates should make sure that the parties know that a counter-offer is, in effect, a rejection of the previous offer or counter-offer, and the presentation of a new offer back to the other party. With the counter-offer, only the terms that vary from the original offer are written out and all terms remaining the same from the original offer are incorporated by reference. Any terms from previous counter-offers, which are intended to be carried forward, must also be written out or specifically referenced.

Delivery of Accepted Offers

The Associate shall discuss with the parties the different methods of delivery available for returning a signed and accepted offer, counter-offer or other written proposal to the other party, and thus creating a binding contract. Unless the offer is modified to specify additional delivery methods, personal delivery is the default method of delivery that will always apply. In addition, the parties may authorize other delivery methods by checking the boxes in the Delivery of Documents and Written Notices section. The other delivery choices include fax, commercial delivery, U.S. mail and email. The parties may choose as many delivery methods as they like.

The Associate shall urge each party to provide a delivery address for documents and written notices that are mailed or commercially delivered. This address has no effect for personal or fax deliveries. Associates shall explain that delivery by mail is considered delivered upon deposit in the mail.

A document or written notice may be addressed either to the party or to the party's designated "recipient for delivery." This allows a party to designate the Associate, the Firm, or any other person or entity. The recipients for delivery are used only for personal delivery, commercial delivery and delivery via U.S. Mail. Acceptance of the role of a "recipient for delivery" creates new responsibilities for the Associate or the company to make sure that notices and other documents received on behalf of a party are promptly and competently processed and presented to the party. There may be liability when critical materials are not timely processed and delivered.

Personal delivery means that the document or written notice is personally given to either the party or the party's designated recipient for delivery. The document or written notice is delivered via fax when it is transmitted to the fax number stated by the party in the contract. If it is a consumer transaction, the parties would have to give electronic consent before using email delivery, electronic documents and signatures, email delivery is made upon transmission. The email addresses listed in the offer do not need to be the email addresses used to obtain the electronic consent nor do they need to be associated with a recipient for delivery. Email delivery is discussed in greater detail in the Technology Policy Manual and in the Legal Talks videos regarding Electronic Disclosure at https://www.wra.org/LegalTalks/ElectronicDisclosure/.

Whenever an offer is being handled by an Associate for the purpose of personally delivering it back to the cooperating office or to the other party, a copy of that accepted offer should also be mailed or faxed as a back-up in case there are obstacles to the personal delivery.

Delivery of Loan Commitments

The decision to accept a loan commitment, deliver it to the seller and satisfy the financing contingency, or the decision to not accept a loan commitment (and forward it to the seller with a notice of unacceptability), must be the buyer's and the buyer's alone. The Financing Contingency in the approved offers makes it clear that the buyer must review the loan commitment and give written delivery instructions for the delivery of the loan commitment, and that written directive must accompany the loan commitment when it is delivered to the seller. Delivery of a commitment without a copy of the written directive is as if the delivery did not occur.

Firm Policy for Documenting Authority to Deliver Loan Commitment

Buyer must review loan commitment and if approved, give written direction to Associate to deliver to seller, both the written direction and loan commitment.

Using Contractors in Transactions

When helping parties find professional inspectors and contractors, Associates should always take the following steps:

1. Prepare a list of professional inspectors and contractors. Do not recommend or endorse a particular expert, because a "recommendation" may result in liability. Associates should try to maintain a list with at least three names of lenders, title insurers, inspectors and professionals in each field, containing any available references from past users. Any affiliations must be disclosed when the list is distributed. Put the list on a sheet of company letterhead, and include a disclaimer that the list is not a personal endorsement of these professionals.
2. Avoid referral fees. Earning a fee just for referring business (except to other real estate licensees) violates RESPA if the contractor or company is a RESPA settlement service provider like a home inspector, appraiser or title company.
3. Let inspectors and contractors do their jobs. Do not accompany the inspector through the house, because this may imply that you are supervising the inspector. Reinforce the concept that the buyer hired the inspector so the buyer should deal directly with the inspector.
4. Get specific authorization if you must hire contractors. It is not a part of an Associate's duties to hire contractors for the parties. If an Associate must personally hire contractors in a particular situation, the Associate should have the parties give a specific written authorization to hire contractors and a liability release for any damages caused by the contractor. Any contractor should hold all applicable credentials for the type of work being performed. Associates should always use a written engagement letter or work order memo; specify that the party is the client, that the party will be paying for the service and that the Associate is simply relaying the information as an agent for the party. Specify the contractor's performance standards in writing and require the contractor to follow all safe work practices required by applicable law. See the sample forms for this process on Pages 12-13 of the May 2004 *Legal Update*, "Avoiding Liability When Signing and Making Referrals," at www.wra.org/LU0405.

An Associate risks liability if the Associate actually hires, or is perceived to have hired, any contractors who work on a party's property or provide services for the real estate transaction. An Associate may be held liable for damages resulting from a negligent performance by the retained contractor if the Associate is found to have been negligent in hiring, instructing or supervising the contractor or his or her work.

Cooperation with Out-of-State Real Estate Firms

Wis. Stat. § 452.137 changed Wisconsin to a cooperative state effective January 1, 2015, for all real estate transactions, including leases and sales. Any out-of-state broker (OSL) cannot act as a broker in Wisconsin unless the OSL enters into a cooperative agreement with a licensed Wisconsin firm. The OSL be licensed and in good standing in the state, territory or country where the broker normally practices. An OSL cannot list Wisconsin property, with or without a cooperative agreement, nor can an OSL promote Wisconsin real estate for sale or for rent within this state. An OSL who is a party to a cooperative agreement must comply with the laws of the state of Wisconsin and must file an irrevocable consent for service of process that allows legal actions to be commenced in Wisconsin against the OSL by serving the REEB.

Associates shall enter into the REEB cooperative agreement only with the advance written consent of the Firm who will indicate the appropriate parameters of that cooperative relationship.

The law establishes very clear penalties; see Wis. Stat. § 452.137(5) (b) and (f). The consequences of violating the law are two-fold:

- Any person who violates this specific section of the law or a rule promulgated under this section may be fined, for each violation, not more than the greater of:
    - $5,000.
    - 1 percent of a sales transaction purchase price subject to the cooperative agreement.
    - 1 percent of the lease or rental transaction total lease or rental value of the property subject to the cooperative agreement.
- No person may pay an OSL any commission, money or other thing of value for brokerage services unless the OSL broker is a party to a cooperative agreement with a Wisconsin broker.

Arguably, "no person" includes a Wisconsin Firm, a seller, a title company or a closing attorney, and therefore any person paying an OSL broker would be violating the law if a commission was paid unless the OSL broker entered into a cooperative agreement with a Wisconsin broker.

See WRA LegalTalks video series about the OSL legislation: www.wra.org/LegalTalks/OSL, FAQ regarding the OSL legislation: www.wra.org/oslfaq, Wis. Stat. § 452.137 at http://docs.legis.wisconsin.gov/statutes/statutes/452.pdf and pages 2-3 of the March 2014 *Legal Update*, "Legislative Update 2014," at www.wra.org/LU1403 for further information.

Referral Fees

All referral fees coming to Associates must go through the Firm. See Wis. Stat. § 452.19(2). If a referral company requests that an Associate pay or accept an amount other than an amount set forth in the Firm's commission and compensation schedules, the Associate must first consult the Firm or Supervising Broker. Associates shall always confirm a referral fee agreement in writing prior to sending or accepting a referral. When dealing with brokers from other states, Associates shall request written evidence that the person is licensed (copy of current license) and is actively practicing real estate in his or her state, before agreeing to pay a fee.

IRS Cash Reporting

Real estate brokers are required to report cash payments of over $10,000 – cash and currency, cashier's checks, bank drafts, traveler's checks and money orders with a face value of not more than $10,000 received in a real estate transaction. These cash payment are reported to the IRS on the Form 8300. A copy of Form 8300 and of IRS Publication 1544, "Reporting Cash Payments of Over $10,000 Received in a Trade or Business," may be obtained from the Internal Revenue Service at www.irs.gov/pub/irs-pdf/p1544.pdf or by calling 1-800-TAX-FORM (1-800-829-3676).

Anti-Money Laundering

Money laundering is the act of converting money, proceeds, gained from certain specified unlawful activity into money that appears to be legitimate so that its illegal source cannot be traced. Real estate transactions may be used in money laundering schemes. Firms should be aware of potential risk factors in three categories; geographic risk, customer risk, and transaction risk. Geographical risk occurs when the buyer or the funds come from a location or country known for money laundering. Customer risk involves unknown or unfamiliar buyers in a transaction, shell companies as parties, property is titled in the name of a third party, or buyers purchasing property without viewing it. Transaction risk arises when there are multiple cash payments, unusual sources of financing, a quick resale of property, or unusually fast closings. Associates shall immediately report any suspected money laundering to the Firm.

The Financial Crimes Enforcement Network (FinCEN) is a bureau of the U.S. Department of the Treasury that collects and analyzes information about financial transactions in order to combat money laundering, terrorist financiers, and other financial crimes. FinCEN is responsible for collecting

Suspicious Activity Reports (SARs) which are used to report known or suspected violations of law or suspicious activity observed by financial institutions subject to the Bank Secrecy Act. The FinCEN website is http://www.fincen.gov/. Although brokers are not required to file SARs, the broker may do so to report suspicious activity in addition to contacting local law enforcement or the FBI.

In money laundering schemes, it is possible the illegal payments are not in one lump sum in excess of $10,000 to avoid triggering the Form 8300 reporting. If agents are aware of receipt of cash payments aggregating to 10,000 the broker can also use the SAR to report the payments. Associates shall report to the Firm if a transaction involves an aggregate of over $10,000 in cash.

Chapter 9

Closing Procedures

Listing Associate Responsibilities

The listing Associate shall notify the closing officer/department/Firm of the offer, counter-offers and final acceptance in writing. The listing Associate shall complete the Closing Worksheet in conjunction with the selling Associate and send it to the closing officer with the accepted offer. The closing worksheet shall include:

1. Buyer Information. Include the buyer's name, current home and business phone numbers, any fax numbers, email address, address, etc.
2. Seller Information. Include the seller's name, current home and business phone numbers, any fax numbers, email address, address, etc.
3. Attorney Information. Include the names, phone numbers, email addresses, and any fax numbers of both the buyer's and seller's attorneys.
4. Selling Associate Information. Include the Selling Associate's name, company, telephone number, email address, and fax number.
5. Earnest money
6. Title information
7. Buyer's financing information
8. Seller's mortgage information
9. Closing date
10. Miscellaneous information. Include discount points, seller concessions, special credits due buyer, second mortgages, fuel oil, and tenant information.
11. Final sale price
12. Referral information
13. Commission for both sides

Pre-Closing Walk-Throughs

Associates should encourage the buyer to complete the pre-closing walk-through to make sure that there has been no significant change to the condition of the property and that any repairs have been performed as agreed by the parties. This allows the buyer to confirm that debris has been removed, that there has been no property damage, and that all appliances and personal property included in the sale are on the property. Remind the buyer that that is not, however, the chance for a new inspection. Any property damage is addressed under the Property Damage Between Acceptance and Closing provision in the offer.

If it is discovered that repairs have not been completed and not completed per the terms of the offer, Associates can recommend that the parties enter into an escrow agreement for funds to be held for the completion of the repairs. This agreement cannot be drafted by Associates so the parties should look to their attorneys or the title company for assistance. The funds may be held by the Firm.

Closing Document Review

The buyer must receive a copy of the Closing Disclosure at least three business days before closing. If there are discrepancies it could trigger a new Closing Disclosure. If a new Closing Disclosure is required, then a new three-day waiting period will be required.

Three changes will require a new Closing Disclosure:

1. Increase of the APR by more than 1/8 percent (for most loans).

2. Change in the loan program, for example, the buyer changes from a fixed-rate loan to an adjustable-rate loan.
3. Addition of a pre-payment penalty to the loan.

The lender is responsible for the timely provision of the Closing Disclosure and its accuracy, so many lenders may prepare this disclosure rather than the title company or closing agent as was customary in the past.

The Consumer Financial Protection Bureau has created a variety of tools and resources for consumers to better understand mortgages and the mortgage process. The following is a link to the numerous resources http://www.consumerfinance.gov/know-before-you-owe/. See the April 2015 *Legal Update,* RESPA/TILA Integration Overview" at www.wra.org/LU1504 and LegalTalks regarding TILA/RESPA Integration at http://www.wra.org/LegalTalks/TRID/.

After Closing Procedure

Agents are to receive a copy of the closing paperwork from the title company and if given a check for Firms commission (some title companies will submit an ACH) it must be delivered to the Baraboo or Monona office within 24 hours or mailed by the title company within 24 hours. Failure to do this could result in a fine. DSPS closely monitors trust accounts and if the transaction is our Firm's listing, we have 24 hours to disperse.

Firm Incentive for Repairs

If the buyers are willing to proceed with the transaction, so long as the licensees pay for the repairs, this can be documented in a buyer incentive agreement. Incentives may be offered to sellers or buyers to induce them to sell or purchase real estate. Such party incentives should be clearly documented in advance – prior to closing – to establish the payment is not a fee-splitting arrangement with a non-licensee. Associates can draft an agreement between themselves and the parties and incorporate it into the offer to purchase via an amendment. Such an amendment ensures the parties' consent and memorializes the incentives so that the lender is aware and the title company properly reflects these payments on the closing statements.

Failed Transactions

The Associate shall notify the closing officer in writing immediately if an accepted offer has failed. Earnest money shall be disbursed in accordance with the provisions of the offer to purchase and the rules set forth in Wis. Admin. Code § REEB 18.09. Earnest money disbursements typically cannot be made without a proper disbursement agreement, a court order or an independent attorney opinion.

Attorneys at Closing

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

Earnest Money Disbursement

Disbursement of earnest money is the responsibility of the Firm. Disbursements shall be made in accordance with license law and any earnest money disbursement agreement signed by both parties. In this regard, the Associate should not commit the Firm to any decision as to the disposition of the earnest money being held. Associates shall indicate that the earnest money shall be applied to the amount owed

by the purchaser when the sale closes, or disbursed in accordance with the provisions of the contract and Wis. Admin. Code § REEB 18.09 in the event the sale does not close.

Mortgage Funding Problems

Problems with lenders who do not fund at the closing table may occur when final loan and funding approvals are not completed until review of the closing documents by the funding source following settlement. In many cases, the loan funds are only wired to the settlement agent at specific times of the day often leaving the parties in a waiting situation until the funds arrive – sometimes not until the next day. To combat these difficulties, Associates are encouraged to:

a) Collect the names of lenders who have a track record of funding at closing and make this list available to buyers.
b) Educate the lenders. While many lenders are seeking to control their exposure by incorporating additional review/approval procedures, they have also been unpleasantly surprised to learn that their customers' loans were not funded on time due to their new procedures.
c) Contact the closing office to ask if they are aware of funding issues with the lender in the specific transaction and schedule the closing accordingly. Scheduling closings early or late in the day may increase the chance of funding delays.
d) Consider incorporating additional language into the offer to purchase – for example, "Buyer is obligated to have the total purchase price, including mortgage loan proceeds, available at the time of closing. Buyer agrees to determine when Buyer's loan proceeds will be funded to ensure that the funds will be available at the time of closing."
e) Even stronger language in the offer might provide that 1) the buyer must use a lender that provides written verification that the funding will be available at the time of closing and 2) the buyer must provide the lender's written verification to the seller within a specified time after acceptance of the offer to purchase, or the seller may terminate the contract.
f) The parties could agree in the offer to purchase to a liquidated damages provision – an agreed-upon dollar amount per hour/partial day/day that the buyer will pay if the mortgage funds are not available within ___ hours of the completion and execution of the closing documents.
g) Recognize that back-to-back closings should only be scheduled if the lender in the first closing has guaranteed that funds will be available at the time scheduled for closing.
h) Alert the buyer and seller that these problems may occur and make certain that they understand the possible consequences of no purchase money at closing.

Transfer Returns: Seller-Assisted Financing and eRETRs

The parties to a transaction may agree to increase the purchase price by an amount that is offset by the seller's agreement to provide credits, pay points or give other financial assistance. The result is properties selling above market price and above the price originally agreed to by the parties during initial negotiations. Increased purchase price values permit buyers to obtain more favorable financing, but the buyers are left with higher assessed values, higher property taxes, potentially higher insurance costs and higher mortgage payments. When appraisers and assessors use this data from these seller-assisted transactions to establish values for other properties, there is a domino effect and the inflated sales prices may be used to unintentionally over-value other properties.

The Wisconsin Department of Revenue (DOR) is directing sellers to check the box "Obtained from seller" whenever there is any type of financial arrangement from the seller such as a credit, gift, donation, etc. See the Instructions for the electronic Wisconsin Real Estate Transfer Return online at http://www.revenue.wi.gov/retr/. Associates should always encourage the proper completion of the Real Estate Transfer Return to indicate if any seller-assisted financing or concessions were involved in arriving at the final sales price.

Chapter 10

Commercial Practice Company Policy

Goal: Residential Associate/Commercial Team and RE/MAX Preferred work together for mutual benefit to obtain professional knowledge and experience to all cohesively practice Commercial Real Estate.

Policy: Residential Associates should refer or establish an agreement with a Commercial Division Associate for over 8 units, unless personally owned or owned by immediate family.

Res/Com: Residential Transaction Associate merging to Majority Commercial Transaction Associate.

Practice Requirements: Adhere to License Law AND company Independent Contractor Agreement.

a) Complete Minimum Education: Accredited Commercial Professional Certification (ACP)
b) Complete Minimum 1 Year Mentorship with Commercial Leader/Com. Division Associates of 6 closed transactions…or has closed on 6 commercial transactions at another firm/business and hold CCIM, SIOR, CPM, ALC, negotiated over $10 Million in Closed Commercial Transactions involving Investment Analysis.
c) Residential Mentoring Associate and Commercial Mentor must agree on shared compensation terms in writing prior to client/customer representation for each individual transaction.
d) The Residential Mentoring Associate must provide a timely, written accounting to the Commercial Mentor of all prospective purchasers, sellers, lessees and lessors, which the Associate encountered during affiliation with the Commercial Mentor/Com. Division. The Residential Mentoring Associate may maintain the clients during Mentorship in their database as ongoing clients upon completion of the Mentorship.
e) Upon completion of 6 Commercial Transactions and one-year res/com practice, Associate, Commercial Mentor(s) and Broker Manager and/or Co-owners of the company will review and report on successful mentorship and determine additional training is needed. Upon company approval of successful completion of Mentorship, Residential Associate commits to full-time commercial practice or full-time residential practice.

Res/Com Mixed Practice:

An associate specializing in Residential Real Estate practice that has met the above practice requirements and remains a Residential Specialist may practice mixed zoned (res/com) property transactions without Commercial Division Assistance.

Com/Res Mixed Practice:

Majority Commercial practicing Associates may practice residential sales if they have a history of 6 closed Residential transactions. Otherwise they must refer or utilize the Residential Mentorship Company program.

Lease and Rental Policies

Firm Leasing and Property Management Policies

Client Services

Firm does not provide property management services.

Firm does not provide lease listing services for owners of residential properties.

Firm – Commercial Division Associates do provide lease listing services for owners of commercial properties; also rental agreements/lease negotiation services for clients seeking to lease or rent residential properties.

Firm does not provide rental agreement/lease negotiation services for clients seeking to lease commercial properties.

Firm does provide rental agreement/lease negotiation services for owners of residential properties.

Referral

If Firm does not provide property management, lease listing or rental agreement negotiation services, the Associate may refer the property owner to other firms who provide such services.

Independent Practice Leasing and Property Management

Associates who hold broker license may, with Firm's written approval, establish an independent practice for property management, lease listing, rental services, etc. under Wis. Stat. § 452.30. The Associate must also avoid conflicts of interest.

The written approval shall specify all of the following:
1.) Whether the broker may engage other licensees in this independent practice and
2.) the broker is responsible for the supervision of any licensee associated with the broker and its independent practice.

Before engaging in this approval independent practice, the broker must notify the DSPS (using any applicable DSPS form) and the name under which the broker will engage in independent practice.

Associate must ensure that all of the normal aspects of a brokerage are provided for and establish the operation as clearly independent. Firm shall have no responsibility for the independent practice. For further information about independent practice see Wis. Stat. 452.30. Appendix X provides a copy of the WRA's Independent Practice form.

Renting Personally Owned Rental Properties

Because Wis. Stat. § 452.01 does not require a license for the rental of personally owned real estate, Associates may, if authorized by Firm, conduct personal rental transactions without Firm supervision. However, Associates are neither permitted to meet tenants or receive tenants' calls or payments at the Firm's office nor to wear any career apparel or name pins or badges, or communicate from an email identified with the Firm or use forms that include the Firm's name

when working on personal rentals. Associates must have their own business cards and letterhead (rather than using Firm's cards and letterhead). Associates shall be required to give a "disclosure" letter to prospective tenants indicating no Firm involvement. Associates are responsible to secure the appropriate errors and omissions insurance for this personal business activity.

Associate Personal Transactions

Associates renting, leasing and managing personally owned rental properties:

- may work independently in locating and purchasing such properties and need not work through the company

Property Management Agreements

Associates engaging in property management must represent the client's interests as an agent, and must enter into an agency agreement authorizing those property management services and containing the Disclosure to Clients language as required under Wis. Stat. § 452.135. Associates shall use WRA Property Management Agreement or a property management agreement approved in advance by the Firm and prepared by the Firm, the Firm's attorney or the landlord per Wis. Admin. Code § REEB 16.03(1)(e).

Firm authorizes Associates providing property management services for clients to provide the following services [STRIKE AND COMPLETE AS APPLICABLE]: advertise vacancies, take tenant applications, qualify and approve tenants, receive earnest money and security deposits, execute leases on behalf of the property owners, collect rent, perform day-to-day operations such as lawn care, snow removal, repairs and general maintenance, handle tenancy complaints and terminations, perform bookkeeping.

See the additional practice pointers and guidance for Associates in *Legal Update* 01.02, "Lease Listing & Property Management Agreement," at www.wra.org/LU0102, *Legal Update* 07.12, "Landlord Practice Pointers for 2012," at www.wra.org/LU1207 and *Legal Update* 06.12, "REEB 24 Regulatory Revisions," at www.wra.org/LU1206.

Lease Listings

Associates listing properties for lease or rental must represent the client's interests as an agent, and must enter into an agency agreement authorizing those brokerage services and containing the Firm Disclosure to Clients language as required under Wis. Stat. § 452.135.

Residential

For residential rental listings Associates shall use the WB-37 Residential Listing Contract – Exclusive Right to Rent. The WB-37 shall also be used if an owner of a listed property contemplates a rent-to-own transaction.

Marketing and Owner Authorization

Associates, when completing the Marketing and Owner Authorization section on lines 132-148 of the WB-37, may agree to provide only the following services on behalf of the property owner client:

1. Solicit tenant applications
2. Qualify and approve tenant applicants

The January 2013 *Legal Update*, "WB-37 Residential Listing Contract – Exclusive Right to Rent," at www.wra.org/LU1301 contains practice pointers and additional guidance for Associates.

Commercial Lease Listing

For commercial lease listings Associates shall use the WRA Exclusive Listing Contract Right to Rent Commercial Property or another commercial lease listing form drafted by an attorney and approved by Firm in advance in writing. Information and pointers for Associates are found in "The WRA's Revised Commercial Lease Listing Is on its Way," in the August 2013 *Wisconsin Real Estate Magazine* at https://www.wra.org/WREM/Aug13/WRACP/.

WB-36 Tenant Representation Agreement

Associates representing client seeking to rent or lease residential or commercial properties must represent the client's interests as an agent, and must enter into an agency agreement authorizing those brokerage services and containing the Disclosure to Clients language as required under Wis. Stat. § 452.135.
Associates shall use the WB-36 Buyer Agency/Tenant Representation Agreement which is designed to be used by Associates entering into a client representation agreement with a prospective tenant. The WB-36 is flexible and can be used by tenant representatives assisting parties looking to rent or lease an interest in real property. See the November 2007 *Legal Update*, "WB-36 Buyer Agency Agreement – 2008 Revisions," at www.wra.org/LU0711 for practice pointers and guidance for Associates.

Leasing and Property Management Best Practices

If authorized by Firm, Associates shall observe the following rules and guidance when conducting any property management, rental listing or rental agreement activities.

Tenant Screening

The key to tenant screening is to be consistent and fair. Associates may screen prospective tenants with respect to their income, credit, housing references, and eviction records, using a written tenant application form and consistent, objective criteria. Criminal background checks including arrest/conviction records and a Consolidated Court Automation Programs (CCAP) search may be performed if done uniformly for all applicants. Associates shall have predetermined consistent standards in each of these categories that are applied fairly and uniformly to all. Screening standards shall be provided, in writing, to all applicants to help diminish liability. Under guidance issued by HUD in 2016, landlords and property managers can no longer adopt a tenant screening standard that excludes all applicants with any conviction record. The guidance also states that screening standards based on prior arrests are unlawful because arrest records do not prove past unlawful conduct and thus are an unreliable measure of an applicant's potential risk to neighbors or property. The guidance advises that blanket policies routinely excluding anyone with a conviction record or turning away applicants based on an arrest record will most likely be in violation of the federal Fair Housing Act (FHA). Landlords must now balance the risk of FHA liability with their ongoing responsibility to protect other tenants and the owner's property from those who may cause injury or property damage. This new high-wire balancing act should be undertaken with great care. It's not clear how landlords and property managers should treat potential renters with criminal convictions. The guidance does not prohibit consideration of conviction records but says that "arbitrary and overbroad criminal history-related bans" will likely be found to violate the FHA.

HUD's guidance document, "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions," found at https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf.
More information can be found in the Wisconsin Real Estate Magazine's, "HUD's New Take on Tenant Screening Standards" at http://www.wra.org/WREM/May16/HUD/.

The federal Fair Housing Act prohibits discrimination on the basis of race, color, family status, disability, sex, national origin, and religion. Wisconsin Open Housing law prohibits discrimination based on marital status, ancestry, source of income, sexual orientation, age, and status as a victim of domestic abuse, sexual abuse, or stalking.

If Associates use a consumer report, such as a credit report or a report from a tenant-screening service, this is subject to the Fair Credit Reporting Act (FCRA). See the information at http://business.ftc.gov/documents/bus49-using-consumer-reports-what-landlords-need-know.

Lease and Rental Agreement Forms

Associates shall use the following forms in a residential rental transaction:

1. A **rental application** provides for the systematic gathering of uniform information from all tenant applicants and addresses the credit check fee. For example, see the WRA Rental Application.
2. A **rental disclosure** checklist helps the property manager or landlord ensure that all required disclosures are made when a tenant prospect applies and that all required steps are taken when entering into a rental agreement. For example, see the WRA Rental Disclosure Form.
3. A **rental agreement** such as a lease or residential rental contract is at the heart of the tenancy relationship. For example, see the WRA Residential Lease and Residential Rental Contract.
4. **Nonstandard rental provisions** supplement the rental agreement with provisions requiring specific tenant authorization.
5. A **check-in sheet** that documents the unit's condition when a residential tenant moves in is now a requirement. When a residential tenant begins occupancy, Wis. Stat. § 704.08 makes it mandatory for the landlord to provide the tenant with a Check-In Sheet. The tenant may complete the form and return it to the landlord within seven days. For example, see the WRA Check-In Sheet.
6. **Smoke and Carbon Monoxide Detectors Notice**. For example, see the WRA Smoke and Carbon Monoxide Detector Notice.
7. A **move-out report** is critical for documenting the unit condition when the tenant moves out and instrumental when calculating any damages. For example, see the WRA Check-Out Report/Security Deposit Withholding form.
8. The federal **Lead-Based Paint (LBP) disclosures and pamphlets** must be provided for all leases and rentals of target housing built before 1978:
    - An EPA-approved information pamphlet on identifying and controlling LBP hazards, "Protect Your Family From Lead In Your Home" (note that pamphlet updated in September 2013) (http://www2.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure), also available in other formats and languages
    - Any known information concerning LBP or LBP hazards pertaining to the building. For multi-unit buildings this requirement includes records and reports concerning common areas and other units when such information was obtained as a result of a building-wide evaluation.
    - A lead disclosure attachment to the lease, or language inserted in the lease, that includes a "Lead Warning Statement" and confirms that the landlord has complied with all notification requirements, such as the WRA Addendum L.
    - See pages 55-58 of this *Manual* for further information.

Rental Agreement Provisions

Associate shall consult with landlord regarding including the following provision in any lease or rental agreement used by Associates:

Personal Property Disposal Notice Requirements

Wis. Stat. § 704.05(5) provides that landlords may presume that property left behind by tenants is abandoned and may dispose of it in any manner that the landlord believes to be appropriate if, and only if, the landlord first has provided written notice to the tenant. The landlord must give written notice that the landlord will presume that personal property left behind when the tenant moves out, vacates the premises or are evicted is abandoned, and that the landlord will not store any personal property the tenant leaves behind, when the tenant enters into, or when the tenant renews, a rental agreement. There are two exceptions to the general rules, one for medical items and one for manufactured homes, mobile homes and titled vehicles. See the Legal Talks video regarding Disposal of Personal Property (Landlord/Tenant Legislation) at http://www.wra.org/LegalTalks/LandlordTenantLegislation/ for further Associate guidance and practice pointers.

Associates shall consult with landlord the inclusion of the following statutorily required notice used in any residential lease or rental agreement.

Notice of Domestic Abuse Protections

Associates must include a Notice of Domestic Abuse Protections in all rental agreements:

> NOTICE OF DOMESTIC ABUSE PROTECTIONS
> (1) As provided in section 106.50(5m)(dm) of the Wisconsin statutes, a tenant has a defense to an eviction action if the tenant can prove that the landlord knew, or should have known, the tenant is a victim of domestic abuse, sexual assault, or stalking and that the eviction action is based on conduct related to domestic abuse, sexual assault, or stalking committed by either of the following:
> (a) A person who was not the tenant's invited guest.
> (b) A person who was the tenant's invited guest, but the tenant has done either of the following:
> 1. Sought an injunction barring the person from the premises.
> 2. Provided a written statement to the landlord stating that the person will no longer be an invited guest of the tenant and the tenant has not subsequently invited the person to be the tenant's guest.
> (2) A tenant who is a victim of domestic abuse, sexual assault, or stalking may have the right to terminate the rental agreement in certain limited situations, as provided in section 704.16 of the Wisconsin statutes. If the tenant has safety concerns, the tenant should contact a local victim service provider or law enforcement agency.
> (3) A tenant is advised that this notice is only a summary of the tenant's rights and the specific language of the statutes governs in all instances.

See the WRA Legal Talks video regarding Notice of Domestic Abuse Protections (Landlord/Tenant Legislation) at http://www.wra.org/LegalTalks/LandlordTenantLegislation/ for further Associate guidance and practice pointers.

Deadly Sins

A rental agreement or lease that contains the specific provisions listed in Wis. Stat. § 704.44 is void. For example, a lease that contains a provision to increase rent because the tenant contacted law enforcement or a lease that states that the landlord is not liable for personal injury resulting from the landlord's negligent acts or omissions would be void and unenforceable by law. A residential rental agreement is void and unenforceable if it contains a provision that "[a]llows the landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on

the rental property if the tenant, or someone who lawfully resides with the tenant, is the victim, as defined in § 950.02(4), of that crime." Inclusion of such provisions means the entire rental agreement is void. Under Wis. Stat. § 704.44(10), a rental agreement was void and unenforceable if it allows the landlord to terminate the tenancy of a tenant for a crime committed in relation to the rental property and the rental agreement does not include the notice regarding domestic abuse protections now required by Wis. Stat. § 704.14. See Wis. Stat. § 704.44 at http://docs.legis.wisconsin.gov/statutes/statutes/704/44.

Nonstandard Rental Provisions

Wis. Stat. § 704.28(2) requires that Nonstandard Rental Provisions be in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS." Provisions regarding security deposit withholding must be specifically identified to the tenant who then initials or signs each provision, thereby creating a revocable presumption that the tenant agreed thereto. The rules for Nonstandard Rental Provisions regarding the landlord's right of entry upon the premises, lien agreements on the tenant's personal property and other issues are different: the landlord must specifically identify and discuss each such nonstandard rental provision with the tenant, and then the tenant must sign his or her name or initials to each such provision. Then it is rebuttably presumed that the landlord has specifically identified and discussed it with the tenant and that the tenant has agreed to it. See the Legal Talks video regarding Non-Standard Rental Provisions (Landlord/Tenant Legislation) at http://www.wra.org/LegalTalks/LandlordTenantLegislation/ for further Associate guidance and practice pointers.

Sex Offender Notice

See the information in this *Manual* at page 57.

Security Deposits and Other Rental Funds

Rental application deposits, security deposits and rent may be deposited into one of the following three accounts, regardless of whether the owner is a third-party owner or a real estate licensee:

1. A traditional non-interest bearing trust account, in other words, the regular trust account with which licensees are historically familiar.
2. An interest-bearing trust account if the firm obtains the written consent of the parties for whom the funds are being held. This authorization must specify how and to whom the interest will be paid. No interest may be paid to or provided in any way for the benefit of the firm. This type of account will be needed for firms in communities which require that interest be paid on security deposits. See Wis. Admin. Code § REEB 18.031(3).
3. The rental owner's account. "Owner's account" is defined as an account maintained by the rental property owner for the deposit and disbursement of the owner's funds. A firm may deposit rental application deposits, security deposits and rent into the owner's account as long as these checks are payable to the one or more of the owners or to the owner's account, as authorized in Wis. Admin. Code § REEB 18.031(5).

Wis. Admin. Code § REEB 18.031(4) provides, "SECURITY DEPOSITS. A licensee having an ownership interest in a rental property shall either place security deposits related to that property in a real estate trust account or shall provide in a lease for security deposits to be held in an account maintained in the name of the owner or owners."

Evictions and Other Litigation

Associate shall not prepare any notices terminating a tenancy, take any steps to initiate an eviction or other small claims action, or appear in court on behalf of an owner without the prior written consent of the Firm.

For more information and rental practice pointers and guidance for Associates, see the April 2009 *Legal Update*, "Wisconsin Rentals," at www.wra.org/LU0904 and *Legal Update* 03.07, "Residential Rental Primer," at www.wra.org/LU0307.

Chapter 11

RE/MAX Preferred Growth Policy

Authority for Affiliation and Dismissal

- Team Leaders shall have the freedom to hire any private contractor they deem fit to affiliate with RE/MAX Preferred and their team.
- All Potential Independent Contractors will require approval prior to affiliation with RE/MAX Preferred license Validation, Insurance and Criminal/Civil Background Checks.
- Depending whether Team Leader or RE/MAX Preferred started the Affiliation, will be taken into consideration to determine the continued affiliated or not.
- Authority to allow or disallow an exiting team member is on a case by case basis.

Recruiting and Hiring Policy and Practices

- ALL INDEPENDENT CONTRACTORS, TEAM LEADERS, TEAM MEMBERS, STAFF or SUBCONTRACTORS affiliated with RE/MAX Preferred or any Team within shall abide by the following rules and policy.
- NO CROSS RECRUITING OR INFRINGEMENT is allowed, such as: the right to recruit or initiate affiliation changes, ideas or discussions. No person shall organize, seek, share, create or expand any partnership, staffing or suggest position/agent status change.
- Review the Team Growth Policy for more details.

Termination of Associate

Should the Firm and the Associate terminate their relationship, the Associate will immediately turn in all company property including all paper and computer transactional files, documents and photographs pertaining to listings, offers, or other contracts, any other office files, office policy books, company computer files and programs, computers and other company office equipment, office keys, lockbox keys and lockboxes, signs, books, supplies, and a copy of all prospect and referral lists generated while working for the Firm. The Associate will contact the Firm for final out-processing. The Associate shall pay all accrued expenses for advertising, office overhead and supplies. Expenses not paid upon termination shall be offset against any commissions or other payments owed to the Associate.

The Firm will notify the DSPS and the local REALTORS® Association regarding the effective date of the Associate's termination. Either the Firm or the Associate must file a Notice of Termination of Employment of Licensee Associated with Firm (Form #766, revised 7/16) and submit it to the DSPS within 10 days after termination. This form is available at http://dsps.wi.gov/Licenses-Permits/RealEstateFirm/REBRforms.

Listing contracts and buyer agency agreements are the property of the Firm and remain with the Firm. The Firm reserves the right to reassign any listing, buyer agency agreement, offer to purchase or other contract upon an Associate's termination. Compensation for offers to purchase or for listings or buyer agency agreements obtained by the Associate prior to termination of this relationship shall be payable on the basis of the commission schedule attached to the Associate's Independent Contractor Agreement (see Appendix V). The Associate may not coach or induce clients to cancel their listings or buyer agency agreements – interference with the existing agency relationships may violate the Code of Ethics and license law and be the basis for civil litigation.

Chapter 12

Approved Forms and Usage

The DSPS has approved six groups of contractual and conveyance forms for use by Wisconsin real estate brokers. Wis. Adm. Code § REEB 16.03 identifies the six groups, as follows:

1. Forms prepared and approved by the Department. REEB-approved forms are numbered with a numeral preceded by the letters WB. See the list on the next page.
2. Forms prepared and approved by the State Bar of Wisconsin for deeds, land contracts, mortgages, mortgage notes, partial release of mortgage, satisfaction of mortgage, assignment of mortgage, and assignment of land contract. A current list of State Bar forms appears on the next page.
3. Uniform Commercial Code forms, #1, 2, 3, 4, 11, 410, 430, 445, 450 and 451.
4. Contractual forms for the sale, purchase or rental of real estate or a business located in another state, provided that the contractual forms are those which licensees may legally and customarily use for such transactions in the state where the real estate or business is located.
5. Forms prepared by governmental agencies, quasi-governmental and tribal agencies for use in programs administered by them under authority provided by law.
6. Forms to be used for a property management agreement between a Firm and a landlord, prepared by the Firm entering into the agreement, the Firm's attorney, or the landlord, that contain provisions relating to leasing, managing, marketing and overall management of the landlord's property.

Real estate salespersons are permitted to use only those forms enumerated in groups 1, 4, 5 and 6.

Licensees may only use approved forms in real estate transactions, except in the special circumstances listed in Wis. Adm. Code § REEB 16.04:

1. For those types of real estate transactions for which the DSPS has not approved contractual forms, a licensee may, when acting as an agent, use contractual forms drafted by a client or an attorney if the name of the drafter is imprinted on the form before use by the licensee.
2. For those types of real estate transactions for which the DSPS has not approved contractual forms, a licensee may, when acting as a party, use contractual forms drafted by the other party or an attorney, if the name of the drafter is imprinted on the forms before use by the licensee.
3. A licensee may, in any real estate transaction where the licensee is acting as agent, negotiate an agreement and permit the parties or an attorney for one or the other of the parties to draft or prepare a contractual agreement that embodies all of the negotiated terms and conditions.
4. When using DSPS-approved forms, Associates must place any additional material in the blank lines provided on the approved forms or use addenda.

Current List of Forms Prepared and Approved by the Real Estate Examining Board/Department of Safety and Professional Services

WB-1 Residential Listing Contract-Exclusive Right to Sell
WB-2 Farm Listing Contract-Exclusive Right to Sell
WB-3 Vacant Land Listing Contract-Exclusive Right to Sell
WB-4 Residential Condominium Listing Contract-Exclusive Right to Sell
WB-5 Commercial Listing Contract-Exclusive Right to Sell
WB-6 Business Listing Contract-Exclusive Right to Sell
WB-8 Timeshare Listing Contract
WB-11 Residential Offer to Purchase
WB-12 Farm Offer to Purchase
WB-13 Vacant Land Offer to Purchase
WB-14 Residential Condominium Offer to Purchase
WB-15 Commercial Offer to Purchase
WB-16 Offer to Purchase -- Business with Real Estate Interest
WB-17 Offer to Purchase -- Business without Real Estate Interest
WB-24 Option to Purchase
WB-25 Bill of Sale
WB-26 Time Share Contract (Sale by Developer)
WB-27 Time Share Contract (Resale by Non-Developer)
WB-28 Cooperative Agreement
WB-35 Simultaneous Exchange Agreement
WB-36 Buyer Agency/Tenant Representation Agreement
WB-37 Residential Listing Contract —Exclusive Right to Rent
WB-40 Amendment to Offer to Purchase
WB-41 Notice Relating to Offer to Purchase
WB-42 Amendment to Listing Contract
WB-44 Counter-Offer
WB-45 Cancellation Agreement and Mutual Release
WB-46 Multiple Counter-Proposal
WB-47 Amendment to Buyer Agency Tenant Representation Agreement

Current List of the Most Widely-Used State Bar Forms

Form 1	Warranty Deed
Form 2	Warranty Deed
Form 3	Quit Claim Deed
Form 8	Condominium Deed
Form 11	Land Contract (To be used for all transactions where over $25,000 is financed and in other non-consumer act transactions.)
Form 14	Condominium Land Contract
Form 16	Fixed Rate Note
Form 17	Indexed Variable Rate Note
Form 21	Mortgage
Form 23	Condominium Mortgage
Form 29	Satisfaction of Mortgage

Current List of WRA Forms

WRA-5DRV	Five-Day Notice to Remedy Default or Vacate
WRA-5DVN	Five-Day Notice to Vacate – Nuisance or Threat of Harm
WRA-14DN	Fourteen-Day Notice Terminating Tenancy
WRA-28DN	Twenty-Eight-Day Notice Terminating Tenancy
WRA-30DN	Thirty-Day Notice to Vacate for Leases of More than One Year
WRA-ADA	Addendum A to Offer to Purchase
WRA-ADB	Addendum B to Offer to Purchase
WRA-ADE	Addendum E to Exchange Agreement
WRA-ADD	Electronic Document Delivery
WRA-ADL	Addendum L to Lease -- Lead Based Paint Disclosures and Acknowledgements
WRA-ADO	Addendum O to Offer to Purchase - Occupancy Agreement
WRA-ADP	Lead/Arsenic Pesticide Addendum
WRA-ADR	Addendum R to Offer to Purchase - Rental Properties
WRA-ADS	Offer Addendum S – Lead Based Paint Disclosure and Acknowledgement
WRA-AFR	Buyer's Accessibility Features Report
WRA-ALS	Assignment of Leases and Security Deposits
WRA-APP	Rental Application
WRA-AR	Addendum AR to the Offer to Purchase (Rider)
WRA-ADW	Addendum W - Wetlands
WRA-B	Buyer's Closing Statement
WRA-BDCL	Disclosure to Clients
WRA-BDCU	Disclosure to Customers
WRA-BDNC	Disclosure to Non-Residential Customers
WRA-BYR	Transaction Checklist -- Buyer Worksheet
WRA-CACR	Condominium Addendum to the RECR
WRA-CIS	Information Check-In Sheet
WRA-CLS	Transaction Checklist -- Closing Worksheet
WRA-CMA	Market Analysis
WRA-COSD	Check-Out Report/Security Deposit Withholding
WRA-CP	Exclusive Listing Contract Right to Rent Commercial Property
WRA-CR	Real Estate Condition Report (2 pages)
WRA-CS	Combined Buyer/Seller Closing Statement
WRA-CSR	Confirmation/Showing Report
WRA-DMAF	Disclosure of Material Adverse Facts
WRA-F	Real Estate Condition Report - Farm
WRA-IBL	Notice of Intent to Claim Broker Lien
WRA-ICA	Independent Contractor Agreement
WRA-LAI	Listing/Selling Agent Visual Inspection Form
WRA-LCR	Land Contract Rider
WRA-LPA	Licensed Personal Assistant Agreement
WRA-LST	Transaction Checklist -- Listing Worksheet/Seller
WRA-MCR	Amendment to Real Estate Condition Report
WRA-MFL	Managed Forest Law –Seller Disclosure
WRA-NBL	Notice of Broker Lien
WRA-NMR	Note & Mortgage Rider
WRA-NRL	Residential Lease
WRA-NRP	Nonstandard Rental Provisions
WRA-NSD	Notice of Storage or Disposition of Personally Left by Tenant

WRA-PMA	Property Management Agreement
WRA-QST	Listing Questionnaire Regarding Title Issues
WRA-RAG	Lease Guarantee/Renewal/Sublease/Assignment
WRA-RBL	Release of Broker Lien
WRA-RAN	Rental Agreement Notice
WRA-RCC	Seller Disclosure Report –Commercial
WRA-RD	Rental Disclosure
WRA-REO	Information for Buyers about Bank (Foreclosure) Property
WRA-RM	Request/Maintenance/Consent to Enter Notice of Potential Lead-Bearing Paint Hazard
WRA-RRC	Residential Rental Contract
WRA-S	Seller's Closing Statement
WRA-SAFR	Seller's Accessibility Features Report
WRA-SADS	Apendice S Pinturas A Base De Plomo Delaranciones Y Admisiones (Spanish version LBP Addenda)
WRA-SBA	Signature Block Addendum
WRA-SBL	Satisfaction of Broker Lien
WRA-SCR	Real Estate Condition Report (3 pages)
WRA-SSC	Short Sale Checklist
WRA-SSL	Addendum SSL to the Listing Contract – Short Sales
WRA-SMK	Smoke and Carbon Monoxide Detectors
WRA-SRR	Seller's Refusal to Complete Condition Report
WRA-SSL	Addendum SSL to the Listing Contract
WRA-SSO	Addendum SSO to the Offer to Purchase – Short Sales
WRA-TRID	Addendum TRID to the Offer to Purchase
WRA-UPA	Unlicensed Personal Assistant Agreement
WRA-VLD	Vacant Land Disclosure Report-Vacant Land
WRA-WBL	Waiver of Broker Lien Rights
WRA-PASA	Pre-Agency Showing Agreement for Wisconsin Properties
WRA-CA	Compensation Agreement

Office File Forms

The Firm may provide checklists, addenda and other form letters for communication with clients and customers.

Chapter 13

Reference Materials

All current WRA *Legal Updates*, a current copy of Wisconsin real estate statutes and administrative rules (see http://dsps.wi.gov/Boards-Councils/Administrative-Rules-and-Statutes/Real-Estate-Administrative-Rules-and-Statutes/), the *Wisconsin Real Estate Law* manual, and various other materials designed to assist the Associate in daily activities as a real estate professional. Available on the WRA's website at www.wra.org.

The Associate is required to stay abreast of all changes in the real estate license law and in company policy. Even though these changes will be addressed at office sales meetings and company gatherings, it is expected that the Associate will make frequent reference to these educational sources in order that he or she may perform his or her duties legally, ethically and profitably.

Appendix I

REALTOR® Code of Ethics

Updates may be found at www.realtor.org/mempolweb.nsf/pages/code.

Appendix II

Local Association Bylaws and Rules and Regulations

REALTORS® Association Bylaws and Rules and Regulations updates may be obtained from the local Association: www.wra.org

Appendix III

MLS Rules and Regulations

Local Multiple Listing Service (MLS) Bylaws and Rules and Regulations updates may be obtained from the local MLS: https://scwmls.com/

Appendix IV

Executed Independent Contractor Agreement

RE/MAX Independent Contractor Agreement with the Firm for the Associate's reference.

Appendix V

Supervising Brokers

Supervisory authority or a summary thereof so that Associates may know who have supervisory authority in what locations and for what functions and aspects of the business.

Tim Krueger – Broker of Record

Nanci Jenks – Assisting Broker of Record

Section II – Technology Policy Manual

Section II – Technology Policy Manual

Chapter I

Preface

Organization of Technology Guidelines

The following is a discussion of legal and technology issues followed by model language and checklists for e-mail, Internet, social media and computer policies. The discussion of legal and technology issues is primarily a reference tool, which may include sample language to illustrate the points being made under various topics. The sample language used in the discussion of legal and technology issues will also appear in the e-mail and Web site sections.

Terms Used in the Technology Policy Manual

"**Associate**" refers to a licensed real estate salesperson, broker or licensed personal assistant providing real estate and related services on behalf of the Firm and under the Firm's supervision.

"**Firm**" refers to the individual or entity which has engaged the Associates and under whose real estate broker's license the Associates of a company practice.

"Consumer" refers to the clients or customers receiving real estate and related services from the Firm or the Associates.

"**Office Technology Policy Manual Guide**" refers to this document offered by the Wisconsin REALTORS® Association (WRA) for use by its members as a tool for developing company technology policy manuals. The Office Technology Policy Manual Guide is subject to the copyrights of the Wisconsin REALTORS® Association.

"**Third-Party**" is an individual or entity other than Consumers, Firms, Associates and employees of the Firm.

"**Intranet**" Is a private network accessible only by the organization's members, employees, or others with authorization. Like the Internet itself, Intranets are used to share information, but are restricted from the public. An Intranet may be as simple as an internal company Web site or network.

Chapter 2

Electronic Media Policies

Delivery Issues - Electronic Commerce

DocuSign and electronic and digital customer relationship systems may include electronic consent as part of the system platform.

State and federal law provide a framework for the use of e-mail delivery and electronic records and signatures in real estate and other transactions. The Wisconsin E-Commerce law provides:

- A document or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- A contract may not be denied legal effect or enforceability solely because an electronic document was used.
- If a law requires a document to be in writing, an electronic document satisfies that requirement.
- If a law requires a signature, an electronic signature satisfies that requirement.

The Wisconsin E-Commerce law does not require the use of electronic documents or electronic signatures. Rather the law applies only when the parties have agreed to conduct their transaction by electronic means. The parties who are not consumers consent to do business electronically by their actions – there is no formal consent procedure required under state law.

When consumers are going to receive electronic documents via e-mail, federal law – as adopted by Wisconsin law -- requires a disclosure and consent process if the parties wish to substitute electronic documents or signatures for written documents and signatures. A consumer (for these purposes) is an individual who obtains, in a transaction, real estate, real estate brokerage services or proceeds that are used primarily for personal, family or household purposes. If there is a consumer in the transaction, the two-step process for obtaining the electronic consent of the consumer must be followed. The consent requirements apply to most transactions in which individuals are buying or selling residential properties because they will be using the property or the proceeds for personal, family or household purposes.

- Disclosures: The Consumer must be provided with the following information –
  1. Whether the Consumer's consent applies only to a particular document or to broader categories of documents that may be provided during the course of the transaction.
  2. The Consumer's right to have the documents provided on paper, how the Consumer may obtain a paper copy of an electronic document, and whether any fee will be charged for the copy.
  3. The procedures the Consumer must use to update the Consumer's contact information.
  4. The Consumer's right to withdraw his or her consent to the use of electronic documents and any applicable fees or other consequences that may result upon a Consumer's withdrawal of consent.
  5. The procedures the Consumer must use to withdraw consent.
  6. A statement of the hardware and software requirements needed to open and save the electronic documents.
- Electronic Consent Required. The Consumer must affirmatively consent to the use of electronic documents, signatures and delivery. This consent must be given electronically (written consent is not sufficient) in a way that shows that the Consumer can access, open and save the electronic documents.
- E-mail Delivery Language. Once the Consumer(s) has given electronic consent, the offer, listing contract, buyer agency agreement or other transaction document should be modified to indicate that

the Consumer has authorized electronic documents, signatures and delivery. If the REEB-approved (WB) forms includes a check box authorizing electronic delivery of transaction documents then the simple act of checking the box adds email as a form of delivery. Some WB do not include an email delivery check box, in which case the WRA Addendum D may be completed and attached, or other e-mail delivery language may be inserted into the contract.

Things to Know

1. Consumer Electronic Consent

   Accomplish electronic consent (the easy way)
   A. Send an e-mail because the party must provide consent electronically to the use of e-mail and electronic documents and signatures in the transaction.
   B. Go to www.wra.org/ecommerce for the most recent updates and require practice.

2. **If Electronic Consent Cannot be Received from the Consumer or agent is not email provider, Then E-mail Delivery Cannot be Included in a Contract.**

3. **The Law Is Concerned About Consumers; Licensee-to-Licensee Electronic Consent Is Not Required.**

4. **Consumer Electronic Consent Is Required Regardless of the E-mail Address Inserted in the Offer to Purchase.** In essence the federal law is saying it does not matter who the e-mail address belongs to; if there is an e-mail address included in the offer, then electronic consent must have first been achieved. Review lines of 51-52 of the WB-11, which state, "[E]ach consumer providing an e-mail address below has first consented electronically to the use of electronic documents, e-mail delivery and electronic signatures in the transaction, as required by federal law."

5. **The Listing Firm Is Not Required to Request PROOF of Electronic Consent from the Cooperating Firm.** The listing company may find it beneficial to confirm on behalf of the seller that the buyer electronically consented to e-mail as a form of delivery and the use of electronic signatures. This may be a greater priority for the listing firm if the transaction involves a buyer-customer since the agent is drafting the offer as a subagent of the listing company.

LegalTalks

In addition, the WRA legal department created a new video series called LegalTalks. The very first LegalTalks focuses on electronic consent and email delivery. The video series takes legal issues and places them in short segments under seven minutes in length.

To view the LegalTalks go to www.wra.org/LegalTalks.

Going Paperless

In August 2011, Wisconsin REALTORS® Association members received access to a new ZipForm product – DigitalInk. Designed to also work with the Main Street Platform, this product will give members the ability to have a completely paperless transaction, offering secure digital signatures, automatic routing of documents to each signer and accessibility to mobile users. And if that is not enough, it has the electronic consent which meets both the federal consent requirement and the Wisconsin Offer to Purchase delivery language built right into the system. Basically the program is designed to prevent the process from moving forward until the electronic consent has been obtained. If

any other software solution is being utilized by Firm or Associate, Firm should consult with legal counsel regarding the consent requirements.

For more information go to www.wra.org/DigitalInk.

Fair Housing Law

Use of Demographic Information

One of the challenges of providing information by e-mail and of creating a content-rich Web site is determining whether any of the content being sent, residing on the site or linked to from other sites may violate, or create the potential for a violation of fair housing laws.

Section 804(c) of the federal Fair Housing Act makes it unlawful to make, print or publish any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination. Wis. Stat. § 452.23(1) prohibits a Firm from making any disclosure, which constitutes unlawful discrimination in housing under Wis. Stat. § 106.50. Wis. Stat. § 106.50(2) provides:

(2) DISCRIMINATION PROHIBITED. It is unlawful for any person to discriminate:
(d) By advertising in a manner that indicates discrimination by a preference or limitation.

Wis. Stat. § 106.50(1m) defines:

(ad) "Advertise" means to publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign in connection with the sale, financing or rental of housing.
(h) "Discriminate" means to segregate, separate, exclude, or treat a person or class of persons unequally in a manner described in sub. (2), (2m), or (2r) because of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, status as a victim of domestic abuse, sexual assault, or stalking, lawful source of income, age, or ancestry.

In 2011 status as a victim of domestic abuse, sexual assault or stalking was added to Wisconsin law. Counties and local municipalities may develop their own fair housing ordinances that will tend to offer broader protections and may have more protected classes than federal or state law.

The REALTOR® Code of Ethics provides with regard to the use of demographic information and advertising in general that:

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. *(Adopted 1/94, Amended 1/06) (*Standard of Practice 10-1)

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information

and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. *(Adopted 1/05, Renumbered 1/06) (*Standard of Practice 10-2)

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin or sexual orientation. *(Adopted 1/94, Renumbered 1/05, 1/06 and 1/11) (*Standard of Practice 10-3)

Note that in 2011 Article 10 of the Code of Ethics was amended to include sexual orientation.

Article 10
REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin or sexual orientation. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin or sexual orientation. *(Amended 1/11)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin or sexual orientation. *(Amended 1/11)*

In other words, if a Firm separates protected class information from a larger database, and either e-mails or displays the information on a Web site, the potential for a fair housing violation exists. Buyers, however, are not restricted from analyzing a neighborhood based on protected class information and it is not illegal for a Firm to display or link to larger databases of information that include, among other topics, information that addresses protected class issues. A disclaimer similar to the one below may be placed on the Firm's Web site and linked to any page where Consumers access demographic data and any e-mail delivering demographic data:

> **Disclaimer Regarding Use of Demographic Data Relating To Persons Protected Under Fair Housing Law**
> *Under Wis. Stat. § 106.50 it is unlawful for any person to, among other things, advertise in a manner that indicates discrimination by a preference or limitation. "Discriminate" means to segregate, separate, exclude, or treat a person or class of persons unequally because of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, status as a victim of domestic abuse, sexual assault, or stalking, lawful source of income, age, or ancestry. "Advertise" means to publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign in connection with the sale, financing or rental of housing. Therefore, it is unlawful, in connection with a housing transaction, to provide any person with information that separates demographic information into categories based upon classes of persons protected under fair housing law. Because buyers are not legally prohibited from making neighborhood/location decisions based upon demographic information, buyers may utilize Web sites or other sources of demographic information. Real estate licensees, sellers or landlords may not participate in any distribution or analysis of information, which has been separated by protected classes.*

Firms should adopt policies controlling Associates' use of demographic information that isolates information about groups of persons protected under fair housing laws. An example of such a policy might be:

> *Associate's Web site and all other media may not, with regard to residential properties and transactions, distribute demographic information that includes information regarding classes of*

persons protected under fair housing laws, without Firm's prior review and approval. This restriction applies to information located on Associate's Web site, as well as information located on Web sites linked to an Associate's site and other all other media including but not limited to Facebook, Twitter, craigslist, blogs, etc. No approval will be given for distribution of information which isolates protected class information from a larger database (for residential transactions). Because residential buyers are not restricted from analyzing a neighborhood based on protected class information, any Associate Web site and any other media containing demographic information authorized for distribution by Firm must contain the following disclaimer:

Under Wisconsin fair housing law, it is unlawful for a real estate licensee to provide any person with information which separates demographic information into categories based upon classes of persons protected under fair housing law with respect to residential transactions.

Equal Opportunity in Housing Slogan/Logo

The Associate's home Web page (and preferably all Web site pages) and E-mail signatures should reflect the company's Equal Opportunity policy. Associates with residential practices may include the phrase "Equal Housing Opportunity" (and the Equal Opportunity logo). Associates who do not have a residential practice may include the phrase "Equal Opportunity Firm."

To download the Equal Housing Opportunity logo, visit the Web site below:
http://portal.hud.gov/hudportal/HUD?src=/library/bookshelf11/hudgraphics/fheologo.

Fair Housing Advertising

The following are helpful advertising guidelines for Associates with regard to Associate Web sites, e-mails, Facebook, Twitter, craigslist, blogs and all other media:

- Avoid strategies that target less than the whole market
  - Do not direct an ad to only one segment of the community
  - Do not use particular publications or editions of newspapers or other media
  - Do not use only small circulation publications or media that are directed primarily to certain religious or ethnic groups

- Words used in advertising
  - Do not use words describing the seller, buyer, landlord or tenant, e.g., Jewish owner, Hmong home, adult building. **DESCRIBE THE PROPERTY FEATURES!**
  - Do not convey the impression that one group is preferred over another.
  - Avoid catchwords such as "restricted," "exclusive", "private," "board approval" or "traditional."
  - Avoid symbols or logos that suggest or imply discrimination.
  - When stating directions, avoid referencing racial, ethnic or religious landmarks.
  - Do not use these words: "crippled," "mentally ill," "deaf," "retarded," "blind," "adult building," "singles," "mature persons," "exclusive."

TEST: What is the real message of the ad? Does it exclude any groups? Does it describe the property and not the target market?

- Use of human models in Web photographs and other media
  - Do not use only adult or only white models.
  - Represent all races and ages, as well as families with children and persons with disabilities.
  - Vary or rotate the people shown in ads so all groups in the market area are featured
  - Portray models of different races in equal social settings
  - Indicate that housing is available to all persons on an equal basis.

- **KEY POINT:** Associates should be sure to have someone check your spelling and grammar before you publish any material on any Web sites, in e-mail or in any other media. Errors will reflect badly on Associate and Firm.

Advertising

∗ Liability for discriminatory advertisements can extend to anyone who participated in the publication of the ad, including the Associate who wrote the copy, the Supervising Broker, the publisher (newspaper, MLS) and the property owner.

Misrepresentation

Both license law and the Code of Ethics prohibit misleading advertising. Wis. Admin. Code § REEB 24.04 requires that advertising – in whatever format – must not be false, deceptive or misleading. Essentially all advertising laws and regulations applicable to traditional advertising are applicable to advertising in a Web site, an e-mail, Facebook, Twitter, craigslist, YouTube video, blog or other media. The duties imposed by the Code of Ethics, including the duty not to misrepresent, encompass all real estate-related activities and transactions whether conducted in person, electronically or through any other means. Civil liability, REEB discipline and Code of Ethics discipline may each result from misleading advertising occurring on a Web site, in an e-mail, on Facebook, Twitter, craigslist, a YouTube video, a blog or in any other communication. All advertising communications are subject to the Firm's supervision.

Under Wisconsin's strict responsibility law, a real estate licensee may be liable for a misrepresentation of fact, which appears to be information known to be true by a real estate licensee, even if the real estate licensee is not acting negligently in sharing the information with the consumer. For example, if a real estate licensee forwards municipal tax information to a consumer (without identifying the source of the information) that later proves to be incorrect, the licensee may be liable for the incorrect information even though the licensee had no idea that the municipal information was incorrect. Therefore, all e-mails, Web pages, Facebook entries, tweets, craigslist post, YouTube video, blogs or other communications or ads that contain factual information not verified by a licensee should attribute the information to its source and include a disclaimer along the lines of:

Firm Policy Manual Language – Source Disclaimer

The information included (in this e-mail) (on this Web site) (in this message) (on this page) has been provided by seller or other third parties and has not been verified by (Associate) (Firm).

True Picture

In addition to the disclaimer, licensees must ensure the accuracy of any information the licensee provides to Consumers that is not merely passed on from third party sources. Article 12 of the Code of Ethics requires REALTORS® to present a true and honest picture in advertising, marketing and other

representations to the public and ® to use reasonable efforts to ensure that information on their web sites is current. When it becomes apparent that information on the web site is no longer current or accurate, REALTORS® must take prompt corrective action (Standard of Practice 12-8).

REALTORS® must not engage in misrepresentation with respect to their URLs and domain names or manipulate listing content by engaging in unauthorized framing or modifying listing content in any way that produces a deceptive or misleading result, nor may they use deceptive metatags, keywords or other devices/methods to direct or divert Internet traffic, or to otherwise mislead consumers (Standard of Practice 12-10).

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled (Standard of Practice 12-13), along with the Firm's name or trade name on file with the DSPS, as required by Wis. Admin. Code § REEB 24.04(2)(a).

The Article 12 obligation to present a true picture also serves to limit the extent to which photographs used on Web sites and in other media may be retouched: Associates are prohibited from airbrushing or "Photoshopping" out features that potentially are defects or material adverse facts or otherwise misrepresenting or concealing the condition of the property.

Under Article 12 of the Code of Ethics, REALTORS® must be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional.

Regulation Z Credit Advertising Rules

Occasionally, real estate licensees include loan advertisements in their e-mail or Web pages (including linked sites). As with print advertising, these loan ads may be regulated. Regulation Z, also known as the Truth-in-Lending regulations, contains disclosure rules which apply to REALTORS® who advertise real estate financing terms for home-secured loans. Under the new rules that were effective October 1, 2009, any required disclosures of financing terms must be made clearly and conspicuously. If an advertisement states an interest rate, it must state the rate as an "annual percentage rate," using that term and the ad must state if the annual percentage rate may be increased after closing. A simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

These rules state that if an ad contains any of the "triggering terms," then the ad must also contain (1) the dollar amount or percentage of the down payment; (2) all of the repayment terms over the full term of the loan including the number and amount of the installment payments and the period of repayment, including any balloon payment; and (3) the rate of the finance charge expressed as the "annual percentage rate," using that term or the abbreviation "APR" plus an indication if the APR may be increased after consummation. An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used. The "triggering terms" include the dollar amount or percentage of any down payment, the number of installment payments, the period of repayment, the amount of any installment payment or the dollar amount of any finance charge.

If an advertisement for a home-secured loan states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the ad must also disclose in a clear and conspicuous manner: (A) Each simple annual rate of interest that will apply (in variable-rate

transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin); (B) The period of time during which each simple annual rate of interest will apply; and (C) The annual percentage rate for the loan. This required information must be stated with equal prominence and in close proximity to the initially stated simple interest rate.

If an advertisement for a home-secured loan states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner the amount of each payment that will apply over the term of the loan, including any balloon payment, the period of time during which each payment will apply and in an ad for a first lien homer mortgage, the fact that the payments do not include taxes and insurance, if applicable, and that the actual payment obligation will be greater. This required information must be stated with equal prominence and in close proximity to the initially stated payment amount.

Use of Drones

Taking aerial views of real property for advertising is not a new discussion in real estate. However, the regulation by the Federal Aviation Administration's (FAA) of routine nonrecreational use of small unmanned aircraft systems (UAS) -- more popularly known as "drones" has become of great interest in the real estate industry. New rules went into effect August 29, 2016. The rule permits commercial use of drones.

The FAA has put several processes in place to help you take advantage of the rule.

Waivers: If your proposed operation doesn't quite comply with Part 107 regulations, you'll need to apply for a waiver of some restrictions. You'll have to prove the proposed flight will be conducted safely under a waiver. Users must apply for these waivers at the online portal located at www.faa.gov/UAS.

Aeronautical Knowledge Test: Testing centers nationwide can now administer the Aeronautical Knowledge Test required under Part 107. After you pass the test, you must complete an FAA Airman Certificate and/or Rating Application to receive your remote pilot certificate at iacra.faa.gov/IACRA/Default.aspx.

There are operation limits such as: sUAS weighs less than 55 pounds, daylight operations only which is interpreted to be sunrise to 30 minutes after sunset, “visual line of sight” required, maximum groundspeed of 100 mph, maximum altitude of 400 feet above ground level and no operations may be above persons.

Review "10 Things REALTORS® Should Know About the New Drone Regulations," in the August 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Aug16/Drones and the FAQs for Small Unmanned Aircraft Rule at www.realtor.org/law-and-ethics/faqs-for-small-unmanned-aircraft-rule.

Chapter 3

E-Mail Policies

E-Mail Accounts

- Associates must have at least one separate business e-mail account for real estate business communications ("business e-mail account").
- Firm shall not provide Associate with a business e-mail account.
- Firm may not limit the size of email messages received by Associate through the business e-mail account.
  - All business communications shall be written in a professional style and should avoid inflammatory, obscene, derogatory and personally offensive language.
  - Inappropriate business or personal use of e-mail will not be tolerated. Use of business e-mail accounts, whether provided by Firm or by Associate, for content of a sexually explicit nature, focusing on classes of persons protected by fair housing or other anti-discrimination laws, personal attacks on any person, etc. will be grounds for dismissal. As a general rule, if an Associate could not read an e-mail at an all-company meeting, the content of that e-mail may be inappropriate, and if inappropriate, is not permitted on any business e-mail account.
  - It is no more appropriate to receive offensive e-mails than to send them. Any person sending inappropriate e-mails to a business e-mail account should be contacted promptly and asked to refrain from future inappropriate e-mails.

☑**IMPORTANT NOTICE:** Never trust wiring instructions sent via email. Cyber criminals are hacking email accounts and sending emails with fake wiring instructions. These emails are convincing and sophisticated. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.

Responding to Incoming E-Mail

Prompt responses to incoming e-mail are arguably as important to business success as are prompt responses to telephone calls or other communications. The following e-mail response policies are mandatory for all Associates:

- All e-mails shall be responded to personally no later than 24 hours after receipt. If an Associate is unable to personally respond within this time frame another person shall be designated to respond on behalf of the Associate. Firm shall be informed of those persons responding to e-mail on behalf of Associates.
- Auto-responder functions shall be used on all e-mail accounts having this capability. Auto responders shall acknowledge receipt of incoming e-mail and indicate when a personal response will be sent.
- Use of wireless e-mail devices (smart phones, laptops, ipads, etc.) is encouraged to provide immediate communications with persons sending incoming e-mails. Incoming e-mails can then be responded to with a phone call or an e-mail or be forwarded to an assistant or other Associate for personal attention.

Passwords

All business e-mail accounts shall be protected with a password. Associate passwords must follow the best current industry practices and use hardened passwords that are harder to break and more secure than passwords with personal content. These passwords are made up of a combination or random upper and lower case letters, numbers and special characters. For instance a good hardened password would look something like this, "6&gL(^3U." It is also recommended that Associates change their passwords at least three times a year and, of course, passwords should never be shared.

Writing Style for Business Communications and E-Mail

E-mailed business communications and other electronic correspondence shall be drafted with the same style and care as other business correspondence.

Business E-Mail Tips

1. Use descriptive subject lines that recipients will recognize as pertaining to them.
2. Don't send messages without subject lines.
3. Make sure Associate's full name appears in the "From" field.
4. Keep messages as brief as possible.
5. Don't forward warning e-mails you receive from others unless Associate first verifies their validity.
6. Only send attachments when necessary.
7. Don't use e-mail for important communications unless Associate confirms by other means (phone, in person) that the recipient received the e-mail.

Confidentiality

Client/Customer Confidentiality

Parties wishing strict confidentiality should consult with legal or other advisors regarding the use of encryption software. Standard e-mail is generally accepted for most business e-mail. However, the U.S. Post Office or other delivery service should be used if encryption technology is not available and strict confidentiality is required.

Complaints

All complaints resulting from receipt of e-mail shall be copied to Firm and Firm shall determine whether Associate or Firm shall respond to the complaint and shall determine the content of the response.

Other Disclosures

Possible other disclosures, which may be necessary in business e-mail include:

- Disclosures related to referrals or conflicts of interest required under Wisconsin license law (Wis. Admin. Code § REEB 24.05) (http://docs.legis.wisconsin.gov/code/admin_code/reeb/24).
- National Association of REALTORS®, "Affiliated Businesses Land in RESPA Hot Water," at http://www.realtor.org/legal-case-summaries/affiliated-businesses-land-in-respa-hot-water, pages 10-11 and 16 of the February 2005 *Legal Update*, "Common Practice Pitfalls" at www.wra.org/LU0502 and the November 2006 *Legal Update*, "RESPA and the Real Estate Firm," at www.wra.org/LU0611.

CAN-SPAM Act of 2003

The federal CAN-SPAM Act of 2003 created a uniform national standard for e-mails. The Act does not prohibit the offering of a product or service via e-mail or that the recipient provides a prior consent. Instead, the law requires that there be an opt-out mechanism for the recipient and that the sender identification information be included in commercial e-mails.

The Act applies to all solicited and unsolicited electric mail messages that have as their primary purpose the commercial advertisement or promotion of a commercial product or service – whether sent to a large group or to a single recipient. This includes e-mails that promote or sell a product or service for a fee, such as REALTOR® e-mails offering properties or brokerage services.

All Associate commercial e-mails must include:

- A legitimate return address and a valid physical postal address.
- A clear and conspicuous notice of the recipient's opportunity to "opt-out" – that is, to decline to receive -- any future commercial e-mail messages.
- A mechanism that may be used or an e-mail address (active for at least 30 days after message transmission) that the recipient may use to ask to not receive further e-mail
- A clear and conspicuous notice that the message is an advertisement or a solicitation.
- Clear notice in the subject heading if a message includes pornographic or sexual content

Certain e-mail messages are exempt and do not require the opt-out feature and other disclosure. Such messages are called "transactional or relationship messages – those messages that tend to contain information that is specific to the recipient and have the primary purpose of:

- Facilitating, completing, or confirming a commercial transaction that the recipient has previously agreed to enter into with the sender;
- Providing warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;
- Providing notice regarding the terms or features, the recipient's standing or status, or account balance information with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the recipient's ongoing purchase or use of products or services offered by the sender;
- Providing information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating or enrolled, or;
- Delivering goods or services, including product updates or upgrades that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

CAN-SPAM Rules for Wireless Devices

Associates who send commercial e-mails to wireless devices such as smart phones, PDAs, pagers and cell phones must first check the FCC's list of wireless domain names. The list of domain names is available at http://www.fcc.gov/cgb/policy/DomainNameDownload.html. The FCC rules for mobile services commercial messages (MSCM) impose a $250 fine for each commercial e-mail sent to any domain name on the list absent express prior permission from the MSCM recipient. Consent can be obtained verbally or in writing. For additional CAN-SPAM information, see the February 2006 *Legal Update*, "Real Estate Advertising," at www.wra.org/LU0602.

Record Keeping

Associates shall retain copies of all e-mails sent or received in connection with a real estate transaction as a hard copy (printed out) or a read-only PDF, even electronic copies as also saved. This can be accomplished by either printing e-mails or by saving an electronic copy (archiving). Transaction e-mails must be retained in an appropriate transaction file. If an electronic folder has not been established for the transaction, a hard copy shall be filed in the transaction file.

Jurisdiction

Any e-mail communications (including newsletters, marketing information, etc.) being sent to distribution lists that may include residents of states in which (Firm) is not licensed to practice real estate should include the following statement:

> *"Information being provided for residents of the state of Wisconsin (and other states Firm may practice in)."*

Avoid references to cities or states outside of Firm's license jurisdiction in e-mail addresses or elsewhere in Associate marketing materials.

Copyright Issues

Associates should assume that they do not have permission to copy and distribute by e-mail any article, picture, video, music, etc., unless the author of the work has expressly given permission to do so. Modification of these works without permission, by revising or altering the article, picture, etc., is a violation of the author's copyright as well. Permission in writing must be secured prior to Associate's use or modification of such material.

E-Mailing to Distribution Lists

Mass distribution of e-mail is extremely inexpensive. To avoid legal liability, ethical violations or loss of good will, the following guidelines must be followed when distributing e-mail to groups:

- "Spam" or mass e-mails to untargeted lists are prohibited without Firm's prior consent.
- Targeted e-mails to distribution lists are permitted so long as the list consists of persons who are qualified as prospects for Associate's services.
- All e-mails to distribution lists must offer the recipient the opportunity to be removed from the list. Associate is responsible for maintaining the lists and maintaining records of all persons requesting removal from e-mail lists. All persons requesting removal from a distribution list should be forwarded to the Firm so that the person can be removed from all company distribution lists as appropriate.
- All e-mails to distribution lists shall include a disclaimer recognizing the Code of Ethics prohibition against interference with another firm's listing. The Associate shall use the following language in all e-mails to distribution lists unless prior approval is received from the Firm:

> *"If you currently are represented by a real estate licensee, this e-mail is not a solicitation of the business covered by the exclusive agreement with that licensee."*

E-Mail Attachments

Because many e-mail recipients are fearful of viruses and may not be sophisticated computer users, the following procedures shall be followed when sending e-mails.

- Because different e-mail recipients have different preferences regarding use of attachments versus pasting text into the body of the e-mail, Associate shall determine which approach the recipient prefers when sending e-mail. If attachments are used, identify the attachment name and the e-mail subject line in a way that the recipient knows that the e-mail and attachment were created specifically for that recipient. With the exception of read only PDF files, attachments should not be sent or received outside of a local network. There is no way to ascertain the level, if any, of anti-virus protection and email security at the destination or origination mail server.
- Recognize that certain consumers have slow e-mail connections and others have fast connections. Based on the speed of the recipient's connection and other preferences, design e-mail content appropriately. E-mail recipients with dial-up connections should be sent text-only e-mails unless they request additional content. Recipients with fast connections may receive pictures, videos, large documents, etc.

Virus software should be regularly updated when a new update is available and should be set to auto-scan all e-mail – both incoming and outgoing. If the virus software available for the business e-mail account does not have this function, manually check attachment files for viruses before sending. Two popular anti-virus programs are available at www.symantec.com and www.mcafee.com. In addition, two other free anti-virus programs are www.avast.com and www.avg.com.

- Because no anti-virus software is foolproof, perform a full system backup weekly. Then, at the end of each day perform an incremental or daily backup to capture recent changes. These backups can be scheduled overnight so as not to conflict with daily operations when your computers and network is needed most. There are a variety of methods and services, including cloud storage a process in which a server copies the hard drive somewhere on the internet. However, there is one trick – access to the files will be limited unless there is an Internet connection. Some cloud storage is free up to a specific size of data and after that will require a monthly fee. Back up of a system should occur in more than one method.

Texting

Text messaging, commonly referred to as texting, is the ability to send and receive messages via a mobile device using Short Message Service (SMS). Texting allows busy individuals the opportunity to connect quickly, encourages brevity, and is often the method of connection when using a phone or e-mail is undesired or unavailable. Many mobile service providers charge a monthly or per-message fee, although some companies offer SMS free of charge. Text messages can also be sent from a cellular service provider's web site or by visiting some web pages that offer to send text messages for free. Associates shall conform any and all business texting to the policies in Chapters 2 and 3 to the extent practical given the size and formatting limitations of this medium.

- Ask before you text
  Not everyone has a phone that sends and receives texts easily and not everyone enjoys texting; it's what the consumer wants — not what is always easy for the professional. Therefore, ask for permission from consumers before you text them.

  Once you have received permission, be aware of how quickly and what time of day you respond to or send that very first text, as these will set the standard for your entire texting relationship with that individual.

- Watch what you're texting
  Avoid providing disclosures and/or negotiations via text. This is not limited to the conversations you have with consumers — this applies to the texts with other real estate agents and settlement service providers as well!

  Texting should be utilized with consumers for communication, such as confirming showing times. Additionally, be aware of what you're texting — remember the receiver cannot interpret your tone and may not use and/or understand abbreviations, especially those that agents use in transactions; for example, "RECR."

- Keep track of the texts
  Do you text just one of your sellers at one time and then both sellers at another? If you have five listings and have permission to text all sellers, let's pretend there are two sellers for each listing — that's a lot of texts to track! And that's without other agents, buyers, settlement services providers, your firm, e-mails, phone calls, etc.

- Texting and e-mailing while driving is banned in Wisconsin.
  An individual caught sending an e-mail or text message while driving could be fined anywhere from $20 to $400. This ban is included in Wis. Stat. §§ 346.89(3) and 346.95(11).

- Texting is part of the No-call list law
  Effective April 17, 2012, Wis. Stat. § 100.52 (1) (i) was amended to include texting into the definition of "telephone solicitation." Wis. Stat. § 100.52 (1) (i) now reads: "'Telephone solicitation' means the unsolicited initiation of a telephone conversation or text message for the purpose of encouraging the recipient of the telephone call or text message to purchase property, goods or services."

  As a reminder, current Federal FCC rules prohibit sending unwanted text messages to a telephone number on the national Do Not Call list.

- Telephone Consumer Protection Act of 1991 (TCPA)
  Enacted to regulate telemarketing calls to consumer phone lines. A violation of the TCPA is a private cause of action which may result in $500/ call or treble damages for willful violations. TCPA regulates robocalls (prerecorded calls), autodialers and text messages. A July 2015 order expanded the definition of "autodialer" under TCPA. Computer-generated texts to cellphone numbers are covered by TCPA while text messages sent to an email address are covered under CAN-SPAM. One-time texts sent immediately after consumer inquiries are permissible, so long as it's limited to information requested by the consumer.

Additional Resources

- **Resources:** For information as to the Wisconsin Department of Agriculture Trade and Consumer Protection agency relating to ATCP § 127 go to https://datcp.wi.gov/Pages/Programs_Services/WIDoNotCallLaw.aspx. For more information, refer to the August 2005 *Legal Update*, "Federal Laws Impacting REALTOR® Practice," at www.wra.org/LU0508.
- February 2006 *Legal Update*, "Real Estate Advertising," at www.wra.org/LU0602.

For more information on potential legal consequences of texting, see the August 2012 *Wisconsin Real Estate Magazine* article, "Caution: Slippery Slope Ahead" online at www.wra.org/WREM/Aug10/SlipperySlope.

Record Keeping

Wis. Admin. Code § REEB 15.04 requires a firm to retain for at least 2 years exact and complete copies of all listing contracts, agency agreements, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence received or prepared by the firm in connection with any transaction.

- Texts will not remain forever on the majority of phones. Just like voice mails, depending on the setting on your device, texts will delete off of a phone eventually, so you should be proactive and take steps to separately save the text messages.
- The following may be some of the ways to successfully print a text message:
    - E-mail: open the text and forward it, entering your e-mail address rather than a phone number. The problem with this method may be proving who sent the original text since you are forwarding the text from your phone number.
    - Computer: connect a data cable to a computer that permits the transfer of the messages to a computer, save them, and print.
    - Mobile apps: Apps such as PhoneView for iPhone users or TouchCopy for Android allow backup of every text sent and received into your Gmail account; each resolution will depend on your brand of phone. This will likely continue to evolve, making life just that much easier.
- Cell phone providers should have text records. However, most will only provide a detailed text message with a court order. It is also unclear the length of time the provider will keep the detailed message.

Chapter 4

Associate Web Site and Internet Policies

Associate Web Sites

Associate Web pages on Firm's site or Associate Web sites outside Firm's Web site are subject to the policies and procedures found in this manual. Failure to comply may result in deletion of an Associate's Web page on Firm's site or other Firm action.

Web Site Design and Content Responsibility

Firm is legally responsible for all real estate activities of Associate including Web site activities.

Copyright Law

An Associate must have written permission from the author or copyright holder to use any copyrighted materials.

Works Protected

Copyright protection is available for "works of authorship." These works include:

- Literary works. Novels, poetry, newspaper and magazine articles, computer software, software manuals, training manuals, manuals, catalogs, brochures, ads (text), and compilations such as business (MLS) directories.
- Pictorial, graphic, and sculptural works including photographs, posters, maps, drawings, cartoon characters, paintings, and works of fine art.
- Movies, television shows, videos, etc.
- Music and sound recordings.
- Compilations such as the information in a Multiple Listing Service

Who Can Claim Copyright?

Copyright protection exists from the time the work is created. The copyright in the work immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright. In the example of the MLS, the MLS has the legal right to determine how the MLS data is copied, modified, distributed, etc. All use of MLS data, accordingly, shall conform to MLS rules. Any use of MLS data not addressed by MLS rules shall not be incorporated into Firm's or Associate's Web site without prior written approval of the MLS.

The 1976 Copyright Act generally gives the owner of copyright the exclusive right to do - and to authorize others to do - the following:

- To reproduce the work;
- To modify the work;
- To distribute copies of the work to the public by sale or other transfer of ownership, or by rental or lease;
- To display the copyrighted work publicly, etc.

Infringement

Anyone who violates any of the exclusive rights of a copyright owner is an infringer. For example, an Associate found a scenic picture, scanned the copyrighted photograph, altered the image by using editing software, and inserted the altered version of the photograph on the Associate's homepage. Assuming the Associate used the photograph without permission, the Associate infringed on the photographer's copyright by violating the photographer's reproduction right (scanning the photograph), the modification right (altering the photograph), and the distribution and display rights (including the photo on the Associate's Web site). Another example is an Associate who takes MLS compilation information and uses it without permission or uses it in a manner inconsistent with the reproduction guidelines established by the MLS in the MLS rules and regulations.

Notice of Copyright

The use of a copyright notice is no longer required under U.S. law, although it is often beneficial. Because prior law did contain such a requirement, however, the use of notice is still relevant to the copyright status of older works.

Penalties

A copyright owner can recover actual or, in some cases, statutory damages (which can be as high as $100,000 in some cases) from an infringer. In addition, courts have the power to issue injunctions (orders) to prevent or restrain copyright infringement.

Firm Websites and Social Media

Copyright law is important for firms and agents who develop, maintain or operate websites, blogs, Facebook pages, or use Instagram and other social media communication sites. "Works of authorship" may be easily incorporated into a firm's website or other online site to improve the content and enhance the appeal and "look." Articles, music, text, graphics, illustrations, photographs, videos and other features may be used. Licensees must take care that if any of these are protected under copyright law, they first obtain written permission for their use. Just because it is on the Internet does not mean that licensee can copy and paste without first giving pause to consider if they may be infringing copyrights owned by others.

Many brokerage firms and agents have their own websites or other online sites or pages where potential clients and customers can view information about listed properties. The typical real estate website has information about different homes for sale, which often includes several exterior and interior photographs of the properties or links to video tours. There also may be maps or architectural diagrams or even clip art. As ordinary as this may sound, a risk of possible liability may lurk amongst those property listings. Use of the photographs, or any other "original works of authorship," could be a violation of United States copyright laws if they are reproduced without the creator's permission.

Many photographs, graphs, maps or other diagrams on a firm website may come from someone other than the firm. The photographer could be the firm's agent or employee, a third-party vendor, the seller, an agent from another company, or an appraiser. The photographs might also come from the Multiple Listing Service (MLS), or more specifically, the MLS Internet Data Exchange (IDX) feed. The graph or diagram posted on a blog might have come from an online news story or city government. The picture of the n neighborhood school may have come from the community website or the website for the school district. These are all potential copyright violations. Attributing the source is a professional gesture and required as a condition of use when permission is granted, but attribution alone does not get you off the hook. Permission in writing is required to legitimize the use.

Web Site Copyright Notices

To protect Firm's, Associate's and other person's copyrights, Associate shall include a copyright notice in Associate's Web site's terms of use agreement.

An example of such a paragraph is:

> *Limited License for Personal and Non-Commercial Use Only, Printing of Site Content. The Content of this Site (Content) is copyrighted by (Firm/Associate) or other persons and entities that provide information to the Site. Users of this Site are granted a limited nonexclusive license to use the Site and its Content for personal and non-commercial use only. Users may print or copy Content from this Site that is copyrighted or owned by (Firm/Associate) provided that such copies are not modified or revised in any manner and include proper notices indicating that the Content is copyrighted or owned by (Firm/Associate) (such as "Copyright © [Insert Year] (Firm/Associate)"). In addition, any Content that comes from the pages of this Site that contain disclaimers must be printed or copied with the disclaimer included in its entirety. In the event a User wishes to print Content from this Site, or other sites linked to this Site, that is copyrighted or owned by a person or entity other than the (Firm/Associate), the User must obtain permission from the appropriate owner to do so. Except as permitted in this Agreement, Content may not be reproduced, sold, transferred, modified, redistributed, retransmitted, published, or exploited for any purpose without the express written permission of the (Firm/Associate) or appropriate owner of the information.*
>
> *If you would like to reprint Content from this Site for purposes other than those permitted in the Agreement, please send a request to (manager at Firm/Associate). Please include in your request as much information as possible including your intended use of the Content. If you would like to republish the content in an article or publication, please indicate the title and byline of the article and the publication it will appear in. In order for requests to be considered, all requests must include your name, address, phone number and e-mail address.*

Digital Millennium Copyright Act (DMCA).

The DMCA was enacted in 1998 by the federal government to address digital copyright concerns. The DMCA provides a web site operator the ability to avoid liability for copyright infringement created by others who post content to the site. The simple act of a copy and paste from one web site to your company's or agent's site may be enough to violate the law. The DMCA applies to real estate professionals in the way of IDX feeds, blogs, and websites. There is no safe harbor for Twitter, Facebook and other social media outlets.

To avoid liability there is a safe harbor protection. (See 17 USC s. 512(c)). There are five requirements to qualify for the safe harbor. The National Association of REALTORS® created a helpful article detailing DMCA at www.realtor.org/articles/law-policy-do-you-understand-online-copyright-law.

The site operator:

(i) Does not have actual knowledge of the infringing content
(ii) It is not aware of facts or circumstances from which infringement is apparent
(iii) Does not receive a financial benefit directly attributable to the infringing activity
(iv) Acts expeditiously to remove the infringing content when notified
(v) Has provided a means for receiving notice of the infringing content
   a. DMCA requires a site operator register a designated agent.
   b. A form must be completed to communicate the registered agent. The form is found at www.copyright.gov/onlinesp/agent.pdf.

c. As of 2016 the filing fee was $105.

If all five of these elements are met, then the DMCA law allows safe harbor for the web site operator. The Daytona Beach Area Association of REALTORS® has shared via the National Association of REALTORS® website, "The DMCA: What You Need to Know and What You Need to Do" at www.realtor.org/rare.nsf/pages/548057B4406355E586257C7100604B90/$FILE/dmca%20guide.pdf . This helpful PDF serves as a firm's guide to DMCA risk reduction and includes samples of forms and language for your website.

There are few steps the National Association of REALTORS® recommends.

- First Step: Designate a copyright agent. Failure to do so can nullify the safe harbor.
- Second Step: Post a DMCA notice on the website which includes a policy statement about repeat infringers, make sure the copyright agent contact information and instructions for sending takedown notices are clear and complete.
- Third Step: Comply promptly with DMCA takedown notices.

Use of REALTOR.org images and video

In June 2104 the National Association of REALTORS® stated that for the protection of its members to avoid reusing the images and video found on REALTOR.org without first receiving the appropriate permission from the National Association of REALTORS®. The National Association of REALTORS® reprint guidelines may be found at www.realtor.org/reprint-guidelines.

Rules to Live By When Using Photos on the Internet

- Do not copy somebody else's photos. Even if the photo does not include the copyright symbol, it is protected, and using it is copyright infringement.
- Do not use somebody else's maps — including maps contained in the MLS and other sites.
- Do not post somebody else's pictures or artwork to Facebook, Instagram, the MLS or any other site.
- If you don't know where an image came from, don't use it.

The Development Agreement

Associates who hire a person to create, host or maintain a Web site must have a development agreement with the developer to clarify who owns the Web site, the standards that must be met in developing, operating and maintaining the Web site and legal issues. Development agreements must contain a prohibition against the developer reproducing content that is owned by the Firm, Associate or other third party (an MLS or other date source). Competent legal counsel should review the development agreement prior to execution.

A good summary of the development agreement issues can be found at www.yourlegalcorner.com/Internet_Alert/oct2000.html.

Domain Names

Associate shall be responsible for obtaining and renewing the registration of the Associate's Web site(s) domain name(s). Associate must comply with Firm's domain name policies. Associate shall be responsible for ensuring that the domain name is not inappropriate and that it does not violate any person's trademark or service mark.

Associate may wish to search available domain names consistent with Firm's domain name policy or request a virtual domain from "your Firm," such as "agent.yourFirm.com."

What is a Domain Name?

Domain names were invented to identify Internet users. Most computers connected to the Internet are identified by a unique number called an IP address (for instance, 234.208.12.129). Through Domain Name Services (DNS), these unique numbers are given more common, easy-to-remember names, such as google.com, wra.org, Microsoft.com, etc.

Domain name	IP Address
wra.org	192.168.1.2
Microsoft.com	207.46.2.45.214

The Structure of a Domain Name

Using the WRA's domain name as an example (wra.org), the top-level domain (TLD) is .org, which is used for non-profits and other organizations. Other examples include .com (commercial) and .gov (government). Top level domains are also known as domain extensions.

The first half of the domain name (wra) is known as the sub-domain. This is the portion of the name that allows creativity. The Top Level Domain and sub-domain together make up the domain name. No two Web sites share the same domain names. All domain names are recorded in a central database and each record in the database must be unique.

Registration

It is not possible to own a domain name outright; rather an individual may have the exclusive right to use that name for Internet correspondence. Each year the individual pays a renewal fee for use of a domain name. Under certain circumstances a court can take a person's right to use a domain name away. For example, if a domain name uses another company's trademark, the trademark rights of the other company would have priority over the registered domain name.

There are several services where a person can register a domain name. Some sites will take keywords and produce some domain name recommendations. A few tools include:

Registrar Name	Web site
Network Solutions, LLC	www.networksolutions.com
Register.com	www.register.com
Yahoo	http://smallbusiness.yahoo.com/domains/
Dotster	www.dotster.com
Aplus.net	www.aplus.net
GoDaddy	www.godaddy.com

Cybersquatting

Cybersquatting, is the registration, trafficking or use of a domain name with the intent to profit from the goodwill of a trademark belonging to someone else. It generally refers to the practice of buying up domain names that use the names of existing businesses with the intent to sell the names for a profit to those businesses. The Anticybersquatting Consumer Protection Act makes it unlawful for a person to register a domain name containing another person's trademark with bad faith. Domain name disputes may be resolved using the Uniform Domain Name Resolution Policy process or by the court systems.

Code of Ethics Requires True Picture in Domain Names

The REALTOR® Code of Ethics, in Case Interpretation 12-20, that holds that a URL such as "MadisonMLS.com," leading reasonable consumers to the mistaken assumption that the Web site belongs to an MLS instead of to a real estate professional, violates the Code. Article 12 requires REALTORS® to present a "true picture" in their advertising and all other representations and communications, including Web sites and blogs. In addition, Standard of Practice 12-12 provides that, "REALTORS® shall not: 1) use URLs or domain names that present less than a true picture or 2) register URLs or domain names which, if used, would present less than a true picture."

Linking Issues

Direct links from one Web page to another – called hypertext links, hyperlinks or links – make it simple to navigate through the vast world of the Web. Generally it is positive to provide links on the Associate's Web site to other Web sites. Associate's Web site is enriched by the content from the other Web site and Associate's links increase traffic on the other site. However, some restrictions on linking practices exist.

The following linking policies are mandatory for all Associate Web Sites.

Permission to Link

Is permission needed to link to another Web site? Under early "netiquette," such links were added without the permission of the linked site because it meant more visitors to the linked Web site. This thinking remains true today (no permission needed to link) for links to any "public domain" Web sites such as government agency sites and other sites that give blanket authorization for links to their site. Some Web sites prohibit any linking in their "terms of use agreements" without express permission. However, most commercial sites allow linking to the home page of the site without further permission. The home page is typically where the site's privacy statement and terms of use agreement are located. In addition, the most valuable advertising space in most Web sites is found on a Web site's home page and Web site operators have frequently objected to links that bypass this advertising and reduce revenues. Based upon these concerns, cautious Firms and Associates will either link to the home page of another's site or seek permission before linking to internal pages of the site. Associates should review monthly who has linked to Associate's site (and if they have done so properly) by going to www.altavista.com and putting the following into the search field: "link: www.yourdomain.com" (substitute your actual domain name for "yourdomain").

Associates linking to any other Web site shall confirm that all required permissions for the link have been received in writing in advance of the use of the link.

Liability for Linking to Other Sites That Violate Law

If an Associate links to a site that violates libel, fair housing, gambling or some other law and a consumer began in the Associate's site and followed the link to the offending site, the Associate could be liable. To minimize this potential secondhand liability, Associate must be careful what sites are linked and put a strong disclaimer in the terms of use agreement (see the WRA's language below). Associate must also regularly review the sites linked to in order to ensure that the links have not been broken and that the content of the sites is still appropriate.

URL Shortening

This is a technique regularly utilized by an HTTP Redirect on a domain name that is short, linking to the web page that has a long URL. This is often helpful when using technologies that limit the number of characters, such as Twitter. The same permissions discussed above would also apply.

Sample Linking Liability Disclaimer from WRA "Terms of Use"

> **Liability for Linking - Links to Third Party Sites; Accuracy of Content on Linked Sites**
> *Links to other sites operated by independent, third parties exist on this Site. While (Firm/Associate) provides these links as a service to Users, (Firm/Associate) does not control these linked sites and (Firm/Associate) is not responsible for the content contained on these sites. Unless otherwise indicated, (Firm/Associate) does not endorse, approve, or otherwise warrant the accuracy of any information or content contained on a linked site. User agrees that the sites, including the information, material, products and services therein, shall be used solely at the User's own risk. Furthermore, because the (Firm's/Associate's) privacy policy is applicable only when you are on (Firm's/Associate's) Web site, once linked to another Web site, you should read that site's privacy policy before disclosing any personal information. If you are unsure if have moved to another site, check the Uniform Resource Locator (URL) address provided in your World Wide Web browser.*

Frames

As the name suggests, a "frame" is a bordered area of a Web page that "frames" the content of another Web page or Web site. The problem with framing is that when a Web site links to and frames another Web site, the Web site's URL or domain name is not displayed. Instead, the "framer's" URL and Web page border is displayed, while the content of the "framed" site appears within this border. At the very least, this may mislead a consumer into thinking that the Web content they are looking at is the "framer's," not the "framee's." Even worse, if the consumer likes the content of another site enough to save it as a "favorite page" they will likely end up saving the URL of the framer.

Framing third-party information into another Web page raises issues of copyright infringement (derivative works) and trademark infringement. Framing also causes the loss or dilution of a site's advertising potential. Due to the frame imposed upon a target site, the target site's advertising may be distorted or made so small as to be ineffective. Additionally, the advertising contained in the frame may compete with or be contrary to the advertising in the target site. In the event that the framing diminishes advertising revenue for the target site there may be legal consequences.

Associate's Web sites may not frame any other site's pages unless written permission is obtained or the page is in the "public domain." REALTORS® are prohibited under Standard of Practice 12-10 from framing another real estate firm's Web site in any manner that is deceptive or unauthorized.

Associate's Web site's terms of use agreements should explicitly prohibit framing by other sites using the following disclaimer:

> ***Linking to and Framing This Site***
> *Users who create links to any page of the Site may not "frame" any page of the Site for any purpose without the express written consent of the Firm/Associate.*

Terms of Use Agreement

Associates operating Web sites need a "terms of use agreement," which is a contract between the Associate operating the Web site and the consumers using the site. The contract will serve to limit liability to the user on a variety of issues. Associate shall place a link on the Associate's Web sites home page labeled "Terms of Use Agreement."

Privacy Issues

Sharing Consumer Information

Per the Code of Ethics, in Standard of Practice 12-11, Associates intending to share or sell information gathered via the Internet must disclose that possibility in a reasonable and readily apparent manner.

Web Site Privacy Policy

The increasing capability of Web sites to gather information from consumers is at direct odds with society's apparent desire to limit access to personal information. Therefore, it is mandatory that each Associate Web site shall contain a clear, understandable privacy policy. A privacy policy explains what information is going to be gathered (with the user's knowledge or without), and how the information is collected, used and disclosed. A link to the privacy statement should be located on the home page of the Associate's Web site.

A privacy statement must, at a minimum, disclose the following in a clear and conspicuous manner at a location accessible through a direct link from each page of the Web site:

- What personally identifiable information is collected;
- How the information is collected;
- What organization is collecting the information;
- Why the information is being collected;
- How the collected information is used;
- With whom the information may be shared;
- What choices are available to users regarding collection, use and distribution of the information;
- What kind of security procedures are in place to protect against the loss, misuse or alteration of information under the company's control;
- How users can access and correct any inaccuracies in the information.
- Identity and contact information for the Web site operator
- Effective date of the privacy policy

Legal counsel may be consulted for assistance in drafting the privacy statement. Also see the privacy resources in Chapter 6 of this manual, and the *NAR Data Security and Privacy Toolkit* and other resources at www.realtor.org/field-guides/field-guide-to-using-privacy-security-features-in-social-media . There also are other resources on the Web to assist Web site operators who are attempting to draft a privacy statement. One of these resources is TRUSTe (www.truste.org/). TRUSTe certifies privacy statements for companies and has resources available for companies that will be developing privacy statements (even without seeking TRUSTe's certification).

For additional privacy issues, Firms and Associates should review the Gramm-Leach-Bliley Act (GLB). A copy of the Act is available at www.ftc.gov/privacy/glbact/glbsub1.htm. The GLB regulates privacy issues for entities, which provide the type of services provided by financial institutions, including settlement services. The GLB established extensive consumer privacy obligations for financial institutions beginning on July 1, 2001. GLB may impact members of the real estate industry because of the broad definition of "financial institution" found in the law. Entities which engage in "financial activities" are "financial institutions," regardless of whether or not the entity would commonly be considered to be a financial institution. GLB directed the Federal Reserve Board to define financial activities and activities which are financial in nature or incidental to a financial activity. Firms should understand that GLB does not consider brokerage services or property management activities to be financial activities. However, if a real estate firm engages in any of the "financial activities" or "activities incidental to a financial activity" (in addition to the

firm's brokerage services or property management), the firm would be considered to be a "financial institution" and would be required to comply with the privacy provisions of GLB.

The requirements for the privacy disclosures required by the rules are complicated enough to require the assistance of legal counsel. Because each entity's forms must reflect the specific business practices of the entity, no standard form can be made available. While the regulations contain some example clauses, they also make it clear that compliance requires the covered entity to review its own policies and practices concerning nonpublic personal information and tailor its disclosure form to reflect those practices.

Nine points must be covered in the disclosure form, when applicable. These nine items are:

1. the categories of nonpublic personal information that are collected;
2. the categories of nonpublic personal information that are disclosed;
3. the categories of affiliated and nonaffiliated third parties to whom nonpublic personal information is disclosed;
4. the categories of nonpublic personal information disclosed about former customers, and the categories of affiliated and nonaffiliated third parties to whom it is disclosed;
5. if nonpublic personal information is disclosed to a nonaffiliated third party who provides services or function on behalf of the business, the categories of information used must be disclosed as well as the categories of nonaffiliated third parties with whom the business has contracted;
6. an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated parties and how the consumer may exercise that right;
7. any disclosure required under the Fair Credit Reporting Act relating to the ability of a consumer to opt out of the disclosure of personal information to affiliated third parties;
8. the policies and practices followed to protect the confidentiality and security of the nonpublic personal information collected; and
9. notice of any disclosure of nonpublic personal information permitted under the exceptions contained in the regulations.

ADA Website Accessibility

The Americans with Disabilities Act (ADA) was enacted to provide a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. (See 42 U.S.C. 12101 § (b)(1)). Title III prohibits discrimination against disabled at any place of public accommodation; this includes real estate brokerage offices, portions of residence home used as a home office and sales office located in a model home.

The Department of Justice (DOJ) interpretation is that the ADA should be read in a manner that keeps pace with technological changes. Therefore, the DOJ has determined that websites should be ADA accessible. Each jurisdiction that has looked at this law has applied different portions of the law. Therefore, the DOJ has proposed a rule that creates guidelines for the application of the ADA to websites – the WCAG 2.0 AA Guidelines include:

- Maximize compatibility with assistive technologies
- Text alternatives for any non-text content
- Content that can be presented in different ways without losing information or structure
- Separating foreground from background
- All functionality available from a keyboard
- Make text content readable and understandable to web navigation tools.

Trademark Law

Trademarks and service marks are words, names, symbols, or devices used by manufacturers of goods and providers of services to identify their goods and services, and to distinguish their goods and services from goods manufactured and sold by others. Associates operating Web pages shall not use any other person's trademark or service mark without permission of the owner of the mark. This rule applies to observable usages (e.g., use of the audio trademark Harley Motorcycle "roar") as well as hidden uses (e.g., use of a competitor's name in "meta tags").

Availability of Protection

Trademark protection is available for words, names, symbols, or devices that are capable of distinguishing the owner's goods or services from the goods or services of others. A trademark that merely describes a class of goods rather than distinguishing the trademark owner's goods from goods provided by others is not protectable.

Example: The word "corn flakes" is not protectable as a trademark for cereal because that term describes a type of cereal that is sold by a number of cereal manufacturers rather than distinguishing one cereal manufacturer's goods.

Obtaining Protection

The most effective trademark protection is obtained by filing a federal trademark registration application in the Patent and Trademark Office (www.uspto.gov). Federal law also protects unregistered trademarks, but such protection is limited to the geographic area in which the mark is actually being used. The State of Wisconsin also registers trademarks at the Department of Financial Institutions Office (www.wdfi.org/Apostilles_Notary_Public_and_Trademarks/defaultTrademark.htm). Registration without usage does not provide absolute protection. In a dispute, a company with a long history of using a trademark may very well win a dispute with a newcomer who registers the mark and challenges the first company's rights to the mark.

Scope of Protection

Trademark law protects a trademark owner's commercial identity (goodwill, reputation, and investment in advertising) by giving the trademark owner the exclusive right to use the trademark on the type of goods or services the owner supplies. Any person who uses a trademark in connection with goods or services in a way that is likely to cause confusion is an infringer. Trademark owners can obtain injunctions against the confusing use of their trademarks by others and sue for damages for infringement.

A good example of improper use of someone else's trademark is using another person's trademark as a meta tag to draw business to your Web site. A meta tag is programming code used in the creation of a Web site. Meta tags are powerful tools because they have a direct effect on the frequency with which search engines will find a Web site. Even though an Internet user never sees this code, meta tags have been the subject of trademark lawsuits because companies have used them to divert or confuse consumers. For example, Company A inserts the trademark name of a rival business, Company B, into its meta tag. A customer using a search engine to find Company B may be diverted to Company A instead.

Use of the NAR Trademark and Logo

Associates wishing to use NAR's trademarks must comply with the following guidelines:

1. The term REALTOR®, whether used as part of a domain name or in some other fashion, must refer to a member or a member's firm.
2. The term REALTOR® may not be used with descriptive words or phrases. For example, "Number1realtor.com," "Madison realtors.org" or "realtor properties.com" are all incorrect.
3. The term REALTOR® should never be used to denote an occupation or business. Do not combine words like "your," "my," "our" or any descriptive words or phrases between your name and the membership mark. JaneDoeMyRealtor.com and YourChicagoRealtorJohnDoe.com are all examples of improper use.
4. For use as a domain name or e-mail address on the Internet the term REALTOR® does not need to be separated from the member's name or firm name with punctuation. For example, both johndoe-realtor.com and johndoerealtor.com would be correct uses of the term as a part of domain names, and jdoe*realtors@webnetservices.com and jdoerealtors@webnetservices.com are both correct uses of the term as part of an e-mail address.
5. The REALTOR® block "R" logo should not be used as hypertext links on a Web site as such uses can suggest an endorsement or recommendation of the linked site by NAR or by the local Association. The only exception would be to establish a link to the National Association's web site, REALTOR.org, or its official property listing site, REALTOR.com.

The public has adopted the use of all lower case letters when writing domain names, even those containing trademarks. Therefore, for purposes of domain names only, there is an exception to the rule on capitalization of the term REALTOR® and it may appear in lower case letters.

Whether Associates use traditional print media or the Internet, it is essential to use the REALTOR® marks in accordance with the rules and guidelines of the National Association. The REALTOR® marks should only be used to denote membership in the NATIONAL ASSOCIATION OF REALTORS®.

Further information from the NAR on REALTOR® trademark issues can be found at: www.realtor.org/letterlw.nsf/pages/trademarkmanual.

Meta Tags and Other Hidden Code

Meta tags are codes used to direct search engines to a particular Web site.

- Associate is prohibited from using any offensive content or from violating any person's trademark or copyrights in Meta tags or other hidden code.
- Associates are allowed to use meta tags or keywords to identify their Web site with the services they offer, but are subject to Firm approval and supervision.

Firm Identification/Logo

Associates must include on every page of Associate's Web site the Firm's name.

In 2011 the Code of Ethics Article 12 SOP 12-5 was modified to recognize that technology has provided a myriad of ways for REALTORS® to advertise and therefore exceptions regarding inclusion of the firm name may be needed.

Standard of Practice 12-5
REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner. This Standard of Practice acknowledges that disclosing the name of the firm may not be practical in displays of limited information (e.g. "thumbnails". Text messages, "tweets", etc.). Such displays are exempt from the disclosure requirement established in the Standard of Practice but only when linked to a display that includes all required disclosures. *(Adopted 11/86, Amended 1/11)*

However, while the Code of Ethics in Standard of Practice 12-5 identifies that disclosing the name of the Firm may be difficult at certain times, for instance tweets which restrict the number of characters, Wisconsin Administrative law does not make such exception. Therefore, in Wisconsin the licensee would still be required to include the name of the Firm is all advertisements, regardless of the method.

Feedback Comments

Users of Associate's Web site should be given the opportunity to comment. These comments will provide valuable feedback to assist Associate in the further development of the site. Most consumers need some inducement to provide comments. Incentives that can be applied to future transactions (one incentive per transaction!) may be an effective inducement. All comments received from the Associate's Web site shall be forwarded to the Firm no less than monthly.

Contests and Drawings

Associates wishing to offer a drawing on the Associate's Web site must comply with Wisconsin gaming laws. The issue is whether such a drawing would be an illegal lottery under Wis. Stat. §§ 945.04(5) and 945.02. A drawing is generally defined as a regulated lottery if one must give consideration to enter, and the award is determined by chance. Consideration is anything that would be of financial or commercial advantage to the promoter, with some exceptions (send in coupon, visit store, etc.). Because the prizewinner will be determined by chance, there can be no consideration paid for entering. Therefore, any person submitting an entry on the Web site must be entered into the drawing regardless of that person's qualification as a potential prospect, etc. See the Department of Agriculture, Trade & Consumer Protection's Guide to Contests and Promotions at https://datcp.wi.gov/Pages/Publications/TopTenConsumerComplaints.aspx.

- The content and rules of any proposed drawing must be submitted to Firm in writing for review.
- Prior to offering the drawing, Associate must obtain written permission from Firm.
- All drawings must be limited to Wisconsin residents.
- Residents of other states may be included if legal counsel approves following review of that state's gaming laws.
- Legal counsel review shall be at the Associate's expense.

Jurisdiction

The fact that the Internet transmits a Firm or Associate Web site to every state and country raises an interesting legal issue dealing with jurisdiction. In a nutshell, a real estate Firm or Associate must ask the

question whether they are subject to the laws of states and countries reached by the Web site advertising (every state, every country). It's unlikely that a Firm or Associate would be subject to the jurisdiction of another state simply for posting a Web site on the Internet. However, when a Web site (along with a certain amount of e-mails, phone calls and other advertising) generates significant sales in a state outside Wisconsin, there is a greater likelihood that a Firm or Associate may hear from regulators or courts claiming that they have jurisdiction over the Firm or Associate based on a "minimum contacts" theory.

Another key factor in determining whether a Firm or Associate may face jurisdiction issues is the extent to which the Web site is interactive. Jurisdictional claims for passive sites (information delivered to consumers only) are not likely. However, when a site is interactive, jurisdictional claims become much more likely. If a site asks buyers about the type of property they are looking for and respond with information on specific properties, potential jurisdictional claims from other states may be a concern.

Disclaimers in the Web site's terms of use policies, which provide that the Web site is intended for residents of Wisconsin only and indicating that the venue for any litigation is the Wisconsin courts, are useful. Ultimately, not violating the laws of any other states is the best defense, though given the patchwork quilt of state real estate laws this may be an impossible task.

States of Licensure

Standard of Practice 12-9 requires that REALTOR® firm Web sites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner. Additionally, Associate Web sites shall disclose the firm's name and the Associates' state(s) of licensure in a reasonable and readily apparent manner.

The (Firm's/Company's) state(s) of licensure (is)/(are) Wisconsin (and _____).

Current Information and Content Accuracy

It is Associate's responsibility to check his or her Web site pages for accuracy and currency of information, promptly take corrective action and report any errors to Firm in writing. The Article 12 obligation in the Code of Ethics to present a true picture in representations to the public includes information presented, provided, or displayed on Associate's Web site. Standard of Practice 12-8 requires REALTORS® to use reasonable efforts to ensure information on Web sites is current and accurate.

Listings

Associate may not advertise any other company's listing without permission of the other company. This permission is usually extended through the MLS and its Internet Data Exchange (IDX) or other policies.

- Associate shall determine that all listings included on Associate's site have been posted with permission, that no listing information published by Associate is false or misleading and that all applicable MLS rules have been complied with.
- Advertising "For Sale By Owner" (FSBO) properties is prohibited without advance Firm permission.

Web Site Maintenance and Operation

Archiving Web Site
Associate or Associate's Web hosting service should archive the site regularly and all changes should be recorded and maintained in Associate's files for six years.

Marketing
All marketing material (in any media) developed by or on behalf of Associate should incorporate Firm's and Associate's Web site addresses.

Search Engine Registration
Associates should register the Associate's Web site with as many search engines as possible. Information about registering with search engines can be found at many places on the Internet.

Link Validation
All links and e-mail addresses provided on the Associate's Web site should be validated at least monthly.

Passwords
All passwords (as well as related account/user names) maintained by Associate for Associate's Web site e-mail accounts must follow the best current industry practices and use hardened passwords that are harder to break and more secure than passwords with personal content. These passwords are made up of a combination or random upper and lower case letters, numbers and special characters. For instance a good hardened password would look something like this, "6&gL(^3U." It is also recommended that users change their passwords at least three times a year and, of course, passwords should never be shared. In addition, Associates should avoid using the same password everywhere.

Patent Infringement

A patent is an intellectual property right granted by the U.S. Patent and Trademark Office (USPTO) that gives a patent owner the right "to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States" for a limited time in exchange for public disclosure of the invention when the patent is granted. Real estate professionals typically have little reason to ever consider patents or patent law unless they have a second life as an inventor. Real estate licensees have little reason to wonder if the different technologies, online tools and processes that they use daily might have a feature that violates someone's patent and basically assume the producer or servicer provider has resolved any such possibilities before offering the product or service to others, especially when it is for a price.

The fact that there are patent trolls looking for inadvertent violators does not change the position of real estate professionals in that they do not need to become patent experts, but they should be aware that the trolls are lurking, know what to do if approached by such an unwelcome overture, and understand the legislation addressing patent law used as a weapon.

The real estate industry is becoming more and more dependent on information technology and software to market properties and manage business. The recent increase in patent-infringement claims can drag unsuspecting real estate professionals into expensive and time-consuming litigation, putting all

REALTORS® at risk. Patent litigation reform could help to more narrowly tailor patents and reduce the scope of future infringement lawsuits.

Definitions

A **patent** is a set of exclusive rights granted by a sovereign state to an inventor or assignee for a limited period of time in exchange for detailed public disclosure of an invention.

Patent infringement is the commission of a prohibited act with respect to a patented invention without permission from the patent holder. Permission typically is granted in the form of a license. The definition of patent infringement may vary by jurisdiction, but it typically includes using or selling the patented invention.

A **patent troll**, also called a patent assertion entity (PAE), is a person or company who enforces patent rights against accused infringers in an attempt to collect licensing fees, but who does not actually manufacture products or supply services based on the patents. In other words, they make money by bringing patent-infringement lawsuits against a number of targets and typically settle them for nuisance value because the targets cannot afford or do not wish to engage in the litigation necessary to fight them.

Patent trolls usually obtain patents from bankrupt companies, companies that don't intend to act on a technology and individuals without the funds to develop their inventions. The patent system is vulnerable to abuse because technology and software patents are frequently stated in general terms that do not precisely define what is protected. For example, in 2011 one patent troll sent demand letters to thousands of hotels, stores and coffee shops claiming that their use of Wi-Fi infringed upon its patents. Many of the businesses paid settlement fees ranging from $2,300 to $5,000 rather than attempt to sort out what the patents protected and try to fight back. Other trolls have targeted the aggregation of news stories into podcasts, sending photocopies to email, and using online shopping carts on websites. Small businesses, like real estate offices, may receive patent infringement demand letters for using common business technologies like scanner-copiers, dropdown website menus or website mapping features.

Extortion demands

Patent trolls like PDT have increasingly become a financial and legal threat to businesses including individual REALTORS®, MLSs and REALTOR® associations because the patent trolls demand payments from end users of common technologies such as office scanners and website search alert functions instead of the developers, manufacturers and service providers of these common technologies. Fighting a patent troll is exceedingly disruptive and can eat up valuable time and hundreds of thousands or even millions of dollars for research and legal fees.

Patent trolls sometimes use demand letters to unfairly or deceptively target small businesses without the resources to engage in costly patent litigation. The trolls can send thousands of demand letters without regard to whether the targeted companies have actually violated any patents.

The threat is all that matters. The trolls may have no intention of actually filing a lawsuit and may misrepresent or obscure the patents they own, hoping to intimidate a company into paying them in order to settle the alleged patent violation.

If you get a demand letter

A demand letter is correspondence that states that you are potentially infringing the claims of a patent and requesting that you pay for a license to use the patented invention. You have several options for responding to a demand letter:

- Contact your attorney for assistance!

- Request more specific evidence as to why the patent owner believes you are using patented technology without a license.
- If the person sending the letter fails to abide by Wis. Stat. § 101.197, a complaint may be filed with the DATCP. The DATCP can investigate and refer the matter to the attorney general for legal action if warranted. To file a complaint online, visit https://datcp.wi.gov/Pages/Programs_Services/Complaints.aspx.
- Elect to not respond to the letter if sent strictly for intimidation. However, doing nothing carries a risk if you are later found liable for infringement. The court may impose treble damages if it finds you acted recklessly.
- Negotiate with the patent owner for a license to use the patent or to obtain an agreement that you do not infringe the patent.
- Explore suing the patent troll if you do not infringe the patent claims or if § 100.197 has been violated.
- Contact the software vendor or other supplier of the technology and ask for their help.
- If the letter is deceptive, predatory or in bad faith, file a complaint with the DATCP, the state bar where the attorney who signed the demand letter is licensed to practice, or the Federal Trade Commission at www.ftc.gov.

Additional Resources

- Pages 6-9 of the April 2014 *Legal Update*, "Avoiding Liability for Copyright and Patent Infringements," at www.wra.org/LU1404.
  • United States Patent and Trademark Office demand letter resources at www.uspto.gov/patents/litigation/I_got_a_letter.jsp.

Listing Syndication

Most traditionally, syndication is the automated process of pulling information from the MLS data or from a Firm and displaying it to the public on third party websites. Syndication is basically the sharing of the Firm's listing information beyond the MLS and the company or Associate's personal website. Listing syndication provides companies the ability to advertise their listings to consumers well beyond the local MLS, which is a great marketing benefit.

The syndicator is the third party that is receiving the information from the MLS, Firm or Associate, such as ListHub or Point2. The information is the content that the MLS, Firm or Associate is providing to the syndicator. And a publisher is a third party that the syndicator has entered into an agreement with to resyndicate the information.

Essentially listing syndication is a data license. Simply stated, this data license is entered into by the MLS, Firm or Associate with the syndicator agreeing to allow the syndicator to display that listing information for consumers to see. Traditionally the MLS provides the information to the syndicator through a data license agreement which commonly does not permit the syndicator to resyndicate. Often each MLS provides a list of syndicators that the Firm may choose from to syndicate their information. The Firm may choose all of the MLS provided syndicators, some or possibly none. Most commonly, when the information is being provided by the MLS to these syndicators, the information is most accurate. Because the MLS is the provider of the information to the syndicator and the MLS is informed by the company if the listing is modified, terminated or expired, the MLS will be providing the most accurate information relating to that listing.

Company policy should address whether an Associate may enter into separate syndication agreements. Simply stated, this data license is entered into by the MLS, Firm or Associate, with the syndicator agreeing to display that listing information for consumers to see.

The Firm may enter into its own separate data license agreements but cannot include the information of other companies as part of that agreement. The Firm may choose to prohibit an Associate of their company from entering into a syndication agreement. If the Firm wishes to enter into its own syndication agreement or permits an Associate to enter into a syndication agreement, there are a couple of items to keep in mind when reviewing and entering into the data license agreement. All data license agreements are not created equally and should be treated accordingly.

A data license agreement should provide the MLS, Firm or Associate the opportunity to set the parameters for the syndication. For example, the syndication agreement would allow the firm to remain in custody of the listing content during the term of the listing, and when the agreement expires, the provider agrees to purge the data from its site.

Before signing. Below are just 10 details to consider:

1. Read the fine print.
2. Determine what information to be provided.
3. Limitations, if any, with that information.
4. Permission to resyndicate the information.
5. Rights after the listing expires, terminates or sells.
6. Security of the information.
7. Content that is distributed for consumer viewing.
8. Frequency of picking up the information feed.
9. Term of the agreement, and if an automatic renewal included.
10. Termination rights.

There is one last item to mention: inaccurate information. Inaccurate information is being provided to consumers and has started to create a buzz in the real estate community. The common and frequent incidence most often occurs when sites pull information without permission from syndicators or MLS, and do not update the information regularly or at all. Aside from not having permission to publish this information, which means a cease and desist letter will be sent by your attorney, consumers are coming across this inaccurate information, which creates a great deal of confusion.

Another way this is occurring is through resyndication. Does the syndicator have the ability at their pleasure to resyndicate the information to a third party or publisher? If so, what consequence may that have for the firm? One of the biggest issues in this scenario is trying to figure out the terms of the agreement between the syndicator and the publisher as well as if the publisher can sell your information to another publisher. If so, how does the Associate control the quality of the information, and if the Associate discovers inaccurate information, how does the Associate go about getting that information corrected? Lastly, does the Firm have any rights relating to that publisher's content?

At this time the challenge with inaccurate information related to listing syndication is the unknown regarding legal consequences for the publication of such information. However, it is possible such a scenario could be deemed a violation of the relevant Wisconsin administrative rules and statutes relating to advertising, and Article 12 of the Code of Ethics.

The National Association of REALTORS® has created a checklist of issues to address in a syndication Agreement, see below:

Listing Syndication Policy Checklist

	YES	NO	N/A
Licensed Content			
What specific data is being licensed by Provider to Syndicator? Is it clearly and narrowly defined? Active listings? Sold data?			
Is any of the Licensed Content confidential? If so, why is the Provider sending confidential information? What are Syndicator's responsibilities with regarding to protecting the confidential information?			
Can Provider change the definition of Licensed Content, i.e., limit the number of fields or number of listings being provided, during the term of the agreement?			
Use of Licensed Content			
What are the terms of the license restricting Syndicator's use of the Licensed Content?			
Do the usage terms narrowly address the specific and limited purpose for which Provider is licensing the data? For example, to: i. Access ii. Display iii. Copy or reproduce iv. Transmit or distribute v. Transfer to third parties vi. Create derivative works, products, or services vii. Sell viii. Sub-license			
Re-syndication or Sub-licensing Licensed Content			
Pay attention to all key words included in the license and understand their implications. For example: i. Perpetual versus limited ii. Irrevocable versus revocable iii. Exclusive versus non-exclusive iv. Fully paid or royalty-free			
Does the agreement prohibit Syndicator from using Licensed Content to contact Provider, or Provider's participants, subscribers, or agents, for marketing purposes?			
Will Syndicator provide regular reports related to the Licensed Content on Syndicator's website and/or Publishers' websites? Such reports may include			

information about: i. Which listings have been received by Syndicator ii. Which ones were rejected or accepted iii. How duplicate listings were handled iv. Traffic to the Licensed Content			
Does the agreement prohibit Syndicator from re-syndicating or sub-licensing the Licensed Content to any third party?			
Must Syndicator get Provider's written permission prior to re-syndicating or sub-licensing to any third party?			
If re-syndication or sub-licensing is permitted, are the terms and conditions of such activity clearly and narrowly set forth in this agreement?			
Who will receive and/or be able to display the Licensed Content in addition to the Syndicator? i. Does Provider have the ability to control which parties receive or do not receive the Licensed Content? ii. Can Provider have access to the agreements between Syndicator and Publishers?			
Are the terms of re-syndication or sub-licensing consistent with the terms of the syndication agreement? (E.g., the Publisher receiving the Licensed Content from Syndicator does not have any rights to use the Licensed in any manner different from the terms set forth in the syndication agreement between Provider and Syndicator.)			
Do the Publishers have any right to use Licensed Content to create derivative works? For example, can Publishers create automated valuation models, research studies, or lead generation products that can be sold? If so, how is the Licensed Content being used, by whom, and under what conditions?			
Do the Publishers have the right to re-syndicate or sub-license the Licensed Content?			
What mechanisms are in place to ensure that the Publishers receiving the Licensed Content keep the content current? For example, are Publishers required to refresh or update data every 24 hours?			
What mechanisms does Syndicator have in place to ensure compliance by each of the Publishers?			
Retaining Rights to and Ownership in Intellectual Property			
Does the agreement clearly set forth that no intellectual property rights are granted thereunder; Provider retains the rights in and ownership of all Licensed Content?			
If the agreement permits Syndicator to create derivative works, who owns the rights to such derivative works?			
Are Syndicator and Publishers required to display a copyright notice with the Licensed Content?			
Does the agreement prohibit Syndicator or Publisher from challenging or taking any			

action inconsistent with Provider's rights to the Licensed Content?			
Security of Licensed Content			
How will the Licensed Content be delivered to Syndicator? To Publisher?			
Who has access to the Licensed Content? i. Employees? ii. Subcontractors? iii. Publishers?			
What are the mechanisms that Syndicator has in place for protecting the Licensed Content from unauthorized access? For preventing screen scraping? For detecting data hackers?			
What mechanisms does Syndicator have in place to ensure compliance by each of the Publishers? i. How is the Licensed Content marked, if at all, for tracking? Tagging? Watermarks?			
Are Syndicator and Publishers responsible for complying with all federal and state privacy and information security laws, including breach notification?			
Is Syndicator responsible and liable for unauthorized access or misuse of the Licensed Content by any third party, including Publishers?			
How does Syndicator monitor the security of its systems and the Licensed Content?			
If Licensed Content is scraped or misused, how will the Syndicator respond? What steps will be taken to address and resolve the problem?			
Does Provider have the authority to force Syndicator to investigate and respond to alleged violations?			
What is the Syndicator's privacy policy?			
What is the Syndicator's disaster recovery policy?			
Display of Licensed Content on Syndicator or Publisher Websites			
Are Syndicator and Publishers required to display the source of the Licensed Content in proximity to each listing?			
How will the Syndicator and Publisher ensure that the Licensed Content is kept current? i. When is the data updated or refreshed? ii. Will the date that the listing was last confirmed and updated be displayed with the listing? iii. What happens if a Publisher fails to keep the Licensed Content current? Will the Publisher's feed be terminated by Syndicator?			
What is the process for removing expired or sold listings? i. How does a Syndicator enforce compliance of that process against Publishers? ii. How can Provider request that information be removed from Syndicator or Publisher Websites?			

If Syndicator receives multiple entries for the same property, which entry takes priority? How is that determined?			
Will advertisements for competitors (or non-listing agents) be displayed near Provider's Licensed Content? i. Will Provider's contact information be displayed prominently near the listing? Will it be displayed more prominently than competitors'? ii. Does the Syndicator's website provide a link to Provider's website along with the display of the Licensed Content? iii. Are the competitors (or non-listing agents) the default (or preselected) choice for consumer contact?			
Does the agreement prohibit certain types of content from being displayed near the Licensed Content? (E.g., Offensive, discriminatory, or harassing content.)			
Under what conditions may Provider suspend or discontinue delivery of the Licensed Content?			
Audits and Compliance			
How will Syndicator ensure compliance with the terms of the agreement? How will Syndicator ensure compliance by Publishers?			
Are Syndicators and Publishers required to provide periodic (e.g., every 6 months) written certification that the Licensed Content is being used as authorized under the terms of the agreement?			
Does Provider have the right to audit Syndicator's systems to ensure compliance with the license restrictions and security measures? If so, under what terms?			
What are the liquidated damages that Syndicator must pay Provider for unauthorized use or access to the Licensed Content or for any violation of the agreement by Syndicator or Publishers?			
Warranties and Representations			
Does Syndicator warrant and represent that it will comply with all federal and state laws, including state regulations pertaining to real estate professionals?			
Does Syndicator warrant and represent that its use of the Licensed Content and that its website and any feature or functionality related to Syndicator's website does not infringe an intellectual property right of any third party?			
Indemnification			
Does Syndicator agree to indemnify Provider from any claims related to Syndicator's or Publishers' display or use of the Licensed Content?			
Does Syndicator agree to indemnify Provider from any claims that Syndicator or			

Publisher infringes the intellectual property right of any third party -- including patent infringement?			
Does Syndicator's obligation to indemnify extend past termination of the agreement?			
Amendments			
How can the agreement be amended? i. Is Syndicator required to provide notice to Provider if the terms or conditions of the agreement are changed? ii. Is Provider's written consent required for any modification of the syndication agreement?			
Term and Termination			
What is the term of the syndication agreement? Does it auto renew?			
How can the agreement be terminated? i. May Provider terminate at any time for any reason? ii. May Provider terminate feeds to Publishers at any time for any reason?			
What happens to the Licensed Content after termination? Is it destroyed?			
How will Syndicator ensure that Syndicator and Publishers will be unable to access, use, or retain any Licensed Content upon termination of the syndication agreement?			

For additional information see the National Association of REALTORS® resource, "Internet Displays of Listings: Firm Considerations for Syndication" at www.realtor.org/topics/syndication/checklist-of-issues-to-address-in-a-syndication-agreement.

Firm Policy Manual Language – Listing Syndication

If the Firm allows their Associates to enter into listing syndication agreements, the Firm should determine if it would be appropriate to have a policy that requires written permission and whether the Firm would require review by the Firm of the terms prior to given said authorization to the Associate.

An Associate may enter into a listing syndication agreement unless the Firm (has provided the Associate written permission) (after reviewing the agreement has provided the Associate written permission.)

If the Firm has determined company policy prohibits an Associate from entering into listing syndication agreements, then such a policy should be communicated in writing to the Associates.

An Associate may not enter into a listing syndication agreement under any circumstances.

Social Networking

Social network services , such as blogging, Twitter, FaceBook, Active Rain and Linkedin, Pintrest, Ning, and Real Town focus on building and interconnecting online communities of people and business professionals who share a similar set of interests, professional trades and activities. Social networks are becoming more popular on the Internet and are often measured in terms of "social connectiveness." From a business perspective, it allows professionals to find, connect and network with colleagues and organizations

in the same field. According to RealtorMag in April 2012 the top 6 social media web sites, in order from one to six were: Facebook, Twitter, Pintrest, LinkedIn, Tagged and Google+.

Social networking sites are Web communities people join -- usually free of charge -- through a simple registration process. Members can post profiles and invite other members to become their friends.

Blogging

Blogs, short for "web logs" are online business journals or commentaries that can provide a great marketing tool for a real estate business. A blog is like a regularly updated collection of short, practical articles where an Associate can give readers tips and useful links, and share his or her viewpoints, knowledge, and expertise on matters pertaining to real estate, the local community, etc. Readers return if the blog has interesting headlines and provides them with something of value.

Blogs are free marketing -- free blogs are readily available through ActiveRain (www.activerain.com), Blogger (www.blogger.com), WordPress (www.wordpress.com), RealTown (www.realtown.com/blogs) and others. An Associate can simply create an account, choose a template and start a blog.

Each blog post serves as a Web page that can show up in search results. When an Associate links back to the Associate's Web site in the blog, the Associate is actually boosting the rankings of the Associate's Web site. When an Associate writes a blog post, it can be found by everyone in the world any time day or night. Unlike postcards or brochures which are usually discarded, a blog post may remain accessible forever on the Web. Reference to the blog's Web address in an Associate's e-mail signature, advertising and marketing materials maximize its impact.

Blogs enable increased presence on major search engines like Google and Yahoo!. A well-written, creative real estate-related blog community will help set an Associate apart from the competition and allow the Associate to strengthen brand awareness and customer loyalty. Blogs can be used to penetrate niche markets that are underserved. Blogs also are a great way of getting an Associate's name out in front of the public as a real estate expert -- the media relies on blogs for source material. Blogs don't just have to be text. Videoblogs (or vlogs) are also popular.

Article 15 of the Code of Ethics prohibits REALTORS® from knowingly or recklessly making false or misleading statements about competitors, their businesses or their business practices. "The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means." *(Adopted 1/10, Amended 1/12)*" (Standard of Practice 15-2). There also is a duty to refrain from making false or misleading statements about other real estate professionals, their business and their business practices which includes publishing a clarification about or removing statements made by others on electronic media controlled by the REALTOR® once the REALTOR® knows the statement is false or misleading. *(Adopted 1/10, Amended 1/12)* (Standard of Practice 15-3).

- Associates must include a disclaimer on any Associate blog indicating, "The views expressed on this blog are mine alone and do not necessarily reflect the views of the Firm."
- Associates shall establish terms of use for the Associate's blog which shall be approved by Firm. The terms of use should prohibit the posting of unlawful or objectionable materials and any use of the blog to harass or stalk anyone. Any content that infringes on the rights of others or expresses a preference based upon an individual's membership in a protected class should be prohibited and the host should reserve the right to take down any postings that violate these policies.

- The Associate should disclaim liability for any third-party sites that may be linked and for content posted by others. A privacy policy should be included. The blog must disclose the identity of the Associate and the Firm.
- Associate blogs are subject to the same policies and procedures as Associate Web sites unless otherwise specified by Firm in writing.

Facebook

Facebook (www.facebook.com) is the best known of these sites. Facebook started out as an exclusive college-only platform and quickly spread. Facebook can be used to network with past clients and customers, other real estate professionals, and other groups that will hopefully include future clients. Associates can also create Facebook ads and pages. Facebook also allows members to create marketing flyers for targeted distribution through networks. For tips for attracting prospects using Facebook, see http://news.wra.org/story.asp?a=1315 and http://news.wra.org/story.asp?a=1334.

Twitter

Twitter (www.twitter.com) is a free micro-blogging service that lets users send out brief (140-character) text messages to everyone on your subscriber list (who are known in the Twitter world as your "followers"), via computer, cell phone or smart phone. You can receive updates from others by following their Twitter feed" in any format you choose—on your phone, e-mail, RSS aggregator, etc. Associates can use Twitter to let their clients know what they are doing for them, post short descriptions of new listings or keep their team on schedule, but they must be careful to keep it professional and not neglect their business responsibilities.

Associate Twitter is subject to the same policies and procedures as Associate Web sites unless otherwise specified by Firm in writing.

A quick how-to Twitter video is found at http://dotsub.com/api/smallplayer.php?filmid=3066&filminstance=3068&language=none on the Twitter Web site.

Pintrest

Pintrest (http://pinterest.com/) is a free online pinboard where members can save photos, videos, posts, and link to URLs and image files. Members create their own pinboard using images from their own website or other sites which are then linked back to the place of origin. For real estate licensees they are able to place an image (for example great fireplaces) which then links the viewer back to the licensee's site. Over the course of 2012, Pintrest became the third most popular social site behind Twitter and Facebook.

LinkedIn

LinkedIn (linkedin.com) is an online network of more than 20 million experienced professionals from around the world, representing 150 industries. It is geared to professionals seeking to expand their circle of contacts. Once connected to someone on LinkedIn, Associates can link with who that person is connected to. Associates can use to network with not only other firms but past and future clients as well. LinkedIn resembles a more professional version of Facebook with anyone from CEOs to web designers on the site.

For example, Associates may become a member of the Wisconsin REALTORS® Association LinkedIn group at www.linkedin.com/groups?gid=118489&sharedKey=4C234B272B6E. The WRA's goal is to promote the advancement of real estate in Wisconsin and provide cutting edge tools to help REALTORS® enjoy a successful career. By registering to be a member of the WRA group, an Associate would consent to have Associate's name and e-mail address be accessible by the official representative of the WRA group, and to be identified as a WRA group member in Associate's profile and the LinkedIn search results. For social media marketing information, visit http://news.wra.org/story.asp?a=1143.

ActiveRain

ActiveRain (www.activerain.com) is a free online networking site for real estate professionals across the United States. Members are categorized by geographic location and create profiles containing a photo, general information regarding specializations, etc. Blogging on the site is very active, as members post comments to exchange ideas and information.

Ning

Ning (www.ning.com/) allows members to submit photos, videos, blogs and the like thus creating your own social network which has built-in integration with Facebook, Twitter and YouTube. The member has the ability to determine who has access to the customized site, makes the member's social network accessible on any device and to create apps for both iPhone and Android.

Real Town

Real Town (www.realtown.com/) is a resource of members to articles from industry experts and publications from all over, blogs relating to real estate matters, groups created by members which create both networking opportunities and public and private communities including RealTalk which is the "most-respected and longest-running real estate community on the internet.

Associate social networking is subject to the same policies and procedures as Associate Web sites unless otherwise specified by Firm in writing. Associates using social networking must remember that social media are never private. What is said on social media reflects upon the Associate and the Firm, and it may be circulated endlessly and cannot be taken back. Thus Associates using social media must do so in a professional and businesslike manner and conduct any personal networking through separate sites or means.

A 2011 nCircle Survey regarding information security and compliance trends found that only 44% of employees comply with social media policies, a reduction from the 48% in 2010. The study also discovered that while 68% of companies have social media policy, only 59% monitor such use in the office.

Safety Reminders

- Be careful of what information is placed on social media. For example, don't reveal where and when you're going on vacation, if you blog or post personal information about your family, upbringing, etc. make sure that none of your passwords relate to your pet's name, child's name, hometown, etc.
- Consider signing up for a password management system such as LastPass, Intuitive Password, PasswordBox, StickyPassword Dashlane, etc.
- Re-evaluate whether single sign-on is appropriate for you. Single sign-on allows a user to have one sign-on to then have access to Facebook, Twitter, etc. The downside may be the ability of others to track your online activity.
- Be aware of malware. Malware can infect your devices and leave you without your technology after it infects your device. Before you open, install, or download an app make sure it's coming from a legitimate source.
- Privacy. It's a good practice to sign-out of a website so that you can evaluate the privacy settings because companies are often recalibrating privacy and security settings. Logging out will allow you to confirm all of your original setting are still consistent.

All text posted in social media, including blogs, Twitter, and Facebook shall be the Associate's own and not plagiarized or copied without the author's permission, although quotations properly cited to the source and retweeting are permitted.

- *Associates may not write regarding listings of other Associates of Firm.*
- *Associates may not write regarding listings of other brokerages.*

Associates must ensure that postings do not contain unauthorized disclosures of confidential information.

Chapter 5

General Policies for Associate Use of Computers

Passwords

All business e-mail accounts shall be protected with a password. Associate passwords must follow the best current industry practices and use hardened passwords that are harder to break and more secure than passwords with personal content. These passwords are made up of a combination or random upper and lower case letters, numbers and special characters. For instance a good hardened password would look something like this, "6&gL(^3U." It is also recommended that Associates change their passwords at least three times a year and, of course, passwords should never be shared. Thus, a second suggestion is to take advantage of software available for you to keep track of all of your passwords. In addition, Associates should be mindful not to use the same password everywhere, there should be diversity. Some password management software utilities include:

Password Safe: https://pwsafe.org/
Password KeePass: http://keepass.info

Personal Use of Office Computers, E-Mail and Internet Services

A real estate office risks potential liability when an Associate uses office computers, e-mail or Internet services for personal use. If the Associate is transacting personal business using office computers and e-mail a consumer may mistakenly believe the Associate is acting on behalf of the company. Even though the Associate is doing personal business, the company may become liable under the principle of implied agency.

Inappropriate personal or business use of e-mail or the Internet can also result in liability based on fair housing violations, charges of sexual harassment, libel charges, etc. Most of us are familiar with individuals who distribute e-mails to friends and Associates with questionable or controversial content. While this may seem relatively innocent to the individual, when held up as one element of a hostile environment in the workplace, the Firm can face substantial liability in a harassment lawsuit. Even relatively isolated misuses of e-mail and the office computer system will be captured on system backups and remain subject to scrutiny by attorneys and government officials. Firms must share some simple rules with all Associates and, more importantly, enforce these rules:

- The company e-mail and Internet systems are for business purposes only.
- Personal business, Internet surfing and other entertainment should be done on personal equipment using personal e-mail and Internet services.
- No inappropriate personal or business use of e-mail or the Internet will be tolerated.
- Any use of e-mail or the Internet which couldn't be shared at an all company meeting is likely inappropriate.
- No use of the company e-mail or Internet services is private and the company reserves the right to make random audits at any time.
- Inappropriate use of company e-mail or the Internet may be cause for dismissal.
- Associates agree to indemnify and hold harmless the Firm for any liability arising out of improper use of Firm's technology systems.

Privacy – Confidentiality

Privacy Statement

Associates must abide the terms and conditions of the privacy state on the Firm's Web site and are required to have a privacy statement on any Associate Web site as described by Chapter 4 above.

Internal Confidentiality Issues

There should be no expectation of confidentiality for any Associate Internet activity using Firm's hardware, software or intranet or any e-mail received or sent by or Associate using company computers and accounts. The simple rule, if the material is not something Associate would like discussed in a company meeting it does not belong in an e-mail or Web site on a company computer.

Consumer Confidentiality

One hundred percent security is neither possible nor ordinarily required to communicate with parties to whom a duty of confidentiality is owed. However, e-mail comes with a reasonable expectation of privacy for most communications. If confidentiality issues are important enough in a particular transaction, there are encryption technologies should be employed.

Third Party Confidentiality

Like faxes, there is a concern that e-mails can be received by a third-party other than the person intended to receive the e-mail. Third party confidentiality issues may be addressed using a disclaimer like the following:

> *This e-mail message is intended solely for the person to whom it is addressed and may contain confidential and/or privileged information. If you have received this e-mail message in error, but are affiliated with the person to whom it is addressed, please notify the addressee that the e-mail has been received (otherwise delete it). Any printing or other use of this e-mail message by persons other than the addressee is prohibited.*

Firewalls

Computers with a permanent connection to the Internet are vulnerable to information theft and other attacks. Firewalls provide some level of security against these attacks. Firewalls are either software applications installed on a server, integrated within hardware such as a router, network hub or built-into the operating system, such as Windows. If Associate uses a personal computer to access the Firm's Intranet with a permanent connection, Associate shall install a "firewall" to minimize information theft and other attacks. They can either run as software applications on a server, or hardware with an integrated firewall can be purchased, such as a router or network HUB. An example of firewall protection include:

Zone Alarm: www.zonelabs.com

Software Copyright

The Firm licenses the use of computer software from a variety of outside sources. Firm does not own this software or its related documentation, and unless authorized by the software developer, does not have the right to reproduce it. Associates shall use the software only in accordance with the relevant license agreement. Any duplication of copyrighted software, except for backup purposes, is a violation of the federal Copyright Law. All software installed in the information systems must be pre-approved by the network administrator and be non-proprietary or properly licensed.

Record Keeping

Transaction Record Keeping

Wis. Admin. Code § REEB 15.04(1) provides, "A Firm shall retain for at least 2 years unless required by federal law or there is an active or ongoing investigation by the Board, exact and complete copies of all listing contracts, agency agreements, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence received or prepared in connection with any transaction. The retention period shall run from the date of closing of the transaction or, if the transaction has not been consummated, from the date the listing contract or the agency agreement is terminated. These records shall be available for inspection and copying by the board. The firm shall, upon request of the board, promptly send exact and complete copies to the department without charge to the department or board. The Board may not require copies to be submitted beyond the retention period. Electronic or digital means may be used to retain records."

Therefore, Associates and Firm should retain copies of all e-mail sent or received in connection with a real estate transaction. This can be accomplished by either printing e-mails, saving an electronic copy (archiving), or preferably saving the transaction-related e-mails in a read-only PDF. Whether saved electronically or in writing, those e-mails required to be saved under § REEB 15.04 must be retained in the appropriate transaction file. If being saved electronically, a folder established for the transaction would be an acceptable means of "filing" the e-mail in a "transaction file."

Archiving Your Web Site

Keeping a record of Associate's entire Web site and all its changes over time is very important. This will make it much easier to defend against any legal action against Associate and/or Firm as a result of something found on Associate's site. It is a good idea in any case to have Associate's Web hosting service maintain a complete digital backup of the entire site, including incremental changes. Also, Associates should maintain a hard-copy print file of the site that includes printouts of any substantive changes as they occur.

Harassment/Offensive Content

Use of the Firm's or Associate's information systems for harassment, in any form, will not be tolerated. The information systems are not to be used inappropriately to access or forward offensive content. Offensive content includes, but is not limited to, messages or information that will disparage or threaten individuals or groups based on their gender, race, national origin or other protected class; content containing adult oriented information (i.e., primarily sexual theme, offensive language or graphics, etc.) or any other material which might disrupt the work place. Accordingly, conduct including, but not limited to, accessing or forwarding offensive comments, jokes/riddles, cartoons, pornography, profanity and offensive messages or information in any form are expressly prohibited. Any Associate who receives communications containing offensive content shall immediately report the situation to the Supervising Firm, consistent with Firm's prohibition of harassment. No Associate Web site may contain offensive content, accessible on Web sites linked to or from the Associate's site, or in any hidden code.

Chapter 6

Company Policies for Data Security and Privacy

Protecting Consumers

Technology has dramatically increased the amount of consumer data collected and used by businesses. Several recent high profile data breaches, coupled with a high rate of identity theft crime as made data security and consumer privacy a critical issue. Firms and Associates who collect Social Security numbers, parties' personal financial information or other personal information must address data security and disposal concerns.

FTC: Five Key Principles to a Sound Data Security Program

The Federal Trade Commission has set forth the following five key principles for Firms and Associates to follow when creating a data security program https://www.ftc.gov/tips-advice/business-center/guidance/start-security-guide-business including a training video.

1. Take stock. Know what personal information you have in your files and on your computers, who has access, how the information is collected and if consumers have the ability to opt-out. (see the *NAR Data and Security and Privacy Toolkit* for an information inventory checklist.

a. Perform an information inventory to discover what type of personal and confidential information the company maintains regarding clients, customers and others and why. Determine how the information is collected, where it is held, and who maintains or has access to this information. Look at whether a user or consumer may opt out and not provide the information. The more thorough the inventory, the better equipped the business will be when crafting a written data security program and the better protected the company will be going forward. In order to track what information a business is collecting, conversations should be had with any information technology staff, human resources personnel, accounting personnel, outside service providers and independent contractors. Firms should also inventory all computers, laptops, flash drives, disks, home computers, mobile devices and other equipment to find out where sensitive data is stored.

b. Information Inventory Checklist. See if you can answer the following questions:

i. Who sends personal information to the business?

ii. How does the business receive personal information?

iii. Where does the business keep the information collected at each entry point?

iv. Who has-or could have- access to the information?

v. What kind of information does the business collect at each entry point?

2. Scale down. If the Firm or Associate does not have a legitimate business need for consumers' personal identifying information – then don't collect it. If there is a legitimate business need, then keep it only as long as it's necessary and then properly dispose of it.

If the company collects credit card information, the FTC offers a few tips for maintaining security:

- Only print the truncated credit or debit card number on consumer receipts and do not include the card's expiration date.

- Do not retain the credit card account number or expiration date unless there is an essential business need to do so.
- Check the default settings on any software that reads credit card numbers and processes the transactions. Sometimes software is preset to keep information permanently, so change the default setting to make sure only necessary information is kept.

3. Lock it. Protect the information that you keep using physical (locked files, limited access, etc.) and electronic (encryption, anti-virus, secure connections, passwords, firewalls, etc.) security measures. All electronic documents should be stored in a read-only format or other unalterable format in order to demonstrate that the documents are in their original state. (see the *NAR Data and Security and Privacy Toolkit* for a checklist for protecting personal information).

The FTC recommends four key data security and protection measures for the company data security plan:

a. physical security,

b. electronic security,

c. employee training and

d. the security practices of contractors and service providers.

According to the FTC and many state laws, proper disposal of personal information is an important step in any data security program. But before the business begins to dispose of information and documents, it is best to have a systematic plan regarding document retention and document disposal. The Document Retention Policy addresses what documents need to be retained, for how long, in what format and how they may be properly disposed of once the retention period has ended.

a. identify sources and types of information.

b. identify and document current retention policies

c. evaluate existing policies

d. create a policy

The Document Retention Policy should include the following:

i. How long certain documents should be retained

ii. Policy's effective date and date of last review

iii. Individual responsible for the policy

iv. Purpose of the policy

v. Definitions (if needed)

vi. Process for preserving records if litigation arises or is likely

vii. Process for document disposal at the conclusion of the applicable retention period.

e. legal review of document retention policy

f. distribute the policy to employees and independent contractors and make sure that the policy IS being followed.

g. plan to periodically review the policy to make sure it is still relevant.

4. Pitch it. Properly dispose of what you no longer need. Create a Document Retention Policy (see the *NAR Data Security and Privacy Toolkit for a checklist for creating a document retention policy*).

Disposal of Consumer Report Information

In an effort to maintain consumer privacy, protect against unauthorized access, and protect against identity theft, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (http://www.ftc.gov/os/statutes/fcrajump.shtm) regulates the use of consumer report information such as personal information contained in a credit report, employment background, medical history, CLUE Report or tenant rental history. Specifically, the FTC's Disposal Rule regulates how individuals and businesses dispose of this sensitive consumer information when it is no longer needed.

The FTC Disposal Rule protects consumer report information, that is consumer reports and the information derived from them. This includes information obtained from a consumer reporting company that is used – or expected to be used – in establishing a consumer's eligibility for credit, employment, or insurance. Credit reports, credit scores and CLUE Reports are consumer reports. So are the reports that businesses or individuals receive with information relating to a person's employment background, check writing history, tenant history or medical history. The FTC Disposal Rule applies to all people and both large and small companies that use consumer report information including real estate firms and agents.

The standard for proper disposal of information derived from a consumer report is intended to be flexible. The Disposal Rule allows organizations and individuals to determine what measures are reasonable based on the sensitivity of the information, the costs and benefits of different disposal methods, and changes in technology. Although the Disposal Rule applies to consumer reports and the information derived from consumer reports, the FTC encourages those who dispose of any records containing a consumer's personal or financial information to take similar protective measures. Reasonable measures for disposing of consumer report information may include:

- Burning or shredding papers containing consumer report information so that the information cannot be read or reconstructed;
- Destroying or erasing electronic files or media containing consumer report information so that the information cannot be read or reconstructed;
- Hiring a document destruction contractor to dispose of material specifically identified as consumer report information consistent with the rule after conducting a due diligence review of the contractor's qualifications, reputation and integrity.

5. Plan ahead. Create a plan to respond to security incidents. (see the *NAR Data Security and Privacy Toolkit for a checklist for implementing a data security program and for drafting a breach notification policy*).

Firm and Associates must be diligent in their efforts to protect consumers' sensitive personal information. The REALTOR® Code of Ethics explicitly acknowledges a REALTOR®'s obligation to preserve the confidentiality of personal information provided by clients in the course of any real estate agency or non-agency relationship — both during and after the termination of these business relationships. Accordingly, Firm and Associates must:

- Publish a privacy policy on the Firm's Web site and on any Associate Web site (see Chapter 4 of this manual)
- Use strong passwords and controls to prevent unauthorized access to systems, data, and communications;
- Establish methods to detect unauthorized access, use, or alteration of data;
- Store sensitive data only for so long as it is needed;
- Encrypt sensitive data when stored or transmitted;
- Establish personal responsibility for data security;
- Test and monitor the effectiveness of company system safeguards and procedures;

- Develop plans for responding to security incidents if they occur.

Wisconsin Data Breach Law

Wis. Stat. § 134.98 provides that whenever an entity that collects personal information in the ordinary course of its business becomes aware that an unauthorized person has acquired the personal information, the business shall notify the individuals whose personal information has been acquired. This law applies to any entity that does business in Wisconsin, but does not apply to a business conducted solely by an individual, such as a sole proprietorship.

Personal information under this law includes an individual's name; driver's license or state identification number; and financial account number, including credit or debit account number or any security code access code or password that would permit access to an individual's financial account. The fact that an entity has failed to comply with this law may be used as evidence in court to prove that the entity is liable for damages incurred by an individual whose identity has been misappropriated.

Such a due diligence inquiry might include:

- Reviewing an independent audit of a disposal company's operations and/or its compliance with the rule;
- Obtaining information about the disposal company from several references;
- Requiring that the disposal company be certified by a recognized trade association, and;
- Reviewing and evaluating the disposal company's information security policies or procedures.

For additional information and resources, visit the Wisconsin Office of Privacy Protection website at http://datcp.wi.gov/Consumer/Office_of_Privacy_Protection/index.aspx.

NAR Data Privacy and Security Principles

REALTORS® collect, store and share a great deal of consumer information. Often, the collected data is of a sensitive financial nature. REALTORS® recognize that as data collection continues to become a valuable asset for building relationships with their clients, so does their responsibility to be trusted custodians of that data. Consumers are demanding increased transparency and control of how their data is used.

Therefore NAR endorses the following Data Privacy and Security principles:

1. Collection of Personal Information Should be Transparent.
2. Use, Collection and Retention of Personal Information.
3. Data Security.
4. Disclosure of Personal Information to Third Parties.
5. Maintaining Consumer Privacy in Business Relationships with Third Parties.
6. Single Federal Standard.

Red Flag Rules

Some associations and brokerages may also be subject to the Identity Theft Red Flags and Address Discrepancy Rules (Red Flags Rules) contained in the Fair and Accurate Credit Transactions Act of 2003 (FACTA). The Red Flag Rules require all users of credit reports to take certain actions whenever a credit report contains a notice of an address discrepancy. The rules also require all creditors, and those that regularly arrange for credit to be provided, to establish policies and procedures to protect against identity theft. Although the Red Flags Rules became effective on January 1, 2008, the mandatory compliance date has been delayed several times and now is scheduled for December 31, 2010. See the Red Flags Rules resources at www.realtor.org/topics/identity-theft-red-flags-and-address-discrepancies and the FTC at www.ftc.gov/bcp/edu/microsites/redflagsrule/index.shtml.

For more information about Safeguarding Personal Information, see the May 2013 *Legal Update* at www.wra.org/LU1305.

Associate Acknowledgement of Receipt

Associate Acknowledgement of Receipt, Review and Agreement

I acknowledge that I have received a copy of the Greater Madison Realty, LLC dba RE/MAX Preferred Office Policy Manual and understand its provisions. I understand that the Manual includes summaries of and references to real estate license law procedures and requirements, which I am obligated to observe, as well as general guidance on rules of office conduct. I understand that the Firm reserves the right to amend and change the policies or procedures expressed in the Manual at any time. I will read amendments and changes implemented by the Firm as they supplement the original Office Policy Manual. This confirms my annual reaffirmation also, unless I note I do not reaffirm in writing to the broker of record at such time of changes implemented.

Date:_____

_____
(Associate Signature)

_____
(Type or print Associate's Name)