



# **Real Estate & Mortgage Office Policy Manual**

Revised 01/01/2019

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# **1. About the Company**

## **1.1 General**

Each office is independently owned and operated. The Company is licensed by the Department of Real Estate under the following name: Excel Realty & Mortgage, Inc., Excel Realty, Excel Realty Fine Homes, Excel Mortgage Services, Excel Realty and Mortgage, Atlantic Pacific Funding, Reliance Lending Group, and Excel Realty & Mortgage. Additionally, the brokerage is a member of the National, California, Bay East, Sacramento, and Santa Clara Association of REALTORS®.

## **1.2 Mission Statement**

### **EX·CEL**

Verb

The ERM philosophy of EXCELLENCE in real estate and lending with an attitude of, “if it can be done, it will be done”

### **MISSION**

Excel Realty & Mortgage, Inc. offers real estate and mortgage professionals serving California the opportunities to achieve higher levels of sales success by providing the best tools, technology, and products to maximize commission earnings within a no-commission-split, minimum fee financial structure.

### **VISION**

Excel Realty & Mortgage, Inc. is the company of choice for real estate and mortgage professionals who excel in meeting their client needs, exceeding personal sales goals, and achieving financial freedom.

### **VALUES**

We believe success is based upon integrity and achieved through the commitment to clients, family, and the search for life balance.

## **2. Policy Manual**

### **2.1 General Purpose**

The purposes of this policy and procedure manual are to:

- Establish a uniform system of daily conduct by and between us when dealing with each other, other members of the Company, our clients and members of the public.
- Provide you with policies and guidelines to help provide quality service to our clients and avoid disputes with and liability to others.
- Provide an orderly system of conflict resolution.

### **2.2 Incorporated Items**

The following items are incorporated into this manual by reference whether or not the items are attached:

- California Real Estate Law
- The National Mortgage System Registry (NMLS) Regulations, Rules, Laws
- The Bylaws Rules and Regulations of the National, State, and Local Associations of REALTORS®, of which this Company is a member, including the Code of Ethics and Standards of Practice of the National Association of REALTORS®
- The Bylaws, Rules and Regulations of the Multiple Listing Service(s) of which this Company is a member

## **2.3 Responsibilities**

You are responsible to work in accordance with Company policies and procedures. Your failure to comply with the policies and procedures within this manual may result in your termination from this Company.

## **2.4 Exceptions to Policies and Procedures**

When exceptions appear to be needed, they shall be discussed in advance with the Manager. Any exceptions shall be in writing and apply only to the particular situation for which the exception is granted.

## **2.5 Changes in Manual**

This Policy manual may be changed from time to time by the Company. Changes can be made at any time and will be distributed periodically. Proposals for policy or procedural changes should be sent to the Manager for study and recommendation. Any questions as to the existence of policy at any time in the past should be directed to your Manager.

## **2.6 Exclusions from the Manual**

This Manual applies only to real estate agents and loan officer with Excel Realty & Mortgage, Inc.

## **2.7 Conflict with Salesperson/Broker Independent Contractor Agreement**

In the event of a conflict between this Policy Manual and your Salesperson/Broker Independent Contractor Agreement, the terms of this Policy Manual shall prevail.

# **3. Independent Contractor Relationship**

## **3.1 Independent Contractor**

You have signed an Independent Contractor Agreement with the Company and are associated with this Company as an Independent Contractor. You do not have an employee-employer relationship with this Company. You are considered to be an Independent Contractor for tax purposes and will receive a 1099 at the end of each calendar year. The Company will NOT withhold taxes or Social Security from your compensation. Payment of taxes and Social Security contributions are your responsibility. You are also considered an independent contractor for purposes of Unemployment Insurance. You are not subject to the minimum wage laws. The Company will provide Worker's Compensation insurance for you.

### **3.2 Broker-Associates**

If you are a Broker-Associate, you may not associate with another broker or company nor engage in real estate brokerage transactions under your own broker license without the prior written consent of your Manager.

### **3.3 At-Will Status**

You are associated with the Company for an unspecified term on an at-will basis. Except where it is otherwise expressly agreed in writing with the Company, either party may terminate your association at any time with or without cause or reason.

## **4. General Office Procedures**

### **4.1 DRE License and Requirements**

You are required to maintain a valid California real estate broker or salesperson license in good standing while associated with this Company. If your license expires, you may not engage in any activities on behalf of the Company for which a real estate license is required. Your Manager may designate another Company salesperson to handle your prospects, listings and transactions during any time your license lapses, and allocate such reasonable compensation to that salesperson for work performed.

Your Company's Broker is charged by California law to review, supervise and manage the activity of all salespersons. The Broker may rely on management and staff support to perform this function. You are expected to cooperate with your Manager and assistants in the handling of files, documents and procedures in accordance with this Policy Manual and California law.

The Company may occasionally sponsor education courses, some of which may have Continuing Education credits. However, it is your responsibility to keep current on changes in industry practices and to take advantage of available education and training programs to maintain your professionalism and your ability to properly represent your clients. It is also your responsibility to obtain all Continuing Education courses so as to renew your license in a timely manner.

#### **4.1.1 Authorized Transactions**

You are authorized to perform real estate and mortgage activities based on the type of valid license you have and the agreements you have with Excel Realty & Mortgage, Inc.

For example, to perform mortgage loan activities you must have a valid NMLS license and a valid CalBRE license. You are only authorized to perform residential real estate and mortgage transactions only. To perform commercial related transactions, you must have prior written approval from your broker before you enter into any contract.

Commercial transactions are authorized based upon the type of transaction, the experience level of the agent, etc. If you are not authorized to conduct the commercial related transaction the broker may assign / refer the commercial transaction to another agent within Excel Realty & Mortgage or to a commercial agent outside of Excel Realty & Mortgage.

#### **4.2 Office Hours and Use**

The office is available for your use even after normal business hours. You are encouraged to use the office whenever necessary for client meetings. Under no circumstances is the office to be used for business other than that of the Company without the prior permission of your Manager.

You are reminded to exercise reasonable caution and care at all times when using the office and meeting clients. If you are the last to leave the office in the evening, be sure to properly secure the building, closing all windows and making sure that all doors are locked.

#### **4.3 Desk & Equipment**

You will have access to community desks to meet clients. You are responsible for keeping your desk and the area immediately around it in a neat and professional appearance. All private information must be locked up and out of view of the public. You are required to maintain a password and antivirus software on your personal computer, that is used to conduct real estate and loan transactions.

#### **4.4 Company-Supplied Items**

The Company will separately publish lists of items supplied at no cost to you, and items provided at a cost to you. This list and the costs may be modified from time to time. Any other supplies not so identified are to be provided by you at your own expense. Your Manager will establish a procedure for the handling of your expenses with the Company. You are expected to comply with this procedure for the billing and collection of expenses incurred by you. Any equipment and supplies provided by the Company are

for your business-related use and may not be used for your personal use without the Company's prior consent.

#### **4.5 Business Cards**

The cost of business cards ordered will be responsibility of the agent.

#### **4.6 "For Sale" Signs**

The Company will separately publish a list of the costs of these signs to be borne by you.

**BE AWARE:** Certain municipalities, housing developments and Homeowners' Associations have strict guidelines, rules, and ordinances regarding the size and placement of signs. You must determine whether or not the Company's sign and its placement will conform to these requirements BEFORE installation. If any sign is confiscated, impounded or otherwise lost, you will be responsible for all costs incurred to recover or replace that sign.

You are responsible to have the sign removed immediately once the listing expires or the property sale is closed.

You are encouraged to obtain a supply of "sign riders" with your name and/or contact number to place on the sign. Sign riders must be purchased through a vendor selected by the Company to maintain graphic consistency and must conform to any size rules as noted above.)

#### **4.7 Conference Rooms**

Conference rooms are available for your use. They are available on a first come, first served basis unless a reservation system has been set up by your Manager. Be considerate of others. When you finish using the room, leave promptly and be sure to clean up when you leave.

#### **4.9 Office Equipment**

It is your responsibility to make all copies necessary for each file. Copies are to be made at your own cost. The fax machine is available to send and receive contracts. Please be considerate of others and limit your time when using shared equipment. You are expected to provide your own computer for your own personal use.

#### **4.10 Keys and Access Cards**

If authorized by the broker, you can receive a door key to the office. Do not allow anyone else to use these items absent your Manager's prior written consent. All of these items must be surrendered immediately upon your termination.

#### **4.12 Professional Conduct**

As a member of the National Association of REALTORS®, you are expected to be familiar and comply with the Code of Ethics.

We place a high value on cooperation in the Company between our salespersons, both in the sharing of market and inventory information, as well as working together to provide a high level of service to our clients. Cooperation between salespersons fosters a congenial work place, ultimately benefits everyone, and fosters a high level of service to our clients.

#### **4.13 Personal Appearance**

You are a professional and should project a quality and professional image. Please exercise good judgment in your dress and appearance when dealing with the public, your clients, other agents and service providers.

#### **4.14 Working at Home**

It is permissible to work from your home. However, remember that the Broker is required to supervise your activity. All transaction are required to be uploaded to our online transaction management system within 3 days of taking a listing and or writing a purchase agreement. All loans must be submitted to processing within 24 hours of taking a loan application. Loan officer should be advised that there are 6 required items of information need to have a valid loan application. Be sure that all listings, transactions, files and documents that you work on in your home are promptly brought into the office for review by your Manager in the same manner as if you were working from the office.

#### **4.15 Alcohol and Drugs**

Possession, use, sale or being under the influence of alcohol or drugs on or off company premises while conducting Company business is prohibited. Use of alcoholic beverages is not permitted in the office at any time without the Company's prior consent. Use good judgment. NEVER DRINK AND DRIVE.

#### **4.16 Smoking in the Office**

Smoking is not permitted in the office. Smoking is only allowed in designated areas identified by your Manager.

#### **4.17 Office Meetings**

We will have occasional office meetings covering real estate and loan topics.

#### **4.20 Professional Associations**

##### **A. Multiple Listing Service**

The Company is a member of the many MLS Service that services our market area. As an associate with this Company, you are required to join the MLS (unless you solely do loans). The MLS provides on-line computer access to a variety of services and information, including listings contained in the MLS. You are encouraged to use the on-line service to obtain the most current MLS information available. This does not apply to Loan Officers that solely work in the mortgage field.

As an MLS member, you are required to be familiar with, and adhere to, the rules and regulations of the MLS. A copy of those rules and regulations are on file in the office or through the MLS. If you fail to comply with those rules and regulations, or fail to pay your MLS bill when due, you and/or the Company may be fined, suspended or expelled, and your listings may be removed from the MLS. You will be responsible for payment of any and all fines levied against you and/or the Company resulting from your noncompliance. Furthermore, your noncompliance may result in your termination from this office.

##### **B. National, California and Local Associations of REALTORS®**

You are required to maintain a current membership in the National, California and Local Associations of REALTORS® at your own expense. Membership is billed annually through your local association of REALTORS®. This does not apply to Loan Officers that solely work in the mortgage field.

#### **4.21 Fees and Commissions**

All fees and commissions must be made payable to the Company. You will be paid out of the fees and commissions earned by you, and for which you are the procuring cause, based on the Compensation Schedule published separately by the Company. Payment to

you is conditioned upon actual receipt of the compensation by the Company. Payment is further conditioned upon review of your file by your Manager and the file being deemed by him/her to be complete.

#### **4.22 Monthly Advances/Draws**

It is the Company's policy to NOT pay monthly advances or draws to our salespersons.

#### **4.23 Tax Reporting**

At the end of each calendar year or as soon thereafter as possible, the Company will provide you with an Internal Revenue Service Form 1099 setting forth compensation paid to you. Your income earned and expenses incurred have significant tax consequences. You are encouraged to get competent independent tax advice and keep accurate records of earnings and expenses.

#### **4.24 Deductions**

All expenses of any kind incurred by you with the Company; or incurred by the Company on your behalf, including unpaid draws and advances, expenses for advertising, supplies, signs, etc., and/or any such expenses that you have agreed to pay the Company but have not paid in accordance with Company policy, will be deducted from the next commission payments due you.

#### **4.25 Trust Fund Handling**

**As of 01/01/2013, Excel Realty & Mortgage, Inc. will not allow any agent associated with Excel Realty & Mortgage to handle trust funds for clients, etc. ALL TRUST FUNDS (escrow deposits, Inspection fees, rental checks, etc.) MUST BE DELIVERED TO THE ESCROW COMPANY, COMPANY, OR OWNER BY THE CLIENT DIRECTLY. BROKER DOES NOT HAVE A TRUST FUND ACCOUNT. DO NOT TOUCH CLIENT'S CHECKS.**

The mishandling of trust funds is the number one reason real estate agents and loan officers licensed by the California Bureau of Real Estate have their licenses suspended or revoked. Under NO circumstances will an agent accept earnest money deposit checks. Do not handle any money in the form of check, money order, cash or otherwise, regarding good faith deposits, appraisals, home inspections, repairs, credit reports, or other service providers. Have your client deliver or send escrow deposit directly to the escrow company. Give client escrow information needed for them to mail or drop off deposit

directly to escrow within three business days after acceptance of offer. Have client pay for home inspections and/or appraisals at the time of inspection.

Excel Realty & Mortgage, Inc. does not allow any agent to conduct any type of property management services.

As a regular part of the real estate business, it is possible to receive funds on behalf and for the benefit of others, i.e. “trust funds.” **Excel Realty & Mortgage, Inc. does not allow agents to handle trust funds.**

The Department of Real Estate Reference Book defines trust funds as “*money or other things of value that are received by a Broker or salesperson on behalf of a principal or any other person, and which are held for the benefit of others in the performance of any acts for which a real estate licensed is required.*” The most common types of funds are:

- “earnest money deposits”
- option payments
- rental security deposits
- rental income owed to a property owner.

Improper trust fund handling may lead to civil, criminal and Department of Real Estate action against you and the Company. Remember, you are handling someone else's money.

The Broker is deemed to have received those funds when you receive them. A Broker is generally required to deposit trust fund money not later than the third business day after receipt, unless specifically authorized to hold the funds uncashed. Therefore, in order to ensure that the funds are properly handled, you must deliver any funds received on behalf of another party by not later than the next business day after you receive those funds. All trust fund checks shall be made payable to the designated Title/Escrow company. Trust funds checks may not be made payable in the agents name or company name.

If the funds are to be held uncashed, such as the initial deposit on a purchase agreement, you must still deliver those funds to the designated staff person as required above.

If the funds are to be held uncashed, such as the initial deposit on a purchase agreement, you must fill out the Log of Uncashed Trust Funds when you take such a check, and when you deliver the check to its final destination, such as the escrow company.)

If you do not have written permission to hold the trust fund check uncashed, the Company will promptly deposit it into the appropriate escrow account.

If the trust funds will be something other than money (wire, personal check, cashier's check, or money order), you must obtain your Manager's pre-approval before taking possession of the trust item.

No funds will be disbursed from the trust account until the funds have cleared the appropriate financial institution, nor without the written authorization of the principal and prior approval of the Company, or by legal process.

#### **4.26 Identity Theft**

Identity theft is a growing concern. The Company is dedicated to take all prudent steps to protect the identity information of its customers and clients. To that end, it is essential that you treat with care and confidentiality all files containing names, addresses, phone numbers, social security numbers, credit card information or any other personally identifiable information. The Company also has a program for proper destruction of all files containing the personally identifiable information of its clients and customers. You must assure that any files containing such information that remain in your possession be kept in a secure location and disposed of properly. Any questions about destruction of these files should be addressed to your Manager. Excel Realty & Mortgage has a separate "Red Flags" policy on protecting identity theft. This "Red Flags" is attached to this Office Policy Manual.

#### **4.27 Safe Work Environment**

The Company is committed to providing a safe work environment for its staff and salespersons. If you observe any situation or condition which could pose a health or safety risk to employees, agents, clients or the public on any of Company's premises, promptly notify your Manager.

The Company has implemented an Injury and Illness Prevention Program in compliance with Labor Code §§ 6401.7, et seq. A copy of the Injury and Illness Prevention Program is on file with the Company and may be reviewed upon request.)

#### **4.28 Safe Driving**

You are expected to keep your automobile in a clean, properly maintained, and safe operating condition at all times. Remember: You are responsible for damage or injury caused while driving. It is your obligation to drive in a safe, responsible and alert manner. This is especially true if you have clients in your car. The Company recommends that you use your cell phone only when your car is stopped safely on the side of the road. If you find it necessary to use the cell phone while driving, use a hands-free device. Cell phones can be a distraction; do not become distracted while driving.

#### **4.29 Personal Transactions**

You may buy or sell property for your personal account subject to the following guidelines.

##### **A. Listings**

See Paragraph 11.5 Agent-Owned Property for information regarding the handling of listings of property in which you have an ownership interest.

##### **B. Commissions**

Upon the sale or purchase of property in which you have, or will have, an ownership interest, you agree to pay to the Company a commission based on the normal per transaction fee.

##### **C. Indemnity**

Except as may be covered by the Company's Errors & Omissions policy of insurance, you agree to indemnify and hold harmless the Company from any and all claims against you and/or the Company arising out of the purchase or sale of any property in which you have, or will acquire, an ownership interest.

##### **D. Disclose Interest in Property**

You must disclose in writing that you are a real estate licensee whenever you buy or sell property in which you have an ownership interest, or where you have a special relationship with a buyer, or where there is a possibility that you could acquire indirectly a financial or legal interest in the property.

#### **4.30 Vacations**

As an Independent Contractor, you are entitled to schedule vacations. However, please advise your Manager of your vacation schedule and how any pending business will be handled in your absence.

#### **4.31 Leaves of Absence**

The Company will grant leaves of absence for only extenuating personal reasons. Discuss any request for a leave of absence with your Manager, how any pending business will be handled, and how your compensation will be affected per the Company's Compensation Schedule.

#### **4.32 Jury Duty**

Jury service is a civic duty. If you are called to serve on a jury, advise your Manager and arrange with your Manager to have a fellow salesperson handle your business while on jury duty.

#### **4.33 Injury at Work**

If you are injured at work or in a work-related activity, you must report the injury to your manager at the earliest practicable time.

#### **4.34 Anti-Trust Guidelines**

Do not engage in any verbal or written conversations with agents or brokers with other companies regarding:

- the setting of commissions, charges or other fees to the public;
- boycotting or not doing business with a particular competitor;
- the setting of rates or percentages of shared commission compensation to cooperating brokers.

#### **4.35 Transaction Coordinators**

A transaction coordinator can assume many roles. In this office, the T.C.:

- Reviews all agreements and documents to determine if all signatures have been obtained
- Calendars all dates
- Monitors compliance with contractual requirements
- Orders inspections

- Originates Broker escrow files
- Arranges for delivery of documents
- Interfaces with outside affiliates such as lenders, mortgage brokers, and inspection companies, professional reporting companies, escrow companies and title companies
- Reports deficiencies, delinquencies or problems to the licensee and Broker.

The use of a T.C. is to be paid solely by you.

#### **4.36 Risk Management Fee**

Each year, the Company shall separately establish and publish the amount to be paid by all salespersons, and the method of that payment, as a Risk Management Fee. This Fee will be used by the Company to offset the costs of the Errors & Omissions policy of insurance; legal advice related to transactions and escrows as needed; settlements, judgments, and legal fees and costs of claims and litigation; and other risk management costs, such as education and training.

#### **4.37 Loans**

Loans require special attention and care. You must be licensed by both the DRE and the NMLS to conduct loan transactions. There must always be a benefit to the borrower and the borrowers' best interest must always be the most important guideline that our loan officers must consider. Loan officers may not "churn" loans, meaning refinancing loans over and over to make a commission without there being a true benefit to the borrower. Loan officer must be aware that lenders that we are approved with require a seasoning timeframe of 180 days once a loan has closed, before the loan is paid off by refinance or sale of the property. Generally called an "early payoff". An early payoff can be demanded if the loan on the property is paid off whether the original loan officer refinances or another loan officer with a different company refinances the loan. Loan officers are solely responsible to pay the cost of any early payoff demand by any lender in which we receive a valid demand. The early payoff demands typically include all commission and lender credit paid on the loan by the lender. When working as a "team" the team leader is equally responsible to pay any early payoff demand by a lender, whether he/she was the loan officer originating the loan.

## **5. Handling Clients**

### **5.1 Proprietary Information**

Treat all client information as confidential and proprietary. You have a fiduciary duty to your clients and must never use any information learned during the course of your representation of your clients in any manner adverse to their interests.

### **5.2 Fair Housing**

We live and work in a diverse, multi-cultural society. The Company is committed to equal opportunity, fair housing, fair lending, and complying with all applicable local, state and federal fair housing laws. To that end, we do not discriminate on the basis of any arbitrary classification, including, but not limited to, the following:

- Race
- Color
- Religion
- Sex
- Handicap or disability
- Familial status
- National origin
- Sexual orientation

### **5.3 Agency Relationships and Duties**

#### **A. Recognized Forms of Agency**

The Company generally recognizes two forms of agency:

- Single Agency (Seller's Agent exclusively or Buyer's Agent exclusively)
- Dual Agency

If the Company has the listing, we represent the seller only, unless you or another licensee working for the Company also brings in the buyer, in which case the office represents both the buyer and the seller and is a dual agent.

If the Company is working with the buyer and does not have a listing agreement with the seller, we represent the buyer exclusively.

Remember, the agency relationship is created through the Broker. If you have listed the property and another salesperson from this Company brings an offer from a buyer, a dual agency will be created.

## **B. Duties and Standards of Conduct**

When you represent a principal in a transaction you have a fiduciary duty to that person. This means you have a duty of utmost care, integrity, honesty and loyalty in dealings with that principal. In addition, a listing agent owes the buyer, and a buyer's agent owes the seller the following duties:

- Honesty
- Good faith and fair dealing
- Disclosure of known facts materially affecting the value or desirability of the property that are not within the diligent attention or observation of the parties
- The exercise of reasonable skill and care in performance of your duties

## **C. Agency Disclosure Requirements**

The agency disclosure law applies to sales, exchanges and leases for more than one year, involving real property improved with one-to-four dwelling units, stock cooperatives, and mobile homes. The law applies whether or not the property is owner-occupied. You must provide a statutory disclosure form entitled "Disclosure Regarding Real Estate Agency Relationships" (California Association of REALTORS® form AD or similar form) in every applicable transaction.

If you represent the seller, you must provide the disclosure form to the seller BEFORE entering into the listing agreement. Inform the seller of our policy regarding agency as set forth above. Get a signed "Acknowledgment of Receipt."

If you represent the buyer, the law requires that you must provide the buyer with an agency disclosure as soon as practicable BEFORE executing an offer to purchase. Don't forget to get a signed acknowledgment of receipt.

When you present an offer and this office is not the listing agent, you must also provide a new agency disclosure to the seller as soon as practicable BEFORE presenting an offer. Delivery of the disclosure to the listing agent is generally sufficient.

Delivery may be made in person, by mail or by facsimile.

#### **5.4 Sharing Information**

It is the Company's policy to make a full, open and sincere effort to cooperate with other Company salespersons including sharing information, unless the principal has given instructions to the contrary. This does not mean, however, that you should disclose confidential information about your client or the Company.

#### **5.5 Farming**

Agents are encouraged to consult with Broker prior to conducting farming activities.

#### **5.6 Listing Presentations**

All of your marketing efforts will be a waste if you don't have an effective listing presentation. If you are a new licensee, don't be afraid to ask for help. Your Manager or an experienced associate will be more than happy to help you develop an effective listing presentation. If you are an experienced associate, it never hurts to review your presentation with other associates. Remember: practice makes perfect.

For an effective presentation, here are a few guidelines to follow:

- BE PROMPT!
- Prepare a Market Analysis for the Seller's use
- Always leave a copy of any signed contract with the seller
- Be confident, positive and truthful. Don't exaggerate or mislead.

As a newly licensed associate, you must be accompanied by the Broker or a mentor on at least 2 listing presentations before you may conduct one alone.

#### **5.7 Taking Listings**

California law requires that a compensation agreement be in writing and signed by the party to be charged in order to be enforceable. Unless approved in advance by the Broker, all listings will be "Exclusive Right and Authorization to Sell" listings.

Absent your Manager's prior consent, you must have all owners of a property sign the listing agreement before you begin marketing the property. If someone signs on behalf of another, you must have written evidence of the authority to act, such as a power of attorney or letter of administration. If a party refuses to sign the listing agreement, notify the signing parties in writing that it is Company policy not to market the property until all parties have signed the agreement.

Before taking the listing, search the MLS to determine whether or not the property is currently listed with another broker. It is this Company's policy to not take a new listing until the existing listing has expired. NOTE: With the approval of your Manager, and subject to Article 16 of NAR's Code of Ethics, you may enter into a listing agreement now which will not become effective until after expiration of the prior agreement.

If the property is in escrow, continue marketing the property unless the seller agrees otherwise. Make sure the listing does not expire before close of escrow. Get all modifications or extensions in writing.

All listings are taken in the name of the Company, which reserves the right to reassign the listing upon request of the seller, or if the listing has not been handled properly, or the Company deems it in the best interest of the client to do so. Any decision by the Company to reassign a listing is conclusive and you will have no right to a commission upon the sale unless agreed to by your Manager.

If you represent a buyer in a for-sale-by-owner (FSBO) and the buyer is to pay a commission, you must have a written agreement with the buyer to pay that commission, such as a buyer-broker agreement. If the FSBO seller is to pay the commission, you must have a written agreement with the seller, such as a single-party compensation agreement or a separate commission agreement.

## **5.8 Negotiating Commissions**

While commissions are negotiable, the Company reserves the right to set minimum acceptable commissions on listing agreements. Due to our flat fee based commission structure it is possible to list and or sell a home, where the only commission would be the brokerage fee. The minimum broker fee on a listing or sale is \$795. If you listed or sold a home at this level you would not receive any commission. The only commission would go to the broker fee.

## **5.9 No Advance Fees**

The payment by a principal to the Company prior to the performance of services is known as an Advance Fee. All Advance Fee arrangements must be pre-approved by the California Department of Real Estate. You may not propose or accept an Advance Fee without the express approval of your Manager and the prior written approval of the Advance Fee arrangement and materials by the California Department of Real Estate.

## **5.10 Conducting Open Houses**

Open houses are a great way to expose your listing for sale and to meet prospective buyers. Plan your open houses in advance. Be sure they are advertised. In order to assure a successful open house, follow these guidelines:

- Prepare and take sufficient property flyers and information about you and the Company.
- Prepare and take a list of comparable sales and properties for sale in the immediate area of the open house.
- Suggest that the sellers not be present and that they lock away all valuables that could be targets of theft.
- Place your A-Frames in strategic, but permissible, locations.
- Open the house, turn on the lights, and make the house look fresh and inviting.
- Have a sign-in sheet.
- Greet visitors in a friendly manner.
- Be aware of your personal safety. Let someone know where you are and have a plan if a visitor starts to make you feel uncomfortable or threatened.
- Accompany the visitors through the property, especially in furnished properties.
- When the open house is over, close up the home, making sure that all doors and windows are locked.

## **5.11 Showing Properties**

Whenever possible, preview a property before showing it to prospective buyers. If you are familiar with the property you will be more effective when showing it to your client. Also, you may find that despite contrary representations, the property really is not suitable after all. Your time and your client's and the seller's time are valuable, don't waste it:

- Whenever possible, call the listing agent to alert the seller before showing.
- Give the seller reasonable time to make the property ready for you and your client.

- Listing agents should give the seller an estimated time frame within which you expect to arrive. Be prompt. If you will be considerably late, call the seller.
- If you have not heard from the seller before arriving, or if you are using the lockbox, go to the door first without your client.
- If the seller is home, explain the situation and ask for access. Remember, be respectful.
- When using a lockbox, always ring the doorbell and/or knock loudly several times and allow time to respond.
- Enter the property first and verify no one is there.
- Open curtains and turn on lights as necessary.
- Allow sufficient time for your clients to view each room and the property. Be mindful to look for any potential "red flags" about the property. (Disclosure)
- Do not leave your clients unattended in or on the property. You don't want to be blamed if any items are missing from the property later.
- When you are finished, leave your card inside the property in a conspicuous place, and return the property to its original state (turn off appropriate lights, reset any alarms and lock the doors).
- If for some reason you don't show the property, call the listing agent as soon as possible to cancel.

## 5.12 Drafting and Negotiating Contracts

A. When preparing an offer to purchase on a purchase agreement form, or completing an addendum or counter-offer form:

- Fill in all blanks or place a line through them.
- Review any written sentences or paragraphs to see if they can be clearly understood by someone who is not familiar with the discussions you may have had with your client.
- Review this document in light of all prior offer terms, addenda and/or counter-offers to make sure that there are no ambiguities or conflicts between the various terms.
- Review the document to be sure it reflects your client's wishes prior to asking them to sign.

- B. Remember, as a listing agent, you must present all offers to the seller, even if the property is in escrow, unless the seller has given you written instructions to the contrary. Upon receiving the offer, review it thoroughly for completeness, accuracy and clarity. Pay close attention to time limits set out in the offer, **ESPECIALLY** the time within which the seller must respond. Make an appointment as soon as possible to present the offer.
- C. As with all contracts, you must obtain all parties' signatures. If a party signs on behalf of another, you must have evidence of that person's authority to do so in writing. If you must present an offer missing a signature, you must disclose this fact to the seller or listing agent. Be sure to condition the offer on obtaining any missing signature(s).
- D. If your clients receive a counter-offer, be sure the terms are clear and complete. Be sure to review it against the original offer to purchase and all previous counter-offers. Act expeditiously to present the counter-offer for consideration, signature and timely delivery to the other agent.
- E. You may never represent two buyers offering on the same property at the same time absent your Manager's prior consent.
- F. It is Company policy that, if you have a listing and there are multiple offers, you may not represent both buyer and seller in the contract negotiations absent your Manager's prior written consent. You must choose to represent only the seller or the buyer during the pre-contract negotiations, and a Manager or another salesperson will represent either the buyer or seller who is not represented by you during contract negotiations.

### **5.13 Property Management**

**The Company does not provide property management services to our clients. You may not engage in the management of property for others without the express written consent of the Company.**

### **5.14 Gifts**

It is the policy of this Company that you may give gifts to your clients at closing and other times as an appreciation of their business. The agent must always be aware and be responsible to follow the rules of RESPA.

## **5.15 Out-of-Area Business**

If you are requested by a client to handle the listing or sale of property outside of the normal geographic market served by the Company, it is the policy of this Company that you refer that business to a broker in that area.

## **5.16 Referral Fees**

The Real Estate Settlement Procedures Act (RESPA) prohibits the payment of cash or anything of value from one settlement provider to another settlement provider (real estate agent, lender, title company, etc.) for the bare referral of business or in expectation of the receipt of future business, pursuant to a pre-existing agreement. One exception is between real estate brokers (but not mortgage brokers) for the referral of clients, in which case referral fees may be paid or received. RESPA applies to all 1 to 4 unit residential transactions with a federally-related mortgage loan (this includes most institutional loans). You may not, personally or on behalf of the Company, offer to give to, or to accept from, a non-real estate broker or agent a fee or thing of value for the referral of a client to you pursuant to a pre-existing agreement to do so. If you have any questions as to whether to accept such a fee or anything of value, contact your Manager.

## **5.17 Powers of Attorney**

It is Company policy that you never act as an attorney-in-fact under a power of attorney for your clients. If your clients will not be available to sign documents related to a transaction, it is imperative that they secure someone, other than you or someone connected with the Company, to act on their behalf. You should have the escrow company review any power of attorney to determine its sufficiency for their purposes for the attorney-in-fact to execute necessary documents.

## **6. Maintaining Files**

### **6.1 General**

Excel Realty & Mortgage stores all closing documents electronically. You will have access to our transaction management system to provide all documents and logs within the transaction. You are to provide all documents associated with the transaction, whether they are specifically listed within the transaction checklist or not. All documents must be uploaded to our transaction management system.

Your files are a record of every event relative to your dealings with your client on a listing or sale transaction. You must retain copies of all listings, deposit receipts, cancelled checks, trust records, and other documents executed by you or obtained by you in connection with a real estate transaction, whether the sale is consummated or not. You must maintain a neat and orderly file on every listing and sale on which you work. All files are the property of the Company and are to remain either in your possession or the Company's possession until the file is closed. All closed files will be promptly returned to and remain with the Company for storage. All files will be held in storage a minimum of three (3) years in accordance with real estate law after which time they may be destroyed in accordance with the Company's document storage policy. The company has a separate procedure for delivering files electronically.

### **6.2 Broker Review**

Within 72 hours of receiving a listing agreement, purchase contract, or loan application, you must turn this into the office. You must promptly submit all signed documents to your Manager or his/her designee after receipt by you. Your Manager will review the document for completeness and accuracy. Any incomplete or incorrect items or documents must be promptly corrected and returned to your Manager.

Prior to the close of every escrow, you are required to turn in your files for review by the Manager or his/her designee for a pre-closing review. Any missing or incomplete items will be noted and you will be given a time period within which to comply. Remember, your file must be complete to receive compensation.

### **6.3 File Requirements**

- A. Your file must contain an accurate, comprehensive email, text, and telephone log and journal of your activities relative to that file.

- B. Always write down the following:
  - The name of any person you spoke with
  - The date and time of the conversation or activity
  - The subject matter of the conversation or activity and the result of the conversation or activity.
  - Any significant decision or discussion not documented elsewhere in writing.
- C. Also include in your file:
  - A checklist and calendar of important information and deadlines
  - Copies of all correspondence and significant emails to and from your client
  - Copies of all offers and counter-offers and contract addenda
  - Copies of all disclosures and reports or any other writing delivered to you or your client
- D. Be sure all documents contain signatures of all parties required to sign. Whenever your client receives a written document regarding the transaction, you must leave a copy with the client and retain a copy of the same document for your file.
- E. Your Manager may have a sample file for your use as a guide for proper record keeping. If you are not sure how to maintain a proper file, get help from your Manager.

#### **6.4 Get It In Writing**

As a general rule, all agreements must be in writing. In fact, if you don't have a written agreement with the principal, you may not receive your commission. If you discuss anything with any party or another broker/agent, always confirm your discussions and understanding with a written follow-up to that party or broker/agent. Never sign anything on behalf of your client, another agent or anyone else.

#### **6.5 The Listing/Management/Commission Agreement**

California law requires that a compensation agreement be in writing and signed by the party to be charged in order to be enforceable. If you represent a buyer in a for-sale-by-owner (FSBO) transaction and the buyer is to pay a commission, you must have a written agreement with the buyer to pay that commission, such as a buyer-broker agreement.

If seller has not, or will not sign a listing agreement, and if the seller is to pay the commission, you must have a written agreement with the seller, such as a single party compensation agreement.

Unless approved in advance by your Manager, all listings will be "Exclusive Authorization and Right to Sell" listings. All listing and management agreements will be taken on the most current California Association of REALTORS® Standard Forms or another form approved by the Broker.

## **6.6 Do Not Use Outdated Forms**

Always use current forms. Keep your on-line forms database (such as Zipforms) up to date with the most current forms. Always check with your office to see that you are not using out-of-date forms.

# **7. Personal Assistants**

## **7.1 General**

Generally, as your business increases, you may find hiring a personal assistant to be helpful. In hiring a personal assistant, you become an employer and have employer responsibility in that relationship. Interviewing, hiring and contracting with the assistant will be solely up to you. You agree that any assistant you hire will be required to abide by this Policy Manual. If your assistant engages in any conduct that would violate this Policy Manual, or in any way acts in a manner to bring disrepute or potential liability to the Company, the Company reserves the right to demand that you terminate the assistant or otherwise prohibit him/her from entering the office for any reason, at any time.

Any compensation due the assistant shall be arranged between you and your assistant, and will be your responsibility.

## **7.2 Licensed Assistant**

If the personal assistant has a real estate salesperson license, that license must be given to the Company. The personal assistant may not engage in any activity which requires a real estate license without: (1) the prior written consent of the Company, and (2) entering into a written Independent Contractor agreement detailing the personal assistant's relationship with the Company.

Licensed personal assistants are not subject to, nor paid in accordance with, the Company's Compensation schedule. Licensed personal assistants are compensated solely

through your contractual arrangement with them. The Company shall never be obligated to pay your licensed personal assistant except as may be paid to such assistant out of funds in escrow, or from escrow funds actually received by the Company, and for which you have given specific instructions to the Company to pay such assistant.

### **7.3 Payment / Tax Reporting**

You are responsible for determining whether your relationship with the personal assistant is that of employee/employer or independent contractor, and for proper withholding and reporting of taxes. The Company strongly recommends that these matters shall be discussed with an attorney and/or accountant before any decisions are made.

### **7.4 Salesperson – Personal Assistant Contract**

You are required to have a written agreement with your personal assistant that expresses the nature of the relationship and each party's duties and responsibilities. The Company shall be given a copy of the agreement for its approval and records prior to its effective date.

### **7.5 Supervision**

You are responsible for supervising all activities of your personal assistant, whether or not such activity requires a real estate license. When requested by your Manager, you shall report on the performance of the personal assistant.

### **7.6 Indemnity**

Except as may be covered by the Company's Errors & Omissions policy of insurance, you agree to indemnify, defend and hold the Company harmless from all claims, demands, liabilities, judgments, arbitration awards and attorney fees for which the Company is subject by reason of any action taken or omitted by your personal assistant.

### **7.7 Workers Compensation**

No Workers Compensation insurance is provided by the Company for unlicensed assistants hired by agents. Agents who hire unlicensed assistants shall be responsible for providing Workers Compensation insurance for those assistants where required. Agents should discuss this situation with a Workers Compensation insurance representative, and/or check out the State of California Division of Workers Compensation website at <http://www.dir.ca.gov/dwc/>.

## **8. Advertising Guidelines**

### **8.1 General**

As used here, advertising includes, but is not limited to the following:

- all display advertising
- all classified advertising with any publication including newspapers and magazines
- all mass mailing and faxes
- e-mails
- Internet postings
- television programs or ads
- flyers
- postcards
- all newsletters
- "for sale" signs and riders
- billboards
- business cards.

All advertising must be approved by the Company before your placement or use.

You may only advertise property actually listed for sale by the Company. Anytime you advertise property you must include the term "Broker," "agent," "licensee" or "REALTOR®." All advertising shall include the Agent Name and Company Name, and include DRE license number of both the company and agent.

All advertising words and content are and shall remain the property of the Company whether created by you and/or the Company.

### **8.2 Legal and Ethical Considerations**

Advertising is one of the most important tools for success in real estate, however it must be used carefully. As an associate and licensee, you have both a legal and ethical obligation to be truthful when advertising property or services.

All advertising must comply with all state and federal advertising requirements as well as the NAR Code of Ethics. Any false or misleading advertisement will immediately be withdrawn by the Company. Legally, you may be held liable for fraud, intentional misrepresentation, or negligent misrepresentation if you make material false statements or material omissions in an advertisement. Additionally, you may face disciplinary action from the Department of Real Estate.

Finally, licensees who place listings in the Multiple Listing Service in expectation of compensation are responsible for the truth of all representations in such listings, of which the licensee had knowledge, or reasonably should have had knowledge, to anyone injured by their falseness or inaccuracy.

#### **8.3 Advertising Expenses**

The Company will separately publish its schedule of advertising media; as well as those advertising expenses which will be borne by the Company, those that will be split between the Company and you, and those that will be solely your expense. This schedule may be changed by the Company from time to time.

#### **8.4 Company Name and Logos**

The Company's name and logo must conform to the Company's graphic standards regarding the style, color and uses of the name and logo. These standards are available through your Manager. No other uses of the Company name or logo are permitted without prior consent of your Manager.

#### **8.5 REALTOR® Trademark**

The use of the name REALTOR® must be used in compliance with the National Association of REALTORS® guidelines governing the use of that name and mark. Those guidelines are available on-line at: [www.realtor.org](http://www.realtor.org).

#### **8.6 Telephone: Do-Not-Call Compliance**

You are required to comply with the do-not-call laws which generally prohibit "telephone solicitations" to residential and cell phone numbers registered on the National Do-Not-Call Registry. A "telephone solicitation" is defined as the initiation of any telephone call or message, unless exempt, "for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."

- A. The Company will maintain a "do-not-call" list from, among other things, the federal Do Not Call Registry. You may not call anyone at their home or cell phone number if listed on that Registry unless an exemption applies. Exemptions include written permission or an established business relationship.

1. **Written permission** means the person being called has given prior express permission to call as evidenced by a signed, written agreement to be contacted at a specific number.
2. An **Established Business Relationship** means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber on the basis of either:
  - a. The consumer's business transaction with the Company in the past 18 months; or,
  - b. The consumer's inquiry or application regarding the Company's services within the past three months.

In addition, any party who expresses a desire not to be called again must be placed on the Company's "do not call" list. No person on this list may be cold called.

B. **Cold Calling:** Cold calling (telemarketing) is commonly used by real estate companies and salespersons to solicit prospective clients for sales, property management, or loan transactions. It generally involves messages or telephone calls to promote the purchase, rental and financing of real property and services provided incidental to such activities. You are encouraged to explore cold calling as a method of business promotion, but you must comply not only with the do-not-call rules, as well as other cold calling requirements as follows:

1. You may not call a residence before 8:00 AM or after 9:00 PM.
2. You must provide the called party with your identity and telephone number where you may be contacted.
3. You may not call any emergency lines, health care facilities, radio common carrier services (cellular or paging services) or any service for which the called party will be charged for the call.
4. You may not use an auto-dialer for telemarketing while associated with the Company.

C. **It is your responsibility to adhere to this policy and will be solely responsible for any violation, including any fines, penalties, damages recovered, settlements or attorney's fees and costs.**

## **8.7 Fax and E-Mail Advertising**

There are state and federal laws prohibiting faxing or e-mailing to recipients with unsolicited commercial advertisements or solicitations. Exemptions include prior permission or an established business relationship. It is the Company's policy to adhere to these legal guidelines. Contact your Manager if you have any questions.

It is your responsibility to adhere to this policy and will be solely responsible for any violation, including any fines, penalties, damages recovered, settlements or attorney's fees and costs.

## **8.8 Websites: Privacy**

The Company maintains a website which advertises Company listings. It is the Company's policy to respect the privacy of persons visiting our website. See the Company website Privacy Policy statement on-line for more details.

You are encouraged to obtain your own personal website, you must conform to the Privacy Policy statement on the Company website in all your interactions with visitors to your website. Your personal website must also conform to other online privacy and other laws, to this Policy Manual and to MLS and NAR rules regarding advertising of listings.

## **8.9 Regulation Z**

You are required to adhere to the requirements of Regulation Z for advertising certain credit transactions. Under Regulation Z, if an advertisement states a specific finance charge, the charge must be expressed as an annual percentage rate (APR).

If any of the following terms are used in the advertisement:

- the amount or percentage of the down payment
- the amount of any installment payment
- the dollar amount of any finance charge
- the number of installments
- the period of repayment

then the advertisement MUST include all of the following specific terms:

- down payment
- terms of repayment
- rate of finance charge expressed as an annual percentage rate
- if the annual percentage rate may be increased after the transaction is consummated, that fact.

Any advertisement of commission rates, discount points, reductions or incentives must be approved by the Broker prior to your placement or use.

#### **8.10 Fair Housing**

The Company is committed to equal opportunity and fair housing in all of its advertising.

Federal law states that a broker may not print, publish or make any discriminatory notice, statement or advertisement which indicates a preference, limitation or discrimination in the sale or rental of a dwelling. The prohibition against discriminatory advertisements applies to all oral and written statements, including flyers, brochures, signs, banners, posters and billboards used in the sale of a dwelling.

Be aware that the selective use of words, phrases, symbols, visual aids and media in the advertising of real estate may indicate preferences held by the advertiser and lead to allegations of discriminatory housing practices. Words in a real estate advertisement which indicate a particular race, color, sex, handicap, familial status or national origin are considered likely violations of the Federal Fair Housing Act and may not be used in Company advertisements at any time.

## **9. Company Network**

#### **9.1 General**

The Company has installed an internal computer network for the exclusive use and benefit of its salespersons.

The Company has a valuable proprietary interest in the network, its operating programs, and the data they contain. You agree not to disclose, transfer or transmit those programs, in whole or part, or any portion of the data they contain, to any third parties not

associated with the Company; nor may you copy or use any of the above for your own personal use unrelated to Company activity.

It is our policy to encourage use of technologies and the Internet while protecting ourselves from inappropriate use of Company resources. Accordingly, we provide full access to the network, the Internet, and related communications media to be used only in accordance with this Policy Manual.

## **9.2 Network Use**

- A. Company-provided network, Internet/Intranet and e-mail privileges are to be used for business purposes only.
- B. Use of Internet/Intranet and e-mail may be monitored for network management reasons and conformity to these policies.
- C. Users shall not visit Internet sites that contain obscene, hateful or other objectionable materials; send or receive material that is obscene or defamatory or which is intended to annoy, harass or intimidate another person.
- D. You may not at any time:
  - Solicit e-mails that are unrelated to business activities
  - Solicit non-company business for gain or profit
  - Use the Internet or e-mail for illegal purposes
  - Represent personal opinions as those of the Company
  - Make or post indecent remarks, proposals, or materials
  - Upload, download, or otherwise transmit commercial software music, videos, or any copyrighted materials belonging to parties outside the Company, or the Company itself
  - Download any software or electronic files without virus protection
  - Intentionally interfere with the normal operation of the network and/or in any way attempt or perform modification to the network programming
  - Examine, change or use another person's files, output, or user name without prior explicit authorization.

- Perform any other inappropriate uses identified and published by the network administrator or the Company.

## **10. Policy Against Harassment**

### **10.1 Company Policy**

It is the policy of the Company that its employees, associates and visitors be free of harassment. Harassment is damaging to morale, serves no legitimate business purpose, is unlawful, and exposes the Company and the individuals involved to significant legal liability.

### **10.2 Identifying Harassment**

Sexual harassment is any verbal or physical conduct of a harassing nature, requests for sexual acts or favors, unwelcome sexual advances, or any other conduct with the purpose or effect of which unreasonably interferes with an individual's work performance or creates a hostile, intimidating or offensive work environment. Sexual harassment is illegal.

Racial, religious and ethnic harassment is also illegal. For this reason, you must make sure that you do not engage in such harassment or in any behavior toward your fellow workers that could be viewed as harassment.

Possession of weapons, threats and throwing objects are prohibited. Furthermore, name-calling and use of obscene language should be avoided.

### **10.3 Enforcement**

Because harassment is a serious offense, the Company will deal with these issues in the strictest of terms, which may include termination if you are found to have engaged in such conduct.

Company policy states that the following people may not harass you:

- co-workers
- supervisors
- any member of the firm

- any guest or visitor to the firm.

If you believe that you have been harassed, please bring the problem to the attention of your Manager. You do not have to put your complaint in writing, but it is helpful to provide details about dates, times, places, and witnesses to the harassment.

All complaints will be investigated promptly by designated Company management.

The identity of the associate or employee making the complaint as well as the identity of the individual accused of sexual, ethnic, racial or religious harassment will be kept strictly confidential to the extent possible. Information regarding the charge of sexual harassment and the investigation of that charge will not be made known to anyone who is not directly involved either as a party, a witness, a member of the investigation team, or as legally required. Witnesses interviewed will be provided only such information as is necessary to elicit from them their observations and other relevant information.

No one may retaliate against you if you file a charge of harassment against him or her. The Company will make every effort to prevent possible retaliation against you under such circumstances.

If your complaint of harassment is found to be totally and completely without basis, appropriate measures may be taken against you. This should not, however, discourage you from making a complaint if you believe you have been a victim of sexual, racial, religious, ethnic, or any other harassment.

## **11. Litigation and Claims Handling**

### **11.1 General**

You are required to:

- A. Promptly notify your Manager of any claim or potential claim made against you and/or the Company, including any demand received by you for money or services alleging a negligent act or omission; any notification of the commencement of a lawsuit, arbitration or mediation process; or any written or verbal notice or threat that anyone intends to hold you and/or the Company responsible for any alleged wrongdoing.
- B. Cooperate with the Company in the defense of a claim.

- C. Promptly pay to the Company any amounts due hereunder upon notice to you from the Company.

## **11.2 Legal Defense**

- A. When a claim or demand is made, or a lawsuit or other action is filed, against either you or the Company by a third party which alleges any breach of any duty, error or omission, or negligence in the performance of "Professional Services," as that term is defined in the Company's Errors & Omissions Policy of Insurance, for activities covered by the Insurance Policy, then the Company shall defend the claim, and the cost of such defense shall be allocated as set forth herein.
- B. The Company has the right to make all decisions concerning the defense of the claim, including the choice of counsel. In the event you object to any decision made by the Company, you may obtain your own attorney at your own expense; however, you shall not be relieved from the obligation to pay your portion of the cost of the claim as set forth herein.

## **11.3 Allocation of Costs of Defense**

- A. Except as provided below, the first \$10,000 of cost of defense of the claim, or to defend or protect against any potential or possible Claim where the Company or you are not involved as a party, including attorney's fees, and the cost of any settlement or a judgment (collectively the "Costs of Defense"), shall be the responsibility of the agent. Other costs shall be allocated between the Company and you at a 10% (company) / 90% (Agent) prorated rate if not covered by E&O insurance, whether or not the transaction actually closed. This amount is due regardless of whether there is a finding of liability on the part of you or Company.
- B. You shall solely be responsible for the Costs of a claim if you fail to follow any law, regulation or Company policy as set forth in this Policy Manual, and that failure results in a judgment or other final adjudication based on that failure.
- C. You shall be solely responsible, and shall reimburse the Company, for all of the Company's Costs of Defense if a judgment or other final adjudication on any claim adverse to the Company and/or you:
  1. establishes that dishonest, fraudulent, criminal, or malicious acts, errors or omissions were committed; or,

2. results in a finding of intentional tort, slander, defamation or any conduct which leads to the imposition of punitive, exemplary or multiple damages, or fines or penalties; or,
3. establishes discrimination on the basis of race, creed, religion, ethnic background, national origin, age, sex, handicap, familial status, physical disability, sexual preference, or any other unlawful classification; or,
4. results in a finding of pollution or any wrongful act in connection with any such pollution, including the discharge release or escape of any hazardous materials as defined in the Insurance Policy; or,
5. results in a finding of any liability for claims for damage to property or death or injury to persons arising out use, removal or exposure to goods or products, in any form, composed in whole or in part of lead, asbestos or asbestos related materials.
6. If the sale or purchase is an Agent-Owned Property. As listed in section 11.5

D. Notwithstanding the foregoing, the Company will not pay the attorney fees nor the cost of defending, nor will it pay the cost of settlement or judgment, involving any claim:

1. that does not involve the business operations of the Company
2. that seeks redress for actions outside the scope of your Independent Contractor Agreement
3. that is based on or arising out of the formulation, promotion, syndication, or operation or administration of any limited or general partnership, property syndication, real estate investment trust, joint venture or corporation, or any interest therein;
4. based on or arising out of bodily injury or property damage;
5. that is excluded from the Errors & Omissions Insurance Policy.

You agree to promptly accept a tender of defense on any such claims and pay the entire Costs of Defense incurred, including any Company attorney's fees.

E. The Company shall have no obligation to bring a legal action, mediation, or arbitration on your behalf to recover a disputed commission or other allegation. The Company shall participate in the costs and fees of prosecuting such a claim only if the Company agrees to do so; and the costs shall be allocated between you and the Company in the same percentage as provided for in the Compensation Schedule for the contested transaction.

#### **11.4 Disputes During Escrow or After the Close of Escrow**

If a dispute arises during an escrow or after the close of escrow between seller, buyer, the cooperating broker and/or the Company:

- A. Which cannot be resolved by negotiations between the parties and the agent(s) involved; and
- B. The Company determines that it is in the best interest of the Company to resolve the matter during escrow or after the close of escrow rather than risk a potential claim or litigation; then

Company management has the right to negotiate a resolution of the dispute which may involve a reduction in the commission to be received, or a credit given to one of the parties. In that event, and regardless of actual Company or agent liability or responsibility in the dispute, the agent(s) will be responsible for the dollar to dollar amount used to negotiate the resolution up to \$10,000.

#### **11.5 Agent-Owned Property**

Any property in which you have, or will acquire, an ownership, financial or other legal or other interest, is “Agent-Owned Property.” The Company’s E&O Insurance Policy governs coverage of the sale or purchase of any Agent-Owned Property. Many times, there is no E&O Insurance for Agent-Owned Property. **In any sale or purchase of Agent-Owned Property, you shall be solely responsible for costs of defense, settlement, or judgment on any claim, suit, or action of any nature arising therefrom.**

In the event you are selling or purchasing Agent-Owned Property, you must:

- A. Notify your Manager in advance;
- B. Obtain, in advance, your Manager’s approval of all marketing material and disclosure documents; any purchase contract provisions prior to their execution; and any correspondence or other writings that pertain to the purchase or sale;
- C. You must contact the Broker prior to acting as listing agent for the sale. If E&O insurance allows you to list agent owned property, Broker may give permission to list.

- D. without prior approval from Broker you may not represent buyers or prospective buyers in the sale of Agent's Property; and,
- E. Notify your Manager immediately in the event that any of the Company's agents writes an offer on your property.

## **12. Dispute Resolution**

### **12.1 Intra-Office Dispute Resolution**

All disputes involving you and another associate of the Company will be promptly reported to your Manager. The Manager, or designated members of the management team, will attempt to resolve the dispute through informal mediation in which all affected salespersons are expected to participate. Written or oral statements may be taken from the associates involved, as well as other evidence and testimony and a decision will be rendered based on that evidence and testimony.

You agree that all disputes involving another associate which cannot be resolved by the Company, and disputes involving the Company, will be resolved by binding arbitration with the local Association of REALTORS® in accordance with the bylaws and rules the in effect. If the Association of REALTORS® cannot hear (or declines jurisdiction over) the matter, then the parties agree to arbitrate before a neutral arbitrator agreed upon between them.

### **12.2 Third Party Disputes**

The Risk Management portion of this Policy Manual governs the coverage, handling and disposition of claims involving third parties.

You are required to immediately notify your Manager of any dispute or claim involving you, another associate of this office, the office itself, the Company, and a third party, including brokers and associates of other brokerages.

If appropriate, the Company will report the dispute or claim to the liability insurance company. The Company will make all reasonable efforts to resolve the dispute informally. Any such resolution will be binding on the agents involved in the dispute or claim.

You agree that any disputes involving brokers and associates of other brokerage firms shall be resolved through binding arbitration with local Board/Association of REALTORS® or C.A.R. as appropriate in accordance with the bylaws and rules then in effect.

## **13. Confidentiality of Information**

You agree that you will not furnish to any person, business, real estate brokerage or any other entity presently existing, or to be formed in the future, any information regarding the Company's clients, customers, properties, prices, or terms of negotiations including the Company's policies and relationships with clients, customers or other business relations and/or the Company's business.

You agree not to remove from the office any of the following:

- any files (other than instances stated above)
- maps
- books
- publications
- records
- prospect or client lists
- sales plans
- programs
- manuals
- forms
- brochures
- training material
- listing and sales materials provided by the Broker or
- any other material, files, records or data.

Any such items in your possession will be returned to the Company within 24 hours after your termination. You expressly agree that all such items are the property of the Company and you will not use these materials in connection with any real estate business carried on by you, either alone or with other individuals or entities.

The Company agrees that you are entitled, at your own expense, to photocopies of any records and files in which you have a bona fide personal, legal, or economic interest; and you may access such files only for such purposes upon reasonable notice, during the Company's scheduled business hours.

You agree not to sell, market to, or otherwise solicit or encourage any clients of the Broker, particularly sellers with whom the Company presently holds listing agreements, to terminate their relations or contracts with the Company.

## **14. Termination**

### **14.1 Grounds For Termination**

Your association with the Company can be terminated by either party, with or without cause, at any time upon written notice given to the other party.

Termination for cause could result from any violation of Company policies or the REALTOR® Code of Ethics, any conviction of any illegal act or any violation of the Real Estate License Law or any dishonest or unethical act.

### **14.2 Associate's Compensation on Termination**

If this Agreement is terminated while you have any listings, pending sales transactions, or loans that require further work normally rendered by you, your Manager will make arrangements with another salesperson or salespersons in the Company to perform the required work. The licensee performing the work shall be reasonably compensated for completing work on those listings or transactions, and such reasonable compensation shall be deducted from your share of the compensation. Regardless of any language in your Independent Contractor Agreement to the contrary, you will not be compensated for any transaction which is completed after your termination unless you have made a prior arrangement with your Manager, and then only in proportion to the actual work performed by you on the transaction.

### **14.3 Listings**

Listings are the property of the Company, even upon your termination. Within 24 hours after notice of termination by either party, you must provide your Manager with a list of all active listings taken by you, and all pending transactions in which, if completed, you will be entitled to compensation from the Company in accordance with the terms of your Independent Contractor, or other written, agreement. You specifically agree that you may not contact the sellers of properties where listings were taken by you for the purpose of directly or indirectly soliciting or inducing the client to terminate their listing with the Company.

## **Acknowledgment of Receipt of Office Policy Manual (For Associates to sign and return)**

This is to acknowledge that I have received a copy of the Office Policy Manual and Excel Realty & Mortgage Independent Contractor Agreement. I understand that the Office Policy Manual contains important information about the Company's general office policies. I know I am expected to read, understand, and adhere to the Company policies. I understand that, from time to time, the Company may, in its sole and absolute discretion, change any policies, benefits, or practices in the Manual, with or without prior notice.

Initial \_\_\_\_\_

Furthermore, I understand that I am an Independent Contractor and that my association with the Company is not for a specified term. Accordingly, either I or the Company can terminate our association at will, with or without cause, at any time.

Initial \_\_\_\_\_

Furthermore, I acknowledge that the Office Policy Manual contains this Company's Policy Against Harassment. I agree to comply with all aspects of the policy against sexual harassment and other forms of harassment. I understand that if I violate any aspect of the Company's Policy Against Harassment, I may be subject to disciplinary action, up to and including termination.

Initial \_\_\_\_\_

My signature below certifies that I have received the Office Policy Manual and agree to abide by its provisions during my association with the Company. It supersedes all prior agreements, understandings, and representations concerning my association with the Company.

Associate's Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_