

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:

- (1) uphold the following fiduciary duties in the course of representing a principal:
 - (a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;
 - (b) obedience, which obligates the agent to obey all lawful instructions from the principal;
 - (c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:
 - (i) the other party; or
 - (ii) the transaction;
 - (d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:
 - (i) a defect in the property; or
 - (ii) the client's ability to perform on the contract;
 - (e) reasonable care and diligence;
 - (f) holding safe and accounting for all money or property entrusted to the agent; and
 - (g) any additional duties created by the agency agreement;
- (2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:
 - (a) seller(s) the individual represents;
 - (b) buyer(s) the individual represents;
 - (c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);
 - (d) the owner of a property for which the individual will provide property management services; and
 - (e) a tenant whom the individual represents;
- (3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:
 - (a) clearly explaining in writing to both parties:
 - (i) that each is entitled to be represented by a separate agent;
 - (ii) the type(s) of information that will be held confidential;
 - (iii) the type(s) of information that will be disclosed; and
 - (iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;
 - (b) obtaining a written acknowledgment from each party affirming that the party waives the right to:
 - (i) undivided loyalty;
 - (ii) absolute confidentiality; and
 - (iii) full disclosure from the licensee; and
 - (c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;
- (4) when acting under a limited agency agreement:
 - (a) act as a neutral third party; and
 - (b) uphold the following fiduciary duties to both parties:

- (i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;
 - (ii) reasonable care and diligence;
 - (iii) holding safe all money or property entrusted to the limited agent; and
 - (iv) any additional duties created by the agency agreement;
- (5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:
 - (a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;
 - (b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;
 - (c) the licensee's agency relationship(s);
 - (d)
 - (i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and
 - (ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;
- (6) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;
- (7) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:
 - (a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and
 - (b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;
- (8) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;
- (9) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:
 - (a) in the currently approved Real Estate Purchase Contract; or
 - (b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;
- (10) when executing a lease or rental agreement, confirm the prior agency disclosure by:
 - (a) incorporating it into the agreement; or
 - (b) attaching it as a separate document;
- (11) when offering an inducement to a buyer who will not pay a real estate commission in a transaction:
 - (a) obtain authorization from the licensee's principal broker to offer the inducement;
 - (b) comply with all underwriting guidelines that apply to the loan for which the borrower has applied; and
 - (c) provide notice of the inducement, using any method or form, to:
 - (i) the principal broker of the seller's agent, if the seller paying a commission is represented; or
 - (ii) the seller, if the seller paying a commission is not represented;
- (12) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:
 - (a) notify the listing brokerage that sub-agency is requested; and

- (b) enter into a written agreement with the listing brokerage with which the seller has contracted:
 - (i) consenting to the sub-agency; and
 - (ii) defining the scope of the agency;
- (c) obtain from the listing brokerage all available information about the property; and
- (d) uphold the same fiduciary duties outlined in this Subsection (1);
- (13) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;
- (14) (a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:
 - (i) the principal broker's individual name; or
 - (ii) the principal broker's brokerage name; and
- (b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;
- (15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:
 - (a) the licensee is involved as agent or principal;
 - (b) the licensee has received funds on behalf of the principal broker; or
 - (c) an offer has been written;
- (16) (a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and
- (b) ensure that any such compensation is paid to the licensee's principal broker;
- (17) (a) in negotiating and closing a transaction involving a property for which a certificate of occupancy has been issued, use:
 - (i) (A) the standard forms approved by the commission and identified in Section R162-2f-401f;
 - (B) standard supplementary clauses approved by the commission; and
 - (C) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;
 - (ii) forms prepared by an attorney for a party to the transaction, if:
 - (A) a party to the transaction requests the use of the attorney-drafted forms; and
 - (B) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or
 - (iii) if no state-approved form exists to serve a specific need, any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:
 - (A) the principal; or
 - (B) an entity in the business of selling blank legal forms; and
 - (b) in presenting an offer on a property for which a certificate of occupancy has not been issued, use:
 - (i) the state-approved Real Estate Purchase Contract for Residential Construction; or
 - (ii) a contract that complies with Section 61-2f-306(2)(b)-(c).
- (18) use an approved addendum form to make a counteroffer or any other modification to a contract;
- (19) in order to sign or initial a document on behalf of a principal:

- (a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;
 - (b) retain in the file for the transaction a copy of said power of attorney;
 - (c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;
 - (d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and
 - (e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"
- (20) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;
- (21) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;
- (22) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:
- (a) the conditions and other terms under which the property is guaranteed to be sold or purchased;
 - (b) the charges or other costs for the service or plan;
 - (c) the price for which the property will be sold or purchased; and
 - (d) the approximate net proceeds the seller may reasonably expect to receive;
- (23) immediately deliver money received in a real estate transaction to the principal broker for deposit; and
- (24) as contemplated by Subsection 61-2f-401(18), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.