



RHODE ISLAND ASSOCIATION OF REALTORS®, INC.

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www.riliving.com

www.statewidemls.com

**Five “Must Have” Documents for REALTORS
Presented by Monica Staaf, RIAR Legal Counsel
March 1, 2007**

What are an agent’s and company’s commission splits? Who pays how much for advertising? Can an office require an agent to pay a commission to the company when selling his or her own home? How much commission will an agent receive from listings if he or she is terminated? Can an office refuse to pay an agent if he or she forgets to have the buyer sign a lead disclosure form?

The answer to all of these questions is, “It depends. What does your independent contractor agreement or office policy say?” Whether you’re a salesperson or Principal Broker, if your company doesn’t use independent contractor agreements, you may face some unpleasant legal surprises.

Also, if a real estate licensee has not signed an independent contractor agreement or filed the correct form with the RI Division of Labor and Training, the real estate company and/or principal broker must comply with withholding requirements for state and federal income tax, social security, unemployment compensation, and workers’ compensation.

1. Independent Contractor Agreement - If a real estate licensee does not sign an independent contractor agreement, he or she will be considered an employee for legal purposes.

This form is available in the Transit Forms Library:

<https://transit.statewidemls.com/login.aspx?ReturnUrl=/Default.aspx>

“Independent Contractor or Employee” – brochure from Internal Revenue Service. You can also go to <http://www.irs.gov/pub/irs-pdf/p1779.pdf>

2. Written Termination Policy - Commercial Licensing Regulation 11, Rule 8(b) requires all principal brokers to adopt a written policy for the payment of commissions to affiliated licensees when they leave or are terminated. It must be signed when the real estate licensee first affiliates with the office.



REALTOR® - is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®

Link to regulation:

http://www.dbr.state.ri.us/documents/rules/comm_licensing/Commercial_Licensing_Regulation_11.pdf

RIAR Independent Contractor Agreement includes termination policy.

3. "Notice of Designation as Independent Contractor" form

All real estate licensees who are independent contractors must complete and file this form with the RI Division of Labor and Training; otherwise the licensee will legally be considered an employee, and the company would be required to pay for workers compensation, unemployment compensation, and withhold state and federal taxes. This form is also available on Transit.

<http://www.dlt.ri.gov/wc/forms/DWC-11-IC-Mar06.pdf>

4. "Transfer of Real Estate Broker or Salesperson License" form

This form must be completed and filed with the RI Department of Business Regulation along with documentation of errors and omissions insurance when a real estate licensee changes offices.

<http://www.dbr.state.ri.us/documents/divisions/commlicensing/realestate/RE-transfer-sales-broker-lic.pdf>

5. Office Policy Manual - an office policy can be used to supplement the independent contractor agreement and discuss office procedures, such as who pays for advertising and expenses, listing procedures, etc.

The National Association of REALTORS web site has a toolkit with samples on creating your own office policy: <http://www.realtor.org/rmoprint.nsf/pages/Feat3200607>

Questions? Contact the RIAR Legal Department at 401-785-3650 and select "option 5".

IRS TAX PUBLICATIONS

If you are not sure whether you are an employee or an independent contractor, get Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Publication 15-A, *Employer's Supplemental Tax Guide*, provides additional information on independent contractor status.

IRS ELECTRONIC SERVICES

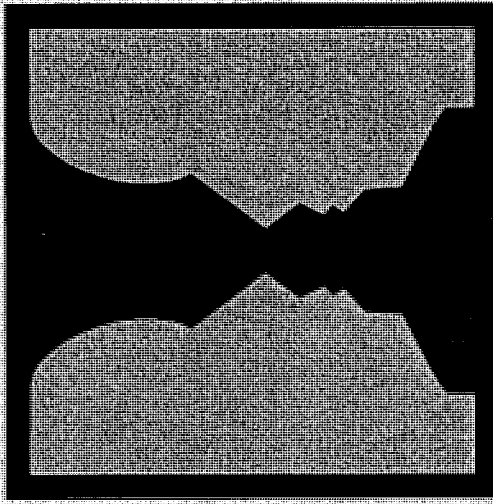
You may download and print IRS publications, forms, and other tax information materials on the Internet at www.irs.gov and you may call the IRS at 1-800-829-3676 (1-800-TAX-FORM) to order free tax publications and forms.

From a fax machine, dial (703) 368-9694 and you will immediately get a list of IRS tax forms faxed back to you. Follow the voice prompts to get specific forms faxed to you.

Publication 1796, *Federal Tax Products on CD-ROM*, of current and prior year tax publications and forms, can be purchased from the National Technical Information Service (NTIS). You may order Publication 1796 toll-free through the IRS at 1-877-233-6767 or via the Internet at www.irs.gov/cdorders.

Call 1-800-829-4933, the Business and Specialty Tax Line, if you have questions related to employment tax issues.

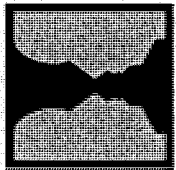
INDEPENDENT
CONTRACTOR



EMPLOYEE



3



INDEPENDENT CONTRACTOR OR EMPLOYEE

Which are you?

For federal tax purposes, this is an important distinction. Worker classification affects how you pay your federal income tax, social security and Medicare taxes, and how you file your tax return. Classification affects your eligibility for employer and social security and Medicare benefits and your tax responsibilities. If you aren't sure of your work status, you should find out now. This brochure can help you.

The courts have considered many facts in deciding whether a worker is an independent contractor or an employee. These relevant facts fall into three main categories: behavioral control, financial control, and relationship of the parties. In each case, it is very important to consider all the facts — no single fact provides the answer. Carefully review the following definitions.

BEHAVIORAL CONTROL

These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done — as long as the employer has the right to direct and control the work. For example:

- **Instructions** — if you receive extensive instructions on how work is to be done, this suggests that you are an employee. Instructions can cover a wide range of topics, for example:
 - how, when, or where to do the work
 - what tools or equipment to use

- what assistants to hire to help with the work
- where to purchase supplies and services

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an independent contractor. For instance, instructions about time and place may be less important than directions on how the work is performed

- **Training** — if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an employee.

FINANCIAL CONTROL

These facts show whether there is a right to direct or control the business part of the work. For example:

- **Significant Investment** — if you have a significant investment in your work, you may be an independent contractor. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an independent contractor.
- **Expenses** — if you are not reimbursed for some or all business expenses, then you may be an independent contractor, especially if your unreimbursed business expenses are high.
- **Opportunity for Profit or Loss** — if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an independent contractor.

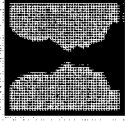
RELATIONSHIP OF THE PARTIES

These are facts that illustrate how the business and the worker perceive their relationship. For example:

- **Employee Benefits** — if you receive benefits, such as insurance, pension, or paid

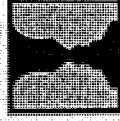
leave, this is an indication that you may be an employee. If you do not receive benefits, however, you could be either an employee or an independent contractor.

- **Written Contracts** — a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.



When You Are an Employee

- Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment (FUTA) taxes on your wages. Your employer must give you a Form W-2, *Wage and Tax Statement*, showing the amount of taxes withheld from your pay.
- You may deduct unreimbursed employee business expenses on Schedule A of your income tax return, but only if you itemize deductions and they total more than two percent of your adjusted gross income.



When You Are an Independent Contractor

- The business may be required to give you Form 1099-MISC, *Miscellaneous Income*, to report what it has paid to you.
- You are responsible for paying your own income tax and self-employment tax (Self-Employment Contributions Act — SECA). The business does not withhold taxes from your pay. You may need to make estimated tax payments during the year to cover your tax liabilities.
- You may deduct business expenses on Schedule C of your income tax return.



INDEPENDENT CONTRACTOR AGREEMENT
RHODE ISLAND ASSOCIATION OF REALTORS®



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The AGREEMENT is made this _____ day of _____, _____ by and between _____ (the "Agency") and _____ (the "Licensee").

**IN CONSIDERATION OF THE MUTUAL PROMISES AND AGREEMENTS HEREIN CONTAINED,
 IT IS HEREBY AGREED AS FOLLOWS:**

1. The parties to this Agreement intend that Licensee be an independent contractor, and not an employee of Agency, so that Licensee retains absolute discretion and judgment in the way in which Licensee carries out listing and selling activities, but Licensee agrees to carry out those activities according to the policies and procedures of the Agency. Licensee shall not be treated as an employee with respect to services and activities performed pursuant to this Agreement for Federal and State tax purposes. Licensee acknowledges that, because of his/her Independent Contractor status, Licensee is not entitled to be compensated under Rhode Island State Worker's Compensation Law or Unemployment Compensation Law. Licensee agrees to execute and file all forms, which are required by state or federal law or regulations, to confirm his/her independent contractor status.

2. Agency agrees to make available to Licensee all of its current listings and other information relating to prospective purchasers, lessees or renters and to assist Licensee in his/her work by rendering full cooperation in every way possible. Nothing in this Agreement shall be construed to require that Licensee accept any particular listing or prospective listing suggested by Agency, nor shall Agency have the right or authority to direct Licensee to see particular parties or restrict Licensee's activities to particular parties or particular areas.

3. When the Licensee performs any service hereunder whereby a commission is earned, said commission shall, when collected by Agency, be divided between Agency and Licensee, and shall be paid to Licensee not later than ten (10) days after receipt by Agency. Such commission shall be based on the Licensee's gross sales without deduction for taxes and shall not be based on the number of hours worked. In the event that two or more duly licensed individuals participate in performing a service for which a commission is payable, and do not agree as to the division of the commission, the Agency shall not be liable to the Licensee for any commission. However, when the commission has been collected, the Agency shall hold the same in trust for Licensee and itself to be divided accordingly.

4. The Agency may provide office facilities and supplies for the use of the Licensee, but the Licensee shall otherwise pay his/her own expenses, including, but not limited to, all of the costs of a real estate license, business cards in a form acceptable to Agency, and all professional association dues. If the Principal Broker elects to require that Licensee be a member of the state REALTOR® Association and the local REALTOR® board, Licensee agrees to become a member and maintain status in same.

5. The Licensee shall be permitted to work out of his/her own home or the office of the Agency and to work any hours that he/she chooses. The licensee may accept outside employment.

6. All listings must be signed by Agency. Licensee shall have no authority to bind Agency by any promise or representation. The expense of attorney's fees, costs, transfer tax, title abstracts and the like which must, by reason of some necessity, be paid from the commission, or are incurred in the collection of, or the attempt to collect the commission, shall be paid by the parties in the same proportion as provided for herein in the division of the commission.

7. Either party may terminate this agreement at any time upon _____ days' written notice to the other. Upon the termination of this agreement, a list shall be prepared of all pending unfinished business involving any sale, lease, or exchange of real property (which list shall be signed by both parties, and neither party shall have any claims except as set forth in such list). Commissions thereafter earned from such unfinished business shall be distributed in accordance with the following:

(a) With respect to any pending brokerage business involving the sale, lease, or exchange of real property listed for sale and under contract for sale by the Licensee and thereafter closed by the Licensee or the Agency, the Licensee shall receive _____ % percent of the net commission collected, and the Agency shall receive _____ % percent;

(b) With respect to any pending brokerage business involving the sale, lease, or exchange of real property listed for sale by the Licensee but sold by another Licensee or Agency and thereafter closed, the Licensee shall receive _____ % percent of the net commission collected, and the Agency shall receive _____ % percent;

(c) With respect to any pending brokerage business involving the sale, lease, or exchange of real property not listed for sale by the Licensee but under contract of sale procured by the Licensee which thereafter closes, the Licensee shall receive _____ % percent of the net commission collected, and the Agency shall receive _____ %.

(d) Outstanding Listings: With respect to any listings procured by said Licensee, and not currently under contract as of termination date of Licensee, the Licensee shall receive _____ % percent of the net commission collected and the Agency shall receive _____ % percent.

8. I acknowledge that I have read and understand the Agency's Policy and Procedure Manual. _____

(Initials)

9. I acknowledge that I have read the agreed upon Commission Schedule. _____

(Initials)

10. Other: _____

 Agency

 Licensee: Print Name License Number

 For Agency: Print Name Title

 Signature

 Signature

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TERMINATION RIDER RHODE ISLAND ASSOCIATION OF REALTORS®



- (a) With respect to any pending brokerage business involving the sale, lease, or exchange of real property listed for sale and under contract for sale by the Licensee and thereafter closed by the Licensee or the Agency, the Licensee shall receive _____ % percent of the net commission collected, and the Agency shall receive _____ % percent;
- (b) With respect to any pending brokerage business involving the sale, lease, or exchange of real property listed for sale by the Licensee but sold by another Licensee or Agency and thereafter closed, the Licensee shall receive _____ % percent of the net commission collected, and the Agency shall receive _____ % percent;
- (c) With respect to any pending brokerage business involving the sale, lease, or exchange of real property not listed for sale by the Licensee but under contract of sale procured by the Licensee which thereafter closes, the Licensee shall receive _____ % percent of the net commission collected, and the Agency shall receive _____ %.
- (d) Outstanding Listings: With respect to any listings procured by said Licensee, and not currently under contract as of termination date of Licensee, the Licensee shall receive _____ % percent of the net commission collected and the Agency shall receive _____ % percent.

Signature

Date

COMMERCIAL LICENSING REGULATION 11

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(F) Escrow Accounts:

(1) Each Agency shall maintain an escrow account. A multi-office Agency shall maintain an escrow account for each office or one (1) central escrow account for the Agency. In the event a multi-office agency utilizes a central escrow account, the Office Supervisor in each Branch Office shall be given a monthly report as to the status of that office's escrows and shall be responsible for its accuracy.

(2) Funds held in escrow may be applied to the Commission when earned by the listing company.

(3) It is a violation of this regulation to fail to maintain and deposit within five (5) days in a special account in a Rhode Island depository institution, separate and apart from personal and other business accounts, monies received by a Principal Broker acting in said capacity or as an escrow agent, or as the temporary custodian of the funds of others in a real estate transaction;

(4) Remaining commissions shall be brought to the closing for disbursement by the closing officer.

(G) Dual activities. In all Real Estate transactions in which a Broker acts in more than one capacity, i.e. builder, contractor, insurance agent, all deposit monies received must be placed in his/her Real Estate escrow account.

(H) Security Deposits. Security Deposits relating to rental agreements are exempt from the provisions of this section of the regulation.

RULE 8 COMMISSIONS

(A) Unless otherwise expressly provided by written agreement between the Principal Broker and an affiliated Licensee and cooperating broker and referring broker, all commissions due to a Licensee from the Principal Broker shall be subject to an accounting and payment to the affiliated Licensee and cooperating broker and referring broker no later than ten (10) calendar days from the receipt of such commission by the Principal Broker.

(B) Every Principal Broker must promulgate a written policy for the payment of commissions to affiliated Licensees on their termination. Such policy must prescribe the rate of commission to be paid, if any, on termination. The Principal Broker must obtain the written signature of each affiliated Licensee under such Broker as soon as such affiliation is established, indicating that such affiliated Licensee agrees to such policy which shall include, but not be limited to the following:

(1) Upon termination of affiliation or employment, the Principal Broker shall make a complete accounting in writing of all commissions due to Licensee;

(2) In the event any commission so accounted for is not in accord with the established commission schedule, the Principal Broker shall give a complete written explanation of any difference; and

(3) Such accounting shall be made within thirty (30) days after the termination of affiliation or employment of said Licensee.

(C) In the event the seller offers an incentive payment beyond the agreed listing fee to the procuring Licensee, the Principal Broker and the seller must have a written agreement describing the incentive payment and recognizing that if the sale is a cooperative sale, the incentive payment must be in conformity with R.I. Gen. Laws § 5-20.5-14(12) and must be distributed to the Licensee by the Principal Broker with whom he/she is affiliated.

RULE 9 ADVANCE FEES

(A) Any Principal Broker who charges or collects an advance fee in excess of twenty-five dollars (\$25.00) for services to be rendered, including but not limited to, advertising costs under an advance fee agreement, shall at the time of accepting said advance fee furnish his/her buyer or seller with a list of services to be rendered.

(B) This section shall not apply to advance fees charged by a Principal Broker for the purpose of performing an appraisal and/or a market analysis of real property.

RULE 10 RECORDS

(A) Every Principal Broker shall keep records of all funds and property of others received by him/her for not less than three (3) years from the date of receipt of any such funds or property.

(B) These records shall clearly indicate: the date, amount and from whom received, specifying property and reason for holding monies, date of deposit of such funds and name of depository bank, date of disbursement, amounts forwarded, together with the name of the recipient, and any other pertinent information concerning the transaction.

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State of Rhode Island, Department of Labor and Training, Division of Workers' Compensation
P.O. Box 20190, Cranston, RI 02920-0942
Phone (401) 462-8100 TDD (401) 462-8084 www.dlt.ri.gov

NOTICE OF DESIGNATION AS INDEPENDENT CONTRACTOR PURSUANT TO RIGL §28-29-17.1

PLEASE READ OTHER SIDE

WARNING

No one can force you to sign this form. When you sign this form you are stating that you are an independent contractor and in the event of injury, are not entitled to workers' compensation benefits.

* (Name) _____	Soc. Sec. No. _____
* Business Name _____	FEIN _____
_____	Business License No. _____
Address _____	Date of Birth _____
_____	_____

I declare that I am an independent contractor pursuant to RIGL §28-29-17.1 and, therefore, I am not eligible for nor entitled to Workers' Compensation benefits pursuant to Title 28, Chapters 29-38, of the Workers' Compensation Act of the State of Rhode Island for injuries sustained while working as an independent contractor for the hiring entity named below. This designation will remain in effect while performing services for the named hiring entity or until a withdrawal of designation as independent contractor form is filed with the Department of Labor and Training.

* Hiring Entity Name _____	Soc. Sec. No. _____
_____	FEIN _____
* Address _____	Business License No. _____
_____	_____

Warning! This form is for purposes of Workers' Compensation only and completion of this form does not mean that you are an Independent Contractor under the rules, regulations or statutes of the Internal Revenue Service or the RI Division of Taxation. Information on this form will be shared within the Dept. of Labor and Training, the RI Division of Taxation and the Internal Revenue Service.

Independent Contractor: _____
Signature Date

A hiring entity that knowingly assists, aids and abets, solicits, conspires with or coerces an employee to misrepresent the employee's status as an independent contractor may be subject to criminal prosecution under RIGL §28-33-17.3.

*** This information is available to the public including the Hiring Entity's Workers' Compensation Insurance Carrier.**

The Department will mail a confirmation of this filing to the independent contractor within five business days. If you have any questions, call 462-8100, option 5.

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DWC-11-IC Reverse Side

This is a form DWC11-IC, Designation of Independent Contractor. This means that you have stated that you are an independent contractor NOT an employee and are NOT eligible for Workers' Compensation benefits.

Many factors are considered when determining whether someone is an employee or an independent contractor. Some of those factors are: independent contractors set their own work hours, have their own tools and work when and for whom they choose.

An employer generally does not have to withhold or pay any taxes on payment to independent contractors, such as social security, Medicare, unemployment and Temporary Disability Insurance (TDI).

This form is for purposes of Workers' Compensation, and completion of this form does not mean that you are considered an Independent Contractor under the rules, regulations or statutes of the Internal Revenue Service or the R.I. Division of Taxation.

SHOULD YOU HAVE ANY QUESTIONS ABOUT WHETHER YOU ARE AN INDEPENDENT CONTRACTOR OR AN EMPLOYEE, PLEASE CONTACT THE RI DIVISION OF TAXATION AT (401) 222-3682, OR THE US GOVERNMENT INTERNAL REVENUE SERVICE AT 800-829-1040.

IF YOU FEEL YOU HAVE BEEN COERCED OR FORCED TO SIGN THE INDEPENDENT CONTRACTOR FORM, REPORT THIS TO THE WORKERS' COMPENSATION FRAUD AND COMPLIANCE UNIT AT (401) 462-8100, option 7.

When your work as an independent contractor ends with this employer, complete and return the form titled Notice of Withdrawal of Designation as Independent Contractor, DWC-11-ICR, to the Dept. of Labor and Training, Division of Workers' Compensation.

If you have a question, contact the Division of Workers' Compensation at (401) 462-8100, option 5. For further information, contact the Workers' Compensation Information Line at (401) 462-8100, option 1.

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REALTOR[®]

MAGAZINE ONLINE

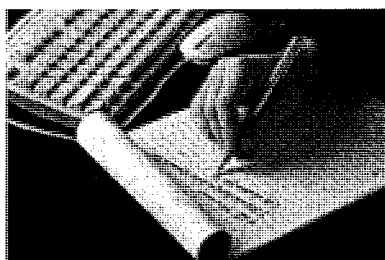
This article was published on: 07/01/2006

ONLINE EXCLUSIVES

An invaluable guide

How to Create an Office Policy Manual

With an easy-to read manual, your staff and associates will know what's expected of them. We explain how to write, produce, and distribute your company's roadmap to success.



If you manage or own a real estate company, or any company for that matter, a well thought-out office policy manual is a must.

Why? It gives sales associates a solid understanding of your company's mission and goals from their first day on the job, helps to avoid unnecessary confusion, and communicates company policies on e-mail, advertising, and other important topics.

"A good policy manual establishes trust, prevents misunderstandings and clarifies expectations for both the broker and the agent," says David Fletcher, a broker and founder of Agent's Boot Camp in Orlando, which develops training courses and products for new associates and independent brokerages.

Fletcher believes that not having a written policy manual is one of the biggest mistakes a broker-owner can make. When creating one, you're forced to think through all of thorny issues that may come up in the day-to-day course of business — from commission disputes to dress code problems — and create a solution.

Office policy manuals also help reduce turnover. You should ask recruits to review the manual before choosing whether or not to come on board, Fletcher says. "It answers most questions the agent will eventually have in a professional way. In one sitting, [associates] can get a great idea what is expected of them and what they can expect of the broker."

In this article, we'll take you through the steps of creating an effective office policy manual, including:

- What topics to cover
- Whether you should hire an expert to pull it all together
- Tips on making the manual easy to read
- How you should distribute it
- Free resources that will help you get started.

What Topics Should the Manual Cover?

Your manual should encompass all of the basics: your mission statement, personnel policies, and

general procedures such as office attire, sales meetings, office conduct, terminations, and vacations. However, it's also important to include policies and procedures specific to real estate. Here are some suggestions. Remember, this list is meant only as a guide — it's not all-inclusive.

Advertising. Explain your rules about signage, advertising language, when to use the equal opportunity slogans and logos, and open house ads, as well as the allocation of advertising costs and space. Show examples of ads whenever possible to illustrate what's allowed and what's not. Cross-reference the NAR Code of Ethics guidelines on advertising practices.

Acknowledgement Form. Ask salespeople and staff to sign the form to confirm that they've received the office policy manual and understand company policies.

Brokerage Relationships/Agency Disclosure. To respond to the needs of consumers today, real estate agents may represent buyers, sellers, or both. Informed consumers can choose from a variety of business relationships with real estate agents. NAR encourages real estate companies to have a written policy that addresses and outlines agency/brokerage relationships with consumers. It helps reduce potential liability by educating licensees on the different types of brokerage relationships that your company offers. Read more on agency disclosure.

Business Procedures. In this nuts-and-bolts section, be sure to include company policy for presenting offers, disclosure statements, delivering paperwork, and holding open houses. It also should include information about lockboxes and keys — where they're kept and how they're managed.

Commission and Fee Structure. Include splits, bonus plans, referrals, entitlement to commissions, and how you will resolve interoffice and intraoffice disputes over commissions. Read more on avoiding commission disputes.

Do-Not-Call Rules. Create an office policy even if you plan to hire an outside service to assure your compliance with the rules; it could protect your company from lawsuits resulting from a failure to comply. Include procedures on how you comply with the rules, how you will train personnel to comply, how you will maintain your do-not-call list, and your process for preventing telephone solicitations to numbers on the list. Read more on creating an office policy for do-not-call rules.

E-mail Communication. Cover computer, e-mail and telephone solicitation, and use of the Internet. Spell out rules for salespersons' use of company names and logos on Web sites and in e-mails; cite rules for opt-in e-mail marketing and CAN-SPAM Act compliance; and address content copyright issues. Include a chapter on computer security, use of e-mail, and use of computers. Read more on developing Internet policies.

Ethical Standards. Provide a copy of the NAR Code of Ethics and explain how to file an ethics complaint. Read more about office policies on ethics.

Equal Opportunity. While not required by law, it's a good idea to include an equal opportunity statement in your office policy manual, setting forth your company's position. Here's a sample equal opportunity statement: "The ___ company has been and is fully committed to equal employment opportunity, both in principle and as a matter of policy. Our employment policies and practices require that we provide equal opportunity to all applicants, independent contractors, and employees, without regard to race, color, religion, sex, national origin, age, or disability."

Expenses. Clarify who bears responsibility for Board dues, MLS fees, and continuing education costs. Also, include information about overhead costs, such as who's responsible for local and long-distance calls, postage and photocopying.

Fair Housing. Summarize fair housing regulations and include an equal opportunity statement indicating that applicants are considered without regard to race, color, religion, sex, national origin, age or disability. Read more on reducing your [fair housing risk](#).

Independent Contractor Agreement. This agreement should state that the salesperson's compensation will be solely in the form of commissions, that the salesperson is not an employee, and that the salesperson will conduct business in accordance with the state's laws and regulations. Read more on [7 items that every independent contractor agreement should include](#).

Legal Assistance. Outline when you'll make legal counsel available for sales associates and how you'll handle lawsuits, threats of action, arbitration, and code of ethics and license law violations.

Listings. Write a policy for departing associates, covering the question of who "owns" clients and pending sales. Describe whether an associate may or may not take listings with him or her when they leave the company. Also, explain your MLS policies, including responsibility for entering listings and length of time listings can remain on your personal site after sale.

Other Requirements. Include your policy and information about errors and omissions (E&O) and liability insurance, continuing education and professional memberships.

Performance Reviews. Explain your policy for periodic review of employees, and how it offers the opportunity for evaluation and constructive comments by both parties.

Personal Assistants. Spell out a personal-assistant policy, including guidelines for hiring and supervising assistants, both licensed and unlicensed. Read more on [personal assistants](#).

RESPA Compliance. RESPA violations can carry serious consequences. RESPA, or the Real Estate Settlement and Procedures Act, prohibits kickbacks for the referral of business incident to or part of a settlement service and also prohibits the splitting of a charge for a settlement service, other than for services actually performed. State regulations can impose additional constraints. It's vital to include what is prohibited and what is allowed. Read more on [how to comply with RESPA](#).

Sexual Harassment. Your policy should consist of an explanation of what constitutes sexual harassment, names of people to whom claims can be reported (other than the direct supervisor), a statement that no retaliation will occur from a claim, procedures that are followed when sexual harassment is alleged, disciplinary action to be taken against those who file a false claim, and your commitment to all employees on the issue. Take a quiz on [sexual harassment awareness](#).

Workplace Privacy. Check with state laws on workplace privacy as you formulate your policy. Include access to performance and medical records; alcohol and drug testing; and monitoring of phone and/or e-mail use. Balance your need to maintain a safe, productive, and efficient workplace with your employee's privacy rights. Put your policy in writing and ask employees to give their written acknowledgement. Read more on [workplace privacy](#).

How Should I Produce It?

As you determine what to put in your manual, you also have to figure out who will write it. Your best option depends on the size of your budget and whether or not you already have a core manual from which to draw.

“The best way to start writing a policy manual is to purchase one and revise it to meet [your] needs,” says Fletcher. “The broker needs to write it. The person responsible for procedures (such as contract processing) should write [that section] for the broker’s review. This is the person who best understands the paper trail and scope of the work,” says Fletcher.

Another option is to hire a human resources consultant to draw up a draft. You may want to borrow a copy of another company's manual to use as a guide. Contact your local REALTOR® association to see if it has a sample.

“If you can’t afford to hire a consultant to create a manual, you’ll have to assemble it from existing policies and procedures (written and unwritten), along with information from your state rules, regulations and laws,” says Darla J. Scott, CEO of Management Master.com in Philadelphia. “You’ll also want to develop day-to-day policies and create forms (such as Buyer Transmittal Form, Seller Transmittal Form and Listing Checklists) to help promote organization and efficiency within the office.”

It’s necessary to have an attorney review the document before it’s printed and distributed to staff. When it comes to issues such as regulatory compliance, terminations, and workplace privacy, you will want to have a legal expert’s advice and expertise on complying with state laws.

Make It Easy to Read

Your office policy manual should be attractive and user-friendly. It shouldn't be a chore to read.

That means using clear, concise, and uncomplicated language. Let someone else read the manual and ask for feedback; what’s clear to you may not be to a third party.

Also, clearly label each chapter and create a table of contents or an index so employees and salespeople can jump to the topic they're looking for.

To set an upbeat tone, use positive statements, not negative ones, whenever possible. Don’t tell workers what they can do, instead what they will do.

For real estate salespeople who are always on the go, an online version of the guide makes good business sense. Another benefit of an electronic version: you can easily make changes to and update the document without having to spend a bundle printing new manuals.

What’s Next?

Distribute your finished office policy manual to everyone on staff and let them know where to find it on the Web or company intranet. Make sure that every new employee has his or her own copy, and require staff to sign a statement acknowledging they have read and understand the manual.

Remember: an office policy manual is a living document. Develop a maintenance plan to keep it accurate. Update the policy manual as laws and the organization's priorities change, and schedule regular reviews of the manual and update accordingly.

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Sources: *Book Smart: How to Make a Valuable Office Policy Manual* (Florida REALTOR® Magazine, 2005), *Don't Risk It: A Broker's Guide to Risk Management, 2nd Ed.* (NATIONAL ASSOCIATION OF REALTORS®, 2000), REALTOR.org.

More Resources

REALTOR.org: Field Guide to Real Estate Office Policy Manuals

The articles and books in this Field Guide provide tools and tips to create a policy manual, covering subjects ranging from policies and procedures to cell phone usage and more.

MicrosoftOffice.com: Creating an Office Policy Manual

Free tips, demos, and templates, including an outline to help you develop your manual and a form letter that employees can sign to acknowledge they read it.

eHow.com: How to Write Policies and Procedures for Your Business

An 8-step guide to creating an office policy manual, with related how-to articles on employee evaluations, being politically correct, and counseling your staff.

TemplateZone.com: How to Write a Policy Manual

This free PDF document, offered by a Web site that sells office policy manuals, explains the importance of an office policy manual and how to get started creating one. It's not real estate specific, but provides good tips nonetheless.

U.S. Department of Labor: The Fair Labor Standards Act

Learn about the federal regulations regarding employee record-keeping, minimum wage, overtime, and other important topics.

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