## USE OF THE NC REALTORS®
## MODEL OFFICE POLICY MANUAL

The NC REALTORS® has developed this Model Office Policy Manual (the "Manual") as a guide in the preparation of policy manuals for real estate offices. Although an attempt has been made to make the *Manual* as comprehensive as possible, there are undoubtedly other things not addressed in the *Manual* that could be addressed in your office policy manual. Just because a particular item is not addressed in the *Manual* does not necessarily mean that it would be inappropriate to include that item in your office policy manual. On the other hand, your office policy manual does not necessarily need to address each and every item set forth in the *Manual*.

Perhaps the only thing worse than not having a written office policy manual is having one that contains policies your firm does not adhere to. It is therefore very important that you read each section of the *Manual* carefully, and then edit it so that it reflects your firm's actual policies. An attempt has been made to put editorial comments and directions in bold type, which should be eliminated from the text. You may alter the *Manual* in whatever way you may choose; however, the *Manual* is for the use of your firm only as a guide in the preparation of your firm's office policy manual, and should not be used for any other purpose whatsoever, or sold or otherwise transferred to any other person or entity for any purpose whatsoever.

The *Manual* has been reviewed by counsel for NC REALTORS® in an attempt to ensure that the policies contained in the *Manual* comply with all applicable laws, regulations and rules. However, the purpose of the *Manual* is to provide general guidance only and may not be relied on by anyone as specific legal advice. It is recommended that legal counsel review the content of your office policy manual.

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## ACKNOWLEDGMENT AND AGREEMENT

The undersigned agent or employee of S.S. SMITH, INC., REALTORS®, acknowledges receipt of a copy of S.S. SMITH, INC., REALTORS®, Office Policy Manual.

As a condition of his/her association or employment with S.S. SMITH, INC., REALTORS®, the agent or employee agrees to abide by the terms of this Manual as presently adopted and as amended in the future by publication from management of any changes.

THIS OFFICE POLICY MANUAL IS NOT INTENDED AS AN EXPRESS OR IMPLIED CONTRACT OF EMPLOYMENT. S.S. SMITH, INC., REALTORS® RESERVES THE RIGHT TO TERMINATE THE ASSOCIATION OF ANY AGENT OR EMPLOYEE AT ANY TIME, WITH OR WITHOUT CAUSE.

_____
Agent or Employee signature

_____
Date

## ADVERTISING POLICY

**(NOTE: A company which practices buyer agency exclusively should delete references to listings. However, several other sections are appropriate, especially those regarding advertising by provisional brokers.)**

The specific procedures for advertising properties with S.S. SMITH, INC., REALTORS®, are found in other training materials. These procedures, such as where and when properties are advertised are subject to change. The policies stated here primarily regard the legal and risk reduction aspects of advertising.

The following policies apply to all property listed with S.S. SMITH, INC., REALTORS®.

1. Advertising Defined: It is the policy of S.S. SMITH, INC., REALTORS®, that the term "advertising" is to be broadly interpreted to include any communication, whether oral or written, between an agent and the public.

2. Necessity Of Signed Listing Agreement: No property will be advertised in any way without a signed written listing agreement on file with the broker (sales manager). The listing agreement in the hands of the agent is not sufficient. If a listing agent has a listing he/she wants to advertise, the original or a fax of the original must be in the hands of the broker (sales manager).

3. Newspaper/Magazine Ads: A listing which is due to expire by the publication date of a newspaper or magazine ad will not be inserted into the ad unless a written extension of the listing is received by the broker (sales manager) before the deadline for placing the ad.

4. Price Changes: No price changes or other substantive changes to the listing will be advertised unless a written change of the price or other appropriate information is received by the broker (sales manager) before the deadline for placing the ad.

5. Advertising Features As "New": Information on features of the property will not be advertised as "new" unless substantiated by written receipts or other evidence of payment from the owner showing the date the work was done. If the verification is received, it will be advertised with the appropriate date. If the verification is not received, the listing agent must use other words such as "newer" or "recent" to describe the feature.

Agents should take special care to follow these same rules in the use of "special feature" sheets. If an agent does not follow this policy regarding any information sheets or other documentation/advertising the agent prepares, the agent will be solely liable for any errors or omissions which later cause any losses.

6. "For Sale" Signs: "For Sale" signs and lock boxes will be removed immediately upon expiration or withdrawal of a listing.

7. "Sold" Signs: According to the REALTOR Code of Ethics, prior to closing, only the sold sign of the listing broker is allowed on the listing, unless the listing agent consents otherwise. The Code of Ethics also allows the cooperating broker to post a "sold" sign with the written permission of the buyer after the closing. Per the Code of Ethics, either the listing broker or the cooperating broker may claim to have sold the property in advertising and representations to the public. However, the North Carolina Real Estate Commission discourages the use of "sold" signs on property prior to closing. In light of this position, it is the policy of this Company to place "Under Contract" signs rather than "sold" signs on any property prior to closing.

8. "Personal Advertising": Personal advertising by individual agents is encouraged. Any personal advertising must be approved by the broker (sales manager). North Carolina Real Estate Commission Rule 58A.0105 requires that a provisional broker include the company name or the name of his/her broker in any advertising regarding the sale of real estate for others, and that all ads clearly indicate they are the advertisements of a broker or brokerage firm. Standard of Practice 12-5 of the Code of Ethics requires that the name of the firm be disclosed in a reasonable and readily apparent manner in any advertisement in any medium of real estate services or listed property, either in the advertisement or in electronic advertising via a link to a display with all required disclosures.

The proper use of names in advertising was addressed in the March 2004 issue of the NC Real Estate Commission's *Bulletin.* A copy of the article follows in italics. All personal advertising by agents of the Company must be in conformity with the guidelines set forth in the article.

*If you use a name in your real estate business which is different from the name on your real estate license certificate (which should be your legal name), you may be in violation of the Real Estate License Law.*

*For example, suppose your full legal name is Midlemas Phestus Furplesnurkle, IV, but you prefer to go by "Purple" in connection with your real estate business. Your advertisements in the local homes magazine, newspaper and on the web, simply say, "For all your real estate needs, think "Purple!" Likewise, your (purple) business cards and sign riders identify you only as "Purple."*
*This method of identification is insufficient under the law even if your ads, cards and stationery include your company name, address and phone number. The name under which you do business should be enough to identify you legally and to assure that you are not misleading the public as to your identity. By using only "Purple," you are engaging in business under a name not legally your own, and thus effectively concealing your identity. While you may not intend to deceive, you do so by not using your legal name.*

***First Names***

*Nicknames have always been common, and you can certainly use one in place of your legal first name. The key is to remain readily identifiable to the public and to the Real Estate Commission. Some nicknames are short versions of a longer name and are commonly known. For example, William may go by "Will" or "Bill," Robert by "Rob" or "Bob," and Elizabeth by "Liz," "Beth," or even "Betsy." In these kinds of situations, you may use a nickname because your actual name can be easily determined. Similarly, a nickname involving the use of initials in place of your given name is*

*acceptable, as when Thomas Joseph Jefferson goes by "T. Joseph Jefferson" or even "T.J. Jefferson."*

*Other nicknames are not logically associated with the user's first name. For example, if your name is Midlemas Phestus Furplesnurkle and you use a nickname like "Purple" or "Kid," a member of the public would have no way of knowing that you are actually "Midlemas." In order to assure that you can be easily identified, your business cards and correspondence should include your full name together with your nickname. This can be done in various ways. For example, your business card might read, "Midlemas 'Purple' Furplesnurkle, Broker," and your newspaper ad could say, "For all your real estate needs, call Purple! (M.P. Furplesnurkle, IV, Broker)."*

***Last Names***

*On the other hand, using a surname that is not your own is not allowed. If you have an awkward or lengthy surname, you may wish that you could shorten or simplify it only in connection with your real estate business. While the goal is understandable, the result is misleading if you haven't legally changed your name. For instance, if your surname is Furplesnurkle, you can't simply call yourself "Mr. Furp" or "Mr. Jones" in your brokerage activities, so long as your legal name remains Furplesnurkle. If you want to become "Furp" or "Jones," you should legally change your name. The most straightforward way to do this is to go through a judicial name change proceeding before the clerk of court in the county where you reside.*

*If you don't want to go to the trouble of changing your name legally, then you should use your legal name in all aspects of your business. You cannot avoid the problem by filing an assumed name registration in the office of the register of deeds. That procedure is only for business names--not for personal name changes.*

9. Regulation "Z": Any advertising containing financial terms of the offering must comply with federal Truth-in-Lending laws, also known as "Regulation Z." Regulation Z requires that all of the terms of the financing be stated if any "triggering terms" are used. "Triggering terms" are terms such as the amount of down payment ("10% down"), the amount of any payment ("Only $550 per month"), the period of repayment ("40 year loan available") or the number of payments ("Only 48 monthly payments).

If any of these terms are used, the following disclosures are required:

a. Amount or percentage of down payment.
b. Terms of repayment.
c. Annual Percentage Rate, stated and calculated as such.

Use of any interest rate in advertising is not allowed. Only the Annual Percentage Rate, stated and calculated as such is allowed. Therefore, a property cannot be advertised as having a "7% assumable VA loan."

Not all terms trigger Regulation Z disclosure. Some examples of terms which can be used without triggering Regulation Z disclosure are "No down payment", "Financing Available", "Special Financing", or "Assumable Loan".

10. Internet Advertising
    a. All agent-created or -utilized online advertisements, Web pages, domain names, sponsorships, links, frames, blogs and other electronic media (referred to as "Internet advertising") must conform to state and federal law and to Company [or franchise] identity standards.
    b. All Internet advertising must be approved by Company management before going online. This policy covers personal Web sites, all forms of social media, blogs and listings posted on any site other than the Company's Web site, [the Company's franchise's Web site or REALTOR.com®].
    c. Any contract for Internet advertising must be reviewed and approved by Company management before the agent signs it.
    d. All Internet advertising must contain appropriate content and shall not contain links to any inappropriate content nor be sponsored by any person or entity that has not been specifically approved by Company management. (Examples of inappropriate content include racial or ethnic "hate" content, content that is excessively violent, and sexually explicit content.)
    e. The agent will be responsible for all costs of the Internet advertising that he or she has contracted for. The agent may not enter into any contracts for Internet advertising in the Company's name; instead, the agent must enter into such contracts in his or her own name. If the Company becomes liable for an agent's Internet advertising contract, the agent will promptly reimburse the Company the costs of the advertising and/or the Company will have the right to deduct such costs from any pending commissions due the agent.

## AGENCY DISCLOSURE POLICY

~~Complementing the agency policy chosen by the company is the North Carolina Real Estate Commission Rule on Agency Agreements and Disclosure (Section 58A.0104).~~ In addition to the requirements under the License Law, S.S. SMITH, INC., REALTORS®, ~~maintains a policy promoting~~ requires discussion of agency relationships at the first reasonable opportunity with a customer or a client. Each agent is required to attend training and education on agency disclosure within the company training program.

~~The rules of the North Carolina Real Estate Commission require the use of the "Working With Real Estate Agents" brochure prescribed by the Commission. The brochure must be given in every real estate sales transaction by a broker working directly with a prospective buyer or seller at the first substantial contact with the prospective buyer or seller. The broker must review the brochure with the prospective buyer or seller and determine whether the broker will act as the agent of the prospective buyer or seller. If the broker will work with a prospective buyer as an agent or subagent of the seller, the rules of the Commission require the broker to disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker represents the interests of the seller. This should be accomplished by checking the box appearing in the bottom part of the brochure's "tear-off" signature panel and having the buyer initial in the space provided.~~

~~The Rules of the Commission also require that in every real estate sales transaction, a broker representing a buyer shall disclose to the seller or seller's agent, at the initial contact with the seller or seller's agent, that the broker represents the interests of the buyer. Additionally, the broker shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he/she represents the interests of the buyer.~~

The North Carolina Real Estate Commission's Working with Real Estate Agents Disclosures ("WWREA") are mandatory. The primary purposes of the WWREA are to warn potential buyers and sellers against sharing confidential information with brokers who do not represent them, and to inform prospective buyers and sellers about the types of agency relationships that are offered by a real estate brokerage firm.

~~In light of the increasing emphasis in the industry on agency relationships,~~ The License Law requires that WWREA be reviewed with prospective buyers and sellers at "first substantial contact," which occurs when an agency relationship begins to exist between a broker and prospective buyer or seller and confidential information is shared. Simply sending the WWREA to a prospective buyer or seller and requesting an acknowledgment of receipt does not comply with the rule, nor does including a link in your email signature. Agents must review the WWREA with the prospective buyer or seller. Accordingly, S.S. SMITH, INC., REALTORS®, ~~prefers and~~ strongly urges that each agent discuss agency relationships with customers and clients at the earliest possible time in the relationship to avoid later misunderstandings. All agents must disclose agency not later than the time periods required by the License Law ~~Rules~~.

~~The North Carolina Real Estate Commission Rules require that records of all transactions, including the "tear-off" signature panel from the "Working With Real Estate Agents" brochure,~~ Once reviewed

and signed by a prospect, WWREA must be retained by licensees. ~~Completed signature panels~~ Signed WWREA are to be sent to the branch sales manager for further processing and retention by the company. If a prospective buyer or seller refuses to sign ~~complete the signature panel~~, the agent should set forth, sign, and date a written explanation of the facts of the refusal. Any written explanations of this type must be forwarded to the branch sales manager for further processing and retention by the company.

(NOTE: The company should insert the appropriate procedure and place for retaining agency disclosure forms.)

## AGENCY POLICY

(THE NC REALTORS® DOES NOT RECOMMEND OR ENDORSE ANY SPECIFIC AGENCY METHOD OR PRACTICE OTHER THAN COMPLIANCE WITH THE REALTOR® CODE OF ETHICS, THE RULES OF THE NORTH CAROLINA REAL ESTATE COMMISSION, AGENCY LAW, AND THE REAL ESTATE LICENSING LAW.)

(The sample agency policies listed below are only examples of possible agency policies. Each company should decide which services to provide and adopt a policy consistent with its choice in consultation with its legal counsel.)

EXAMPLES OF AGENCY POLICIES:

1. Single Agency - Seller Representation Only:

S.S. SMITH, INC., REALTORS® adopts this written policy identifying and describing the relationships in which the licensees of S.S. SMITH, INC., REALTORS® may engage with sellers, landlords, buyers or tenants. As used in this policy, the word "Company" means S.S. SMITH, INC., REALTORS® and its affiliated licensees.

The Company acts only as seller's agents (and/or landlord's agents) through written listing agreements or other written agreements for brokerage services with sellers (and/or landlords) and represents only sellers.

The Company does not act as buyer's agents (or tenant's agents) and will not represent buyers (and/or tenants) nor enter into written agreements for brokerage services with buyers (and/or tenants).

The Company will work with buyers (and/or tenants) to sell its listings. The company will also work with buyers (and/or tenants) to sell listings of other brokers as subagents of those brokers when offers of cooperation and compensation are offered to subagents, either through written offers of subagency or through unilateral offers of subagency made in any multiple listing services in which the Company participates. Licensees of the Company engaging in subagency must comply with applicable law and rules regarding disclosure of subagency to the buyer (and/or tenant).

The Company will not act as a dual agent.

OR

2. Single Agency - Buyer Representation Only - Written buyer agency agreements required:

S.S. SMITH, INC., REALTORS® adopts this written policy identifying and describing the relationships in which the licensees of S.S. SMITH, INC., REALTORS® may engage with sellers, landlords, buyers or tenants. As used in this policy, the word "Company" means S.S. SMITH, INC., REALTORS® and its affiliated licensees.

The Company acts only as buyer's agents (and/or tenant's agents) through written buyer (and/or tenant) agency agreements or other written agreements for brokerage services with buyers (and/or tenants) and represents only buyers. The Company will not undertake to represent a buyer (or tenant) without a written buyer (or tenant) agreement. A written agreement that complies with MLS policy must be entered into with any buyer (or tenant) before the buyer (or tenant) tours any home. This written agreement must: (1) specify and conspicuously disclose the amount or rate of compensation to be received or how this amount will be determined, with such compensation amount to be objectively ascertainable and not open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offer to the buyer" is not permitted); (2) prohibit an agent from receiving more compensation than what is agreed to in the written agreement from any source; and (3) contain a conspicuous statement that broker fees are not set by law and are fully negotiable.

The Company does not act as seller's agents (and/or landlord's agents) and will not represent sellers (and/or landlords) nor enter into written agreements for brokerage services with sellers (and/or landlords). The Company does not accept listings of property.

The Company will work with sellers (and/or landlords) as customers in circumstances where a seller's (and/or landlord's) property is not listed and the Company's buyer client desires to purchase seller's/landlord's property. In such circumstances, the Company will disclose to the seller (and/or landlord) in writing the Company's status as a buyer's agent, and will obtain the appropriate written authorizations to show the property. The Company recommends that NC REALTORS Standard Form #150 ("Unrepresented Seller Disclosure and Fee Agreement") be used in this regard.

The Company will not act as a dual agent.

The Company will accept compensation from listing brokers and/or sellers with appropriate disclosures to its clients.

OR

3. Single Agency - Buyer Representation Only - Oral buyer agency agreements permitted:

S.S. SMITH, INC., REALTORS® adopts this written policy identifying and describing the relationships in which the licensees of S.S. SMITH, INC., REALTORS® may engage with sellers, landlords, buyers or tenants. As used in this policy, the word "Company" means S.S. SMITH, INC., REALTORS® and its affiliated licensees.

The Company acts only as buyer's agents (and/or tenant's agents) and represents only buyers (and/or tenants). The Company encourages its agents to establish agency relationships with buyers (and tenants) through written buyer (and/or tenant) agency agreements or other written agreements for brokerage services at first substantial contact with buyers (and/or tenants). However, if a buyer (or tenant) is initially unwilling to enter ~~into~~ a written buyer (or tenant) agency agreement, it is permissible for agents of the Company to undertake to represent the buyer (or tenant) without a written buyer (or tenant) agency agreement in accordance with the rules of the North Carolina Real Estate Commission and MLS policy.

The Company's agents should encourage the buyer (or tenant) to put the agency agreement in writing as soon as possible. As required by the Commission's rules, a buyer (or tenant) agency agreement must be in writing not later than the time an offer to purchase (or lease) is presented to a seller (or lessor) or the seller's (or lessor's) agent. As required by MLS policy, agents working with a buyer must have an executed, written agreement with every buyer prior to touring a property, even if the agent is working under oral buyer agency. Such written buyer agreement must: (1) specify and conspicuously disclose the amount or rate of compensation to be received or how this amount will be determined, with such compensation amount to be objectively ascertainable and not open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offer to the buyer" is not permitted); (2) prohibit an agent from receiving more compensation than what is agreed to in the written agreement from any source; and (3) contain a conspicuous statement that broker fees are not set by law and are fully negotiable. (NOTE: If the company is going to require as a matter of company policy that oral buyer or tenant agency agreements be put in writing by a particular time (for example, within a specified number of days following first substantial contact or not later than a specified number of meetings between the buyer or tenant and the agent representing the buyer or tenant), this paragraph should be revised to reflect that policy.)

The Company does not act as seller's agents (and/or landlord's agents) and will not represent sellers (and/or landlords) nor enter into written agreements for brokerage services with sellers (and/or landlords). The Company does not accept listings of property.

The Company will work with sellers (and/or landlords) as customers in circumstances where a seller's (and/or landlord's) property is not listed and the Company's buyer client desires to purchase seller's/landlord's property. In such circumstances, the Company will disclose to the seller (and/or landlord) in writing the Company's status as a buyer's agent, and will obtain the appropriate written authorizations to show the property. The Company recommends that NC REALTORS® Standard Form #150 ("Unrepresented Seller Disclosure and Fee Agreement") be used in this regard.

The Company will not act as a dual agent.

The Company will accept compensation from listing brokers and/or sellers with appropriate disclosures to its clients.

4. Single Agency - Seller or Buyer Agency - No Dual Agency - Written buyer agency agreements required:

S.S. SMITH, INC., REALTORS® adopts this written policy identifying and describing the relationships in which the licensees of S.S. SMITH, INC., REALTORS® may engage with sellers, landlords, buyers or tenants. As used in this policy, the word "Company" means S.S. SMITH, INC., REALTORS® and its affiliated licensees.

The Company acts as seller's agents (and/or landlord's agents) or as buyer's agents (and/or tenant's agents) through written listing agreements or written buyer (and/or tenant) agency agreements or other written agreements for brokerage services with sellers (and/or landlords) or buyers (and/or

tenants). The Company will not undertake to represent a buyer (or tenant) without a written buyer (or tenant) agreement. A written agreement that complies with MLS policy must be entered into with any buyer (or tenant) before the buyer (or tenant) tours any home. This written agreement must: (1) specify and conspicuously disclose the amount or rate of compensation to be received or how this amount will be determined, with such compensation amount to be objectively ascertainable and not open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offer to the buyer" is not permitted); (2) prohibit an agent from receiving more compensation than what is agreed to in the written agreement from any source; and (3) contain a conspicuous statement that broker fees are not set by law and are fully negotiable.

The Company will not act as a dual agent in any transaction. If a represented buyer desires to purchase a Company listing (in-house sale), the Company will refer that buyer to another company so that no dual agency is created. The Company will accept a referral fee from the other company, if negotiated, and if disclosed to both the buyer and the seller in the transaction. In addition, the buyer and the seller will be informed that confidential information of the referred buyer will not be disclosed to the seller. (NOTE: If a firm adopts this policy, it is suggested that the firm's listing agreement should specifically permit the firm to maintain a referred buyer's confidential information, and the firm's buyer agency agreement should specifically permit the firm to refer the buyer to another company if the buyer desires to purchase a firm's listing.)

The Company will also work with unrepresented buyers (and/or tenants) to sell its listings or will work with those buyers (and/or tenants) to sell listings of other brokers as subagents of those brokers when offers of cooperation and compensation are offered to subagents, either through written offers of subagency or through unilateral offers of subagency made in any multiple listing services in which the Company participates. Licensees of the Company engaging in subagency must comply with applicable law and rules regarding disclosure of subagency to the buyer (and/or tenant).

OR

5. Single Agency - Seller or Buyer Agency - No Dual Agency - Oral buyer agency agreements permitted:

S.S. SMITH, INC., REALTORS® adopts this written policy identifying and describing the relationships in which the licensees of S.S. SMITH, INC., REALTORS® may engage with sellers, landlords, buyers or tenants. As used in this policy, the word "Company" means S.S. SMITH, INC., REALTORS® and its affiliated licensees.

The Company acts as seller's agents (and/or landlord's agents) through written listing agreements with sellers (and/or landlords). The Company also acts as buyer's agents (and/or tenant's agents). The Company encourages its agents to establish agency relationships with buyers (and tenants) through written buyer (and/or tenant) agency agreements or other written agreements for brokerage services at first substantial contact with buyers (and/or tenants). However, if a buyer (or tenant) is initially unwilling to enter ~~into~~ a written buyer (or tenant) agency agreement, it is permissible for agents of the Company to undertake to represent the buyer (or tenant) without a written buyer (or tenant) agency

agreement in accordance with the rules of the North Carolina Real Estate Commission and MLS policy.

The Company's agents should encourage the buyer (or tenant) to put the agency agreement in writing as soon as possible. As required by the Commission's rules, a buyer (or tenant) agency agreement must be in writing not later than the time an offer to purchase (or lease) is presented to a seller (or lessor) or the seller's (or lessor's) agent. As required by MLS policy, agents working with a buyer must have an executed, written agreement with every buyer prior to touring a property, even if the agent is working under oral buyer agency. Such written buyer agreement must: (1) specify and conspicuously disclose the amount or rate of compensation to be received or how this amount will be determined, with such compensation amount to be objectively ascertainable and not open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offer to the buyer" is not permitted); (2) prohibit an agent from receiving more compensation than what is agreed to in the written agreement from any source; and (3) contain a conspicuous statement that broker fees are not set by law and are fully negotiable. (NOTE: If the company is going to require as a matter of company policy that oral buyer or tenant agency agreements be put in writing by a particular time (for example, within a specified number of days following first substantial contact or not later than a specified number of meetings between the buyer or tenant and the agent representing the buyer or tenant), this paragraph should be revised to reflect that policy.)

The Company will not act as a dual agent in any transaction. If a represented buyer desires to purchase a Company listing (in-house sale), the Company will refer that buyer to another company so that no dual agency is created. The Company will accept a referral fee from the other company, if negotiated, and if disclosed to both the buyer and the seller in the transaction. In addition, the buyer and the seller will be informed that confidential information of the referred buyer will not be disclosed to the seller. (NOTE: If a firm adopts this policy, it is suggested that the firm's listing agreement should specifically permit the firm to maintain a referred buyer's confidential information, and the firm's buyer agency agreement should specifically permit the firm to refer the buyer to another company if the buyer desires to purchase a firm's listing.)

The Company will also work with unrepresented buyers (and/or tenants) to sell its listings or will work with those buyers (and/or tenants) to sell listings of other brokers as subagents of those brokers when offers of cooperation and compensation are offered to subagents, either through written offers of subagency or through unilateral offers of subagency made in any multiple listing services in which the Company participates. Licensees of the Company engaging in subagency must comply with applicable law and rules regarding disclosure of subagency to the buyer (and/or tenant).

6. Seller/Buyer Agency - Disclosed Dual Agency - Written buyer agency agreements required - Advance written consent to dual agency required:

S.S. SMITH, INC., REALTORS® adopts this written policy identifying and describing the relationships in which the licensees of S.S. SMITH, INC., REALTORS® may engage with sellers, landlords, buyers or tenants. As used in this policy, the word "Company" means S.S. SMITH, INC., REALTORS® and its affiliated licensees.

The Company acts as seller's agents (and/or landlord's agents) or as buyer's agents (and/or tenant's agents) through written listing agreements or written buyer (and/or tenant) agency agreements or other written agreements for brokerage services with sellers (and/or landlords) or buyers (and/or tenants). The Company will not undertake to represent a buyer (or tenant) without a written buyer (or tenant) agreement. A written agreement that complies with MLS policy must be entered into with any buyer (or tenant) before the buyer (or tenant) tours any home. This written agreement must: (1) specify and conspicuously disclose the amount or rate of compensation to be received or how this amount will be determined, with such compensation amount to be objectively ascertainable and not open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offer to the buyer" is not permitted); (2) prohibit an agent from receiving more compensation than what is agreed to in the written agreement from any source; and (3) contain a conspicuous statement that broker fees are not set by law and are fully negotiable.

If a represented buyer desires to purchase a company listing (in-house sale), the Company will act as a disclosed dual agent in the transaction with the consent of all parties to the transaction. Written consent of all parties to the transaction is required before the Company will act as a disclosed dual agent. Consent to act as a dual agent shall be obtained from seller and buyer clients at the time of entering into a listing agreement or buyer agency agreement, as the case may be, through proper completion of the "Dual Agency" section of the agency agreement.

The Company will also work with unrepresented buyers (and/or tenants) to sell its listings or will work with those buyers (and/or tenants) to sell listings of other brokers as subagents of those brokers when offers of cooperation and compensation are offered to subagents, either through written offers of subagency or through unilateral offers of subagency made in any multiple listing services in which the Company participates. Licensees of the Company engaging in subagency must comply with applicable law and rules regarding disclosure of subagency to the buyer (and/or tenant).

OR

7. Seller/Buyer Agency - Disclosed Dual Agency - Oral buyer agency agreements permitted - Advance written consent to dual agency required:

S.S. SMITH, INC., REALTORS® adopts this written policy identifying and describing the relationships in which the licensees of S.S. SMITH, INC., REALTORS® may engage with sellers, landlords, buyers or tenants. As used in this policy, the word "Company" means S.S. SMITH, INC., REALTORS® and its affiliated licensees.

The Company acts as seller's agents (and/or landlord's agents) through written listing agreements with sellers (and/or landlords). The Company encourages its agents to establish agency relationships with buyers (and tenants) through written buyer (and/or tenant) agency agreements or other written agreements for brokerage services at first substantial contact with buyers (and/or tenants). However, if a buyer (or tenant) is initially unwilling to enter ~~into~~ a written buyer (or tenant) agency agreement, it is permissible for agents of the Company to undertake to represent the buyer (or tenant) without a written buyer (or tenant) agency agreement in accordance with the rules of the North Carolina Real Estate Commission and MLS policy.

The Company's agents should encourage the buyer (or tenant) to put the agency agreement in writing as soon as possible. As required by the Commission's rules, a buyer (or tenant) agency agreement must be in writing not later than the time an offer to purchase (or lease) is presented to a seller (or lessor) or the seller's (or lessor's) agent. As required by MLS policy, agents working with a buyer must have an executed, written agreement with every buyer prior to touring a property, even if the agent is working under oral buyer agency. Such written buyer agreement must: (1) specify and conspicuously disclose the amount or rate of compensation to be received or how this amount will be determined, with such compensation amount to be objectively ascertainable and not open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offer to the buyer" is not permitted); (2) prohibit an agent from receiving more compensation than what is agreed to in the written agreement from any source; and (3) contain a conspicuous statement that broker fees are not set by law and are fully negotiable. (NOTE: If the company is going to require as a matter of company policy that oral buyer or tenant agency agreements be put in writing by a particular time (for example, within a specified number of days following first substantial contact or not later than a specified number of meetings between the buyer or tenant and the agent representing the buyer or tenant), this paragraph should be revised to reflect that policy.)

If a represented buyer desires to purchase a company listing (in-house sale), the Company will act as a disclosed dual agent in the transaction with the consent of all parties to the transaction. Written consent of all parties to the transaction is required before the Company will act as a disclosed dual agent. Consent to act as a dual agent shall be obtained from seller and buyer clients at the time of entering into a listing agreement or written buyer agency agreement, as the case may be, through proper completion of the "Dual Agency" section of the agency agreement. If a buyer who is represented by the Company under an oral buyer agency agreement desires to purchase a Company listing (in-house sale) but is unwilling at that time to enter into a written buyer agency agreement, the Company will refer that buyer to another company so that no oral dual agency is created. The Company will accept a referral fee from the other company, if negotiated, and if disclosed to both the buyer and the seller in the transaction. In addition, the buyer and the seller will be informed that confidential information of the referred buyer will not be disclosed to the seller. (NOTE: If a firm adopts this policy, it is suggested that the firm's listing agreement should specifically permit the firm to maintain a referred buyer's confidential information, and the firm's buyer agency agreement should specifically permit the firm to refer the buyer to another company if the buyer desires to purchase a firm's listing but is unwilling to enter into a written buyer agency agreement.)

The Company will also work with unrepresented buyers (and/or tenants) to sell its listings or will work with those buyers (and/or tenants) to sell listings of other brokers as subagents of those brokers when offers of cooperation and compensation are offered to subagents, either through written offers of subagency or through unilateral offers of subagency made in any multiple listing services in which the Company participates. Licensees of the Company engaging in subagency must comply with applicable law and rules regarding disclosure of subagency to the buyer (and/or tenant).

8. Seller/Buyer Agency - Disclosed Dual Agency - Oral buyer agency agreements permitted - Oral dual agency permitted:

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The Company acts as seller's agents (and/or landlord's agents) through written listing agreements with sellers (and/or landlords). The Company encourages its agents to establish agency relationships with buyers (and tenants) through written buyer (and/or tenant) agency agreements or other written agreements for brokerage services at first substantial contact with buyers (and/or tenants). However, if a buyer (or tenant) is initially unwilling to enter ~~into~~ a written buyer (or tenant) agency agreement, it is permissible for agents of the Company to undertake to represent the buyer (or tenant) without a written buyer (or tenant) agency agreement in accordance with the rules of the North Carolina Real Estate Commission and MLS policy.

The Company's agents should encourage the buyer (or tenant) to put the agency agreement in writing as soon as possible. As required by the Commission's rules, a buyer (or tenant) agency agreement must be in writing not later than the time an offer to purchase (or lease) is presented to a seller (or lessor) or the seller's (or lessor's) agent. As required by MLS policy, agents working with a buyer must have an executed, written agreement with every buyer prior to touring a property, even if the agent is working under oral buyer agency. Such written buyer agreement must: (1) specify and conspicuously disclose the amount or rate of compensation to be received or how this amount will be determined, with such compensation amount to be objectively ascertainable and not open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offer to the buyer" is not permitted); (2) prohibit an agent from receiving more compensation than what is agreed to in the written agreement from any source; and (3) contain a conspicuous statement that broker fees are not set by law and are fully negotiable. (NOTE: If the company is going to require as a matter of company policy that oral buyer or tenant agency agreements be put in writing by a particular time (for example, within a specified number of days following first substantial contact or not later than a specified number of meetings between the buyer or tenant and the agent representing the buyer or tenant), this paragraph should be revised to reflect that policy.)

If a represented buyer desires to purchase a company listing (in-house sale), the Company will act as a disclosed dual agent in the transaction with the consent of all parties to the transaction. Written consent of all parties to the transaction is required before the Company will act as a disclosed dual agent except in cases where the Company is representing the buyer pursuant to an oral buyer agency agreement. Consent to act as a dual agent shall be obtained from seller and buyer clients at the time of entering into a listing agreement or written buyer agency agreement, as the case may be, through proper completion of the "Dual Agency" section of the agency agreement. As required by the Commission's rules, a buyer agency agreement must be in writing not later than the time an offer to purchase is presented to a seller or the seller's agent, *and* written authority to act as a dual agent must be obtained not later than the time one of the parties represented by the Company makes an offer to purchase, sell, rent, lease, or exchange real estate to the other party.

The Company will also work with unrepresented buyers (and/or tenants) to sell its listings or will work with those buyers (and/or tenants) to sell listings of other brokers as subagents of those brokers

when offers of cooperation and compensation are offered to subagents, either through written offers of subagency or through unilateral offers of subagency made in any multiple listing services in which the Company participates. Licensees of the Company engaging in subagency must comply with applicable law and rules regarding disclosure of subagency to the buyer (and/or tenant).

9. Seller/Buyer Agency - Designated Agency: (NOTE: The following model policy requires written buyer agency agreements and advance written consent from all parties before the Company will act as a disclosed dual agent. If the Company wishes to permit oral buyer agency agreements and/or oral dual agency, consideration should be given to substituting one of the immediately preceding model policies for the first three paragraphs of the following policy, and then adding the language from the following policy relating to designated agency. In any event, it should be noted that subsection (j) of Real Estate Commission rule 58A.0104 specifically requires that the authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing.)

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The Company acts as seller's agents (and/or landlord's agents) or as buyer's agents (and/or tenant's agents) through written listing agreements or written buyer (and/or tenant) agency agreements or other written agreements for brokerage services with sellers (and/or landlords) or buyers (and/or tenants). A written agreement that complies with MLS policy must be entered into with any buyer (or tenant) before the buyer (or tenant) tours any home. This written agreement must: (1) specify and conspicuously disclose the amount or rate of compensation to be received or how this amount will be determined, with such compensation amount to be objectively ascertainable and not open-ended (e.g., "buyer broker compensation shall be whatever amount the seller is offer to the buyer" is not permitted); (2) prohibit an agent from receiving more compensation than what is agreed to in the written agreement from any source; and (3) contain a conspicuous statement that broker fees are not set by law and are fully negotiable.

If a represented buyer desires to purchase a company listing (in-house sale), the Company will act as a disclosed dual agent in the transaction with the consent of all parties to the transaction. Written consent of all parties to the transaction is required before the Company will act as a disclosed dual agent. Consent to act as a dual agent shall be obtained from seller and buyer clients at the time of entering into a listing agreement or buyer agency agreement, as the case may be, through proper completion of the "Dual Agency" section of the agency agreement.

The Company adopts the additional policy of designating agents for clients pursuant to Rule 58A.0104 of the rules of the North Carolina Real Estate Commission (known as "designated agency"). When the Company represents both the buyer and seller in the same transaction, the firm may, with the prior written consent of the buyer and seller, designate one or more individual brokers associated with the firm to represent only the interests of the seller and one or more other individual brokers associated with the firm to represent only the interests of the buyer in the transaction. Sellers and

buyers should indicate their consent for the Company to engage in designated agency in the "Dual Agency" section of the listing agreement or the buyer agency agreement, as the case may be.

Subject to the following exceptions, it is the Company's policy that the listing agent automatically will be appointed as the designated agent for the seller and the buyer agent automatically will be appointed as the designated agent for the buyer. Exceptions to this policy are as follows:

A licensee shall not be designated to represent the interests of only one party if the licensee has actually received confidential information concerning the other party in connection with the transaction.

A broker-in-charge shall not act as a designated agent for a party when a provisional broker under her/his supervision will act as a designated agent for the other party.

If one of the above exceptions applies, the broker-in-charge is authorized by this policy to make the appointment of designated agents on behalf of the Company, or, in the alternative, to make a decision that the Company will not engage in designated agency with respect to the transaction.

The Company will also work with unrepresented buyers (and/or tenants) to sell its listings or will work with those buyers (and/or tenants) to sell listings of other brokers as subagents of those brokers when offers of cooperation and compensation are offered to subagents, either through written offers of subagency or through unilateral offers of subagency made in any multiple listing services in which the Company participates. Licensees of the Company engaging in subagency must comply with applicable law and rules regarding disclosure of subagency to the buyer (and/or tenant) when accepting a unilateral offer of subagency.

(NOTE: A company adopting a policy permitting disclosed dual agency and/or designated agency should consider additional issues in practicing these policies. Some of these issues include the timing of the disclosure of possible dual agency to both buyer and seller, the appropriate method for making appointments of designated agents, and appropriate office policies to protect the confidentiality of information of clients within the office. Legal counsel should be consulted so that the broker understands and learns the proper procedures to carry out this agency policy.)

(NOTE: A company adopting a policy permitting oral buyer agency and/or oral dual agency should consider additional issues in practicing these policies. Some of these issues include possible use of letters of confirmation or a written buyer agreement (not an agency agreement) to confirm the existence and specific terms of oral relationships, and possibly requiring the company's agents to review the firm's buyer agency agreement with a buyer prior to representing the buyer on an oral basis as a buyer's agent and/or disclosed dual agent. Legal counsel should be consulted so that the broker understands and learns the proper procedures to carry out this agency policy.)

(NOTE: Although licensees are ~~now~~ permitted by the Commission's rule to enter into oral buyer agency agreements, ~~since~~ Article 9 of the *Code of Ethics* requires REALTORS® to assure that agreements are in writing whenever possible, and MLS policy requires that agents working with a buyer must have an executed, written agreement with every buyer prior to touring a property, even if

the agent is working under oral buyer agency. It might therefore be ~~prudent~~ preferable for REALTORS® to offer to enter into written buyer agency agreements at the outset of all relationships with buyers. If a REALTOR® offers to enter into a written agreement up front, but the buyer is reluctant to do so, it should not be a violation of Article 9 for the REALTOR® to thereafter work with the buyer under an oral agreement, at least up until the time that the Commission's rule or MLS policy requires the agreement to be reduced to writing.

Following this Agency Policy is a sample letter confirming the establishment of an oral, non-exclusive buyer agency relationship. Firms may modify it to create their own version of such a letter. NC REALTORS® makes no representation as to the legal validity or adequacy of any provision of this sample letter in any specific transaction.)

10. Mandatory Buyer Agency Events:

It is the policy of S.S. SMITH, INC., REALTORS® that any agent working in the following circumstances MUST act as a buyer's agent and may not act as a subagent of the seller:

The agent is buying property for her or himself.
The agent is working with the agent's immediate family, that is, mother, father, brother, sister, children, any of their spouses or any business owned fully or partially by any of these persons.

11. Strongly Recommended Buyer Agency Events:

It is the policy of S.S. SMITH, INC., REALTORS® that any agent working in any of the following circumstances is strongly urged to work as a buyer's agent:

The agent is working with any relative by blood or marriage not in the agent's immediate family as defined above.
The agent is working with a close friend, business associate or long term past customer or client.

The agent is working with a seller of a currently or previously listed property to find property to buy. The agent may be concurrently working with the seller to sell the property and also working to buy a new property. This event also applies to a seller whose property is under contract or closed and is working to by a new property.

(NOTE: If the Company's policy is to offer representation of sellers only, consideration should be given to either making an exception to the general policy with respect to the circumstances listed in the preceding two policies regarding mandatory and recommended buyer agency or modifying the two policies to provide that agents of the Company will not work with buyers under such circumstances.)

**THIS IS NOT A COMPLETE LIST OF POSSIBLE AGENCY POLICIES.**

*Firm Name/Address/Date*

DRAFT

*Client Name*
*Address*
*Dear _____:*

*I am looking forward to working with you in your search for real estate. As we discussed during our review of the "Working With Real Estate Agents Disclosure" ~~brochure~~, a buyer has several choices as to how a real estate firm and its agents will work with the buyer. You have indicated your preference that I begin working with you as a buyer's agent under an unwritten agreement, which is permitted up to a certain point in ~~the~~ our relationship. The purpose of this letter is to confirm the most important terms of our agreement.*

*The terms of our agreement ~~with you~~ are as follows:*

- *I will act as a buyer's agent for you on behalf of our real estate firm.*
- *I will assist you in locating and buying residential real estate in the following geographical area(s):_____.*
- *Our agreement will continue until (1) either of us notifies the other that the agreement is terminated or (2) another agreement is created in writing between us.*
- *~~The~~ This agreement is non-exclusive.*
- *I will show you any properties where the listing firm or seller will offer compensation to our firm.*
- *Our firm will seek compensation from the listing firm or seller and not directly from you at this time. ~~and you agree that our firm may receive any compensation offered, including bonuses~~. Any compensation we may eventually receive for being your agent, including compensation paid by a seller or listing agent, must first be approved by you in a separate written agreement between us.*
- *If you become interested in property where no compensation is offered, we would need to enter into a further agreement addressing how I would be paid for assisting you as your agent. ~~in buying the property~~.*
- *Pursuant to MLS policy, I am not permitted to tour a home with you without a written agreement that specifically sets what I will be paid. This document is not sufficient for me to provide touring services.*
- *Pursuant to North Carolina law, a written buyer agency agreement is required no later than the time we might present an offer to purchase on your behalf, or my firm would be prohibited from continuing to represent you. Sample copies of the buyer agency agreement used by our firm and referred to herein are available upon your request.*
- *If you become interested in property listed with our firm, the firm may represent both the seller and you as a dual agent in accordance with the Dual Agency paragraph in the Buyer Agency Agreement form I reviewed with you. [add the following only if the firm practices designated agency: If our firm acts as a dual agent, the firm may designate an agent to represent you in accordance with the "Designated Agency Option" in the Dual Agency paragraph.]*

- *You understand that other buyers represented by our firm may seek property, submit offers, and contract to purchase property through our firm, including the same or similar property in which you may be interested.*

~~*You will recall from our discussion of the "Working With Real Estate Agents Disclosure" brochure that our buyer agency agreement would need to be put in writing no later than the time we might present an offer to purchase on your behalf, or we would be prohibited from continuing to represent you. Sample copies of the buyer agency agreement used by our firm and referred to above are available upon your request.*~~

*If you feel that this letter does not reflect the terms of our agreement, or if you have any questions about anything in this letter, please contact me at your earliest convenience.*

_____

*Agent Name*

## ANTITRUST POLICY

S.S. SMITH, INC., REALTORS®, maintains a strong policy against any antitrust ~~involvement~~ violation by the company, its agents, or employees. Few obligations can be taken more seriously than this area, as violations of the antitrust law can cause significant monetary and reputational damage to our company. In addition, the most serious antitrust violations are prosecuted criminally and can result in prison sentences and significant fines. S.S. SMITH, INC., REALTORS®, requires each person associated with the company to participate in antitrust education and acknowledge his/her understanding of these principles. Two areas are the primary antitrust focus.

1. Price Fixing: Price fixing means any agreement, setting, consent to, suggestion or implication with a competitor regarding a fee to charge. This includes fees charged to the public, fees split among brokers and fees paid to agents. "Agreement" can be overt, covert, express or implied. It is very broad based and can even be suggested or implied by casual conversation with any competitor.

Accordingly, S.S. SMITH, INC., REALTORS®, its agents and staff are prohibited from discussing with any competitor, including an individual agent, any aspect of the fees the company charges or how total fees are split. S.S. SMITH, INC., REALTORS®, determines its charges based on the company's own independent internal analysis of its expenses, its revenue, its desired profit level and its choice of the type and level of service it desires to provide.

In any discussion with a member of the public about our charges (such as a listing appointment), the only acceptable answer about why the company charges what it does is the foregoing explanation. Do not be drawn into a discussion about company fees as "the standard rate," "the Board rate," "the typical rate" or the like. If questions arise about other company's fees, suggest that the potential client call several competitors and ask about their rates.

2. Boycotting Competition: It ~~is~~ also can be a violation of state and federal law to make any agreement, express or implied, with a competitor to boycott or otherwise not deal with a third ~~competitor~~ party, including competitors in some instances. For example, assume Discount Realty opens up an office. Then assume Bob Broker, an agent with Big Bucks Broker, and Alice Agent, an agent with Just As Big Broker are having lunch one day and discuss the competitive impact of Discount Realty. Bob and Alice agree that Discount is a danger to their large listing portfolios and further agree that individually they will not show Discount's listings because "Something has got to be done about that price-cutting monger." This simple agreement with two agents is an illegal boycott. Even if it were implicit and not overt, it could be construed as an illegal boycott.

S.S. SMITH, INC., REALTORS®, prohibits any agent or staff member from making any agreement or suggestion with a competitor, including an individual agent, that he/she or the company will not deal with a third broker or agent, whether it be a listing company, buyer's brokerage, discount broker or any other broker or agent whatever.

3. Allocation of Markets, Territories, or Customers: It also is a violation of state and federal antitrust law for competitors to agree with one another to divide up, or allocate between them, any

market, territory, or set of customers. So, for example, our company could not agree with a competitor to divide up the market geographically, such that our company will focus on one geographic territory, market segment, and/or type of customer and the competitor will focus its business on a different geographic territory, market segment, and/or type of customer. Never discuss any type of allocation like this or any agreement to allocation markets, territories, or customers with any competitor.

4. Meetings and Discussions with Competitors: Most antitrust violations arise from communications between competitors that are about a topic that is legally off-limits. The "off-limits" topics include those mentioned above and some others that can result in harm to competition. On the other hand, there are some limited topics that competitors can discuss that are pro-competitive and not a violation of the antitrust laws (for example, discussion of a potential rule or practice that benefits consumers, such as those intended to give greater transparency and increased information to consumers), but these are limited. As a result, whenever you are going to be in a position of attending a meeting or participating in any communication with any competitor(s), you should be especially careful to restrict yourself to topics that are clearly permitted and to avoid topics that could even create the appearance of an antitrust violation (such as any discussion regarding the commissions that competing firms charge, boycotting any third party, and/or dividing up markets, territories, or customers). Before any such communication or meeting where competitors will be present, you should refresh yourself on this policy and also seek legal counsel any time you are in doubt. Finally, if you are present in a meeting or discussion among competitors where any potentially forbidden topic arises, you should make a "noisy exit," meaning that you make clear to others in attendance that you have removed yourself from the discussion (and, in a meeting where formal minutes are kept, have your exit noted in the minutes) and should immediately seek legal counsel.

The above is intended to highlight select items that can result in antitrust violations, but it is not a comprehensive list. Other practices and conduct that have a tendency to harm consumers and/or to diminish competition in any respect can also violate the antitrust laws. Therefore, any time you identify any possible practice or conduct that falls in this category, you should seek appropriate legal counsel before engaging in any such practice, conduct, or related communication(s) with external parties.

**(NOTE: If a company cannot access the NAR video or publication on antitrust, delete the next paragraph. All companies are strongly urged to consider using the NAR materials available in this area.)**

Each agent and staff member of S.S. SMITH, INC., REALTORS®, is required to promptly review the most recent NAR material ~~video~~ on antitrust. ~~*Antitrust 101 for Real Estate Professionals*, and read the NAR publication, *Antitrust Compliance Guide*.~~

## BUYER QUALIFICATION POLICY

Whether acting as an agent of the seller or buyer, qualifying the buyer is a critical step in completing a property transaction. S.S. SMITH, INC., REALTORS®, strongly recommends that each agent become knowledgeable through company training and offered continuing education programs about properly qualifying a buyer as to her/his financial ability to purchase a property. Financial qualification has two major parts, as follows.

1. Loan Qualification

If working as an agent of the seller dealing with a buyer, the agent has a duty to act diligently for her/his client, the seller. Determining whether a buyer is financially able to purchase any property (and ultimately the seller's property) is part of that duty to act diligently. While there may be times when financial qualification information is difficult to obtain, such as in the case of a buyer of a luxury home, the agent must take diligent steps to determine financial qualification. Some of these steps may include:

a. Securing a lender's financial qualification form for the buyer to complete.
b. Setting up a meeting between a lender and buyer to discuss financial ability to qualify for a loan.
c. Providing necessary information to a buyer about property so that she/he can respond as to whether she/he can get a loan.

In order to help avoid a later claim that the agent was acting as an undisclosed dual agent, an agent working with a buyer as a subagent should take great care not to give the buyer the impression that the agent is representing the buyer. If, in assisting the buyer with the loan qualification process, the buyer or any third party (such as a potential lender) attempts to disclose to the agent information of a confidential nature about the buyer's financial condition, the agent should remind the buyer (or the third party) that the agent represents the seller and would be required to disclose any such information to the seller.

If working as an agent of the buyer, the agent has the same duty to act diligently for her/his client. In this case, however, the client is the buyer, not the seller. This approach changes the perspective of the buyer's agent in that the buyer client has a right to expect that the agent will diligently determine whether a buyer can qualify to purchase a certain type of property. Again, steps may include:

a. Completion of a financial qualification form. This form should be in sufficient detail and sufficiently accurate that the buyer is reasonably sure of qualification. If an agent is not sure of her/his level of skill to complete such a form, the agent should get further education and training and immediately call a sales manager or lender to assist.
b. Consultation with the buyer and a lender to determine financial ability to qualify for a loan.

The difference in the approaches between a seller's agent and buyer's agent is probably one of degree, with the buyer's agent being required by fiduciary obligations to conduct a more "in-depth" analysis of the buyer and the buyer's circumstances.

2. Estimated Closing Costs

The second type of financial qualification which accompanies loan qualification (and in many cases is a part of loan qualification) is estimating closing costs. As in loan qualification, duties exist to the buyer and/or seller to diligently and accurately estimate closing costs. S.S. SMITH, INC., REALTORS®, has a policy of strongly encouraging its agents to become educated through company and/or board/association training and education about estimating closing costs.

Do not use rules of thumb such as 2-5% of the purchase price. The spread of costs is too great in such estimates to be sufficiently accurate. For a first time buyer with little cash, a one-half percent difference in closing costs can mean the difference between purchasing and not purchasing.

Do not use computerized closing cost estimating programs unless previously approved and authorized by S.S. SMITH, INC., REALTORS®. The programs may or may not take local costs and variations into account. In addition, the programs which allow for local costs may require that the agent input the costs. If the agent desires to use such a program, management of S.S. SMITH, INC., REALTORS®, will approve its use and review the local costs being input.

Lender closing costs are generally reviewed in loan qualification procedures. One note of caution is in order. Some lenders unbundle services and charge for each service. These so-called "extra" costs are in addition to origination fees and points. They may include charges for "processing fee", "underwriting fee", "document preparation fee", "courier fee", etc., totaling $500.00 or more on a single closing.

Whether representing a buyer or a seller, a lender should be asked what her/his "extra" fees are at the time closing costs are estimated and not at time of commitment or closing.

## CELL PHONES AND DRIVING

As real estate professionals, we all work out of our cars a great deal of the time. And because instant communication with our clients, other licensees and various vendors is so critical to making sales happen, we also use phones, especially cell phones, a great deal of the time. The combination of cars and cell phones, however, can be deadly – for you, for your clients and for others. Our brokerage has, therefore, established the following policy for all brokers and employees, which we hope will minimize the dangers that can result when cell phones are used while driving:

Avoid talking on your cell phone while driving when possible. If you must converse on your cell phone while driving, follow these tips to increase safety:

When receiving calls that require more than a quick response such as "I'm running late" or "I'm on my way," tell the caller that you will call him/her back as soon as you pull over and stop your car.

Use a hands-free device. Place the phone where you can see it without diverting your eyes from the road for any longer than necessary.

Program emergency and frequently-called numbers into your phone.

Practice using your cell phone so you know how to use the hands-free devices, memorized numbers and other features without taking your eyes from the road.

If your phone has voice activation, which allows you to initiate calls to pre-programmed numbers by saying a word or two, use it.

Keep conversations as brief as possible. There is nothing wrong with telling a caller that it is not safe to talk and drive right now and that you will call him/her back as soon as you can do so safely.

Drive in slower lanes and increase the distance between your car and the one ahead so you'll have more time to react to problems that may occur.

Don't try to take notes regarding the conversation.

Don't engage in complex discussions that divert your attention from road and traffic conditions.

Don't initiate calls or answer the phone if it rings when you are in a traffic situation where your safety could be compromised. You can make and return calls once you are in a safer place.

Sending or reading text or email on your phone while operating a motor vehicle is unlawful in North Carolina unless the vehicle is lawfully parked or stopped.

Never forget that safe driving is your first priority!

## COMMERCIAL E-MAIL POLICY

It is the policy of S.S. Smith, Inc., REALTORS®, to comply with the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, more commonly known as the "CAN-SPAM Act of 2003" (the "Act"). The Act does not ban commercial e-mails but rather outlines a series of practices that must be followed when sending them. All agents and employees of S.S. Smith, Inc., REALTORS® are required to comply with this policy.

1. Requirements for commercial email messages. The Act defines "commercial electronic mail message" as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service." Commercial email messages must include the following:

a. A clear and conspicuous notice that the message is an advertisement or solicitation (unless the recipient has given prior consent to the sender to receive commercial emails)
b. A functioning e-mail address or other mechanism that allows the recipient to send a message requesting that the sender stop sending commercial e-mails to the recipient
c. A clear and conspicuous notice of the recipient's opportunity to opt-out of future messages
d. A valid physical postal address for the sender

**E-mails sent to individuals or firms with whom an agent or employee has an existing business relationship are not exempted under the Act and must contain the information listed above *unless* they are "transactional or relationship messages." (See below for more on "transactional or relationship messages.")**

If a recipient makes a request to not receive commercial e-mail messages from the Company or its sales associates, the sender has 10 business days to stop sending commercial emails to them and may not sell or otherwise transfer the recipient's email address to another party. A recipient who has opted out may thereafter be contacted *only* if he or she subsequently gives the Company and its sales associates permission to send commercial e-mails.

2. Exemptions. The Act exempts from its requirements "transactional or relationship messages." For a real estate agent, a transactional or relationship message would be an e-mail to a client addressing an ongoing transaction or related to the agent's representation of the client. For example, e-mails sent by a listing agent to a seller who has listed her home for sale or by an agent to a buyer client probably would be considered transactional or relationship messages. On the other hand, emails that solicit sellers or buyers who are not presently Company clients probably would not be considered transactional or relationship messages.

## COMPUTER USAGE POLICY

1. Computers provided by the Company in the offices or otherwise generally are for business use only.

2. Agents and employees may use a Company computer for personal word-processing and Internet browsing only if no one else in the office needs the computer for business purposes. If someone needs the computer for a business reason, the person using it for personal tasks must stop and give the business user immediate access.

3. Personal data and files (including those created pursuant to section 2) may not be stored on Company computers.

4. Internet usage:
   a. Computers provided by the Company may be used for business-related Internet browsing (also called "surfing"). Generally, agents and employees should not use Company computers for recreational or personal Internet browsing.
   b. The occasional use of Company computers for recreational or personal Internet browsing is permitted on the same conditions as the use of Company computers for personal purposes. (See sections 2 and 3 above.)
   c. Under no circumstances may Company computers be used for browsing Web sites containing inappropriate content. (Examples of inappropriate content include racial or ethnic "hate" content, content that is excessively violent, and sexually explicit content.)
   d. Under no circumstances may Company computers be used for communications with or communication methods provided by Web sites containing inappropriate content. (For examples of what content would be considered inappropriate, see section 4c above.) "Communications" and "communication methods" include any type of use of the computer to communicate; examples are all forms of social media, "chat," "chat rooms," "instant messaging," discussion groups, listservs and e-mail.

5. E-mail usage:
   a. If an agent or employee maintains e-mail files on Company computers, those files are not considered private or confidential and may be reviewed by Company management at the Company's discretion.
   b. Agents and employees will provide, at the request of the Company, copies of any e-mail communications they possess regarding any client, customer or transaction involving the Company or its sales associates.
   c. Agents and employees may not defame any person in any e-mail communication.
   d. Agents and employees may not use inappropriate language in any e-mail communication. ("Inappropriate language" includes profanity, "hate" speech, and sexually explicit speech.)
   e. Agents and employees will be solely responsible for any contracts obligating them entered into via an e-mail communication. If the Company becomes liable for a contract made by an agent or employee in an e-mail communication, the agent or employee will promptly reimburse the Company for the costs of the contract and/or the Company will have the

right to deduct such costs from any pending commissions due the agent or salary due the employee.

f. All e-mail communications must conform to state and federal laws. (See the Company's Commercial E-Mail Policy for more on the federal CAN-SPAM law, which regulates commercial e-mail.)

6. Any communications transmitted or communication methods used via a company computer must be appropriate and within all applicable local, state and federal laws. Under no circumstances may Company computers be used to communicate any type of inappropriate content or language. (For examples of what would be considered inappropriate content and language, see sections 4c and 5d above. For the definition of "communications" and "communication methods," see section 4d above.)

7. Agents and employees must obey all applicable laws and regulations in their business and personal use of Company computers; this includes use for e-mail, all forms of social media, and Internet browsing. Applicable areas of the law include: copyright, trademark, defamation of character, libel, slander, fraud and misrepresentation.

8. Privacy:

a. Because the computers and communication systems (including all networking systems) are Company-owned, all material, communications, information and usage may be monitored and regulated by the Company in any way, method or manner deemed necessary and appropriate.

b. No agent or employee shall retain, maintain or own any rights to any information or communication stored on or routed through Company computers.

c. No agent or employee shall have any privacy rights regarding any information accessed or created, communication transmitted, or activity conducted using Company computers, regardless of the reason for the computer use.

## CONCEALED HANDGUNS

**[NOTE: The company should choose one of the options noted below.]**

S.S. SMITH, INC., REALTORS® **(DOES) (DOES NOT)** allow concealed handguns to be carried on its premises by persons with concealed handgun permits. This policy applies to all persons on the premises, including employees and licensees of the Company.

**[NOTE: NC GENERAL STATUTES SECTION 14-415.11 DOES NOT AUTHORIZE A PERSON WHO HAS A CONCEALED HANDGUN PERMIT TO CARRY A CONCEALED HANDGUN "ON ANY PRIVATE PREMISES WHERE NOTICE THAT CARRYING A CONCEALED HANDGUN IS PROHIBITED BY THE POSTING OF A CONSPICUOUS NOTICE OR STATEMENT BY THE PERSON IN LEGAL POSSESSION OR CONTROL OF THE PREMISES." THEREFORE, IF THE COMPANY CHOOSES TO PROHIBIT CONCEALED HANDGUNS, IT MUST POST A CONSPICUOUS NOTICE ON THE PREMISES THAT CONCEALED HANDGUNS ARE PROHIBITED.]**

## CONFIDENTIALITY POLICY

One of the most important duties of an agent is to maintain the confidentiality of the client, whether buyer or seller. Agents should pay particular attention not to make unauthorized or offhand comments about a client's situation or a client's property in a way that could be considered a violation of the duty of confidentiality. The following areas are considered of particular importance:

1. That a seller client may agree to a price, terms, or any conditions of sale other than those established by the seller.
2. That a buyer client may agree to a price, terms, or any conditions of sale other than those offered by the buyer.
3. The motivation of a client for engaging in the transaction unless disclosure is otherwise required by statute or rule.

c. Any information about a client which the client has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

If dual agency is offered, it is particularly important for each agent to realize that she/he must hold confidential the information of both buyer and seller, regardless of which party the particular agent is working with, in accordance with the agency agreements, the Code of Ethics, and the rules of the North Carolina Real Estate Commission.

**(NOTE: If designated agency is offered, confidentiality provisions for office procedures must be instituted. The following is one example of some areas of procedures to adopt.)**

In offering designated agency, the company and all of its associates must be sensitive to confidential information within the office and among the associates of the company. The following procedures and policies are intended to protect the confidentiality of the company's clients.

1. Associates should not discuss confidential information of the client between or among themselves.

2. Comments at sales meeting should not reveal confidential information of the client without the client's permission.

3. Office files of listings and pending sales are confidential and may not be accessed except for authorized staff and the particular agent involved in the listing or transaction.

4. Fax transmissions are confidential. Office staff will distribute faxes in envelopes so as not to reveal contents to persons other than to whom the fax is addressed.

5. Telephone messages with confidential information will be distributed in an envelope.

6. Contracts, offers, counteroffers or other transactional documents will be delivered to the person addressed in envelopes. Persons other than the addressee are not authorized to open any such envelope.

Please refer to the attachments to the policy manual which refer to "Buyer Agency Do's and Don'ts", "Subagency Do's and Don'ts", and "Disclosed Dual Agency Do's and Don'ts."

**Please also refer to "Cooperation and Compensation Policy" and "Sale Contract Policy" for information about disclosure of the existence, terms and/or conditions of offers and counteroffers.**

## COOPERATION AND COMPENSATION POLICY

**(NOTE: In addition to a written agency policy, a company should establish a policy regarding cooperation and compensation of cooperating agents, whether subagents or buyer's agents. ~~If the company belongs to an MLS, any listing placed on the MLS MUST provide for cooperation and compensation to either subagents, buyer's agents or both.~~ A decision to cooperate and compensate ~~only subagents or only buyer's agents~~ should be based on advancing the client's best interests in conjunction with the broker's professional advice. ~~concerns~~ (see Article 3 ~~III~~ of the Code). ~~If a substantial number of showings in a market are by buyer's agents, it is probably not in the best interests of the seller-client to refuse to cooperate with buyer's agents. Likewise, if a substantial number of showings in a market are by subagents, it is probably not in the best interests of the seller-client to stop cooperating with subagents.~~ ~~Before~~ When selecting a cooperation and compensation policy, ~~these~~ fiduciary duty to the client ~~concerns~~ should be paramount ~~considered~~. The following are some example cooperation and compensation policies.)**

1. Cooperation/Compensation of Subagents and Buyer's Agents: S.S. SMITH, INC., REALTORS® ~~believes it is in the best interests of the company's seller-clients to give property the widest possible exposure of possible showings. Because both subagents and buyer's agents conduct showings in the market, S.S. SMITH, INC., REALTORS®~~ cooperates and compensates both subagents and buyer's agents at the same level of cooperative compensation, subject to a seller-client's express consent to offer cooperative compensation. **OR**

2. No Cooperation/Compensation of Subagents or Buyer's Agents ~~Only~~: S.S. SMITH, INC., REALTORS® does not offer cooperative compensation to seller subagents or buyer's agents. ~~cooperates and compensates only buyer's agents~~. S.S. SMITH, INC., REALTORS®' policy is to inform seller-clients of its policy before entering into the listing agreement and secure the acknowledgment of the seller of the company's policy. ~~**OR**~~

~~3. Cooperation/Compensation of Subagents Only: S.S. SMITH, INC., REALTORS® cooperates and compensates only subagents. S.S. SMITH, INC., REALTORS®' policy is to inform seller-clients of its policy before entering into the listing agreement and secure the acknowledgment of the seller of the company's policy. **OR**~~

In all cases, before entering into a listing agreement, the listing agent is ~~ethically~~ obligated to disclose ~~to the seller~~ and obtain the seller's written consent to the following:

1. The company's policy regarding cooperation and the amounts of ~~any~~ compensation, if any, that will be offered to subagents and/or buyer's agents;

2. If the company cooperates with buyer's agents, the disclosure must also state that buyer's agents, even if compensated by S.S. SMITH, INC., REALTORS®, will represent the buyer, not the seller; and

3. Any potential for S.S. SMITH, INC., REALTORS® to be a dual agent, if company policy allows dual agency.

S.S. SMITH, INC., REALTORS®, maintains a strong policy that no unlicensed person will be paid for any real estate activity requiring a license. The real estate licensing law (NCGS Section 93A-6(a)(9)) makes it clear that an unlicensed person may not be paid for acts which require a real estate license. An exception to this policy is for referral or finder's fees paid to buyers and sellers in their own transactions, which is permissible under the real estate licensing law.

## EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is S.S. SMITH, INC., REALTORS®' policy to provide equal employment opportunities without regard to race, color, religion, sex, age, national origin, handicap, or status as a Vietnam era veteran, to all qualified employees and applicants for employment. This policy applies to all areas of employment, job assignment, training, promotion, transfer, compensation, discipline and discharge. The company abides by all federal and state laws regarding employment practices, including, but not limited to the Americans with Disabilities Act.

## FAIR HOUSING POLICY

S.S. SMITH, INC., REALTORS®, believes that fair housing policies are not just the law of the land but simply the right thing to do. S.S. SMITH, INC., REALTORS®, maintains a strong policy upholding all federal and state fair housing laws and Article 10 of the REALTOR Code of Ethics and the NAR Code of Fair Housing Practices. In addition to Federal and State fair housing laws, which prohibit housing discrimination on the basis of race, color, religion, sex, handicap, familial status, and national origin, the REALTOR® Code of Ethics prohibits discrimination based on sexual orientation or gender identification.

In addition, S.S. SMITH, INC., REALTORS®, requires each agent and staff member to participate in fair housing education.

Accordingly, S.S. SMITH, INC., REALTORS®, prohibits any agent or staff member from discriminating against any person in the provision of any of the company's services on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identification.

Among the prohibited practices which against this policy and the law are:

1. Refusing to show, sell or rent based on a person being a member of a protected class.

2. Different treatment/disparate treatment to persons of a protected class.

3. Steering: A person shall not encourage or discourage another from moving into any area because of the race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identification of the present residents.

4. Discriminatory advertising that "expresses" a preference for buyers or tenants of a particular race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identification.

5. Harassment (i.e., coercion, intimidation, threats or interference with a person's fair housing rights or because a party is abiding by fair housing law)

6. Applying more burdensome criteria to applicants of protected classes

7. Blockbusting: A person is prohibited from inducing or attempting to induce another to sell or rent a property by making any express or implied representations regarding the entry or prospective entry into a neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identification.

Agents and staff should be aware that persons with AIDS are considered handicapped and "familial status" means families with children.

S.S. SMITH, INC., REALTORS® supports the Fair Housing Partnership Resolution adopted by the National Association of REALTORS® and the U.S. Department of Housing and Urban Development, and encourages its agents to be guided by the principles contained in the REALTOR Fair Housing Declaration developed by NAR and HUD as one means of promoting fair housing to the public and within the company itself. Each agent and staff member of S.S. SMITH, INC., REALTORS®, is required to participate in Board and/or company education regarding the Partnership.

## FRAUD PROTECTION POLICY

1. General statement of policy. Electronic communications such as email, text messages and social media messaging are neither secure nor confidential. Even the best security protections can be bypassed by a hacker. Agents of S.S. SMITH, INC., REALTORS® should never transmit, nor request the transmission of, wire instructions or nonpublic personal information such as credit or debit card, bank account, routing or social security numbers to or from a client, closing attorney or other party via any such means of communication.

2. Wiring instructions. International criminal organizations attempting to steal large sums of money are targeting electronic communications of parties involved in real estate transactions in North Carolina and elsewhere. Typically, a hacker will gain access to the email account of a buyer or seller, real estate agent or closing attorney. The email account is then monitored, likely for several weeks, and the hacker actively intervenes once the business practices of the parties are studied and understood and a significant wire transaction is to be produced.

The nature of the scams varies. In some instances, fraudulent wiring instructions for the buyer's down payment or the full purchase price are emailed to the buyer purporting to be from the closing attorney or the buyer's agent. In other cases, fraudulent instructions for the seller's sales proceeds are emailed to the closing attorney purporting to be from the seller. The fraudulent emails are sophisticated and convincing. If followed, large sums of money may be diverted to a criminal's off-shore bank account and never recovered. Millions of dollars in wires have been illegally diverted from the trust accounts of North Carolina attorneys.

(a) Advice to buyers. Agents of S.S. SMITH, INC., REALTORS® should advise buyers:
(i) before sending any wire, the buyer should call the closing attorney's office to verify the instructions
(ii) if the buyer receives wiring instructions for a different bank, branch location, account name or account number, they should be presumed fraudulent and the buyer should contact the closing attorney's office immediately.

(b) Advice to sellers. Agents of S.S. SMITH, INC., REALTORS® should advise sellers:
(i) if the seller's proceeds will be wired, the seller should provide wiring instructions at closing in writing in the presence of the attorney
(ii) if the seller is unable to attend closing, the seller may be required to send an original notarized directive to the closing attorney's office containing the wiring instructions
(iii) the seller should, at a minimum, call the closing attorney's office to provide the wire instructions
(iv) any wire instructions should be verified over the telephone via a call to the seller initiated by the closing attorney's office to ensure that they are not from a fraudulent source.

(c) Advice to buyers and sellers. Regardless whom they represent, agents of S.S. SMITH, INC., REALTORS® should advise their clients to call the closing attorney's office at a number that is independently obtained to ensure the number is legitimate,

and not to rely on a phone number in an email from the closing attorney's office, their real estate agent or anyone else.

~~3. Use of Standard Form. The NC REALTORS® has developed a Wire Fraud Notification Addendum (form 780) that is designed to be attached to a listing agreement or buyer agency agreement. It is the policy of S.S. SMITH, INC., REALTORS® that its agents must attach NC REALTORS® form 780 to all listing and buyer agency agreements at the time the agreement is signed.~~

## GOVERNMENT OFFICIALS—INQUIRIES/VISITS/SUBPOENAS

Any inquiry by a government official, whether by telephone, letter or in person, should immediately be forwarded to the broker (sales manager). In the absence of the broker (sales manager), the name of the official and agency or department he/she represents should be obtained. Then, the President or other officer of the company should be contacted. If none of these persons are available, the person receiving the inquiry should immediately contact the company's attorney by phone and request guidance. In situations where neither the broker (sales manager) nor an officer of the Company are available and the inquiry is of an in-person nature, the person receiving the inquiry should not allow any representative from a local, state or federal office to see any files or any information maintained in the office unless presented with a valid search warrant signed by a federal judge or a North Carolina state court judge ~~of the county in which the office is located~~, or unless the government official is a representative of the North Carolina Real Estate Commission (**NOTE: Rule 58A.0108 of the North Carolina Real Estate Commission requires records of all transactions to be made available for inspection by the Commission or its authorized representatives without prior notice.)** ~~The person should refuse to answer any questions of such a representative official unless the company's attorney has authorized the person to answer.~~ The company recommends that any employee should seek legal advice from the company's attorney and/or their own personal attorney before answering any questions of such a representative official.

If a process server appears in the office with a subpoena for the Company, any employee or agent should accept it. Once accepted, it should immediately be turned over to the broker (sales manager). The broker (sales manager) should immediately contact the President or other officer of the company. In the absence of any of these persons, the broker (sales manager) should contact the company's attorney. If the process server asks for a specific person, only that specific person may accept the subpoena. If that person is not in the office, the person receiving the inquiry should not volunteer any information about the person requested and should not give out home phone numbers or home addresses, even if asked. Refer the inquiry to the broker (sales manager) immediately.

## HOLIDAYS AND HOLIDAY HOURS

S.S. SMITH, INC., REALTORS® closes on the following days: New Year's Day, Easter Sunday, Thanksgiving Day and Christmas Day. Abbreviated days are observed on the following days: Memorial Day (3:00 p.m.), Independence Day, July 4 (3:00 p.m.), Labor Day (3:00 p.m.), Christmas Eve (Noon) and New Year's Eve (3:00 p.m.).

## INDEPENDENT CONTRACTOR/EMPLOYEE AGREEMENT

**(NOTE: A company should choose the type of legal relationship it desires between its sales agents and the company or broker. The NC REALTORS® does NOT recommend any particular type of relationship. The sample policy below is based on an independent contractor relationship. If a company chooses an employer-employee relationship, appropriate revisions should be made.)**

S.S. SMITH, INC., REALTORS®, has a policy of associating with its licensees as independent contractors. Each agent will be required to sign a written agreement setting out the relationship as an independent contractor. While the exact terms of the relationship are covered in the contract, a few reminders about being an independent contractor follow.

1. Income Taxes: All income taxes, federal and state, are the responsibility of the agent. The company does not withhold or pay Social Security taxes on commission earnings. Self employment tax must be paid by the agent.

2. Unemployment Taxes: As an independent contractor, the agent is not covered under state or federal unemployment laws. Independent contractor real estate agents are exempt from the unemployment laws by North Carolina statute. Accordingly, S.S. SMITH, INC., REALTORS®, does not pay unemployment taxes on the earnings of its agents.

3. Worker's Compensation Insurance:

[NOTE: Even though they may be recognized as independent contractors for income tax purposes, it is not clear under current North Carolina law whether real estate agents are independent contractors or employees for other purposes, including but not limited to workers' compensation benefits. Given this uncertainty, the NC REALTORS® recommends that a firm carry workers' compensation insurance on its agents.]

**[NOTE: North Carolina law does allow a real estate firm to enter into an agreement with a real estate broker *on provisional status* to reimburse the firm for the cost of covering that agent under the firm's workers' compensation coverage, if the agent is recognized as an independent contractor for federal income tax purposes (see General Statute Section 93A-11). A firm electing to seek such reimbursement from a provisional broker should consider addressing the issue in the independent contractor agreement with the provisional broker.]**

Option 1:

Although real estate agents may be recognized as independent contractors for income tax purposes, it is the policy of S.S. SMITH, INC., REALTORS®, at its cost, to carry workers' compensation insurance on all its employees and agents to insure that the firm, its employees and agents are protected in the event of an on-the-job injury to an employee or agent caused by an accident. Workers comp insurance will cover reasonable and necessary medical expenses related to the injury and

provide certain disability benefits for as long as the employee or agent is totally incapacitated from work.

Option 2:

S.S. SMITH, INC., REALTORS® carries carry workers' compensation insurance at its cost on all its employees. However, as independent contractors, S.S. SMITH, INC., REALTORS® does not carry workers' compensation coverage on any of its agents. Agents of the company should therefore consider securing their own coverage to protect themselves in the event of an on-the-job injury caused by an accident. Workers comp insurance will cover reasonable and necessary medical expenses related to the injury and provide certain disability benefits for as long as the employee or agent is totally incapacitated from work.

The agent should contact the broker (sales manager) for details on securing such coverage.

4. Automobile Insurance: Each agent should carry adequate automobile insurance to protect not only the agent but also the customer or client. In today's legal climate, liability coverage of $_____per person/$_____ per accident is strongly recommended **[insert amount of minimum recommended coverage]**. Any lesser amounts could cause unnecessary exposure of personal assets. Consult carefully with your insurance agent.

Each agent is reminded that State law requires each occupant of an automobile to wear a seat belt. In addition, state law requires that children of less than eight years of age and less than 80 pounds in weight must be secured in a weight-appropriate child passenger restraint system. S.S. SMITH, INC., REALTORS®, has an approved car safety seat in each office for your use when transporting customers or clients with young children. To reduce risk, we strongly recommend that you insist that all occupants of your vehicle wear safety belts. You should also note that any infant's car seat (children approximately one year or younger) should not face forward, but should face the rear of the vehicle. In addition, children and small adults should not sit in the front passenger seat. Airbags are known to release with such force that injury or death is possible for children and small adults. State law requires that in vehicles equipped with an active passenger-side front air bag, a child less than five years old and less than 40 pounds in weight shall be properly secured in a rear seat (if the vehicle has a rear seat), unless the child restraint system is designed for use with air bags.

5. Expenses: As an independent contractor, each agent is expected to be in business for herself/himself. Generally, the expenses of that business will be the responsibility of the agent. S.S. SMITH, INC., REALTORS®, will provide the following items and/or pay for the following expenses:

**(NOTE: The company or broker should determine the expenses which it is willing to provide or pay and delineate the major items here. Some of these expenses may include office space, newspaper advertising, business cards, yard signs, telephone expense, stationery, etc.)**

The agent will be expected to pay for all other expenses, including these particular items:

**(NOTE: Here, the company should list the typical expenses borne by agents. Some of these expenses may be things such as business cards, personal car or yard signs or personal advertising. The NC REALTORS® makes no recommendations as to what should or should not be on either the broker or agent list of expenses.)**

This list of expenses paid by company or agent may be amended by the company from time to time by appropriate publication to all agents.

## LISTING PROCEDURES

**(NOTE: If a company practices buyer agency exclusively, this section should be deleted.)**

S.S. SMITH, INC., REALTORS®, accepts listings and seeks to build an inventory of available merchandise for sale to buyers of homes and investment real estate. It offers the merchandise directly to the public and by cooperating with other licensed agents.

Listings not only represent "the merchandise on the shelf" but also present a significant area of risk. Statistically, at least two-thirds of all claims filed against real estate agents involve claims of misrepresentation, fraud and/or breach of fiduciary duty. It is at the listing level that many of these claims originate. As a listing company, it is imperative that S.S. SMITH, INC., REALTORS®, develop clear policies to reduce the risk of later claims from oversights and exposures at the time of listing. The following policies apply to all listings taken by S.S. SMITH, INC., REALTORS®.

1. Types of Listings:

In accord with the REALTOR® Code of Ethics, S.S. SMITH, INC., REALTORS®, urges the use of an exclusive right to sell listing agreement unless it is contrary to the best interests of the owner. The Company recommends use of NC REALTORS® Standard Form #101 ("Exclusive Right to Sell Listing Agreement"). The Company also accepts exclusive agency listings of property in situations where the seller desires to reserve the right to sell the property on an unlimited or restrictive basis. Open listings may be accepted **(Option 1:)** at the agent's discretion OR **(Option 2:)** only with consent of a manager or broker of the company **[select only one option]**. Net listings are not accepted**.** A net listing is one in which the owner agrees to let the agent keep any sale proceeds over a "net" price the owner wants for the property. Listings will be submitted to the multiple listing service in accordance with the rules and regulations of the service.

**(NOTE: A company may choose to accept any type of legal listing, may choose to restrict its listings to a certain type or types or may limit its acceptance of certain types of listings to certain situations. Local competitive market conditions may influence the types of listings accepted. Whatever policy it chooses, it should specify the policy here.)**

2. Commission Policies:

**(NOTE: Whatever commission policies a company has should be specified here. A company should consider covering the following areas:**

a. Rates and prices charged for services to the public. Examples of areas to consider, depending on the company's selection of agency policy and business practice, are:

(1) Charges to sellers for listings.
(2) Charges to buyers for representation.
(3) Charges to owners for leasing.
(4) Charges for any other services it renders.
(5) Compensation offered to subagents.
(6) Compensation offered to buyer's agents.

(7) Compensation offered to the company's licensees
(9) Circumstances under which the Company will agree to reduce charges or increase compensation offered to others, if allowed, and the procedures for approval of such reductions/increases.)

2. Other Listing Terms:

**NOTE: A company should specify any policies it has as to other terms in a listing contract such as:**

- **length of listing**
- **length of protection period (i.e. time after end of listing term in which a commission is owed if a buyer procured by broker purchases property)**
- **whether and for what length of time exclusions from the listing contract will be accepted**
- **who in the company has authority to accept the listing on behalf of the firm.**

3. Disclosure of Material Facts:

The North Carolina real estate licensing law provides that a real estate agent may be disciplined by the Real Estate Commission for "[m]aking any willful or negligent misrepresentation or any willful or negligent omission of material fact." (NCGS Section 93A-6(a)(1)) The Commission's *License Law and Rule Comments* publication contains the following information about material facts:

"The Commission has historically interpreted 'material facts' under the Real Estate License Law to at least include:

- facts about the property itself (such as a structural defect or defective mechanical systems);
- facts relating directly to the property (such as a pending zoning change or planned highway construction in the immediate vicinity); ~~and~~
- facts relating directly to the ability of the agent's principal to complete the transaction (such as a pending foreclosure sale); and
- facts that are known to be of special importance to a party (such as zoning ordinances).

Regardless of which party in a transaction a real estate agent represents, the facts describe above must be disclosed to both the agent's principal and to third parties the agent deals with on the principal's behalf. In addition, an agent has a duty to disclose to his or her principal any information that may affect the principal's rights and interests or influence the principal's decision in the transaction." (*License Law and Rule Comments*, page 4)

4. Disclosure Statements:

The Residential Property Disclosure Act (the "Act") requires most owners of residential real property to furnish to a purchaser a Residential Property and Owners' Association Disclosure Statement and a Mineral and Oil and Gas Rights Mandatory Disclosure Statement prescribed by the Real Estate Commission no later than the time the purchaser makes an offer to purchase the property (NC General Statutes Chapter 47E). The Act specifically states the following: "A real estate broker acting as an

agent in a residential real estate transaction has the duty to inform each of the clients of the real estate broker of the client's rights and obligations under this Chapter." (NC General Statutes Section 47E-8). ~~In an article in the Real Estate Commission's Summer 1996 *Bulletin*, the Commission set forth the~~ The duties of real estate agents with respect to the Property Disclosure Statement~~. The same duties would apply with respect to~~ and the Mineral and Oil and Gas Rights Mandatory Disclosure Statement~~. Those duties~~ are as follows:

Duties of Listing Agents:
(1) Provide the seller with a copy of the required Residential Property Disclosure Statement provided by the Commission.
(2) Explain to the seller at the time of listing that, under the License Law, an agent must disclose to prospective buyers any material fact regarding a listed property which the agent knows or reasonably should know, even if the seller chooses not to disclose the fact or to make no representation about it.
(3) Assist the seller in assessing the property.
(4) Assist the seller with proper completion of the form.
(5) Assist in delivering the completed Disclosure Statement to prospective buyers.
(6) Monitor the property and circumstances to help the seller ensure the continuing accuracy of the Disclosure Statement.
(7) Be sure the buyer signs the Disclosure Statement, and return a copy to the seller.

Duties of subagents
(1) Obtain a completed Disclosure Statement from the seller or listing agent and assist in delivering the form to prospective buyers prior to the preparation of any offer.
(2) Be sure the buyer signs the Disclosure Statement, and return a copy to the seller or listing agent

Duties of buyer agents
(1) Take affirmative steps, if necessary, to obtain a completed Disclosure Statement and deliver it to the buyer prior to the preparation of any offer
(2) Be sure the buyer signs the Disclosure Statement, and return a copy to the seller or listing agent
(3) Assist the buyer in assessing the Disclosure Statement and the property, and advising the buyer to have inspections by experts where appropriate

In completing the Disclosure Statements, the seller MUST fill in the form. An S.S. SMITH, INC., REALTORS®' agent MAY NOT complete the forms on behalf of a seller.

A seller may, according to law, elect not to make any representations as to the characteristics and condition of the property by checking the "No Representations" boxes on the Disclosure Statement. If a seller has questions about whether the seller should check one or more "No Representation" boxes on the Disclosure Statement, the listing agent should inform the seller that it is not appropriate for a real estate agent to give legal advice and direct the seller to contact an attorney.

Some sellers may refuse to sign a Disclosure Statement. S.S. SMITH, INC., REALTORS®, **(WILL) (WILL NOT)** accept a listing for which a seller refuses to complete a Disclosure Statement. **[If firm does accept such listings, the following statement should be added:]** If a seller refuses to sign a Disclosure Statement, the listing agent should advise the seller that if a prospective buyer does not

receive a Disclosure Statement prior to making an offer on the seller's property, the buyer may cancel any resulting contract prior to whichever of the following events occurs first: (1) the end of the third calendar day following receipt of the Disclosure Statement; (2) the end of the third calendar day following the date the contract was made; or (3) Closing or occupancy by the Buyer in the case of a sale or exchange.

If a material inaccuracy in the Disclosure Statement is discovered, or the Disclosure Statement is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Act requires the owner to correct the inaccuracy and deliver a corrected to the buyer. Therefore, a listing agent should be careful to keep the Disclosure Statement current. If the information becomes inaccurate because the property's condition has changed, a seller (and agent!) could have liability for allowing known inaccurate information to be given to the buyer.

An agent may not rely on a statement of the seller if the agent knows or reasonably should know that the statement is inaccurate. An agent therefore may not ignore the representations on the Disclosure Statement just because the seller completed it. If an agent, in his/her reasonable judgment and expertise, suspects that a Disclosure Statement is not accurate, the agent should seek further information from the seller. An example might be a seller who states that there has been no water in a basement in which there are obvious water stains and cracks. An agent's best course is to seek further information from the seller as to the exact nature of their statements and then accurately convey this information to any prospective buyer, in accord with the obligation to disclose material facts.

6. Accuracy of Listing Information

Several "traps" of liability exist in taking a listing. These are covered below. Each S.S. SMITH, INC., REALTORS®, agent should take careful note of these hazard areas and be particularly diligent in handling these issues.

a. Room Counts: S.S. SMITH, INC., REALTORS®, agents must be careful to accurately represent the number of rooms, bedrooms and bathrooms in a property. Generally, questions of whether an area constitutes a room, bedroom or bathroom are resolved by determining whether an appraiser would count the area as such. For example, basement rooms that are below grade are not generally considered rooms, bedrooms or bathrooms for appraisal purposes. Another example is that a room normally must have a closet to be considered a bedroom. Also, "walk-through" rooms are not usually considered separate bedrooms. These ambiguous areas can be denoted by a symbol such as a "+" sign after the room count (e.g. 8+ rooms, 4+ bedrooms) or highlighted in remarks for the property or other descriptive information.

**b.** Square Footage: [**NOTE: Real estate agents are not required by the Real Estate License Law or the rules of the North Carolina Real Estate Commission to report the square footage of properties offered for sale. However, most multiple listing services require entry of square footage information about listed properties. Also, prospective buyers commonly request information about a house's square footage. The following policy assumes that the firm reports the square footage of its listings.**

**The policy is based on the *Residential Square Footage Guidelines* (the "Guidelines") adopted by the North Carolina Real Estate Commission. A firm that has a policy of not reporting square footage should insert that policy instead. Firms that do not report square footage in areas where the prevailing practice is to report square footage in the advertising and marketing of homes, must, according to the *Guidelines*, disclose this fact to prospective seller clients before entering into agency agreements with them. See the *Guidelines,* a copy of which can be found at the Commission's website at www.ncrec.gov.]**

When calculating and reporting square footage, it is the policy of S.S. SMITH, INC., REALTORS® that its agents will follow the *Residential Square Footage Guidelines* adopted by the North Carolina Real Estate Commission. The "Agents' Responsibility" section of the *Guidelines* provides the following guidance:

*"Real estate agents are expected to be able to accurately calculate the square footage of most dwellings. When reporting square footage, whether to a party to a real estate transaction, another real estate agent, or others, a real estate agent is expected to provide accurate square footage information that was compiled using these Guidelines or comparable standards.) While an agent is expected to use reasonable skill, care and diligence when calculating square footage, it should be noted that the Commission does not expect absolute perfection. Because all properties are unique and no guidelines can anticipate every possibility, minor discrepancies in deriving square footage are not considered by the Commission to constitute negligence on the part of the agent. Minor variations in tape readings and small differences in rounding off or conversion from inches to decimals, when multiplied over distances, will cause reasonable discrepancies between two competent measurements of the same dwelling. In addition to differences due to minor variations in measurement and calculation, discrepancies between measurements may also be attributable to reasonable differences in interpretation. For instance, two agents might reasonably differ about whether an addition to a dwelling is sufficiently finished under these Guidelines to be included within the measured living area. Differences which are based upon an agent's thoughtful judgment reasonably founded on these or other similar guidelines will not be considered by the Commission to constitute error on the agent's part. Deviations in calculated square footage of less than five percent will seldom be cause for concern.*

*As a general rule, the most reliable way for an agent to obtain accurate square footage data is by personally measuring the dwelling unit and calculating the square footage. It is especially recommended that listing agents use this approach for dwellings that are not particularly unusual or complex in their design.*

*As an alternative to personally measuring a dwelling and calculating its square footage, an agent may rely on the square footage reported by other persons when it is reasonable under the circumstances to do so. Generally speaking, an agent working with a buyer (either as a buyer's agent or as a seller's agent) may rely on the listing agent's square footage representations except in those unusual instances when there is an error in the reported square footage that should be obvious to a reasonably prudent agent. For example, a buyer's*

*agent would not be expected to notice that a house advertised as containing 2200 square feet of living area in fact contained only 2000 square feet. On the other hand, that same agent under most circumstances, would be expected to realize that a house described as containing 3200 square feet really contained only 2300 square feet of living area. If there is such a "red flag" regarding the reported square footage, the agent working with the buyer should promptly point out the suspected error to the buyer and the listing agent. The listing agent should then verify the square footage and correct any error in the information reported.*

*It is also appropriate for an agent to rely upon measurements and calculations performed by other professionals with greater expertise in determining square footage. A new agent who may be unsure of his or her own calculations should seek guidance from a more experienced agent. As the new agent gains experience and confidence, he or she will become less reliant on the assistance of others. In order to ensure accuracy of the square footage they report, even experienced agents may wish to rely upon a competent state-licensed or state-certified appraiser or another agent with greater expertise in determining square footage. For example, an agent might be confronted with an unusual measurement problem or a dwelling of complex design… When an agent relies upon measurements and calculations personally performed by a competent appraiser or a more expert agent, the appraiser or agent must use these Guidelines or other comparable standards and the square footage reported must be specifically determined in connection with the current transaction. An agent who relies on another's measurement would still be expected to recognize an obvious error in the reported square footage and to alert any interested parties.*

*Some sources of square footage information are by their very nature unreliable. For example, an agent should not rely on square footage information determined by the property owner or included in property tax records. An agent should also not rely on square footage information included in a listing, appraisal report or survey prepared in connection with an earlier transaction."*

When calculating square footage, agents of S.S. SMITH, INC., REALTORS® should carefully follow the *Guidelines*, a copy of which may be obtained from the Real Estate Commission's website (www.ncrec.gov).

c. Lot Size: Lot size and acreage should only be determined from an accurate survey. The agent should NOT attempt to measure lot size on her/his own.
d. Taxes: Taxes should be determined from county tax records or the owner's tax bill. The agent should not rely on the statements of the owner as to tax amounts.
e. Modernization Information: Often, good selling features about a property are the updates or upgrades made by the owner. In order to accurately advertise these items, S.S. SMITH, INC., REALTORS®, requires that the owner verify any information given to us before it can be used in any promotional material on the listing.

Items such as "new" roof, "new" air conditioner, "new" furnace, "new" bathroom, "new" kitchen, etc. are misnomers because of the difficulty in defining what "new" means. Substantiation of the information means the owner must supply S.S. SMITH, INC., REALTORS®, with receipts, canceled

checks or other proof of payment of upgraded or rehabbed items. Once provided, then S.S. SMITH, INC., REALTORS®, will accurately advertise and promote these good selling features with language like "New roof, 1990","New furnace, 1989","Kitchen remodeled, 1991".

If it is not possible to substantiate modernized features, they can be advertised or promoted as "Newer" or "Recent", as in "Newer furnace" or "Recently remodeled bathroom".

7. Signatures: S.S. SMITH, INC., REALTORS®, desires that listing agreements be enforceable in every possible situation to ensure that the company and agent will be paid under the terms of the listing agreement. Because of these factors, agents must secure listing agreements with the proper signatures before the listing will be promoted or advertised in any way. Agents should be especially aware in the several situations below.

a. Spousal Signatures: A spouse must ALWAYS sign a listing agreement unless a waiver of marital rights given by the non-signing spouse exists (e.g., separation agreement, prenuptial agreement), a copy of the waiver has been given to S.S. SMITH, INC., REALTORS®, and legal counsel for S.S. Smith, Inc., REALTORS®, has confirmed that the agreement constitutes a valid waiver of the non-signing spouse's rights.
b. Most often, these questions come up when the property is titled only in the "selling" spouse's name and the "non-selling" spouse claims that he/she has no interest in the property. Typical situations are a widowed person who has remarried or a divorced person who has remarried. The spouse not on the title ALWAYS has a marital interest under North Carolina law and MUST sign the listing agreement unless one of the exceptions noted above exists.
c. Property In Estate: When property is in an estate, ALL heirs AND spouses must sign, along with the executor or administrator (Personal Representative). It is possible that the Personal Representative has authority to sell the property without the joinder of the heirs and their spouses. The agent must secure a copy of the part of the will or court decree which empowers the Personal Representative to sell property. The power of sale granted the Personal Representative by a will may not be acceptable until after a certain period of time has passed following the date that the Personal Representative has been appointed. In this situation, management for S.S. SMITH, INC., REALTORS® will consult with legal counsel to determine if the power to sell in the will is acceptable.
d. Trustees: If a property is held by a trust, the trustee will normally be empowered to sell. However, the agent must secure a copy of the part of the trust which empowers the trustee to sell because some trusts require the signatures of more than one trustee to sell as in the case of an individual and corporate trustee (bank). The trustee's spouse does not sign the listing agreement because the trustee is acting in a representative capacity.
e. Seller Incapacitated: If a seller is not mentally competent to sell, a guardian must be appointed by the Court and the guardian must obtain a court order to sell the property. Until such time, the property cannot be sold even if a child, sister, niece, nephew, etc. is also on the title. Also, if a property is jointly owned in this fashion, the spouse of the "second signer" (child, sister, niece, nephew, etc.) must also sign the listing contract. It is possible that a properly drawn Durable Power of Attorney may provide a means to sell this type of property. However, before relying on the Durable Power of Attorney,

company management will consult with legal counsel to determine whether the existing Durable Power of Attorney is acceptable. ~~NC General Statutes Section 32A-9 requires that no durable power of attorney is valid subsequent to the seller's incapacity or mental incompetence unless it is registered in the register of deed office in the county of the seller's residence.~~ Also, refer to the paragraph on Powers of Attorney, below.

~~f.~~ Divorces: A person is NOT legally divorced until a court so orders. A person "in the process of divorce" cannot sign the listing agreement alone. The spouse must also sign, regardless of whether the spouse is living on the premises or the couple has a "legal separation," unless a valid waiver of marital rights exists (see section on Spousal Signatures above). Once divorced, the person may sign alone. However, so long as the former spouse is shown as a record owner of the property, he or she should sign the listing agreement since his or her name will be required on the deed.

g. Powers-of-Attorney: A Power-of-Attorney authorizing the sale of real estate is acceptable for signature on a listing contract. However, not all powers-of-attorney authorize the sale of real estate. A copy of the recorded Power-of-Attorney authorizing the sale of real estate must be secured for the files of S.S. SMITH, INC., REALTORS®.

8. Seller Net Proceeds Calculations: It is the policy of S.S. SMITH, INC., REALTORS®, to calculate estimated net proceeds for sellers as often as appropriate. The first estimate should be given on the listing call or as soon as possible after listing the property. Even though some information may not be available, such as exact loan balances or prepayment penalties, the agent should use all existing information to prepare as accurate an estimate as possible and note any missing information.

When information becomes available, estimated net proceeds should be recalculated. This is particularly appropriate when an offer is presented and when each new offer or counteroffer is received.

Many reasons exist for using seller net calculations. First, it is an important service to a client. Secondly, it is important for S.S. SMITH, INC., REALTORS®, to know whether it is likely that there are sufficient proceeds to pay off the indebtedness on the property and the real estate commission. Finally, the company must know whether the seller of the property can deliver marketable title. If the indebtedness exceeds the listed price, immediate discussions must occur with the seller and the lenders to determine whether the property can be sold with clear title given the level of indebtedness.

Note also that, as a possible material limitation on the client's ability to complete the transaction, this condition may be considered a material fact to be disclosed to the buyer.

Estimated Seller Net Proceeds Calculation forms are available in each office. **(NOTE: If a firm does not have its own form, the "Seller Estimated Net Sheet" (form 110) in the NC Association of REALTORS® forms library may be used.)**

**(NOTE: If an area does not have a common lock box system, alterations to the following section may be considered. Some companies may wish to consider whether to put lock boxes on furnished property and/or whether adequate security measures exist in the absence of a board-sponsored lock box system. This manual assumes a common lock box system.)**

9. Lock Box Procedures: S.S. SMITH, INC., REALTORS®, as part of the local association of REALTORS® common lock box system, encourages the use of lock boxes on all listings as a safe, secure, efficient tool in marketing property. Specific permission from the owner must be obtained on each listing before installing a lock box.

10. Open House Procedures: The "how-to" of holding open houses, etc., is covered elsewhere in S.S. SMITH, INC., REALTORS®, training programs and manuals. However, S.S. SMITH, INC., REALTORS®, must maintain a policy that adequately informs owners of their responsibilities in consenting to open houses. Agents must strongly recommend to owners that they take common sense precautions with any valuables in the house during the time of the open house. This includes removal of all jewelry boxes, collectibles of value, (sentimental or dollar value), small audio or video equipment or other items which may be of value. Owners should also be informed that their homeowner's insurance company is the responsible party for any losses on an open house.

As in all other areas, an agent may not act carelessly or recklessly. If for no other reason, an agent must be diligent in conducting an open house to maintain good business relations and rapport with the owner. Agents of the Company are specifically prohibited from using listed properties for personal use, including but not limited to meetings of any sort that are not related directly to the sale of the client's property.

11. Internal Verification Procedures: S.S. SMITH, INC., REALTORS®, maintains a system of checking and verifying both listing contracts and documents and sale contracts and documents for accuracy, enforceability and compliance with North Carolina Real Estate Commission Rules. **(NOTE: The company should insert its specific procedure for dealing with this item. Options include the sales manager or a central person verifying the files.)** Each agent is expected to cooperate fully and promptly with any requests for verification, further information or correction of any oversights in the documents.

For other related policies, see the section on Risk Reduction Policies.

## MISSION STATEMENT

It is the mission of S.S. SMITH, INC., REALTORS®, to profitably, ~~and~~ ethically, and legally provide high quality professional real estate services to the home buying, home selling and real estate investing public.

**(NOTE: If the company is an exclusive buyer agency firm, delete this reference above to home selling.)**

## OFFICE HOURS POLICY

During Daylight Savings Time, S.S. SMITH, INC., REALTORS® regular office hours are _____a.m. to _____ p.m. daily. During Eastern Standard Time, the offices close at _____ p.m. On Sundays, opening time is at _____ a.m.

**(NOTE: If the Company has an after-hours policy, it should be inserted here.)**

## OFFICE OPENING AND CLOSING PROCEDURES

**(NOTE: A general description of procedures to open and close the office should be inserted here. Things such as locking doors, turning off computers and copiers, setting thermostats, etc. could be included.)**

## PERSONAL ASSISTANTS

A growing trend in the real estate business is for high producing agents to use specific persons as their assistants and/or to associate with other licensees as a "team." S.S. SMITH, INC., REALTORS® encourages the appropriate use of personal assistants and teams as a tool for high earning agents to be even more productive. Several caveats are in order from the perspective of the company. Many of the distinctions are based on whether a licensed or unlicensed assistant and/or team members are used. S.S. SMITH, INC., REALTORS® policies on the use of personal assistants and/or teams are as follows.

1. Employee v. Independent Contractor: Whether licensed or unlicensed, the agent must decide whether to associate with the personal assistant or team member (hereafter "PA/TM") as an employee or independent contractor.

Serious issues of the right of control, method of payment and direction of the work exist if the agent chooses to have an independent contractor PA/TM. S.S. SMITH, INC., REALTORS®, strongly urges the agent to consult with her/his tax consultant to determine the proper procedures in making this choice. If independent contractor status is chosen, all of the issues mentioned above regarding withholding, unemployment taxes, worker's compensation and automobile insurance should be clear in the arrangement between the agent and the PA/TM.

If employee status is chosen, the agent should be aware that all employment taxes, withholding reports, unemployment tax reports, workers' compensation insurance and reports and W2 forms are the responsibility of the agent. S.S. SMITH, INC., REALTORS®, is not a party to the arrangement between the agent and PA/TM and will not be responsible for any employment activities of the agent.

2. Unlicensed Personal Assistants/Team Members: The policy of S.S. SMITH, INC., REALTORS®, is that personal assistants or team members who do not have active licenses WILL NOT UNDER ANY CIRCUMSTANCES engage in the practice of real estate brokerage as defined in the real estate licensing law (North Carolina General Statutes Section 93A-2). The agent associating with the PA/TM is strictly responsible for maintaining this policy. If an unlicensed PA/TM performs any acts which constitute the practice of real estate brokerage, the agent puts her/himself in jeopardy of disassociation. The North Carolina Real Estate Commission has taken a position as to the types of things unlicensed office personnel may and may not do. Please review the section on "Functions of Unlicensed Office Personnel" to determine these items. The policy of S.S. SMITH, INC., REALTORS®, is that unlicensed personal assistants fall into the same category as unlicensed office personnel.

The agent is further advised that unlicensed persons may not be paid any fees or commissions for any work done. The company will not split commissions with an unlicensed person.

3. Licensed Personal Assistants/Team Members: A PA/TM with an active license can engage in the practice of real estate brokerage. It is the policy of the Company that unless written permission to the contrary is given by the Company, the license of the PA/TM must be held by S.S. SMITH, INC., REALTORS®, and any payments due a PA/TM for engaging in real estate brokerage must

come from the company. Please review the section of "Functions of Unlicensed Office Personnel" to determine the difference between "clerical" functions and "real estate" functions. **(NOTE: There are some situations where the agent with whom a PA/TM is affiliated may or must act as the PA/TM's broker-in-charge instead of or in addition to the Company's BIC. It is strongly suggested that the Company contact the North Carolina Real Estate Commission to get a determination of what would be an appropriate arrangement, given the particular circumstances, before consenting to such an arrangement. Also, under some circumstances, payments due a PA/TM for performing brokerage services may come from an entity other than the company. Again, it is suggested that the Commission be contacted prior to allowing any alternative methods of payment to the PA/TM.)**

The easiest and cleanest way to accomplish this end is for the agent to split commissions as they are earned with the licensed PA/TM in whatever proportion the two parties negotiate. The amount of the split between the PA/TM and the agent should be specific and regular and should not vary per transaction. The company requires written agreements between the company and both agents to delineate the relationship and also requires the PA/TM and agent enter into a written agreement defining the relationship and specifying the compensation arrangement.

## PROPERTY INSURANCE ISSUES

Real estate transactions can be affected by the lack of availability and/or unaffordability of insurance to cover the property that is being bought or sold. In the past, securing property insurance was considered routine. It was not unusual to call the insurance agent a few days or a week before closing and have the insurance issued with little more than that phone call.

Today, the property insurance environment has dramatically changed and continues to do so. Buyers should address the property insurance issues seriously and early in the transaction process. Here are some important tips for buyers to consider about this new insurance environment:

1. Don't wait to secure insurance. As soon as the offer is accepted, have the buyer call their insurance agent and arrange for coverage. If the buyer is shopping around, the buyer should try to pick an insurance company/agent before writing an offer. Then, when the offer is accepted, they will know who to call. If the buyer has not picked an insurance company or agent by the time the offer is accepted, have them do it immediately after the offer is accepted.

2. Consider buying an "Insurance Score" report. Similar to a "credit score," the buyer's "insurance score" is used by many insurance companies in deciding whether to extend insurance coverage. The components of the insurance score may vary from company to company, but usually include a composite of the buyer's credit score and their past record of filing insurance claims on other properties they have owned or rented.

3. Consider obtaining a "CLUE" Report for the property the buyer currently owns. "CLUE" means "Comprehensive Loss Underwriting Exchange." CLUE is a database of insurance claims on properties throughout the United States. Insurance companies contribute claims information about properties they have insured and thus a record of claims as to each property that has been insured by a contributing company has been built over the past 10 to 15 years. Generally, claims over the past 5 years are available through the CLUE database. Similar to insurance scores and buyers, CLUE Reports are used by insurance companies to decide whether to insure a property. If a CLUE Report reveals that a property has had "too many" past claims or certain types of claims (such as water damage), many insurance companies will not insure the property. Unfortunately, there is no standard among insurance companies about what are "too many" claims to result in a denial of coverage. The best time to get a CLUE Report for the buyer's own property is before they put it on the market and before they write an offer to buy a new property. If the buyer's current property's CLUE Report reveals significant insurability issues, this may affect their buying decision.

4. Consider asking the seller of the property the buyer is interested in buying for a CLUE Report for their property before writing an offer to buy. Only the owner of the property can order a CLUE Report.

5. A property that has an unfavorable CLUE Report may be insurable, but only at a significantly higher premium. Buyers with low insurance scores may also be required to pay higher premiums to secure property insurance.

## RISK REDUCTION POLICY

S.S. SMITH, INC., REALTORS®, advocates and encourages the concept of risk reduction. A majority of claims filed against real estate agents and brokers allege some misrepresentation or fraud. The trend of the law in the real estate industry is for more and more disclosure. Accordingly, S.S. SMITH, INC., REALTORS®, has the following policies regarding risk reduction and disclosure.

1. Compliance With All Laws, Rules And Regulations: As an agent of S.S. SMITH, INC., REALTORS®, each person assumes the obligation of strict compliance with all laws, rules and regulations which govern real estate licensees in the State of North Carolina.

2. Compliance With This Policy Manual: As an agent of S.S. SMITH, INC., REALTORS®, each person agrees to comply with all policies as stated in this manual and its additions, changes and amendments as from time to time published by management of the company. Failure to comply with the policies herein subject the agent or staff member to disciplinary action which may include termination of association with the company.

3. Physical Condition Of The Property: In accord with the REALTOR® Code of Ethics, North Carolina Real Estate Commission Rules, and the North Carolina real estate licensing law, the policy of S.S. SMITH, INC., REALTORS®, is to disclose to all appropriate parties any known material facts of a property. This applies whether S.S. SMITH, INC., REALTORS®, is the listing agent, subagent or buyer's agent. (See section of this Manual captioned “Disclosure of Material Facts” under “Listing Procedures” for a discussion of what constitutes a “material fact.”)

4. “Stigmas” On Property: NC General Statutes Sections 39-50 and 42.14.2 provide that the fact that a property was occupied by a person who died or had a serious illness while occupying the property in not a material fact. These statutes also provide that it is not a material fact that a person convicted of a crime that requires the person to register under the sex offender registration law occupies, occupied or resides near the property. As is stated in the Real Estate Commission’s *License Law and Rule Comments* publication, “agents do not need to voluntarily disclose such a fact; but if a prospective buyer or tenant specifically asks about such a matter, the agent must respond honestly. If, however, a prospective buyer or tenant inquires as to whether a current or previous owner or occupant had AIDS, the agent is prohibited by fair housing laws from answering such an inquiry because persons with AIDS are considered to be “handicapped” under such laws.” Therefore, it is the policy of S.S. SMITH, INC., REALTORS®, that an agent should not make an unsolicited comment that the current or former occupant has or had AIDS. Further, if an inquiry is made by the buyer as to whether the occupant has AIDS, the agent shall not respond to such a question. The agent should state to the effect "it is the policy of S.S. SMITH, INC., REALTORS®, not to answer that type of question one way or the other since it is not material and may violate the Fair Housing Act." If the buyer persists, the agent shall state, "if that information is important to you, you must determine that information yourself."

If a prospective buyer asks an agent whether there are any sex offenders living near the property, the agent should inform the buyer that detailed information about registered sex offenders is available from the local sheriff’s department. The agent should also make the buyer aware of the

existence of the statewide registry of sex offenders maintained by the SBI (access to which is available via the Internet at **http://sexoffender.ncsbi.gov/.**

The Code of Ethics provides that factors defined as "non-material" by law or regulation do not need to be disclosed.

Because of the practical problems of the inevitable "disclosure" of these factors (often by the neighbors), the policy of S.S. SMITH, INC., REALTORS®, is to discuss with the seller-client the inevitability of this disclosure and to recommend disclosure of such factors (other than AIDS, HIV, or related illnesses) that may have an impact on a purchaser's decision to buy. Recent violent crimes or suicides are specific examples of such events. If, after this discussion, the seller-client instructs the company not to disclose these factors voluntarily, the agent should consult company management to determine whether the listing will be accepted.

5. "Meth Houses": North Carolina law makes the manufacture of "meth" a Class C felony, and prohibits related criminal activity surrounding its manufacture, distribution, and sale. Pursuant to N.C.G.S. 130A-284, the NC Department of Health and Human Services ("DHHS") has created rules establishing decontamination standards for certain properties to assure they are reasonably safe for human habitation. The law requires compliance with these decontamination standards by the property "owner, lessee, operator, or other person in control of a residence or place of business, and who has knowledge that the property has been used for the manufacture of methamphetamine…."

The DHHS rules require a "responsible party" to:

• Perform a pre-decontamination assessment to determine the level of contamination and scope of remediation;

• Decontaminate the property; and

• Document the assessment and remediation.

The documentation must be retained by the local health department for a period of three years.

The following is an excerpt from an article that appeared in the May 2005 issue of the NC Real Estate Commission's *Bulletin*:

*Property managers and other licensees may be viewed as persons "in control of a residence or place of business" under the DHHS law and rules. If so, this could create heightened responsibility for licensees with regard to decontamination. However, the law is unclear concerning the extent of responsibility a property manager or agent might have, if any, especially compared with that of the actual owner or lessee.*

*As a licensee, you are required to disclose material facts concerning a property when you are, or should be, aware of them.*

*Because properties used as "meth" labs may have potential lingering health consequences and responsible parties must undertake clean-up and reporting, the prior use of a property as a "meth" lab is material. However, it is also important to remember that your duty to disclose only arises when you know, or reasonably should know, that the property was once used as a "meth" lab. As with all*

*issues concerning material facts, whether an agent reasonably should have known that a property once was a "meth" lab must be evaluated on a case by case basis.*

*At this time, the Commission does not require licensees to check with the county health department, local law enforcement officials, and the SBI, each time they list a property to see if decontamination or criminal records exist indicating the property was once used for the manufacture of "meth". On the other hand, licensees who encounter properties they know or should know were formerly operated as "meth" labs should make inquiries to determine the status of the property.*

*If the inquiry reveals that remediation is complete, no disclosure is required, assuming that clean-up has been properly documented.*

6. Documentation Of Disclosure: As is apparent, S.S. SMITH, INC., REALTORS®, advocates full disclosure in appropriate circumstances. However, all the disclosure in the world does no good if it cannot be proven. While it would be ideal to have every single disclosure as to every material item disclosed to the parties in writing with their acknowledgment of the disclosure, such is not usually possible.

The S.S. SMITH, INC., REALTORS®, preferred policy is to have a written disclosure and acknowledgment as in the case of a Residential Property Disclosure Statement.

Recognizing that this ideal cannot be attained in every situation, the policy of S.S. SMITH, INC., REALTORS®, is that the agent should document in his/her own personal notes and files each item which is disclosed in a transaction. All such documentation should be included in the Company's record-keeping system described in the Record Retention section of this Policy.

This simple policy can reduce risk and potentially save many thousands of dollars. It assumes that the agent has a regular, systematized method of organizing and keeping files. This is vitally important to a good documentation procedure.

Disclosure is great, but documentation of the disclosure is the glue that seals the cracks.

7. Use of Experts & "Recommendations": S.S. SMITH, INC., REALTORS®, maintains a strong policy that an agent not go beyond her/his area of expertise regarding a transaction. The company strongly recommends that an agent advise the use of an expert in situations where appropriate. For example, if questions arise with a buyer about the adequacy of the electrical system, the agent should advise that a building inspector, engineer or licensed electrician be consulted.

However, an equally strong policy exists in NOT recommending any particular inspector, engineer, electrician or other expert. While advising that AN expert be used is a good risk reduction technique, the benefits of this technique are lost if a specific expert is recommended. Recommendation of a specific expert could lead to liability if the expert fails to do her/his job and the agent was negligent in recommending that person.

The policy of S.S. SMITH, INC., REALTORS®, is to give the names of three experts in each field whenever asked for a recommendation. Do not fall into the trap of responding to a customer/client who insists that you make a specific recommendation. The agent should be firm in having the customer/client make the choice.

Some agents have found a helpful tool in keeping several sample reports from various building/mechanical inspectors, engineers, roofers, etc. When the customer/client asks for a recommendation, the agent gives the customer/client the samples and suggests that they choose the style and cost of the expert which fits their style and needs the best.

A related issue is ordering the report. The policy of S.S. SMITH, INC., REALTORS®, is that the agent should not order the report if at all possible. The company recognizes that certain situations require the agent to place the order, but, in general, the agent should have the customer/client place the order. This removes the company and agent from any involvement in the selection process and reduces the liability of possible negligence in "recommendation" of an expert.

**(NOTE: Consideration should be given to adding a provision encouraging or requiring a company's agents to use NC REALTORS®' standard form #760 ("Professional Services Disclosure And Election") whenever possible in assisting buyers or sellers with selecting professional services to be performed in connection with the purchase or sale of real estate.)**

8. Training: As stated in other parts of this manual, training and education are integral parts of any risk reduction and professionalism program. All agents are expected to complete the company's initial training program and are strongly encouraged to take advantage of company, board and association education programs.

9. Use of Legal Counsel: Whenever an agent believes she/he requires legal assistance, the broker (sales manager) should be contacted. The company has legal counsel for appropriate legal questions and problems. The earlier a legal question or problem is brought to the attention of management, the earlier the problem can be solved. The company's position is that wisely spent legal fees early in a problem can save many thousands of dollars if a formal complaint or lawsuit arises.

10. Non-Attorney Closings: Although it is permissible for a non-lawyer or an out-of-state attorney to perform certain limited activities in connection with a residential real estate closing, the performance of most acts and services required for a closing constitutes the practice of law and must be performed by an attorney licensed to practice in North Carolina. A non-lawyer in North Carolina may oversee the signing of closing documents and receive and disburse closing funds, but a real estate agent, loan officer or other non-lawyer may not, for example, answer a legal question about the meaning of the sales contract or a loan document.

It is the policy of S.S. SMITH, INC., REALTORS® that all buyers should hire an attorney licensed in North Carolina to perform a closing. If a buyer expresses interest in using a non-attorney or out-of-state attorney to handle a closing, it is the policy of SS. SMITH, INC., REALTORS® that the agent working with the buyer should present the buyer clients and customers who has contracted to purchase property with a copy of the NC REALTORS® "Important Notice" on the "Use of attorney

in real estate closing" and have him or her sign it. The Notice may be downloaded from the NC REALTORS® web site at www.ncrealtors.org. The document explains that the firm strongly recommends that the buyer hire a North Carolina real estate lawyer to assist with all aspects of the closing. In addition to helping educate buyers about the limitations on what a non-lawyer may legally do in connection with a closing, the Notice could help protect agents against potential claims from clients and customers that they did not understand the risks of not using a lawyer in all aspects of their closing.

11. Errors and Omissions Insurance:

(**NOTE: If a company does not carry errors and omissions insurance, delete this paragraph. All companies should strongly consider purchasing some minimal amount of coverage. At the least, this can serve to prove a company's track record for a later purchase of more insurance. If the company does not carry the insurance, it is strongly suggested that Option 2 be adopted.)**

Option 1:

S.S. SMITH, INC., REALTORS®, carries errors and omissions insurance in the amount of $_____ with a deductible of $_____ **(NOTE: Fill in the appropriate amounts of your policy.)** All agents and staff of the company are covered by the policy. The policy is paid by **(NOTE: The company should insert here the method of payment for the policy, whether by the company, on a cost sharing basis with the agents, by the agents or some other arrangement.)**

Errors and omissions insurance generally covers the negligent acts of the insured. It does not cover all possible damages for which the company could be liable. For example, no errors and omissions insurance covers punitive damages. For other exceptions, contact the broker (sales manager) for a copy of the policy.

Errors and omissions insurance does cover defense costs, that is, the legal fees involved in defending a claim against the company or agent. This is very valuable coverage.

The policy of S.S. SMITH, INC., REALTORS®, is that each agent must notify the broker (sales manager) as soon as the agent is aware of a possible claim against the agent/broker. "Possible claim" means the potential of a disagreement which could lead to a lawsuit against the company or agent. Only in this way can the company properly invoke the errors and omissions coverage, if necessary.

Option 2:

While the company does not carry errors and omissions coverage, each agent should consider doing so. The agent should contact the broker (sales manager) for details on securing such coverage.

Errors and omissions insurance generally covers the negligent acts of the insured. It does not cover all possible damages for which the agent could be liable. For example, no errors and omissions insurance covers punitive damages.

Errors and omissions insurance does cover defense costs, that is, the legal fees involved in defending a claim against the company or agent. This is very valuable coverage.

The policy of S.S. SMITH, INC., REALTORS®, is that each agent must notify the broker (sales manager) as soon as the agent is aware of a possible claim against the agent/broker. "Possible claim" means the potential of a disagreement which could lead to a lawsuit against the company or agent. Only in this way can the company properly defend itself against the possible claim.

12. Complaint Handling Procedures: One of the simplest and most cost effective risk reduction methods is a good complaint handling process. Accordingly, S.S. SMITH, INC., REALTORS®, establishes the following procedures for handling complaints, which can originate in a variety of ways, including but not limited to telephone calls, in-person complaints, and bad reviews on social media or other Internet sources. **(NOTE: If the Company has a different procedure for handling complaints, it should be inserted here in lieu of the following sample policy)**:

a. If the complaint comes to an agent involved in a transaction, the agent will be the primary contact person to handle the complaint with whatever management assistance the agent requires. At a minimum, the agent should notify the broker (sales manager) of the complaint and the agent's progress with the complaint.
b. If the complaint comes in without specifying an agent, the broker (sales manager) will handle the complaint. If a specific management person is requested (such as "I want to speak to the President!"), the person answering the call should courteously direct the call to the requested person, if available, or the broker (sales manager) in the requested person's absence. The caller should ALWAYS be assisted in some way. The person taking the call should not say "Oh, she isn't here right now." or "You'll have to call him later." or "Please call her office." It is very important to handle an aggravated or upset caller with the utmost courtesy and care.
c. Whoever takes the complaint, the key factor in handling the call is to LISTEN to what the caller's complaint is. The most appropriate and helpful thing the call handler can do is give the person filing the complaint a full and fair airing of her/his grievance. Many times, simple listening to the complaint does much to alleviate the caller's frustration. Sometimes, being listened to is all the person really wants. ACTIVE LISTENING is critical.
d. Usually, the most successful way to handle the initial complaint call is to validate the caller's concerns. In general, it is best not to challenge the caller or become defensive. GET THE FACTS!! Simply try to get all necessary information from the caller's perspective, even if the complaint handler knows it may not be 100% accurate. Remember to document the conversation in writing. Make notes or write a memo about the conversation as soon as possible.
e. Usually the call can be ended by assuring the caller that the matter will be investigated. The complaint handler should tell the caller what he/she can expect. For example, "Mr. Smith, I would hope you understand that I need to do some research. I will look in to the matter, discuss it with Suzie and get back to you by Tuesday." The caller should always be told what the complaint handler will do and by when. THEN DO IT!!

The basic risk reduction techniques in this manual can contribute significantly to the safe and successful practice of the real estate business for S.S. SMITH, INC., REALTORS®, and each agent. The company appreciates each agent's and staff member's enthusiastic endorsement of these concepts.

13. Record Retention: NC Real Estate Commission Rule 58A.0108 requires that brokers retain records of all sales, rental, and other transactions, whether the transaction is pending, completed, or terminated prior to its successful conclusion. Records must be retained for three years after all funds held by the broker in connection with the transaction have been disbursed to the proper party or parties or the successful or unsuccessful conclusion of the transaction, whichever occurs later. However, if the broker's agency agreement is terminated prior to the conclusion of the transaction, the broker must retain such records for three years after the termination of the agency agreement or the disbursement of all funds held by or paid to the broker in connection with the transaction, whichever occurs later.

Records to be retained include copies of the following:

(1) contracts of sale;
(2) written leases;
(3) agency contracts;
(4) options;
(5) offers to purchase;
(6) trust or escrow records;
(7) earnest money receipts;
(8) disclosure documents;
(9) closing statements;
(10) brokerage cooperation agreements;
(11) declarations of affiliation;
(12) broker price opinions and comparative market analyses, including any notes and supporting documentation;
(13) sketches, calculations, photos, and other documentation used or relied upon to determine square footage;
(14) advertising used to market a property (including social media and other electronic forms of advertising); and
(15) any other records pertaining to real estate transactions.

(NOTE: Companies are strongly urged to consider adopting some type of standardized record keeping system that its agents may use in each transaction, as a significant risk reduction tool as well as to help ensure compliance with the Real Estate Commission's record retention rule. Any such record keeping system should be described here.)

## SAFETY FOR AGENTS

Real estate sales agents routinely find themselves in situations in which they are alone with clients or customers about whom they have very little information. The very nature of showing real estate to prospective buyers and tenants who are virtual strangers can make agents, both men and women, susceptible to becoming victims of violent crimes. S.S. SMITH, INC., REALTORS® recommends that all agents follow three basic safety practices:

1. Identify the person you are working with before you join him or her alone, in a car or a house. Preferably meet them at the office, copy his or her driver's license and make sure someone from the office knows where you'll be going with the person.

2. Always carry your cell phone with you and make sure it is fully charged and has reception. Program 911 into speed dial and don't hesitate to call for help.

3. Trust your instincts. If you have a bad feeling, don't second-guess what it's telling you. Listen to your gut feeling and protect yourself.

For more detailed safety tips and practices, please consult the *North Carolina Real Estate Agent Safety Guide*, a joint publication of the NC REALTORS® and the North Carolina Real Estate Commission. You can download it from the NC REALTORS® Web site (www.ncrealtors.org) or the Real Estate Commission Web site (www.ncrec.gov).

In addition to following the procedures discussed in the *Safety Guide*, agents must have a current Agent Personal Information Form on file in the office. Agents also should fill out an Agent Itinerary Form before each appointment. Copies of these forms are included in the *Safety Guide*.

## SALE CONTRACT POLICY

1. Sale Contract Completion

As a member of the NC REALTORS®, S.S. SMITH, INC., REALTORS®, uses the standard contract forms available through NC REALTORS® (including Standard Form #2-T, "Offer to Purchase and Contract," and all addenda thereto). North Carolina Real Estate Commission Rules (Sections 58A.0111, "Drafting Legal Instruments'" and 58A.0112, "Offers and Sales Contracts") and Article 13 of the REALTOR® Code of Ethics govern an agent's conduct in this respect.

S.S. SMITH, INC., REALTORS®, adheres strictly to these provisions. Accordingly, a sample sale contract form book is available to all agents of the company. Agents must use the approved language and fill-ins included in the sample contract book. If a situation is not covered, an agent is not authorized to alter a form or add language without prior approval from company management. Company management maintains a file of pre-approved clauses for situations not covered by the forms book.

Likewise, any amendments or supplements to sale contracts must be written on the standard addenda available from NC REALTORS®. These forms provide for most typical amendments and changes to sale contracts. If an agent requires unusual language, she/he must consult company management who will consult with legal counsel to determine the appropriate language to be used.

North Carolina Real Estate Commission Rule 58A.0111 states that licensees may not "…draft offers, sales contracts, options, leases, promissory notes, deeds, deeds of trust or other legal instruments by which the rights of others are secured…" However, the Rule does permit licensees to complete preprinted offers, option contracts, sales contracts and lease forms. If a customer or client asks us to prepare any other type of document, the agent should ask the customer or client to seek the advice of her/his own legal counsel.

2. Sale Contract Terms

Several areas of contract terms are traps of risk for the unsuspecting agent. S.S. SMITH, INC., REALTORS®, maintains policies regarding these areas to reduce risk and heighten awareness. These are covered below.

a. Earnest Money: Several concerns regarding earnest money are involved. First is the "how much" issue. The company cannot maintain a policy that requires any specific amount of earnest money, as the company and agent are not parties to the contract. However, if the company represents the seller, the advice to the seller will be that sufficient earnest money is very important in that it shows how "earnest" a buyer is. The company has seen many cases where low earnest money has resulted in a buyer simply defaulting on the contract and forfeiting the low amount of earnest money, since the Offer to Purchase and Contract limits the seller's damages to recovery of the earnest money. It has also seen many cases where sufficient earnest money has kept an anxious buyer in a contract to closing because of the prospect of losing a substantial amount of earnest money.

If the company represents the buyer, the classic approach to buyer representation might suggest recommending the lowest possible earnest money in every case. However, the agent is cautioned that this may not serve the best interests of the buyer in all cases. For example, because earnest money indicates how "earnest" a buyer is, or how "strong" an offer is, a buyer may be put at a competitive disadvantage if low earnest money is offered in a situation where the buyer's offer is competing with one or more other offers. As in all other situations, if the company represents the buyer, its job is to give the buyer the best of the agent's and company's expertise, advice and talent which may include advice which on first impression does not follow the "typical" rules.

The policy of S.S. SMITH, INC., REALTORS®, is that earnest money given to S.S. SMITH, INC., REALTORS® as escrow agent will be deposited to the company escrow account immediately upon an accepted contract or, if it is delivered after the effective date of the contract, immediately upon such delivery. In no event shall earnest money be deposited later than the three banking days after contract acceptance or its later delivery. Cash shall be deposited immediately, and in no event later than three banking days after *receipt,* as provided in North Carolina Real Estate Commission Rule 58A.0116. Agents must promptly remit funds to the broker for deposit. In accordance with Commission rule 58A.0116(b), all monies received by a provisional broker shall be delivered **immediately** to the broker by whom the provisional broker is employed.

**(NOTE: If a company does not maintain a trust account, consideration might be given to including the following in lieu of the preceding paragraph.)**

S.S. SMITH, INC., REALTORS® does not maintain a trust account, and it is the company's policy that in transactions in which a brokerage firm representing another party in the transaction will not hold the earnest money, the earnest money will be held a North Carolina-licensed attorney. On company listings that go under contract, the listing agent is expected to timely confirm delivery of the earnest money to the brokerage firm or attorney through receipt of a copy of an acknowledgement of receipt of the earnest money signed by the brokerage firm or attorney, as the case may be.

A corollary issue occasionally arises regarding acceptance of a credit card or line of credit check (Visa, MasterCard, American Express, home equity loan). S.S. SMITH, INC., REALTORS®, takes a conservative position regarding these instruments and strongly discourages their use. The primary reason for this policy regards the difficulty in determining whether this instrument has "cleared". There is no easy way to determine whether the line of credit has been exhausted or overdrawn and upon presentation, will be rejected. In addition, a lender may require that such balances be paid off before loan approval or closing. A credit card or line of credit check should be accepted only with the written permission of the seller.

b. Due Diligence Fee: Several issues regarding the Due Diligence Fee and Due Diligence Period are involved. First is the “how much” issue. Like earnest money, the company cannot maintain a policy that requires any specific amount of Due Diligence Fee, as the company and agent are not parties to the contract. If the company represents the seller, the advice to the seller will be that a sufficient Due Diligence Fee may decrease the likelihood that the buyer will exercise the right to terminate Due Diligence Period since the seller is entitled to keep the Due Diligence Fee.

If the Company represents the buyer, in determining how much to offer in the way of a Due Diligence Fee, the buyer should clearly understand that the purpose of the Due Diligence Fee is to give the buyer the right to "walk away" from the contract for any reason or no reason up until the expiration of the Due Diligence Period, and that once the buyer has had that opportunity, the seller has "earned" the Due Diligence Fee and likely will be entitled to keep it whether or not there is a closing.

It is permissible under the Real Estate Commission's Rule for a broker to accept a check, money order, etc. payable to the seller as a Due Diligence Fee. According to the Rule, while the check, money order, etc. is being held by the Company, it must be delivered to the seller or returned to the buyer according to the buyer's instructions. It is the policy of S.S. SMITH, INC., REALTORS® that if the Company represents the seller, any Due Diligence Fee received by the listing agent will be delivered to the seller as soon as possible upon receipt. In no event may a Due Diligence Fee be held by the Company more than 3 days following acceptance of a contract.

Another issue that comes up is how long the Due Diligence Period should be. The company cannot maintain a policy that requires any specific period of time, as the company and agent are not parties to the contract. Ordinarily, it should be long enough to enable the buyer to conduct his or her "due diligence" of the property and the transaction, which would include a thorough investigation of the physical condition of the property, the negotiation of any requested repairs/improvements with the seller, and qualification for/approval of any loan that the buyer may be obtaining.

c. Inclusions And Exclusions: The contract is the primary method to determine what is being sold with the property. Do not rely on the Residential Property and Owners' Association Disclosure Statement or listing data to establish what is included in or excluded from a contract.

This area is of great importance for risk reduction purposes. Personal property inclusions and exclusions cause a great number of the disputes in a sale contract and can be expensive for an unwary agent. **As a general rule, try to keep the contract free from personal property matters. Not only do these matters "clutter" the real estate aspects of the transaction, but they may affect the maximum loan amount depending on the loan-to-value ratio.** Be aware of the potential hazards in this area and act with caution, making sure inclusions and exclusions are clear in the contract. Agents are cautioned not to use simple statements in the address section of the contracts stating "per MLS sheet" or "per MLS #XXXX." These create confusion as to what MLS sheet and when the MLS sheet was run. **(NOTE: If a company wants to allow its agents to use this type of format, company legal counsel should be consulted as to appropriate language to be included which can incorporate the terms of an MLS sheet into a contract by reference.)**

e. "As-Is" Contracts: Often, listings may be offered in "as-is" condition. This term is unclear, at best, and therefore should be avoided as a general rule. If the seller's intent in offering the property "as is" is simply intended to convey the seller's position that it is unlikely the seller will repair any requested items, it should be pointed out to the seller that the Offer to Purchase and Contract specifically states that "unless the parties agree otherwise, THE PROPERTY IS BEING SOLD IN ITS CURRENT CONDITION" and that the seller is under no obligation to engage in repair negotiations. On the other hand, if the seller's intent in offering the property "as is" is that the buyer

will waive any right to conduct inspections or terminate the contract on account of its condition, the seller should be advised to seek legal counsel to draft an appropriate contract.

In addition, an "as-is" sale does not relieve the licensee of the obligation to disclose all material facts of which he/she has knowledge or which are readily available to him/her relating to the condition of the property.

3. Sale Contract Negotiation:

The techniques and principles of sale contract negotiation (the "how-to") are covered in the company's and Board's training programs. Each agent is encouraged to take full advantage of these resources to improve her/his skill in this area vital to success in this business.

(**NOTE: If a company practices exclusive buyer agency, does not take listings and does not accept subagency, amend the sections on Presentation of Offers and Timing of Presentation to reflect the buyer as client and delete references to listings.)**

Aside from sale contract negotiation techniques, S.S. SMITH, INC., REALTORS®, maintains policies that are directed to the legal and ethical aspects of contract negotiation. These are listed below.

a. Presentation of Offers

In accord with the Code of Ethics and North Carolina Real Estate Commission Rules (Section 58A.0106), S.S. SMITH, INC., REALTORS®, requires its agents to present all offers to the seller until closing and all counter offers to the buyer, regardless of how many offers received and regardless of the order in which the offers were received. S.S. SMITH, INC., REALTORS®, urges any agent involved in a multiple offer situation to contact management to review the proper procedures.

**(NOTE: A company should establish its own procedures for dealing with multiple offers. The procedure set forth below is one option that may be followed to minimize risk and offer a fair presentation to all parties. Neither the Code of Ethics nor the Rules of the North Carolina Real Estate Commission require any specific method. An exclusive buyer agency company will not use this option and should delete this reference.)**

The company will always be guided by lawful instructions of the client in any multiple offer situation. While the company believes that these procedures protect the client, the client may choose to give the company other lawful instructions. The agent should discuss with the client, whether seller or buyer, the customary procedures for handling multiple offers so that the client may determine whether the client wishes to give the agent or company different instructions.

Standard of Practice 1-15 of the Code of Ethics requires that the listing agent, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, divulge the existence of offers on the property. In addition, Standard of Practice 1-15 requires that, when disclosure is authorized,

the listing agent has an affirmative obligation, if asked, to disclose the "source" of the offer, i.e. whether the other offer(s) are from a prospect of the listing licensee, another licensee in the listing licensee's firm or a cooperating broker.

In the event of multiple offers on one property, S.S. SMITH, INC., REALTORS®, follows a policy, with the seller's approval, of notifying all offerors that his/her offer is in competition with other offers as well as giving the opportunity to change the offer. The notification shall take place only after multiple offers actually exist and not when the listing agent may have knowledge of other offers being written or possibly being written.

An exception to this policy exists if the seller has a currently effective counter offer in possession of a buyer. In that event, the agent will not disclose the competition to the second or later offeror until the seller has had the opportunity to examine the second offer. This gives the seller the ability to determine whether he/she desires to revoke her/his counter offer to the first offeror to negotiate with the second offeror.

NC Real Estate Commission Rule 58A.0115prohibit disclosure of the price or other material terms contained in a party's offer to purchase to a competing party without the express authority of the offering party. Therefore, the agent should not reveal any terms of the offer to any other party including expiration time of the offer, price, closing dates, earnest money amounts, financing types, amounts or dates or other terms.

If another agent, whether from S.S. SMITH, INC., REALTORS®, or another company, asks the listing agent to "let me know if another offer comes in", S.S. SMITH, INC., REALTORS®, has a general policy of not acknowledging such requests. If other offers come in, the agent should advise the client that inquiries of this nature have been made and ask the client whether those requests should be followed up.

If multiple offers exist and the listing agent has written one of those offers, the policy of S.S. SMITH, INC., REALTORS®, in such circumstance is that the listing agent may not present any of the offers. In this case, a sales manager or broker (or other S.S. SMITH, INC., REALTORS®, agent if management is not available) must be asked to present the multiple offers.

If a listing agent has already presented an offer from another agent and a customer of the listing agent asks to write a competitive offer, the policy of S.S. SMITH, INC., REALTORS®, is that the listing agent must ask the sales manager, broker or other S.S. SMITH, INC., REALTORS®, agent to write the offer for the listing agent's customer. The listing agent's prior knowledge of the first offer could be seen as influential or biased if the listing agent's customer should be successful in negotiation.

In general, whenever the listing agent has knowledge of an offer presented, or could use information he/she has to the detriment of one of the competing parties, S.S. SMITH, INC., REALTORS®, strongly recommends that a third party agent, such as a manager, broker or other agent, become involved to assist in the negotiations.

A final issue regarding presentation of offers regards whether an oral offer must be presented. The rules of the North Carolina Real Estate Commission speak to presentation of "instruments," thereby implying that only written offers need to be submitted. However, common law agency principles dictate that all material and relevant information of which the agent has knowledge should be given to the client. In addition, Standard of Practice 1-7 of the REALTOR® Code of Ethics speaks only of submitting all offers to the seller.

In accord with agency obligations of disclosure and loyalty and in the spirit of the Code of Ethics, S.S. SMITH, INC., REALTORS®, has a policy of giving the seller client all material and relevant information of which the agent has knowledge. In accord with this policy, if a customer insists on an oral offer, the company believes that the seller is entitled to that information.

The company recognizes that such an oral offer alone is almost certainly unenforceable under the laws of North Carolina. However, it is prudent to tell the seller what the agent knows, that is, an oral offer was made by this party and it is unknown whether the party will ultimately be willing to commit the offer to writing. At this point, a seller may choose to make a written offer to sell and thereby initiate the contract process him/herself.

Additional resources on this topic are available on NAR.realtor. The NAR Professional Standards Committee has published a guide for agents and brochure for buyers and sellers on "Presenting and Negotiating Multiple Offers."

b. Timing of Presentation: S.S. SMITH, INC., REALTORS®, also strongly supports and maintains a policy to present all offers and counter offers as quickly as possible. Standard of Practice 1-6 of the Code of Ethics and North Carolina Real Estate Commission Rule 58A.0106 provides the standards in this area. The Rule requires offers and counter offers to be delivered "…immediately, but in no event more than five days from the date of execution…" and the Code states offers must be submitted "as quickly as possible."

The policy of S.S. SMITH, INC., REALTORS®, is that these terms are to be interpreted to mean "immediately" or "as soon as humanly possible". As an example, a listing agent's receipt of an offer should immediately generate a telephone call to the owner to determine when the seller is available for presentation of the offer. Once contacted, the seller can then instruct the listing agent as to when to present the offer. The critical point is that S.S. SMITH, INC., REALTORS®, believes that the listing agent MUST make a diligent effort to contact the seller immediately upon receipt of the offer - not an hour later, not when the agent finishes lunch, not after the agent shows property.

In the case of a buyer agency, the same principles apply with equal weight. The buyer is the client and must be treated with the same high levels of fiduciary duty as a seller who is a client. These same principles should be adhered to even in the case of a buyer who is a customer and not a client. The North Carolina Real Estate Commission Rule speaks to the delivery of offers with no reference to client-agent relationship.

This is an extremely simple yet very important risk reduction technique. Every agent of this company should consider this of prime importance. The obvious danger in not taking this issue seriously is

that the offeror can revoke/withdraw her/his offer at any time prior to a valid acceptance. S.S. SMITH, INC., REALTORS®, does not want to be in a position of defending an action where an offer was withdrawn before a seller was contacted or diligent efforts to contact the seller were not made.

These issues are common, daily events that the agent should learn to handle with skill and ease. The agent's ability to understand and deal with these issues will act as a significant risk reduction method and contribute to an agent's successful practice of the real estate business.

c. Use of Escalation Clauses. An escalation clause is a provision in an offer to purchase that allows for incremental increases in the offering price based on competing offers. An escalation clause in an offer might say something like the following: if the seller receives any other offer with a purchase price greater than the purchase price in the buyer's offer, the purchase price will be increased in an amount equal to $1000 more than the purchase price in the other offer.

Although escalation clauses are not illegal, they present potential legal concerns to the parties and their agents. The Real Estate Commission discourages the use of escalation clauses and has recommended that agents discourage their clients from using them. Consequently, S.S. SMITH, INC., REALTORS®, has a policy of discouraging buyer clients from using escalation clauses in their offers and discouraging seller clients from accepting offers that include escalation clauses. A buyer client who asks for an escalation clause to be included in their offer or a seller who wishes to accept an offer containing an escalation clause should be advised to seek legal counsel for advice and drafting, as the case may be. An agent who attempts to draft an escalation clause is engaged in the unauthorized practice of law unless she/he also has an active law license. Thus, .S.S. SMITH, INC., REALTORS® agents are strictly prohibited from drafting an escalation clause or including an escalation clause in an offer that has not been drafted by an attorney for that buyer.

## SEXUAL HARASSMENT (POLICY AGAINST)

Any harassment of an associate, whether agent, employee or applicant, because of race, color, sex, religion, national origin, age, military status or handicap is clearly prohibited and will not be condoned. Sexual harassment is one particular form of discrimination which is illegal and violates the company's longstanding equal employment opportunity policy. S.S. SMITH, INC., REALTORS®, maintains a strong policy prohibiting any form of sexual harassment.

No agent, employee, staff member, customer or vendor, male or female, may sexually harass an employee, agent or other person associated with the company by

1. Making unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexually suggestive nature; or

2. Making submission to or rejection of such conduct the basis for employment, continued employment or any other employment decision affecting the employee; or

3. Creating an intimidating, hostile or offensive working environment by such conduct.

Any agent or employee who has been found to have sexually harassed another agent or employee will be subject to appropriate discipline including discharge from association or employment.

This policy applies equally to any work-related sexual harassment by or to both men and women employed by or associated with the company or who deal with the company in our business, and it is not limited to supervisor/employee or manager/agent relations or to conduct occurring on premises or during working hours.

Any agent or employee who believes that he/she is being or has been sexually harassed by another agent or employee should promptly take one or more of the following steps:

1. If appropriate, discuss the situation directly with the person whom you feel is harassing you, and politely request that the person cease harassing you because you feel you do not like or welcome his/her conduct. You might also add that if such conduct does not cease altogether, you will take further steps under this procedure. (If the person involved is a customer or client, please refer the complaint to senior management instead.)

2. If you believe that some adverse employment consequence may result from your discussions with that person, or if the harassment continues, go to a higher level of supervision including any senior executive of the company. You may be required to state in writing the specific details of the harassing behavior including date, time, place and witnesses, if any.

An investigation of any complaint will be undertaken immediately. All complaints will be handled in a prompt, confidential manner insofar as the investigation permits. There will be no adverse action directed toward any complaining agent or employee or witness as a result of making or supporting the complaint, unless there clearly was bad faith.

## SMOKING POLICY

**(NOTE: A company should set a smoking policy for each office location or for the entire firm. Issues of "second hand" or "side stream" smoke will continue to increase in importance. A company should consider a smoking policy as a risk reduction technique regarding agents and staff in the office and customers and clients entering and leaving the office. Although smoking is not restricted or prohibited in a real estate office under North Carolina law, the law does permit local governments to adopt and enforce ordinances regulating smoking that are more restrictive than State law, including smoking in a "public place," defined as "an enclosed area to which the public is invited or in which the public is permitted." Thus, a company should first check with local authorities to determine whether there is a local ordinance regulating smoking in a real estate office. Three examples of smoking policies follow.)**

EXAMPLE 1:

Smoking is prohibited in any office of S.S. SMITH, INC., REALTORS®, including private offices, conference rooms, rest rooms and areas not normally accessible to the public.

EXAMPLE 2:

Smoking is permitted by S.S. SMITH, INC., REALTORS®, only in those areas not normally accessible to the public. Each office or sales manager shall designate such an area in each office and post signs to indicate the area. Smoking is permitted in private offices at the discretion of the office holder. Rest rooms and conference rooms shall not be considered as smoking areas.

EXAMPLE 3:

Smoking is permitted by S.S. SMITH, INC., REALTORS®, only in those areas designated as smoking areas. Each office or sales manager shall designate such an area in each office and post signs to indicate the area. Smoking is permitted in private offices at the discretion of the office holder. Rest rooms and conference rooms shall not be considered as smoking areas.

## STATEMENT OF BUSINESS PRINCIPLES

The following principles form the basis for executing the mission statement of S.S. SMITH, INC., REALTORS®. Agents, management and staff of the company work as a team to accomplish the mission statement and will abide by these principles.

1. Professionalism: Professionalism at S.S. SMITH, INC., REALTORS®, means approaching the business with ethical conduct toward our customers and clients. Abiding by the REALTOR® CODE OF ETHICS forms the basis of that standard. Secondly, constant training and education keep us informed and at the peak of awareness for customer and client. Each agent and employee of S.S. SMITH, INC., REALTORS®, is pledged to these ideals.

2. Integrity: Simply put, honesty in all business dealings is the best way to get and keep business over the long term. Simple honesty also forms the basis for the best business protection we can get. It is a simple, effective, efficient and cost effective risk reduction method.

3. Legal Compliance: S.S. SMITH, INC., REALTORS® is committed to complying with all applicable state and federal laws. Any time you have a question about legal compliance, seek advice from our legal counsel.

4. Profitability: S.S. SMITH, INC., REALTORS®, is in business to make profits in the course of its ordinary activity. Each agent and staff member has a responsibility to the company to contribute to its profitability, whether it be in terms of direct production of revenue or careful expenditure of company funds.

This Office Policy Manual for S.S. SMITH, INC., REALTORS®, is designed to guide each agent and staff member in the most important areas of company activity. If a matter is not covered, bring it to the attention of the President/Owner for possible inclusion in future revisions. If a matter is covered, the agent or staff member is expected to act according to this Manual. Failure to act in accord with company policy will be taken into account in future evaluations of the agent or staff member.

S.S. SMITH, INC., REALTORS® welcomes each new agent and employee to the business of professional, ethical and profitable real estate sales.

## TELEPHONE SOLICITATION POLICY

It is the policy of S.S. SMITH, INC., REALTORS® to comply with federal and state telemarketing rules regulating the telephone solicitation activities of its agents and employees. A "telephone solicitation" is a telephone call or message to any residential telephone subscriber "…for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services…" Calls attempting to obtain a listing from a FSBO seller or a seller whose listing with another company has expired are covered under this definition. All agents and employees of the company are required to comply with this policy.

1. Before Soliciting Business by Telephone.

**(NOTE: A company that registers for the Federal "Do Not Call" Registry has two basic options for accessing numbers listed in the Registry: one, the company may download the list of registered numbers for the area codes selected from the Registry; or two, check numbers via an online phone number search of the Registry. The second option is probably the most useful for a company that engages in limited cold calling. Thus, this model policy assumes selection of the second option. A company choosing the first option should adopt policies ensuring that its agents and employees are working from an up-to-date version of the Registry, which, according to federal rules, may not be more than 30 days old.)**

a. Federal "Do Not Call" Registry. You must first obtain access to the current Federal "Do Not Call" Registry. The Registry is available online at https://telemarketing.donotcall.gov. The [office manager, broker-in-charge] will supply you with the necessary ID and password. You may look up telephone numbers via an interactive phone number search. You will be able to check up to ten numbers at a time within the area code(s) that have been selected by the Company. The search will come back "Registered" or "Not Registered".

If a number comes back "Registered," you may NOT call the number UNLESS:

(1) One of the exceptions set forth in Section 2 below applies AND

(2) The number does not appear on the Company "Do Not Call" list (see 1.B. below).

(3) If a number comes back "Not Registered", you may call the number UNLESS it appears on the Company "Do Not Call" list (see 1.B. below).

b. Company "Do Not Call" List. The Company is required to maintain its own list of persons who have specifically requested that the Company or its sales associates not call them. Ask the [office manager, broker-in-charge] for a current copy of the list. You may NOT under any circumstances call any number appearing on the Company list, even if one of the exceptions set forth in Section 2 below applies.

**(NOTE: A company must have a written policy for maintaining its Company Do Not Call List. Agents and employees of a company should always be working from an up-to-date version of the company list, which may not be more than 30 days old. The names of persons**

**who have requested that the company or its sales associates not call them must be added to the company List as soon as possible and in no event more than 30 days from the date of the request. A do-not-call request must be honored for five years from the date the request is made.)**

c. Document the date and time that you checked the Lists to help prove your attempt to comply with telemarketing laws.

d. You may only use the Lists for the purposes set forth in this policy, and you may not provide access to or copies of any of the Lists to anybody outside the Company.

2. Exceptions. You may place a telephone solicitation to a number listed on the Federal "Do Not Call" Registry in certain instances UNLESS the number also appears on the Company "Do Not Call" list. The exceptions are as follows:

- You may call a FSBO seller on behalf of a buyer client who has interest in the property.
  - NOTE: You may NOT call a FSBO seller to attempt to obtain a listing or to otherwise attempt to "sell" your services as a real estate professional.
- You may call persons with whom you have a "personal relationship", defined as a family member, friend or acquaintance.
- You may call a current client of the Company
- You may call a former client of the Company for up to eighteen months after the end of the agency relationship.
  - NOTE: You may NOT call a seller whose listing with *another* company has expired in an attempt to obtain the listing.
- You may call a person who has made an inquiry to the Company about property or real estate services for up to three months after the inquiry.
- You may call a person who has given express written permission for you and/or Company agents to solicit them by telephone. The written permission must include the telephone number to which a call may be placed.
  - This includes someone who has given permission at a Company open house using the Company's approved registration form.
- For calls to referrals, see section 5 below

(**NOTE: To ensure that an open house visitor has given express written permission to receive a follow-up telephone solicitation, it is recommended that the sign-up sheet contain some kind of notice, such as a box next to each line allowing the visitor to check "yes" if they consent to receipt of a follow-up call.)**

3. Conducting Telephone Solicitations.

- No telephone solicitations may be made before 8:00 a.m. or after 9:00 p.m.
- If, during a telephone solicitation to a consumer whose name does not appear on any of the Lists, the consumer states that he/she does not want to continue the call, advise the consumer that you will respect his/her wishes, thank him/her and hang up. Please immediately report the name and telephone number of the consumer to the [office manager, broker-in-charge] for placement of that person's name and telephone number on the Company's "Do Not Call" list.

- During the call, you must provide the consumer with your name, the Company name, and the telephone number or address where you and the Company may be contacted.
- The telephone used to make a telephone solicitation must transmit your caller ID information in areas where this is technologically possible. Check with the [office manager, broker-in-charge] regarding Company telephones or with your telephone company regarding any other telephone you may use.
- You may not block the transmission of your caller ID information
- Do not use a pre-recorded message or auto dialer.
- Do not disconnect an unanswered call prior to at least 15 seconds or four rings.
- The rules cover all types of telephones (cell, etc.) and apply whether you are calling from inside or outside the Company office

4. Returning a Call to a Consumer Whose Name Appears on the Lists.

- You may return a call to a consumer whose name appears on any of the Lists when the return call is made in response to an express request from the consumer.
- A telephone message instructing you to call a consumer is such a request and may be answered.
- When a consumer calls and asks to speak with someone who is not available, the person taking the message should specifically ask the caller if they would like a return call. This should be conspicuously noted on the message.
- A request for a return call left on a voice mail message or answering machine should be documented by the recipient as evidence of the message.

5. Referrals

**(NOTE: It is not clear whether a real estate agent may place a telephone solicitation to a prospect whose name has been given to the agent by a third party, such as a relocation company or another real estate agent. It would be prudent to assume that such calls are *not* permitted, since the inquiry has not been made directly by the prospect to the recipient of the referral. The following model policy is therefore based on the assumption that such calls are not permitted.)**

- If you receive a referral of possible business from a third party, such as a relocation company or another real estate agent, you must check the Lists before you call the prospect.
- If the prospect's phone number is not on any of the Lists, you may call the prospect.
- If the prospect's name is on the Company Do Not Call list, you may not call the prospect under any circumstances.
- If the prospect's phone number is on the Federal Do Not Call List, you may not call the prospect UNLESS the referring party has provided a signed statement from the prospect agreeing that you may contact the prospect, including the telephone number to which the call may be placed.

## TRAINING PROGRAM AND SCHEDULE

**(NOTE: Training of agents and staff is a critical risk reduction technique. Whether the training is accomplished through a franchise, an independent vendor, one-on-one or with an in-house program is a company decision. A company should insert its education/training philosophy, programs and schedule in this section.)**

## UNLICENSED OFFICE PERSONNEL

The policy of S.S. SMITH, INC., REALTORS®, regarding the functions and use of unlicensed office personnel follows the North Carolina Real Estate Commission Rules. The general policy is that unlicensed office personnel (secretaries, assistants, personal assistants, receptionists, accounting personnel, etc.) are to be used in a support role to the main real estate business function of the company. UNDER NO CIRCUMSTANCES will unlicensed office personnel be allowed to engage in acts for which a real estate broker or salesman's license is required (NCGS Section 93A-2).

In an article in the winter 1995 *Bulletin* of the North Carolina Real Estate Commission, the Commission set forth a list of acts that an unlicensed person may and may not perform. The list is reprinted below. While not comprehensive, the list does provide guidance in interpreting the real estate licensing law and Commission rules.

*"A broker's unlicensed, salaried employee MAY:*

*1. Receive and forward phone calls to his or her employing broker or another licensee in the firm.*

*2. Submit listings and changes to a multiple listing service, but only if the listings or changes are based upon data compiled and provided by a licensed broker or salesman.*

*3. Assist a broker or salesman in assembling documents for closing.*

*4. Secure copies of public records from the register of deeds, clerk of court, or tax office.*

*5. Have keys made for the firm's listings.*

*6. Record and deposit earnest money, security deposits, and other trust monies under the close supervision of the office broker-in-charge.*

*7. Type offers, contracts, and leases from drafts prepared by a broker or salesman with the firm.*

*8. Check license renewal and personnel files for the brokers and salesmen with the firm.*

*9. Compute commission checks and act as bookkeeper for the firm's operating bank accounts.*

*10. Place "for sale" or "for rent" signs on property at the direction of a broker or salesman with the firm.*

*11. Order and supervise routine and minor repairs at the direction of a broker or salesman with the firm.*

*12. Act as a courier to deliver or pick up documents, keys, etc.*

*13. Make routine phone calls to coordinate or confirm appointments between brokers, salesmen, and other persons.*

*14. Schedule appointments for showing property for sale or lease.*

*15. Show rental properties managed by the broker to prospective tenants.*

*16. Complete and execute preprinted form leases for rental property managed by the broker.*

*An unlicensed employee **MAY NOT:***

*1. Show properties for sale to prospective purchasers.*

*2. Solicit listings or management contracts from prospective clients.*

*3. Answer questions concerning properties listed with the firm, except to confirm that the property is listed, to identify the listing broker or salesman, and to provide such information as would normally appear in a simple, classified newspaper* [or other type of public] *advertisement (e.g., location, price, number of rooms).*

*4. Prepare promotional material or advertising of properties for sale or lease without the office broker-in-charge's review and approval.*

*5. Discuss or explain listings, management agreements, Offers, contracts, or other similar matters with persons outside the firm.*

*6. Negotiate the amount of rent, security deposit or other lease provisions in connection with rental properties managed by the firm."*

**ATTACHMENT #1**

**BUSINESS ITEMS LIST**

The member may consider the following business items for inclusion in an Office Policy Manual. Too many possible variations are possible for appropriate inclusion in the main body of the manual. In addition, these items generally do not impact risk and risk reduction methods of the company to a significant extent.

1. List of expenses borne by agent.
2. List of expenses borne by company.
3. Training schedule
4. Sales meetings/property inspection tour procedures
5. Telephone protocol and opportunity time
6. Opportunity time desk procedures
7. Message Procedures
8. "How-to" Market analysis procedures
9. "How-to" Listing procedures
10. "How-to" Qualifying procedures
11. "How-to" Sale contract procedures
12. "How-to" Negotiation procedures
13. Advertising procedures
14. Open house procedures
15. Follow-up after closing procedures
16. Dress code

**ATTACHMENT #2**

**DO'S AND DON'TS FOR BUYER'S AGENTS**

DO Ask the buyer whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you should not, according to the Code of Ethics and/or the law, interfere with the agency of another real estate agent. You may enter into another agreement with the buyer upon release from the other agreement.

DO Go over the "Working With Real Estate Agents Disclosure" ~~brochure~~ prescribed by the Real Estate Commission at "first substantial contact" with the buyer and get the buyer's signature ~~on the brochure's "tear-off" signature panel~~. According to the Real Estate Commission, "first substantial contact" will usually occur "…when you and a prospective buyer discuss in any detail the buyer's interest in purchasing property." Retain the signed disclosure ~~signature panel of the brochure~~ for your files. Explain the agency options the buyer has with your company~~. If your firm offers subagency and the buyer elects to work with you as a seller's subagent rather than as a buyer's agent, check the box in the bottom portion of the brochure's signature panel and have the buyer initial in the space provided. Then, go to "Subagency Do's and Don'ts." If the buyer will not sign the signature panel in the space provided, make a notation on the signature panel as to the time and place that the brochure was given to the buyer and that the buyer refused to complete it.~~ If first substantial contact occurs by telephone or by means of other electronic communication, you should go over the contents of the brochure with the buyer at that time, and then, at the earliest opportunity thereafter (but in no event later than three days from the date of first substantial contact), mail or otherwise transmit a copy of the disclosure ~~brochure~~ to the buyer.

DO, If the buyer desires to engage you as a buyer's agent and is willing to enter into a written buyer agency agreement, use a written buyer agency agreement that complies with the rules of the Real Estate Commission. Explain the agreement, especially how buyer's agents are paid. (NOTE: If the buyer agency is to be exclusive, NC REALTORS

written agreement should specify the duties of a seller's agent and the duties of a buyer's agent. (NOTE: NC REALTORS

DO Point out any relevant information you know about the area, such as proposed roads, power lines, school changes, commercial developments, local tax increases, etc.

DO Complete a Comparative Market Analysis before an offer is made on a property. Make sure it is a thorough comparison of all properties, active, sold and pending. Analyze the data with the buyer and assist the buyer in formulating an offer price.

DO Prepare the offer with favorable and protective terms for the buyer, especially in inspections.

DO Counsel with the buyer as to negotiating strategies on terms and price. Share your experience in negotiating with the buyer and give your recommendations, if appropriate.

DO Keep information of the buyer confidential unless you have permission to disclose it or disclosure is required by law. Go over with the buyer on the buyer interview this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the seller and other agents in a transaction.

DO Treat the customer, the seller, honestly.

DO Disclose to the seller any material facts, including facts relating directly to the ability of the buyer to complete the transaction.

DO Disclose all information you receive from the listing agent. This is especially helpful regarding the seller's negotiating position and intention.

DO Disclose buyer-paid retainer fees (or other fees received or to be received from the buyer) to the seller if you are also getting commission from the seller, and get the informed consent of your buyer to accept commission from the seller.

DO Compete vigorously and in a manner consistent with the antitrust laws and with the antitrust policy contained herein.

DO Comply with all applicable laws and, when in doubt, seek advice from the company's legal counsel.

## DO'S AND DON'TS FOR BUYER'S AGENTS

**Buyer's Agent "DON'Ts"**

DON'T Disclose confidential information of your client, the buyer, during the term of your agency relationship with the buyer. Confidential information likely includes at least the following:

--that the buyer may agree to a price, terms, or any conditions of sale other than those offered by the buyer

--the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule

--any information about the buyer which the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

DON'T Try to balance "fairness" between the seller and buyer. You represent the BUYER - your only obligation to the seller is to be fair and honest and to disclose material facts. If you learn important information about the seller's negotiating position, tell your buyer - don't make decisions about what to disclose in the interest of being "fair" to the seller.

DON'T Accept a bonus, prize, trip or incentive from a seller or listing broker without timely disclosure to and informed consent of your client, the buyer.

DON'T, If you are working with a buyer under an oral buyer agency agreement, assist the buyer in preparing a written offer to a seller unless the buyer puts the buyer agency agreement in writing.

DON'T, If you are working with a buyer under an oral buyer agency agreement, tour a property without first having a written buyer agreement that complies with MLS policy.

DON'T Agree or discuss with competitors the amount or rate of commissions or fees to be charged to any buyer(s). Our company sets the amount of any commissions or fees charged to its customers unilaterally and not in coordination with any competitor(s).

## DO'S AND DON'TS FOR SELLER'S AGENTS

**Seller's Agent "DO's"**

DO Ask the seller whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you should not, according to the Code of Ethics and/or the law, interfere with the agency of another real estate agent. You may enter into another agreement with them upon release from the other agreement.

DO Go over the "Working With Real Estate Agents Disclosure" ~~brochure~~ prescribed by the Real Estate Commission at "first substantial contact" with the seller and get the seller's signature ~~on the brochure's "tear-off" signature panel~~. Explain the agency options the seller has with your company. Retain the signed disclosure ~~signature panel of the brochure~~ for your files. If the seller will not sign ~~the signature panel in the space provided~~, make a notation ~~on the~~ ~~signature panel~~ as to the time and place that the brochure was given to the seller and that the seller refused to complete it. If first substantial contact occurs by telephone or by means of other electronic communication, you should go over the contents of the disclosure ~~brochure~~ with the seller at that time, and then, at the earliest opportunity thereafter (but in no event later than three days from the date of first substantial contact), mail or otherwise transmit a copy ~~of the brochure~~ to the seller.

DO Have a written listing agreement with the seller that complies with the rules of the Real Estate Commission. (NOTE: If the listing is to be an exclusive one, NC REALTORS

DO Disclose all material facts to the buyer which you know or should know. Material facts include facts about the property itself (such as a structural defect or defective mechanical systems); facts relating directly to the property (such as a pending zoning change or planned highway construction in the immediate vicinity); and facts relating directly to the ability of the agent's principal to complete the transaction (such as a pending foreclosure sale).

DO Advise the seller to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

DO Account in a timely manner for all money and property received on behalf of the seller.

DO Comply with all real estate licensing laws, regulations, civil rights laws, fair housing laws and any other applicable laws and rules.

DO Work for the highest amount of earnest money that is appropriate given the market, type of house and type of offer the buyer presents.

DO Complete a Competitive Market Analysis before listing the property.

DO Negotiate the offer with favorable and protective terms for the seller, especially in inspections.

DO Counsel with the seller as to negotiating strategies on terms and price. Share your experience in negotiating with the seller and give your recommendations, if appropriate.

DO Keep information of the seller confidential unless you have permission to disclose it or disclosure is required by law. Go over with the seller on the listing call this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the buyer and other agents in a transaction.

DO Treat the customer, the buyer, honestly.

DO Disclose all information you receive from the buyer's agent. This is especially helpful regarding the buyer's negotiating position and intention.

DO Compete vigorously and in a manner consistent with the antitrust laws and with the antitrust policy contained herein.

DO Comply with all applicable laws and, when in doubt, seek advice from the company's legal counsel.

## DO'S AND DON'TS FOR SELLER'S AGENTS

**Seller's Agent "DON'T's"**

DON'T Disclose confidential information of your client, the seller, during the term of your agency relationship with the seller. Confidential information likely includes at least the following:

--that the seller may agree to a price, terms, or any conditions of sale other than those offered by the seller

--the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule

--any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

DON'T Disclose the price or other material terms contained in a party's offer to purchase to a competing party without the express authority of the offering party.

DON'T Offer cooperative compensation to a seller subagent or a buyer agent without the seller's written consent.

## SUBAGENCY DO'S AND DON'TS

**Subagent "DO's"**

DO Go over the "Working With Real Estate Agents Disclosure" ~~brochure~~ prescribed by the Real Estate Commission with a buyer at the first substantial contact ~~with the buyer~~, and get the buyer's signature ~~on the brochure's "tear-off" signature panel~~. According to the Real Estate Commission, "first substantial contact" will usually occur "…when you and a prospective buyer discuss in any detail the buyer's interest in purchasing property." ~~Also, check the box appearing in the bottom part of the signature panel and get the buyer to initial in the space provided.~~ Retain the signed disclosure ~~signature panel of the brochure~~ for your files. If the buyer will not sign ~~and initial the signature panel in the spaces provided~~, make a notation ~~on the signature panel~~ as to the time and place that the disclosure ~~brochure~~ was given ~~to the buyer~~ and that the buyer refused to complete it. If first substantial contact occurs by telephone or by means of other electronic communication, you should go over the contents of the disclosure ~~brochure~~ with the buyer at that time, and then, at the earliest opportunity thereafter (but in no event later than three days from the date of first substantial contact), mail or otherwise transmit a copy ~~of the brochure~~ to the buyer.

DO Work under a written subagency agreement with another broker ~~or accept a unilateral offer of subagency (MLS)~~.

DO Represent the seller, acting according to your status as a subagent of the seller and the duties of North Carolina law. Represent the seller with the utmost good faith, loyalty and fidelity.

DO Exercise reasonable skill and care for the seller.

DO Seek a price and terms acceptable to the seller.

DO Present all written offers to and from the seller in a timely manner, regardless of whether the seller is presently under contract to buy a property. Present these from and to the listing agent, who hired you.

DO Disclose all material facts to the buyer which you know or should know. Material facts include facts about the property itself (such as a structural defect or defective mechanical systems); facts relating directly to the property (such as a pending zoning change or planned highway construction in the immediate vicinity); ~~and~~ facts relating directly to the ability of the agent's principal to complete the transaction (such as a pending foreclosure sale); and any facts known to be of special importance to a party to the transaction.

DO Advise the seller through the seller's agent to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

DO Account in a timely manner for all money and property received on behalf of the seller.

DO Comply with all real estate licensing laws, regulations, civil rights laws, fair housing laws and any other applicable laws and rules.

DO Work for the highest amount of earnest money that is appropriate given the market, type of house and type of offer the buyer presents.

DO Negotiate the offer with favorable and protective terms for the seller.

DO Keep information of the seller confidential unless you have permission to disclose it.

DO Treat the customer, the buyer, honestly.

DO Disclose all information you receive from the buyer. This is especially helpful regarding the buyer's negotiating position and intention.

DO Disclose the identity of the buyer to the seller. Never work with an undisclosed buyer as a subagent.

DO Compete vigorously and in a manner consistent with the antitrust laws and with the antitrust policy contained herein.

DO Comply with all applicable laws and, when in doubt, seek advice from the company's legal counsel.

## SUBAGENCY DO'S AND DON'TS

**Subagent "DON'Ts"**

DON'T Act like you represent the buyer. Using words or phrases like "I'll take care of you" or "I'll work hard for you" is an open invitation to an undisclosed dual agency.

DON'T Suggest a price other than the listing price, even if the buyer asks.

DON'T Complete a Competitive Market Analysis for a buyer. You can give the buyer information (especially if it is public information), but do not analyze the information or give an opinion on the information.

DON'T Counsel with the buyer as to negotiations or terms.

DON'T Recommend an appraisal, even if you think the buyer is overpaying for the property.

DON'T Tell a buyer you think a listing is overpriced.

DON'T Point out bad features of a property unless they involve material facts that you have an obligation to disclose. Deficiencies such as poor traffic patterns, over improvements for the neighborhood or other functional obsolescences should not be volunteered. Material facts such as defective roofs, basements, plumbing, electrical, etc. must be disclosed.

DON'T Disclose confidential information of the seller you may learn from the listing agent. Confidential information likely includes at least the following:

--that the seller may agree to a price, terms, or any conditions of sale other than those offered by the seller

--the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule

--any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

DON'T Counsel with a buyer to stop negotiating on one piece of property and go to another. Your obligation to the seller means you must work diligently to sell that seller's property until negotiations fail.

DON'T Work with a straw party or unidentified buyer when you are a subagent.

## DISCLOSED DUAL AGENCY DO's AND DON'Ts

**Disclosed Dual Agent "DO's"**

DO Have a specific company agency policy providing for disclosed dual agency.

DO go over the "Working With Real Estate Agents Disclosure" ~~brochure~~ prescribed by the Real Estate Commission with both the buyer and the seller, following the same procedures with the seller and with the buyer as explained in the Do's and Don'ts for a seller and for a buyer.

DO Discuss the possibility of Dual Agency with BOTH buyer and seller at the earliest possible time in your relationship, including the option of designated agency if your company uses designated agency.

DO Have a written agreement with both buyer and seller, authorizing dual agency and, if offered, designated agency. The written agreement should specify the duties of a seller's agent and the duties of a buyer's agent. (NOTE: NC REALTORS®' standard purpose listing agreement and buyer agency agreement forms all address dual and designated agency.)

DO, if your company permits oral dual agency and you are representing the buyer under an oral buyer agency agreement, clearly disclose your dual agency relationship to the buyer in accordance with the company's policy. Obtain written authority to act as a dual agent when the buyer puts the buyer agency agreement in writing by having the buyer complete the "Dual Agency" paragraph of the buyer agency agreement (NC REALTORS® standard form #s 201 or 203). Remember that the Real Estate Commission's rules require that written authority to act as a dual agent must be obtained not later than the time one of the parties represented by the company makes an offer to purchase, sell, rent, lease, or exchange real estate to the other party.

DO Represent the seller and the buyer, acting according to your agreements with the seller and the buyer, ~~and~~ the duties of North Carolina law, the REALTOR® Code of Ethics, and MLS policies. Represent BOTH the seller and the buyer with the utmost good faith, loyalty and fidelity.

DO Exercise reasonable skill and care for the seller and the buyer.

DO Seek a price and terms acceptable to both the seller and the buyer.

DO Present all written offers to and from both the seller and the buyer in a timely manner.

DO Disclose all material facts to both the buyer and the seller which you know or should know. Material facts include facts about the property itself (such as a structural defect or defective mechanical systems); facts relating directly to the property (such as a pending zoning change or planned highway construction in the immediate vicinity); ~~and~~ facts relating directly to the ability of the agent's principal to complete the transaction (such as a pending foreclosure sale); and any facts known to be of special importance to a party to the transaction.

DO Advise both the seller and the buyer to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

DO Account in a timely manner for all money and property received on behalf of the seller and the buyer.

DO Comply with all real estate licensing laws, regulations, civil rights laws, fair housing laws and any other applicable laws and rules.

DO Keep information of both the seller and the buyer confidential unless you have permission to disclose it.

DO Give written disclosure of your agency status no later than the presentation of the offer.

DO Conduct yourself with the knowledge that the brokerage (and therefore you) represent BOTH buyer and seller.

DO, If YOU are both a buyer's agent and the listing agent, ALWAYS have company management involved.

DO, If YOU are both a buyer's agent and the listing agent, stay completely neutral.

## DISCLOSED DUAL AGENCY DO's AND DON'Ts

**Disclosed Dual Agent "DON'Ts"**

DON'T Disclose confidential information of either the buyer or the seller during the terms of your respective agency relationships with them. Confidential information likely includes at least the following:

--that either party may agree to a price, terms, or any conditions of sale other than those offered

--either party's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule

--any information about either party which the party has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

DON'T Adopt a Dual Agency policy until you or your broker have consulted with your company legal counsel and understand the implications and ramifications of using the policy.

DON'T Accept compensation from both parties unless disclosed to both parties and you get the informed written consent of both parties. This includes nonrefundable retainer fees accepted from buyers.

DON'T Accept a bonus, prize, trip or incentive from a seller or listing broker without timely disclosure to and informed consent of both clients, buyer and seller.

DON'T Act like you are the agent of only one of the parties, even after having made disclosure and obtained consent to act as a dual agent.

DON'T Take the position of or advocate on behalf of one or the other parties. Remain neutral as to advising either party about negotiations or any other aspects of the transaction, whether it be pricing or other terms.