

Real Estate Commission – Adopted Rules
Effective: April 15, 2008

Part 1. General Information

1.1 The Commission's Purpose The Vermont Real Estate Commission ("the Commission") is the State Agency responsible for enforcing Vermont's real estate licensing laws. The purpose of the Commission is to protect the public health, safety and welfare. The Commission does this by, among other things, setting standards for issuing licenses and registrations, licensing and registering only qualified applicants, approving education and continuing education courses and regulating license and registration holders and their practices.

1.2 Business Address

Real Estate Commission
Office of Professional Regulation
National Life Bldg., North, FL2
Montpelier, VT 05620-3402

Copies of these rules and more information about the Commission and its requirements and procedures are available on the web at www.vtprofessional.org or by contacting the office.

1.3 Commission Members And Officers The Commission is composed of seven members, including three licensed brokers, one licensed salesperson, one attorney, and two public members. The Governor appoints each member, 26 V.S.A. § 2251.

1.4 Regular, Special And Emergency Meetings The Commission usually meets monthly. The chair or two of the members may call a special or emergency meeting if it is necessary. A majority of the Commission constitutes a quorum for all meetings. No formal action at any meeting is valid unless a majority of those present and voting concur. The office can provide meeting dates and locations.

1.5 Laws That Govern The Commission

(a) The Commission is created by law, Title 26, V.S.A., Chapter 41, which establishes its responsibilities for setting standards, issuing licenses and regulating the profession. In addition, the Commission is subject to several other state laws such as the Administrative Procedure Act (Title 3, V.S.A., Chapter 25), the "Law of Professional Regulation" (Title 3, V.S.A., Sections 121-131), the "Right to Know Law" (Title 1, V.S.A., Sections 311-314), and the "Access to Public Records Law" (Title 1, V.S.A., Sections 315-320). These laws spell out the rights of applicants, license holders or members of the public.

(b) The Vermont Statutes Annotated contain the complete text of these laws. They can usually be found in any Town Clerk's office or public library. The Vermont Statutes Online are also available at <http://www.leg.state.vt.us> . The Commission's statutes and rules may be accessed through the Commission's website at <http://vtprofessionals.org/> .

1.6 Rules

(a) The Commission is authorized to make these rules under Title 26, V.S.A., Section 2252. These rules are approved by the Vermont Legislative Committee on Administrative Rules and have the effect of law and govern the Commission's proceedings. Rules are made following the

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Administrative Procedure Act ("APA"). The Office of Professional Regulation (OPR) helps the Commission to comply with the Act. Rules are reviewed and revised periodically.

(b) Legislative changes from time to time may create inconsistencies between statutes and administrative rules. When rules and statutes conflict the statutes govern.

(c) The appendixes attached to these rules are included for guidance. They will be updated from time to time to offer guidance to licensees and assist licensees in implementing practices and procedures that adhere to the laws governing the practice of the profession.

1.7 Making and Resolving Complaints

- (a) Any person may make a complaint against a broker or salesperson, by writing to the Commission or requesting a complaint form from the Commission office.
- (b) The Commission follows the current investigation and disciplinary procedure adopted from time to time by the Office of Professional Regulation, except where the Commission's published procedures provide otherwise. Copies of the procedure, complaint forms and more information about the complaint process may be found at www.vtprofessionals.org.

1.8 Definitions As used in these rules:

- (1) "Advertising" includes print ads of any type, web, internet, email, or electronic media, stationery, business cards, individual "For Sale" signs and other audio, visual or print depictions or notices of real estate offered for sale or real estate related services.
- (2) "Broker in Charge" means the individual broker responsible for a branch office.
- (3) "Broker's Prelicensing course" means a course of instruction to become a broker at least 40 hours long, which has been approved by the Commission.
- (4) "Brokerage services" means those activities requiring a license, specifically listed in 26 V.S.A. § 2211(a)(4).
- (5) "Brokerage firm" means a business entity, such as a sole proprietorship, a partnership, a corporation, or a business trust, which carries on a business which requires a real estate broker's license.
- (6) "Buyer" includes a person who buys, offers to buy, intends to buy, or is interested in buying, real estate.
- (7) "Buyer services" means brokerage services provided as agent of a buyer of real estate.
- (8) "Commission" means the Vermont Real Estate Commission created by 26 V.S.A. Ch. 41.
- (9) "Continuing education" means instruction approved by the Commission which must be completed prior to renewal.
- (10) "Exclusive agency" means a seller service agreement which expressly reserves to the owner the right to sell or market the property himself or herself without liability to the

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brokerage firm for a commission, and which grants the brokerage firm the right to market the property, but which prohibits the owner from listing the property with any other brokerage firm for the term of the agreement.

- (11) "Exclusive buyer agency agreement" means an agreement by which a buyer engages a single brokerage firm to provide brokerage services, and by which the buyer agrees not to obtain services from any other broker, but which expressly reserves to the buyer the right to purchase property himself or herself without liability to the brokerage firm for a commission.
- (12) "Exclusive right to market" means a seller service agreement which grants to the brokerage firm the exclusive right to market the property, and which recognizes a liability on the part of the owner for a commission to the brokerage firm, even if the property is sold by the owner.
- (13) "Exclusive right to represent buyer" means a buyer service agreement which grants to the brokerage firm the exclusive right to act on behalf of the buyer in a real estate purchase, and which recognizes a liability on the part of the buyer for a commission to the brokerage firm, even if the property is purchased without assistance by the firm.
- (14) "Fiduciary Duty" means the duty to act for the benefit of the principal in all matters relating to the agency relationship. A fiduciary must put the interest of the principal ahead of the interests of the agent and any third party. Fiduciaries must disclose all material facts the fiduciary learns about the transaction, must disclose any knowledge gained from other parties to the principal's transaction, must protect the principal's confidences and act with reasonable care and obedience toward the principal. Unless otherwise agreed, the duty to protect a principal's confidences continues after the brokerage service agreement expires or is otherwise terminated.
- (15) "Licensee" means a person holding any active license issued by the Commission, but does not include a person whose license has lapsed or been placed on inactive status.
- (16) "Net listing" means a broker service agreement in which, at some point, the benefit of negotiating a higher price for the seller or a lower price for the buyer accrues only to the agent and not to the principal. Net listing is a prohibited practice. See Rule 4.8(c).
- (17) "Nonexclusive" or "open" with respect to a seller service agreement means a seller service agreement which expressly reserves to the owner the right to list the property with other brokerage firms or to sell the property himself or herself. It shall also mean a buyer service agreement that allows the buyer to obtain brokerage services from other brokers.
- (18) "OPR" means the Office of Professional Regulation.
- (19) "Principal" (a.k.a. "client") means the person(s) with whom a broker has an agency relationship related to the negotiation, sale, purchase or exchange of an interest in real estate. Brokers owe a fiduciary duty to their principals.
- (20) "Principal broker" means the individual broker responsible for the main office, and all branch offices. Principal brokers are presumed to know all acts taken on behalf of the firm by any broker, salesperson, or other staff member.

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- (21) "Salespersons Prelicensing Course" means a course of instruction to become a salesperson, at least 40 hours long, which has been approved by the Commission.
- (22) "Seller" includes a person who buys, offers to sell, intends to sell, or is interested in selling, real estate.
- (23) "Seller services" means brokerage services provided as agent of a Seller of real estate.
- (24) "Vicariously responsible" means liability of a principal broker or broker in charge for unprofessional conduct by a licensee. A principal broker or broker in charge may be disciplined for any violation of these rules by a licensee or an employee of that broker's firm.
- (25) "V.S.A." means Vermont Statutes Annotated.

Part 2. Information for Applicants

2.1 Need for a License

- (a) A person shall not engage in the business of a real estate broker or salesperson without a license. Broker and salesperson services are defined by statute. See 26 V.S.A. § 2211(a)(4) & (5).

- (b) Examples of activities that require a license:

These activities, and others, require a license when a person engages in them for others, for a fee or other compensation, as a continuing course of conduct. This list is not exclusive.

*Lists, offers, attempts or agrees to list real estate or any interest therein for sale or exchange;

*sells, exchanges or purchases real estate or any interest therein;

*offers to sell, exchange or purchase real estate or any interest therein;

*negotiates, or offers, attempts or agrees to negotiate the sale, exchange or purchase of real estate, or any interest therein;

*buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest therein;

*advertises or holds himself or herself out as being engaged in the business of buying, selling or exchanging real estate or any interest therein;

*assists or directs in the procuring of prospects, calculated to result in the sale or exchange of real estate or any interest therein; however, a non-licensed employee of a licensee shall be allowed to respond to inquiries from members of the public, so long as

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the employee makes it clear that he or she is not licensed and that any information provided should be confirmed by a licensed person.

(c) Examples of activities which do not require a license:

*Offering rental property for lease;

*Offering mobile homes or businesses for sale or lease, without also offering a lot or other real property.

* See 26 V.S.A. § 2211(b).

2.2 Where To Get An Application Applications for a license or registration can be found at www.vtprofessionals.org or by contacting:

Real Estate Commission
Office of Professional Regulation
National Life Bldg., North, FL2
Montpelier, VT 05620-3402

2.3 Types of Licenses and Registrations

(a) The Commission issues the following licenses:

- (1) Broker
- (2) Salesperson
- (3) Temporary Broker (26 V.S.A. § 2299)

(b) The Commission issues the following registrations:

- (1) Brokerage firm
- (2) Branch office

(c) Every licensee must be associated with a single registered brokerage firm, except that a broker who also holds a temporary license under Rule 2.11 may be associated with a second firm.

2.4 How To Become Licensed As A Salesperson

A license as a salesperson shall be granted to a person who satisfies all of the following:

- (1) is at least 18 years old;
- (2) has completed the salesperson's precicensing course of at least 40 hours;
- (3) has passed the national and state examinations required by the Commission, within the two years immediately preceding application;
- (4) has been employed by or become associated with a brokerage firm and that firm's principal broker;

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- (5) is not precluded from licensure pursuant to 3 V.S.A. § 129a; and
- (6) meets other requirements mandated by this Chapter.

The Commission may waive all or a part of the national examination requirement for a salesperson if the applicant is a real estate salesperson regulated under the laws of another jurisdiction, is licensed and in good standing to practice in that jurisdiction; and in the opinion of the Commission, the other jurisdiction's licensure requirements are substantially equal to Vermont's. All applicants are required to complete the state portion of the examination.

2.5 How To Become Licensed As A Real Estate Broker

A license as a broker shall be granted to a person who satisfies all of the following:

- (1) has completed the broker's prelicensing course of at least 40 hours;
- (2) has passed the national and state examinations as required by the Commission, within the two years immediately preceding application;
- (3) has gained at least two years' experience as a licensed salesperson, including at least eight separate and unrelated closed transactions.

The Commission may waive all or a part of the national examination requirement, and experience requirement, for brokers if the applicant is a real estate broker regulated under the laws of another jurisdiction, and is licensed and in good standing to practice in that jurisdiction, and in the opinion of the Commission, the other jurisdiction's licensure requirements are substantially equal to Vermont's. All applicants must complete the Vermont portion of the examination.

2.6 How To Register Real Estate Brokerage Firms To obtain a brokerage firm or branch office registration a person must file a written application and must:

- (1) Designate a principal broker for the main office and a broker in charge for each branch office; and
- (2) Register the firm with the Corporations Division of the Office of the Secretary of State, if required by law.

Corporations and partnerships pay the license fee provided by 26 V.S.A. § 2255. Sole proprietors may register without any fee.

2.7 Examinations All examinations for real estate broker's licenses and for salesperson's licenses are given at least four times a year. A candidate who fails one part of the exam may retake that part within the next six months. After six months or two failures, the candidate must retake the full exam.

2.8 Licenses For Brokers And Salespersons . A license issued by the Commission must be conspicuously displayed in the office where the licensee is primarily located.

2.9 Applicant's Right To A Written Decision And Personal Appearance The Commission will notify applicants in writing of all decisions concerning the granting or denial of a license or

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registration. If a license or registration is denied, the applicant will be given specific reasons and informed of the right to request a review and personal appearance before the Commission before the decision becomes final.

2.10 Applicant's Right To Appeal If the applicant is not satisfied with the Commission's final decision, the applicant may appeal, within 30 days of the Commission's decision, to an appellate officer, by filing a notice of appeal with the Office of Professional Regulation, National Life Bldg., North FL2, Montpelier, Vermont 05620-3402 **Attention:** Appeal. The appellate process is governed by 3 V.S.A. § 130a.

2.11 Temporary Licenses; Death or Incapacity Of Broker

- (a) The Commission may authorize a temporary license upon the death or incapacity of a broker to allow the business of an existing brokerage firm to be concluded and the firm dissolved or sold. Any person may be designated to hold the temporary license by the deceased broker's executor or administrator, or in the broker's will. Upon application, the Commission office shall issue the temporary license; no examination is required.
- (b) A temporary license allows the holder, for one year, to continue agency relationships which have already been established by the deceased broker. A temporary licensee may not enter into a new broker service agreement but may renew an existing agreement until the expiration of the temporary license.
- (c) Upon the death of the principal broker, a firm may appoint a new principal broker rather than designate a person to be temporary broker, or may appoint a broker associated with another firm to be temporary broker.

Part 3. Information For Licensed Brokers And Salespersons

3.1 Renewing A License Or Registration

- (a) Licenses and registrations renew on a fixed biennial schedule, and must be renewed before they expire. The expiration date is stated on the license or registration. Before the expiration date, the OPR will mail a renewal application and notice of the renewal fee, if any. Evidence of having completed at least sixteen hours of continuing education during the current renewal period must accompany license renewal applications. Prior to expiration a licensee may request that the license be placed in an inactive status by paying the fee to transfer the license to inactive status. No continuing education is needed to become inactive. Unless a licensee requests to be placed on inactive status prior to the expiration of their license, the license shall be designated as "lapsed".
- (b) If the license of a principal broker is not renewed prior to expiration, all brokers associated with that brokerage firm shall lose authority to transact business in the firm's name. Any salesperson associated with the lapsed license shall lose all authority to practice the profession.
- (c) If the license of a broker in charge is not renewed prior to expiration, all brokers associated with that brokerage office shall lose authority to transact business in the firm's name. Any salesperson associated with the lapsed license shall lose all authority to practice the profession.

3.2 Reinstating A Lapsed Or Inactive License Or Registration

- (a) A broker or salesperson whose license has lapsed, less than five years, because it was not renewed by the expiration date may be reinstated by paying the renewal fee and late renewal penalty, and providing proof of sixteen hours of continuing education taken within the previous 24 months.
- (b) A licensee who requested the license be inactive, and reactivates during the same renewal period, may be reinstated by paying the reinstatement fee, renewal fee, and providing proof of 16 hours of continuing education taken within the previous 24 months. A licensee who does not request reactivation during the same renewal period may not renew under this section and must qualify under 3.2(a).
- (c) A brokerage firm whose registration has lapsed because it was not renewed by the expiration date may be reinstated by paying the renewal fee, and late renewal penalty.

3.3 Requests For Declaratory Rulings

- (a) Requests for declaratory rulings as to the applicability of any statutory provisions or any rule or order of the Commission may be sent to the Commission office. Requests must be in writing, and must show the existence of a real controversy, not just a hypothetical question. A declaratory ruling is binding upon the parties to the ruling and the Commission. The requests will be considered pursuant to the Administrative Procedure Act, 3 V.S.A. Chapter 25 and the Administrative Rules of the Office of Professional Regulation. The Commission may call witnesses in addition to those presented by the parties.
- (b) In the absence of a real controversy, the Commission may, in its discretion, elect to issue a non-binding advisory opinion, or may decline to address the question presented. An advisory opinion is not binding on the requestor, other licensees, or the Commission.

3.4 Change Of Name Or Address A principal broker or broker in charge must notify the office within ten days of any change in name, address, phone number or email address of the brokerage firm or any licensee associated with that firm.

3.5 Reinstating A Suspended Or Revoked License

- (a) A person whose license has been revoked or suspended may petition the Commission for reinstatement or modification of the action at any time after one year from the effective date, unless otherwise ordered by the Commission. If the person has previously applied for relief from the same penalty or discipline, the Commission will not entertain another petition before the lapse of an additional year following its decision on the last petition.
- (b) Petitions for reinstatement must be in writing, setting out and substantiating the reasons constituting good cause for the relief sought, and include at least two supporting recommendations, under oath, from persons who have personal knowledge of the petitioner's activities since the suspension or revocation was imposed.

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- (c) The Commission may impose conditions for reinstatement or modification of a suspension.

Part 4. Conduct Of Licensees

4.1 Offices And Branch Offices

- (a) A principal broker shall be in charge of each brokerage firm and its main office. The principal broker of a firm's main office must maintain his or her place of business at the main office. The principal broker must notify the Commission of the brokerage firm's primary business location and any changes in business location.
- (b) A brokerage firm which desires more than one office in the state shall register a branch office. A branch office shall use the same name as the main office and shall have a designated broker as broker in charge. The broker in charge of a branch office must maintain his or her place of business at the branch office.
- (c) The firm's associates must have a primary place of business at one of the firm's locations but may work out any of the firm's offices.
- (d) A principal broker or broker in charge may not serve as principal broker or broker in charge for more than one office at any one time.

4.2 Broker Supervision

- (a) A principal broker is vicariously responsible for the professional conduct of all licensees and employees of the brokerage firm, including all branches; a broker in charge is vicariously responsible for the professional conduct of all licensees and employees of the branch office.
- (b) A salesperson must work under the supervision and training of the principal broker or broker in charge.

4.3 Duty To Principals/Clients

- (a) A brokerage firm is the agent of each person with whom it has entered into a brokerage service agreement (see 4.8). Only licensees associated with a brokerage firm employed under a broker service agreement may represent the firm's clients. As an agent, the brokerage firm and all associated licensees owe that person the duties of a fiduciary (see 1.8(14))
- (b) A brokerage firm must, until closing, submit all offers to the principal, with or without a deposit, whether oral or written, whether above or below the listed price.
- (c) A licensee who buys property from his or her principal must show affirmatively that he or she acted in good faith in the transaction.
- (d) A brokerage firm that represents both buyers and sellers in the same market must disclose that fact in writing before entering into a brokerage service agreement.

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- (e) A brokerage firm may retain other brokerage firms to assist it in providing services to its principals and compensate those firms, without thereby creating an agency relationship between the principal and the other firms.

4.4 Limited Agency

- (a) Dual agency is prohibited.
- (b) A brokerage firm shall not act as an agent for both a buyer and a seller in the same transaction, except as a limited agent in conformance with (c) below.
- (c) When a brokerage firm already represents both a seller and a buyer, in separate transactions, and the seller and buyer later want to participate in the same real estate transaction, the firm may act as a limited agent on behalf of both the seller and the buyer with the informed consent of each. Although commonly called a "dual agent", a firm representing both parties in a transaction is a limited agent because of the inherent contradiction in the roles of seller's agent and buyer's agent. In order to obtain informed consent required by these rules, the firm must at a minimum, explain all of the following to both the seller and the buyer.
 - (1) Each is entitled to be represented by his or her own agent, and may refuse consent.
 - (2) Each is surrendering their right to demand undivided loyalty from the agent, although the agent must advance the interest of each party so long as it does not conflict with the interest of the other party, and must otherwise act impartially.
 - (3) There will be a conflict as to an agent's duties of confidentiality and full disclosure. The firm must explain the types of information which will be held confidential by an agent, and the types of information which will be disclosed if revealed to the agent by either the buyer or the seller. The agent may not disclose any information given to the agent by either principal which would likely weaken that party's bargaining position if it were known, unless the agent has permission from the principal to disclose the information.
 - (4) The agent will be required to disclose information given to the agent in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations. After these effects of limited agency have been explained, both parties may give written consent to the termination of their agency relationship for the transaction between them and agree that the firm may act as a limited agent. If either the seller or the buyer declines or fails to give written consent, the firm must terminate its agency relationship with one of the principals, or if necessary to protect a principal's confidences, shall terminate its agency relationship with both principals. A termination for a specific transaction must be acknowledged in writing.
- (d) A limited agent has a duty to act with reasonable care and obedience, to act for the benefit of the principals in matters related to the transaction, and to put the interests of the principals ahead of the interests of the agent or any fourth party.

4.5 Duty To Customers And The Public (Material Facts)

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- (a) A licensee working for a brokerage firm employed by a seller or seller's agent must fully and promptly disclose to a prospective buyer all material facts within the licensee's knowledge concerning the property being sold. This obligation continues until the sale is closed or has been cancelled. Some examples of material facts include, but are not limited to, the following:
 - (1) A defect that could significantly diminish the value of the land, structures, or structural components such as the roof, wiring, plumbing, heating system, water system, or sewage disposal system;
 - (2) A limitation in the deed that could substantially impair the marketability or use of the property and thereby diminish its value;
 - (3) A recognized or generally accepted hazard to the health or safety of a buyer or occupant of the property.
 - (4) Facts a licensee reasonably believes may directly impact the future use or value of the property.
- (b) If the principal refuses to consent to disclosure after being informed that the agent considers disclosure to be necessary, then the agent must withdraw from the agency relationship.
- (c) A licensee, before showing, must disclose any known significant limitations on the seller's ability to convey a fee simple interest in the property, such as options, rights of first refusal, or being subject to prior closings.
- (d) A licensee buying or selling on his or her own account shall disclose the existence of his or her real estate license and that the property under consideration belongs to the licensee or will be purchased for the licensee's use. These disclosures are to be made on initial contact with the seller or buyer.
- (e) A licensee shall comply with all federal, state and local requirements related to the marketing, transfer or development of real estate.
- (f) Upon entering into negotiations on his or her own behalf for the purchase of property listed by the licensee or the licensee's brokerage firm, the licensee must enter into a limited agency agreement with the seller in order to fully disclose the licensee's relationship with the brokerage agency and to give the seller the opportunity to terminate the listing agreement.

4.6 Duty To Provide Vermont Mandatory Consumer Disclosure Form

- (a) A brokerage firm, and its agents, shall provide a written consumer disclosure form that includes the content established by the Commission to any unrepresented person with whom an agent of the brokerage firm has substantial contact. The disclosure shall occur at the first reasonable opportunity, and it must occur before entering into a service agreement or before showing a property. (See Appendix A, which shall be updated with notice as necessary) For purposes of this rule, an unrepresented person means any person who is under contract for representation with an agency but is not at the time in the presence of their agent, or not under contract with an agency for representation.

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- (b) Before the disclosure form is provided, an agent shall give an oral disclosure informing the person that there is no confidentiality between the agent and the person until there is a signed brokerage service agreement.
- (c) If the person required to receive a written disclosure form refuses to sign the form, the licensee shall:
 - (1) Note that information on the form;
 - (2) Sign and date the form; and
 - (3) Provide a copy of that form to the person.
- (d) The agent's signature in (c) above shall constitute a certification by the agent that the form was provided to the person with the recommendation to read the disclosure.
- (e) The disclosure form is not required for unrepresented persons in the following instances:
 - (1) For an open house where the host brokerage firm conspicuously displays a poster containing a replica of the disclosure form, with copies available on request; or
 - (2) For any Vermont licensee; or
 - (3) For any customer of a cooperating firm brought to a principal firm pursuant to an agency agreement between brokerage firms (see Rule 4.11) when that customer has already received the disclosure form from the cooperating firm.

4.7 Trust Accounts

- (a) Every brokerage firm shall maintain a pooled interest-bearing trust account in a bank or other regulated financial institution authorized to do business in Vermont, so long as the firm holds the funds of others in the course of its real estate business, and shall establish individual interest-bearing trust accounts as needed to comply with these rules. Interest on the pooled trust account shall be remitted as provided by 26 V.S.A. § 2214 and 8 V.S.A. § 920.
- (b) All earnest money or contract deposits in the possession of a real estate brokerage firm to be held as an escrow agent under a Purchase and Sale Agreement shall be deposited in the firm's trust or escrow account not later than five (5) banking days after the Purchase and Sale Agreement is executed by both seller and buyer. Any licensee affiliated or associated with that brokerage firm is required to utilize the brokerage firm's accounts in the discharge of his or her responsibility under this rule and under 26 V.S.A. § 2214. Unless otherwise agreed to in writing, all deposits held by any licensee shall be placed in the account of the brokerage firm with which the seller has a seller service agreement, or, if there is no listing broker, in the account of the buyer's broker. No earnings of the accounts shall be made available to the brokerage firm or any associated licensee.
- (c) Deposits which accompany offers may be placed initially in the brokerage firm's pooled trust account. Upon acceptance of an offer, the broker shall determine the amount of interest the deposit is reasonably expected to earn. A deposit which is reasonably expected to earn more than \$100 shall be transferred to or placed in an individual interest-bearing trust account if requested by the person making the deposit, specifying the Social Security account number or taxpayer identification number of the person who paid the money or is entitled to receive the

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interest. A deposit which is not reasonably expected to earn more than \$100 shall be placed or remain in the brokerage firm's pooled trust account. (See Appendix B)

- (d) Disputed deposits--When the broker learns of a dispute concerning the proper party to receive a deposit held in a pooled account, the broker shall notify the parties, in writing, that the deposit will remain in the trust account until (1) the parties to the disputed deposit give written authority to the broker to disburse the funds, or (2) a court of competent jurisdiction determines the proper party entitled to the proceeds of the disputed deposit,
- (e) Augmented deposit--When a person making a deposit increases the amount of the deposit for any reason, the brokerage firm shall recalculate the interest reasonably expected to be earned. If the recalculated interest exceeds \$100, the brokerage firm shall transfer the principal amount of the deposit to an individual trust account, if requested by the person making the deposit.
- (f) When a payment is made out of an individual trust account to the person entitled to it, any interest accrued on that account shall be paid out simultaneously to that person or to such other person designated in the contract acknowledged by both buyer and seller.
- (g) The brokerage firm shall keep accurate records of all earnest monies held by it. Such records shall include:
 - (1) the name(s) of the person from whom the money was received and the person to whom it was disbursed;
 - (2) the amount of each deposit;
 - (3) the amount of each disbursement;
 - (4) the date each amount was received, the date disbursed and the amount of any interest earned on an individual trust account;
 - (5) all contracts, documents and other records related to the trust account and all its activity, including copies of all related broker service agreements, deposit receipts, withdrawal receipts and sales agreements.
- (h) Brokers must label a trust account as a Real Estate Trust Account. The brokerage firm must notify and file with the Commission the name of each bank in which it maintains trust accounts.
- (i) A trust account as described above may have a licensed or non-licensed person authorized to sign on the account. However, the responsibility for the account and all transactions concerning the account remain with the principal broker or broker in charge.
- (j) A brokerage firm may deposit its own funds in the account to cover bank service charges or meet a minimum balance to avoid bank service charges. Check printing charges, wire transfer charges, overdraft charges, and other charges for specialized services are a business expense of the brokerage firm. Ordinary bank service charges may be offset against the interest in the account, but the brokerage firm shall not permit the principal amount of the trust funds to be depleted.

4.8 Agreements For Brokerage Services

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- (a) Before rendering any brokerage services a brokerage firm must have executed: (1) a written listing or seller service agreement with a seller; (2) a written buyer service agreement with the buyer, or (3) a written broker cooperation agreement with a broker employed by a seller or a buyer under a brokerage service agreement.
- (b) Copies of all contracts for brokerage services executed by a brokerage firm shall be given to all parties to the contract at the time of execution.
- (c) Use of a net listing or any variation is prohibited.
- (d) Contracts for seller services and buyer services shall contain a specific expiration date not to exceed 12 months from the date services begin. A contract cannot contain any provision for automatic extension or renewal. All information in a contract shall be current as of the date signed, and shall be current as of the date of the most recent extension or renewal.

4.9 Seller Service Agreements

- (a) A seller service agreement (listing) shall contain:
 - (1) Identification of the type of seller service agreement in boldface type at the top stating only one the following:

NONEXCLUSIVE (Open);
EXCLUSIVE AGENCY;
EXCLUSIVE RIGHT TO MARKET PROPERTY

Each type of seller service agreement must be on a separate form and identified with only one of the above in boldface type.

- (2) A clear description of the property and its location.
- (3) The price, terms and conditions upon which the brokerage firm has authorization to market the property.
- (4) The specific brokerage services the firm will provide, including any limitation on services.
- (5) The agreement date and specific expiration date.
- (6) A provision for avoiding dual agency and other conflicts with respect to the brokerage firm's buyer service agreements. A signed copy of the mandatory consumer disclosure (Rule 4.6) form attached to the listing agreement will satisfy this requirement.
- (7) A statement of the amount of transaction fee or other compensation to be paid the brokerage firm, the method of computation and the person who will pay it; and
- (8) The signatures of all owners or their authorized agents and a licensee associated with the brokerage firm.

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- (9) A clear description of whether, and how, cooperating and/or buyer broker agents will be compensated.
- (b) A seller service agreement may contain a clause which provides for compensation following expiration when:
 - (1) a purchase and sale agreement is signed, a closing held, or the property is otherwise sold, within a specified number of months following the expiration date of the seller service agreement but not to exceed twelve months; and
 - (2) the brokerage firm, during the term of the seller service agreement, was procuring cause of the sale; and
 - (3) the brokerage firm provided the name of the purchaser to the seller in writing not later than 10 days after the expiration or termination date of the seller service agreement; and
 - (4) the property has not been listed with another firm under a valid, exclusive right to sell agreement with terms and conditions similar to those contained in the expired seller service agreement.
- (c) No other provision for compensation following expiration is authorized.

4.10 Buyer Service Agreements

- (a) A buyer service agreement shall contain:
 - (1) Identification of the agreement in boldface type at the top stating either:

EXCLUSIVE RIGHT TO REPRESENT BUYER;
EXCLUSIVE BUYER AGENCY AGREEMENT;
OPEN BUYER AGENCY AGREEMENT.
 - (2) The agreement date and specific expiration date;
 - (3) All terms of the agency authorized;
 - (4) A description of the services that the brokerage firm will perform under the contract, including any limitations on services;
 - (5) A provision for avoiding dual agency and other conflicts with respect to the brokerage firm's seller service agreements. A signed copy of the mandatory consumer disclosure (Rule 4.6) form attached to the listing agreement will satisfy this requirement.
 - (6) A statement of the amount of transaction fee or other compensation to be paid the brokerage firm, the method of computation and the person who will pay it; and
 - (7) The signatures of all parties to the buyer service agreement.
 - (8) A clear description of whether, and how, cooperating and/or buyer broker agents will be compensated.

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- (b) A buyer service agreement may contain a clause which provides for compensation following expiration when:
 - (1) a purchase and sale agreement is signed, a closing held, or the property is otherwise sold, within a specified number of months following the expiration date of the buyer service agreement, but not to exceed twelve months; and
 - (2) the brokerage firm, during the term of the buyer service agreement, was procuring cause of the sale; and
 - (3) the brokerage firm provided the name of the seller and identification of the property to the buyer in writing not later than 10 days after the expiration or termination date of the buyer service agreement; and
 - (4) the buyer has not retained another firm under a valid, bona fide, exclusive right to represent buyer agreement with terms and conditions similar to those contained in the expired buyer service agreement.
- (c) No other provision for compensation following expiration is authorized.

4.11 Cooperation Agreements Between Brokerage Firms

- (a) A cooperation agreement between brokerage firms shall contain:
 - (1) Identification of the brokerage firm acting as principal and the brokerage firm acting as agent;
 - (2) The agreement date and a provision for termination, however, it need not have a specific expiration date;
 - (3) All terms to be authorized;
 - (4) A description of the services which the cooperating firm will perform under the contract, including any limitation on services;
 - (5) A statement of the amount of transaction fee or other compensation to be paid the brokerage firm and the method of computation;
 - (6) A provision for avoiding dual agency conflicts with respect to each brokerage firm's other brokerage service agreements;
 - (7) Signatures of each party.
- (b) The cooperating firm under a cooperation agreement is the agent of the principal firm, and not the agent of the buyer or seller for whom the principal is working.
- (c) A principal firm under a cooperation agreement shall not reveal any confidences of a client to a cooperating firm.

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- (d) An cooperating firm which has accepted an offer of broker agency with respect to a particular property must notify the principal firm before representing a buyer with respect to the same property.
- (e) Participation agreements in broker professional organizations (e.g. MLS) are an acceptable broker cooperation agreement for creating an agency relationship between brokerage firms.

4.12 Advertising

- (a) Every real estate advertisement shall prominently indicate the brokerage firm's registered name.
- (b) If a broker is a sole proprietor, all advertisements shall indicate the sole proprietor's name, and the words "real estate", "realty", or "licensed broker".
- (c) If a licensee advertises his or her own property the licensee must designate in the advertisement that he or she is a real estate broker-owner or a real estate salesperson-owner.
- (c) Signs used in advertising must comply with Vermont state sign laws.
- (d) Advertisements which show properties listed by an agent other than the brokerage firm must also indicate that agents name, and firm.

4.13 Compensation, Commissions, Transaction And Other Fees

- (a) A licensee shall not pay or otherwise compensate an unlicensed person, either directly or indirectly, for the performance of brokerage services. This section shall not prohibit a licensee from reducing or sharing a portion of a commission otherwise owed to the licensee in the transaction, to the benefit of the seller or buyer, so long as it is not compensation for the performance of brokerage services.
- (b) A real estate broker may refer a prospect to a Vermont real estate broker and the Vermont real estate broker may pay a referral fee to brokerage firms licensed in Vermont or other jurisdictions. A licensee making a referral is not a sub-agent. A licensee from another jurisdiction may observe, but not perform, brokerage services in Vermont.
- (c) A brokerage firm may only receive the compensation provided in (1) a written agreement signed by the firm and its client, or, (2) in the case of a firm acting as a limited agent under Rule 4.4(c), a written agreement signed by the firm and the buyer and seller, or (3) an agency agreement with a firm that has a written agreement described in (1) or (2). A brokerage firm shall not collect any compensation for brokerage services except as provided by these rules.
- (d) The brokerage firm representing a seller may compensate a brokerage firm representing a buyer out of the transaction fee without thereby creating an agency relationship. The brokerage firm representing a buyer may compensate a brokerage firm representing a seller out of the transaction fee without thereby creating an agency relationship. Consent of the principal is not required in either case.

4.14 Records

- (a) All agreements for brokerage services, as listed in 26 V.S.A. § 2211(a)(4), shall be in writing.

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- (b) Each brokerage firm shall prepare a complete, detailed statement for every real estate transaction showing all the receipts and disbursements handled by the firm. This is not intended to mean a detailed closing statement.
- (c) A brokerage firm shall maintain all records required pursuant to the Rule at its usual place of business (e.g. copies of all offers, executed contracts, deposit receipts, statements, trust account records and other pertinent documents concerning a transaction) for at least seven years and they shall be available for inspection by the Commission and its duly authorized agents during regular business hours.
- (d) The principal broker, broker in charge, or their designee must cooperate in good faith with the Commission's agent during any inspection, and the principal broker, broker in charge, or their designee may remain present during any inspection. The Commission's agent may not be refused access to the records if the principal broker, broker in charge, or their designee is not present.

4.15 Violations, Attempts And Solicitations A licensee shall not violate, attempt to violate or solicit a violation of any of these rules or 26 V.S.A. Ch. 41. The elements of an attempt to violate are an intent to commit an offense and the commission of some act toward its completion. Solicitation means requesting another to commit a violation, with the intent that the violation be committed.

4.16 Timely Response to Commission Inquiry When contacted regarding any matter related to the regulation of the licensee's profession by the Commission, or the Office of Professional Regulation acting on behalf of the Commission, a licensee shall timely respond in good faith to all inquiries. A "timely response" shall mean as soon as reasonably practicable or within 30 days, whichever is sooner.

Part 5. Education

5.1 Initial Salesperson and Broker Education All applicants for a salesperson's or broker's license must successfully complete the appropriate salesperson's or broker's prelicensing course, which will consist of at least forty hours of instruction approved by the Commission. A list of approved courses found at www.vtprofessionals.org. Any person may seek the approval of a course of study by petitioning the Commission.

5.2 Continuing Education

- (a) Salespersons or Brokers applying for renewal of licenses must complete sixteen hours of continuing education during the two-year period immediately preceding renewal. Four hours of the instruction required of brokers and salespersons must be in a subject designated by the Commission for that licensing period. The courses taken must be approved by the Commission as continuing education courses. A list of approved continuing education courses can be found at: www.vtprofessionals.org. Any person may seek individual approval of a course by petitioning the Commission no later than 90 days before licensing renewal.
- (b) An individual licensed for less than one year (from the original issue date to the current expiration date) must only complete the four hour mandatory course. Individuals licensed for more than one year must complete all 16 hours, which includes the four hour mandatory course.

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- (c) The Commission may waive or postpone the continuing education requirement for licensees who demonstrate extreme hardship in meeting the requirement. Requests for waiver or postponement must be made in writing and must explain the circumstances creating a hardship. No licensee may be granted a postponement or waiver for a second successive renewal period.
- (d) The Commission may appoint an education committee to advise the Commission on standards for approval of courses and the application of those standards, once adopted by the Commission, to particular courses.

EFFECTIVE DATE: April 15, 2008

Appendix A



Vermont Real Estate Commission Mandatory Consumer Disclosure

(This is not a Contract)

This mandatory disclosure shall be given to the consumer at the first reasonable opportunity, and must be given to the consumer before discussion of confidential information; entering into a service agreement; or showing a property.

Right Now You Are A Customer

As a customer, the real estate agent with whom you are working is not obligated to keep confidential the information that you might share with him or her. As a customer, you should not reveal any confidential information that could harm your bargaining position.

Vermont law requires all agents to perform basic duties when dealing with a buyer or seller. You can expect the agent with whom you deal to provide the following services whether you are a Customer or a Client:

- To disclose all material facts pertaining to the property known to the agent.
- To treat both the buyer and seller honestly and not knowingly give false or misleading information.
- To account for all money and property received from or on behalf of the buyer or seller.
- To comply with all state and federal laws related to the practice of real estate.

I/We Acknowledge Receipt of This Disclosure

Printed Name of Consumer

Signature of Consumer Date
[] Declined to sign

Printed Name of Consumer

Signature of Consumer Date
[] Declined to sign

You May Become A Client

Whether you are selling or buying, clients receive more services than customers. You become a client by entering into a written contract with a real estate brokerage firm. All agents in the firm work for you.

In addition to the services noted in the left hand column, as a client you can expect the following services:

- Confidentiality, including bargaining information
- Promotion of your best interest within the limits of the law
- Advice and counsel
- Assistance in negotiations

Important Information

1. You are not required to hire a brokerage firm for the purchase or sale of Vermont real estate. You may represent yourself.
2. Before you hire a brokerage firm, ask for an explanation of the firm's conflict of interest policies.

This form has been presented to you by:

Printed Name of Real Estate Brokerage Firm

Printed Name of Agent Signing Below

Agent of the Firm Signature Date

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Approved for content by the Real Estate Commission – May 27, 2010

Note: Appendix A is not part of the adopted rule, and may be changed from time to time without rulemaking proceedings. The language of this form is *not mandatory*; other language that conforms to the rules may be substituted.

**Appendix B
Interest Worksheet**

You may use this worksheet to determine whether an earnest money or contract deposit will earn a substantial amount of interest.

- | | | |
|----|--|-----------------|
| 1. | Amount of deposit | \$ |
| 2. | Days to expected closing | x |
| 3. | Interest rate on individual, insured account | x _____ % |
| | | divided by: 360 |
| 4. | Total interest expected | |

If the amount in line 4 is over \$100, the broker must comply with Rule 4.7(c), and check (A or B) below.

If the amount in line 4 is \$100 or less, deposit in your pooled trust account.

DEPOSITOR'S ACKNOWLEDGEMENT OF DISCLOSURE

I am the person placing money in escrow. (Name of broker) has explained to me the requirement of Vermont law to place deposits in an individual interest-bearing trust account if the deposit is reasonably expected to earn a substantial amount of interest, and to place money in a pooled trust account if it is not expected to earn a substantial amount of interest. The broker has informed me that my contract deposit may be placed initially in a pooled interest-bearing account, and, when the offer is accepted:

- (A) (1) my deposit will be placed in or transferred to an individual interest-bearing account, and the interest will be paid to me or as agreed in the purchase and sales agreement in this transaction;
- or
- (B) (2) my deposit will be placed or remain in a pooled interest-bearing account, and the interest from the pooled trust account will not be paid to me, but will go to the Vermont Housing Finance Agency to be used in the agency's single family home mortgage program.

_____/_____
Signature of Depositor / Date

_____/_____
Signature of Depositor / Date

Additional information needed to open an individual trust account:

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Address

Social Security Account Number

Note: this appendix is not part of the adopted rule, and may be changed from time to time without rulemaking proceedings. The language of this form is *not mandatory*; other language that conforms to the rules may be substituted.