

NVAR
Suggested
Procedures
Manual

A Guide for REALTORS[®]

2009 Edition

This edition of the “Suggested Procedures Manual” has been published and distributed to the membership of the Northern Virginia Association of REALTORS[®], Inc. (NVAR) with the hope that the manual will encourage cooperation and understanding among agents and brokers.

This manual contains **Suggested Procedures**, not regulations. It is primarily intended for residential real estate procedures, but may be helpful in commercial practice as well. Obviously, brokers will modify some of the suggestions to suit their individual business practices. The work that has gone into this publication has been done with the good of the entire membership in mind.

These suggestions should not be regarded as opinion or advice for any individual case. This manual is not intended to render legal, accounting, or other professional services or advice. This is one of many efforts of your association to provide educational material to help members reach a higher level of professionalism. By referring to this manual, agents, managers, and brokers should be able to stay informed and avoid conflicts.

Many thanks to all the volunteers who have contributed to this Suggested Procedures Manual and to you, the membership, who use the manual every day.

Policy Statement Regarding Compensation.

Under policy established by the Northern Virginia Association of REALTORS[®], the Virginia Association of REALTORS[®], and the NATIONAL ASSOCIATION OF REALTORS[®] regarding compensation:

1. The broker’s compensation for services rendered is solely a matter of negotiation between the broker and his or her client, and is not fixed, controlled, recommended or maintained by any persons not a party to the compensation agreement.
2. Compensation paid by a listing broker to a cooperating broker in respect to any listing is established by the listing broker in the offer of compensation, and is not fixed, controlled, or maintained by any persons other than the listing broker.

Policy Statement Regarding Discrimination and Fair Housing

It is the policy of the Northern Virginia Association of REALTORS[®], the Virginia Association of REALTORS[®] and its members to comply with local, state and federal fair housing laws. These laws require that the kind of service provided to a home seeker or housing provider shall not be influenced by the home seeker’s or housing provider’s race, color, religion, sex, national origin, handicap, elderliness or familial status, or other classification that may be covered by local ordinances.

I. Establishing Brokerage Relationships

Duties of Real Estate Brokers and Salespersons - Title 54.1 (Professions and Occupations), Chapter 21 (Real Estate Brokers, Salespersons and Rental Location Agents) commonly known as Virginia's Agency Law (Agency Law), prescribes (1) your obligations and responsibilities as a "Licensee", (2) what you must do prior to establishing a brokerage relationship, (3) what is required to establish a brokerage relationship, and (4) disclosure of brokerage relationships including dual and designated representation. For the purpose of the Suggested Procedures Manual the definitions are not complete. They have been abbreviated to express the general meaning of the terms and not the exceptions. The following information provides a starting point for understanding your duties as an Agent. Reading and understanding these materials as well as the Agency law will improve your professional competency.

A. OBLIGATIONS AND RESPONSIBILITIES AS A LICENSEE – Licensees may have different responsibilities to their clients depending on whom they represent in a transaction. The act provides clear responsibilities for licensees engaged:

By Sellers,
By Buyers,
By Landlords to lease property,
By Tenants,
By Landlords to manage real estate, and
By Limited Service Representatives

The act also provides limitations for licensees helping "customers" in real estate transactions when there is no brokerage relationship.

The Northern Virginia Association of REALTORS[®], Inc. (NVAR) has prepared a variety of forms that satisfy the foregoing portions of the Agency Law. The following is a list of some of the forms developed by NVAR that may be used by REALTORS[®] and are mentioned throughout this section.

Name of the Form

Listing Agreement - Exclusive Right to Sell
Listing Agreement - Exclusive Agency
Listing Agreement - Exclusive Right to Lease
Exclusive Right to Represent Buyer
Exclusive Right to Represent Tenant
Property Management Agreement

Name of the Form (Continued)

Disclosure of Brokerage Relationship
Disclosure of the Use of Dual Agent or Designated Representatives.

Useful Information about Real Estate Transactions

Your particular attention is directed to your responsibilities for representing clients as spelled out in Article 1 of the National Association of REALTORS® Code of Ethics. Article 1 states, “When representing a buyer, seller...or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller...or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly.”

Be careful, protecting and promoting your client’s best interest means, among other things that, your client’s interest takes priority over yours.

Remember that when you are a disclosed dual agent (undisclosed dual agency is illegal), your ability to represent your clients is limited because of your equal duties to both the buyer and seller. Agents should exercise care if they elect to be a disclosed dual agent and be aware of their responsibility to both parties. It is important to disclose the benefits and risks of dual representation. The following are just some considerations that involve writing terms into the sales contract:

1. Many licensees, when they are the buyer’s agent in a transaction, like to protect the buyer’s interests by inserting terms into the sales contract that place additional duties or responsibilities on the seller.
2. These same licensees, if they are the listing agent for a property, take an opposite approach and try to protect the seller’s interests by negotiating to limit the duties or responsibilities of the seller.
3. What do these licensees do if they are a disclosed dual agent in a transaction?

B. DEFINITIONS (abbreviated) – The NVAR has published a form entitled “Useful Information About Real Estate Transactions” with a sub-section entitled “Types of Real Estate Transactions”. This form also discusses most of the following definitions. Ideally, you will have with you and discuss the information contained in “Useful Information About Real Estate Transactions” at your initial contact with any person with whom you propose to perform a real estate service. Understanding, presenting and complying with the information in this form at the initial contact with a potential “client” will limit the possibility for problems in a transaction.

1. **“LICENSEE”** means real estate *brokers and salespersons*.
2. **“AGENCY”** means every relationship in which a real estate licensee acts for or represents a person by such person’s *express authority* in real estate transaction,

unless a different legal relationship is intended and is agreed to *as part of the brokerage relationship*. (Briefly stated the law provides that you establish whatever relationship you are going to have with the person *as part of the brokerage relationship*. Agency requires express authority unless something different is agreed to as part of the brokerage relationship. Do yourself a favor, always get the express authority in writing.)

Agency includes representation of a client as a standard agent or a limited service agent.

Nothing prohibits a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement.

A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement.

3. **“BROKERAGE RELATIONSHIP”** means the *contractual relationship* between a client and a real estate licensee who has been engaged by such client for the purpose of *procuring* a seller, buyer...ready, able and willing to sell, buy... real estate on behalf of a client.
 - a. If you are a seller’s agent, the act does not say you are engaged to sell a home. It says you are engaged to procure a buyer for that home. Be careful about saying you will sell a person’s home for them. If you say you are going to sell a client’s home, you might be considered to be saying that you are eliminating the possibility that someone else will bring a buyer. By doing this you bring up the issue of whether you are proposing to represent the Seller only, or the Seller and Buyer (“Dual Agent” or “Dual Representation”).
 - b. Be careful of your words and actions. Words and actions can create a “Brokerage Relationship” without the protection of a written contract. Written contractual agreements benefit you by describing & limiting your duties & obligations, and promulgate the method by which you get paid.
4. **‘CLIENT’** means a person who *has entered* into a brokerage relationship with a

licensee. (Again, be careful with your words and actions and make sure brokerage relationships are in writing.)

5. **“CUSTOMER”** means a person who has not entered into a brokerage relationship with a licensee. Without having established a brokerage relationship with a person, the person is presumed to be a customer. Accordingly, by law a licensee may only perform “ministerial acts” for that person.
6. **“MINISTERIAL ACTS”** means those routine acts that a licensee can perform for a person that does not involve discretion or the exercise of the licensee’s own judgment. (“Ministerial Acts” are activities that assist the transaction to go forward, rather than being a service to the individual “customer”. When working with a “customer”, be very careful not to perform acts that might be considered a service to a “customer”. Such service to a “customer” might be interpreted as being contrary to the best interest of the “client”.)
7. **“STANDARD AGENT”** means a “licensee” who acts for or represents a “client” in an agency relationship. (“Standard Agency” is presumed to be your brokerage relationship under the law. *If you do not specify otherwise in a written agreement signed by your “client”, then you will be a “Standard Agent”.*)
8. **“LIMITED SERVICE REPRESENTATIVE”** means a licensee who acts as a limited service representative. This can only be done pursuant to a written brokerage agreement in which the limited service representative (i) discloses that the licensee is acting as a limited service representative; (ii) provides a list of the specific services that the licensee will provide to the client; and (iii) provides a list of the specific duties of a standard agent that the limited service representative will not provide to the client. Such disclosure shall be conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a separate box. In addition, a disclosure that contains language that complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

"By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service representation by the licensee and do further acknowledge that neither the other party to the transaction nor any real estate licensee representing the other party is under any legal obligation to assist the undersigned with the performance of any duties and responsibilities of the undersigned not performed by the limited service representative."

A licensee engaged by one client to a transaction and dealing with an unrepresented party or with a party represented by a limited service representative

and who, without additional compensation, provides such other party information relative to the transaction or undertakes to assist such other party in securing a contract or with such party's obligations thereunder, shall not incur liability for such actions except in the case of gross negligence or willful misconduct.

A licensee does not create a brokerage relationship by providing such assistance or information to the other party to the transaction. A licensee dealing with a client of a limited service representative may enter into an agreement with that party for payment of a fee for services performed or information provided by that licensee. Such payment shall not create a brokerage relationship; however, the licensee providing such services or information for a fee shall be held to the ordinary standard of care in the provision of such services or information.

9. **“DESIGNATED AGENT” or “DESIGNATED REPRESENTATIVE”** means a “licensee” who has been assigned by a principal or supervising broker to represent a client when *a different client is also represented* by another “licensee” affiliated with the same principal or supervising broker in a transaction. (The designated broker remains the “dual agent” in the transaction.) See Article 1 of the NAR’s Code of Ethics.
10. **“DUAL AGENT” or “DUAL REPRESENTATIVE”** means a licensee who has a “brokerage relationship” with *both seller and buyer*...in the same real estate transaction. See Article 1 of the NAR’s Code of Ethics.
11. **“COMMON SOURCE INFORMATION COMPANY”** means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services. (The subjects of this definition are not “licensees” if their activities are limited to the definition. Accordingly, they are not subject to the discussion about Brokerage Relationships.)

C. PRECONDITION TO BROKERAGE RELATIONSHIP – Prior to entering into any brokerage relationship a licensee shall advise the *prospective client* of (i) the type of brokerage relationship *proposed by the broker*, (ii) the *brokers compensation*, and (iii) *whether and how the broker will share such salary or compensation* with another broker who may have a brokerage relationship with another party to the transaction. Tell your *potential “client”*:

1. The exact relationship you are proposing. Examples are:
 - a. To represent a “client” in the sale or lease of a property, or
 - b. To represent a “client” in the purchase or rental of a property,

- c. To be a dual representative or designated representative.

(Your attention is directed to the form entitled “Useful Information About Real Estate Transactions” and the sub-section entitled “Types Of Real Estate Representation”. *Be particularly aware of the limitations on an agent’s ability to represent either party fully and exclusively by “Dual Representation”.*)

2. Whether and how you (your broker) will be compensated and whether the broker will share such compensation with another broker who may have a brokerage relationship with the other party in the transaction. For example:
 - a. How much and how will you be paid by your potential client as a listing agent, or
 - b. How much and how will you be paid for representing a buyer who wants to purchase a home, and
 - c. What is the amount of compensation the potential client will pay you if they buy or sell a property without you while a contractual agreement with you is in effect?

D. ESTABLISHING A BROKERAGE RELATIONSHIP - There are three ingredients required in the contract establishing the brokerage relationship. Forms prepared by and available through NVAR will assist members in meeting the requirements of the Agency Law.

1. The brokerage relationship shall *commence* at the time that a client engages a licensee and shall continue until the termination date or other conditions prescribed in the contractual agreement.
2. The brokerage relationship shall have a *definite termination date*; and if not, the brokerage relationship shall terminate *ninety days* after the date upon which the brokerage relationship was entered.
3. After termination expiration, or completion of performance of the brokerage relationship the licensee owes no further duties to the client except that the licensee shall
 - a. Account for all monies and property relating to the brokerage relationship, and
 - b. Keep confidential all personal and financial information received

from the client during the course of the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, *unless otherwise provided by law* or the client consents in writing to the release of such information.

A properly established Brokerage Relationship benefits you and your client by clearly describing and limiting your duties, obligations and payment method. On the contrary, a Brokerage Relationship improperly established by your words and/or actions might result in failure to get paid or worse, liability and undisclosed dual representation. Undisclosed dual representation, whether intentional or not is illegal.

II. Disclosure of Brokerage Relationship

Virginia's Agency Law specifically addresses the requirement for licensees to disclose his or her Brokerage relationship. Disclosure of whom you represent must be made to all parties that are not your clients and who are not represented by another agent. (If an agent represents the other party, disclosure is not required. Nevertheless, disclosure is always suggested.) The disclosure is a two-phase process. First the disclosure must be made orally, and second the disclosure must be made in writing.

A. Requirements of Disclosure:

1. *Oral disclosure* must be made at the time of your *first substantive discussion about a property*, and
2. That disclosure shall be *confirmed in writing* at the *earliest practical time, but in no event later than the time when specific real estate assistance is first provided.*

B. Why is disclosure required?

Disclosure of whom you represent in a transaction has been required since 1989. A "customer who is not represented by another agent is assumed not to have been informed about the duties of a real estate agent". Such a "customer" has the right to be informed that:

1. You are not working for them, and
2. That your duty is to represent the best interest of your client.

C. What are the two-phases of the disclosure process and how do they work?

1. **Oral Disclosure.** – The law specifically tells us that if we are talking with a buyer or seller (1) who is not our client, and (2) who is not represented by another agent,

we must disclose to that buyer or seller any existing relationship we have at the time of the first substantive discussion about a specific property.

“At the time of first substantive discussion about a specific property”, what does that mean?

The phrase is often misunderstood.

a. It doesn't necessarily mean that you have to disclose that you are working for the other party when you first speak to them because

i. Your first discussion might not be substantive, or

ii. Your discussion might not relate to a specific property whose owner your company represents.

b. When a customer not represented by another agent contacts you about a specific property for whom you or your company represent the owner.

i. You must first orally disclose your existing brokerage relationship.

ii. You must tell the customer that you are

a) Working for the owner of that property and,

b) That it is your duty to represent the best interest of that property owner.

c) However, you can tell the customer that even though you are representing the property owner, you must treat them, the customer, honestly.

iii. Caution, when somebody contacts you about a specific property (e.g. sign call, ad call, open house, etc.) do not discuss the possibility of “Dual Representation”.

c. However, the issue is particularly important to understand with respect to

i. Ad calls,

ii. Sign calls, and

- iii. Open Houses for properties listed with your company, and
 - iv. For Sale By Owners (FSBO's) when you represent a buyer.
- d. In these situations your first contact with a customer not represented by another agent will probably
- i. Involve a substantive discussion about a specific property, and
 - ii. The contact represents specific real estate assistance

2. **Written Confirmation of Brokerage Disclosure, The Second Phase.** – After you have orally disclosed to a customer that you represent the other party in the transaction, you are required to present a written confirmation of that disclosure at the earliest practical time, but in no event later than the time real estate assistance is first provided.

a. “Earliest practical time” will vary in each case. In one situation it may involve faxing the confirmation (often accompanied by other materials). In other situations it may be when you first meet the customer face to face.

i. This might happen when you are showing properties resulting from

a) Ad calls,

b) Sign calls,

c) Open Houses for properties listed with your company, and

d) When a buyer's agent shows a FSBO as discussed above.

ii. If a customer refuses to sign the written confirmation, then you should

a) Note on the form that they refused to sign,

- b) Give them a copy of the form, and
- c) Keep a copy for your records.

In a Rental Transaction the written disclosure must be included in the application or the lease, whichever is executed first.

NVAR has produced a form entitled “Disclosure of Brokerage Relationship” that was designed to satisfy the requirements for written confirmation of brokerage relationships.

D. Summary

Failure to comply with the disclosure requirements may cause you to become an undisclosed dual agent...Undisclosed dual agency, whether intentional or not, is illegal.

What to do when events take over & procedures aren't followed.

As discussed in the foregoing material, a Brokerage Relationship is a contractual relationship and it should be in writing. And the Brokerage Relationship must be disclosed at the time of your first substantive discussion about a property and confirmed in writing at the earliest practical time, but in no event later than the time when specific real estate assistance is first provided. However, “should be” and “must be” don’t always happen. Moreover, Virginia Law recognizes oral contracts for agency relationships. If you find yourself in a situation where your words or actions may have placed you into an unwritten contractual arrangement, you need to protect yourself so that you don’t become an undisclosed dual agent. It is difficult to discuss all the possible ways this can happen. But the procedure for handling it is the same as when buyers want you to represent them but they will not sign the Exclusive Right to Represent Buyer Agreement. If this occurs, you must have the buyer sign the *Disclosure of Brokerage Relationship* form acknowledging that you represent them, the buyer. And the seller must also sign the *Disclosure of Brokerage Relationship* form acknowledging that you represent the Buyers in the transaction.

III. Personal Assistants

A growing trend in today=s market is the use of personal assistants by REALTORS®. It is important for REALTORS® to be aware of the differences between licensed and unlicensed personal assistants. State law restricts the practice of certain activities which are considered the practice of real estate@ without an appropriate license (Salesperson or Broker). Anyone with an active Real Estate Salesperson license from the Virginia Real Estate Board (VREB) who works in an administrative capacity with a REALTOR® would be considered a licensed personal assistant. Employees with an inactive license (not currently hanging with the broker) or who

have never been licensed as a Real Estate Salesperson would be considered an unlicensed personal assistant.

A. A licensed personal assistant may perform any of the following tasks which are defined as the practice of real estate in Virginia (Code of Virginia 54.1-2101).

1. Sell or offer to sell real estate
2. Buy or offer to buy real estate
3. Negotiate the purchase, sale or exchange real estate
4. Lease, rent or offer to rent real estate
5. Negotiate leases for real estate

B. Unlicensed personal assistants are restricted in the activities they may perform in relation to real estate transactions. The VREB issued a few suggested do's and don'ts for personal assistants who are not licensed as a real estate salesperson.

1. **DO**

- a. Submit the listings to the Multiple Listing Service (MLS) and update the listings as necessary.
- b. Follow up on loan commitments after contracts have been negotiated.
- c. Have keys made for listings.
- d. Place signs on the property on behalf of the agent and broker.
- e. Act as a courier service.
- f. Record and deposit earnest money, security deposits and advance rents.
- g. Prepare contract forms (with the approval and under the supervision of the agent and supervising broker).
- h. Prepare promotional materials and advertisements.

2. **DO NOT**

- a. Show property.
- b. Answer questions on listings, titles, financing, closings or the transaction.
- c. Explain or discuss with anyone outside the firm a contract, listing, lease, agreement or other real estate related documents.
- d. Compensate assistants on the basis of real estate activity that would be based on a percentage of commission or on any amount based on listings or sales.

C. Access to the listing property by personal assistants

Personal assistants using a Personal Assistant Sentricard® to access a listing through the Lockbox are restricted in the access they are permitted to a listing property. The Lockbox Rules and Regulations only allow personal assistants to access properties listed by the agent or broker they work for. The personal assistant may only access a listing property for the reason(s) that are provided to the listing agent.

REALTORS® can not loan or allow their personal assistants to use the REALTORS® Sentricard® to access the property. This is a violation of the Lockbox Rules and Regulations which may result in a fine, suspension or termination of Sentricard® privileges.

D. Compensation of Unlicensed Personal Assistants

The general rule is that compensation to unlicensed personal assistants should be based upon actual work performed, not on the amount of commissions earned by the licensee. Payment for work performed may not be contingent upon receipt by the licensee of a commission. Nor is it recommended that payments to unlicensed assistants be computed as a percentage of earned commissions. The recommended practice is to pay assistants directly for work performed on a regular, recurring basis in the manner of either a regular salary or an hourly wage. As with any salaried or hourly employee, bonuses may be paid based on actual profits as calculated according to generally accepted accounting practices. Care should be taken to maintain accurate supporting records to substantiate that the bonus is truly Aprofit based@ and not merely transaction-specific commission splitting. Seeking advice and guidance from an experienced accountant in managing your employee records is highly recommended.

IV. LISTING PROPERTIES FOR SALE

A. Listing Procedures

1. **Completeness and Accuracy of Information** - Do not present listing agreements to potential sellers for signature unless the terms of the agreement are completely filled in. Always get all pertinent and current information; double check all information, then enter it on the proper form.
2. **Tax Records - Ownership** - Verify with the owner the names and marital status of the sellers. Have there been any deaths, divorces or marriages since title was taken? Ask the sellers to provide you with a copy of the most recent title insurance policy and survey of the property if available. Make sure that you have all property owners sign the listing agreement - check with your manager if in doubt.
3. **Existing Deed(s) of Trust & Liens** - Verify the number of trusts and balances, the amount of the payments and what they include. Who is the current note holder? Ask if there are any liens attached to the property. Verify assumption fees and terms on all trusts, loan origination dates, and loan numbers. Send requests signed by the sellers to lenders for confirmation of the loan statement. Verify prepayment penalties or the necessity of a written notice of intent to sell that must be given in lieu of number of days or month's interest charges. Alert the sellers of the need to present clear title at settlement. Add all loan balances, accrued interest and/or other liens

along with brokerage fees, discount points, and closing costs to insure that the seller will have sufficient proceeds or cash available to pay all charges against the property at settlement. Special pay-off rules apply to FHA loans - alert the sellers to contact the lender for their requirements.

4. **Legal Description** - Determine lot size and, if possible, obtain a copy of a plat. Determine any easements, variances or other limitations on the full use of the property. With condominiums, the unit number and parking space number are a vital part of the legal description.
5. **Room Sizes** - Measure all rooms. Never depend on former or existing MLS data, the owner's calculations or the builder's floor plan.
6. **Items to Convey** - Identify what specific items convey with the property. Identify what will be removed or replaced. Request sellers tag those items that do not convey.
7. **"New"** - is defined as never having been used; otherwise state the date of installation for appliances, carpets, etc.
8. **Well and Septic** - If the property is on well and/or septic, advise the sellers that both must pass an inspection. Call county or city officials immediately for verbal verification of capacity of the septic field with respect to the number of bedrooms and any other factors that would influence approval of the system by governing authority. Septic systems should be inspected, if possible. However, the lenders may require a new inspection if the first inspection is more than 30 days old at settlement and this should be checked with the lender. If the house is vacant, the new owner may be required to live in the home for at least 30 days before a new inspection can be done. A private company inspection may be permissible. Well inspections should not be made until 30 days before settlement although this should be checked with the lender. Many septic fields are approved to accommodate fewer bedrooms and/or equipment (for example: washer and disposal) than the house actually has. The listing must clearly indicate septic field limitations!
9. **Water and Sewer Hook-Up Charges** - If sewer and water are available in the street, obtain a written statement from proper authorities that hook-up fees have been paid, and if not, obtain a statement of the costs. This may greatly affect the seller's net when the property is sold.
10. **Heating System(s)** - It is difficult to identify the different types of heating systems. Do not rely on the sellers' opinion. Have the sellers verify the type of heating and/or cooling system and whether there is a heat pump present. If not certain, have them copy down any make or model number and check with a distributor of that product.

11. **CAC** - This denotes central air conditioning throughout all finished areas of the whole house, not only the living and sleeping areas. Any finished areas not supplied with air conditioning should be noted.
12. **Property Adjoining Park Land** - Verify with the planning division of the appropriate jurisdiction that the adjoining land will remain devoted to park land before entering that information in the computer or advertisements.
13. **Finished Wood Floors** - Don't take the owner's word! Check it yourself! Often, selected rooms have finished wood floors, while others in the same house do not. Therefore, beware of the remark "hardwood floors throughout."
14. **Installed Wall-to-Wall Carpeting** - Some area rugs give the appearance of wall-to-wall carpeting. Check to see if they convey.
15. **Get to know condos and HOA's** - For resales of Condominiums or homes in Property Owners' Associations, the Virginia Condominium Act and the Property Owners' Association Act require certain disclosures to the buyer at the time of resale.

The seller should be instructed on pertinent points, or asked to provide certain data, including:

- a. Sellers' responsibility to provide and pay for the Condominium Unit Owners' Association and/or Property Owners' Association required disclosure documents.
- b. Buyers may sign a contract before receiving the required disclosures. The seller should be reminded that the buyers may cancel the contract without penalty anytime prior to approving the disclosures.
- c. Condo or Homeowners fees (exact amount; what is included - ask the sellers and the association).
- d. Amenities, any restrictions on pets, parking, exterior changes, etc.
- e. If project is approved for various loans, e.g., VA, FHA, VHDA, or FNMA including owner occupancy/investor ratio.
- f. Management names and telephone numbers.
- g. Any special regulations, covenants or special assessments.
- h. The cost of and requirements for obtaining the disclosure package.

- i. Move-in requirements for condos, such as time restrictions or elevator fees.
 - j. Parking rules, space numbers, etc.
 - k. If violations are cited in the documents, the seller must make the repairs/corrections prior to settlement.
16. **Special Requirements** - All terms and special requirements of the sellers should be clearly stated in the listing agreement.
17. **Private Exclusive Listings** - Check with your manager - each office will have specific policies and procedures relating to private exclusive listings.

B. Other Advice to Sellers - The listing agent should use the following guidelines:

- 1. Define for the sellers the discount points, loan origination fees and any other possible charges that may be included in the sale.
- 2. Have the sellers sign the net sheet and retain one copy for your file. Leave a copy of the net sheet with approximate costs, noting the approximate balance due at settlement.
- 3. Provide the sellers with a sample copy of the current suggested Sales Contract and any standard sales contract addendum for the sellers' review.
- 4. Discuss how the sellers' pets should be handled during the showing of the property.
- 5. Remind the sellers not to discuss information concerning the listing with cooperating agents or buyers, but to refer them to the listing agent.
- 6. Discuss contract presentation procedures with the sellers. Discuss with the sellers how the sellers wish to handle the presentation of any offers.
- 7. Advise sellers to notify their homeowner's insurance company before the home becomes vacant. It is good practice for the listing agent to contact neighbors to ask for their assistance in watching a vacant property. Remind the sellers of their continued responsibility to maintain the vacant property (mow the lawn, etc.).
- 8. Explain lockbox procedures. Advise sellers to lock all doors when they are away. Remind sellers not to leave money, purses, wallets, jewelry, valuables, weapons, credit cards, prescription drugs, etc. exposed. This is good practice whether there is a lockbox or if the property is shown by some other method. The listing office should consider making an extra set of keys and keeping them in a secure place.

9. As the listing agent, you may want to be present during any post-contract inspections of the property by the buyers, such as home inspections or final pre-settlement inspections, to ensure that the seller is properly represented.
 10. Sellers must have utilities on up to and including the settlement date unless the buyer occupies the property prior to settlement.
 11. Advise sellers of disbursement procedures following settlement required by Virginia law and of requirements for recordation prior to disbursement. Funds sometimes are not available for up to three business days following settlement. In most cases, however, the funds are available the next business day after settlement.
- C. MLS Procedures** - All "For Sale" or "For Rent" listings that require placement in a Multiple Listing Service must be entered into the MLS in accordance with the current Rules and Regulations outlined by the appropriate MLS in which you hold membership.
- D. Compensation** - All listings published in the MLS must clearly indicate the compensation offered to cooperating Participants and shall not reveal the total compensation payable when the listing is sold. The compensation specified may be shown in one of the following forms:
1. By showing a percentage of the gross selling price.
 2. By showing an exact dollar amount.
 3. By showing the specific conditions under which bonuses or other offers are made.
- E. MO, Modified Listings** - You must indicate via MLS a modified listing agreement such as, but not limited to:
1. The exclusion of certain potential buyers the owner may have previously contacted.
 2. A different gross compensation being paid if the listing company sells the property in-house (Variable Rate Commission)
- F. Open Houses** - Guidelines and precautions:
1. If possible, work as a team. Use the buddy system.
 2. Keep directions to the property precise. Open house directional arrows should be placed in accordance with local ordinances.

3. Be sure your family and fellow agents know where you are and the hours of your open house.
4. Keep the doors locked and greet prospective visitors as they arrive.
5. Never abandon an open house to show other properties and do not close an open house early.
6. Accompany all visitors through the house. Do not let them wander on their own.
7. Allow all visitors to enter a room before you do.
8. Have prospective buyers "sign-in", acknowledging your brokerage relationship and agency representation with the sellers which is disclosed on your sign-in sheet.
9. Provide copies of the property condition disclosure or disclaimer form and, if applicable, all required lead-based paint disclosure forms.
10. Do not wear valuable jewelry while sitting at an open house.
11. Do not schedule an open house after dusk.
12. Always have someone check on you while sitting at an open house.

V. REQUIRED STATUTORY DISCLOSURES

This is a brief overview of the relevant disclosure law as of July 1, 2008. Please refer to the most current version of the NVAR Virginia Jurisdictional Addendum, any other relevant NVAR addenda and NVAR bulletins for specific provisions, time frames, deadlines, rights, and obligations relating to the law for the current year. Should you have any questions or doubts, please be sure to consult your broker.

- A. Virginia Condominium Act** - The sellers of a condominium unit, at their own expense, must obtain a resale certificate ("Certificate") from the unit owner's association and provide it to the buyer. The certificate must contain certain financial information and other disclosures which shall be current as of the date stated on the Certificate. The association is required to prepare the certificate within 14 days of the written request. Listing Agents are advised to have the Certificate ordered immediately after completion of the Listing Agreement. The Listing Agent should then follow-up to see that the Certificate is obtained and promptly provided to the buyer.

Upon delivery of the resale certificate by the method and to the address designated by the

buyer, a receipt should be signed indicating the time and date of delivery. After receipt of the Certificate a buyer has a limited period of time to (i) to cancel the contract for any reason or no reason, or (ii) to submit to the association the necessary fees, documents and written request for either written assurances that the information in the Certificate remains materially unchanged or a statement listing any material change(s). The association is required to provide this update upon request. There is no right of cancellation of the contract upon receipt of an update.

Any buyer cancellation allowed under the contract should be done by delivering Notice to the seller within the time allotted. If the contract is cancelled both sides should promptly sign a release form. After settlement the buyer loses both the right to receive the Certificate and the right to cancel the contract based on these disclosure issues.

- B. Virginia Property Owners' Association Act ("POA Act")** - If there is a mandatory homeowners' association then the property is generally subject to the POA Act. The sellers of a property within a development subject to the POA Act must, at his or her own expense, obtain an association disclosure packet ("Packet") from the association and provide it to the buyer. The packet must contain certain financial information and other disclosures which shall be current as of the date stated on the Packet. The association is required to prepare the Packet within 14 days of the owner's written request. Listing Agents are advised to have the Packet ordered immediately after completion of the Listing Agreement. The Listing Agent should then follow-up to see that the Certificate is obtained and promptly provided to the buyer.

Upon delivery of the Packet (or Notice that the Packet will not be available) by the method and to the address designated by the buyer a receipt should be signed indicating the time and date of delivery. After receipt of the Packet or Notice of non-availability a buyer has a limited period of time (i) to cancel the contract for any reason or no reason or (ii) to submit to the association the necessary fees, documents and written request for either written assurances that the information in the Packet remains materially unchanged or a statement listing any material change(s).

Any buyer cancellation allowed under the contract should be done by delivering Notice to the seller within the time allotted. If the contract is cancelled both sides should promptly sign a release form. After settlement the buyer loses both the right to receive the Packet and the right to cancel the contract based on these disclosure issues.

- C. Possible Filing of Mechanics' Lien** - Persons who perform labor or furnish material for the construction, removal, repair or improvement of any building or structure have the right to file a lien against the property. This lien may be filed after title has passed to a new owner. Verify with the seller that all debts have been satisfied, and if not, verify that arrangements have been made for payment of any outstanding debts. The seller should be prepared to sign an affidavit at settlement that the seller has paid all contractors and

suppliers.

D. Virginia Residential Property Disclosure Act - Unless exempt, a seller of residential property must provide a "Residential Property Disclosure Statement" to the buyer. The disclosure statement requires the seller to disclose that he or she makes no representation about a certain number of items pertaining to the property. *Be sure to have the sellers and buyers read and initial a copy of the "Summary of the Rights and Obligations of Sellers and Buyers Under Virginia's Residential Property Condition Disclosure Act."* You will have fulfilled your duties under the act by informing your client and, in the case of a buyer not represented by an agent, the buyer, of his or her rights and obligations under the act. The disclosure statement form notify the buyer that the seller makes no representations with respect to adjacent parcels, that the buyer must exercise whatever due diligence that buyer deems necessary with respect to adjacent lots, and that the buyer must exercise whatever due diligence the buyer deems necessary with respect to information on sexual offenders registered with the state.

1. **Exemptions** - The disclosure act exempts, among other things, judicial sales; foreclosure sales; transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust; transfer from one or more co-owners solely to one or more other co-owners; transfers made solely to any combination of a spouse or a person(s) in the lineal line of consanguinity of one of the transferors; transfers between spouses resulting from a decree of divorce or property settlement; transfers made by owner's failure to pay federal, state, or local taxes; transfers to or from any governmental entity of public or quasi-public housing authority or agency; and transfers involving the first sale of a dwelling (subject to disclosure of all material defects that are in violation of any applicable building code). Seek advice from your manager or a lawyer if you and the seller are not sure whether the property is exempt.
2. **Receipt and Delivery of Disclosure** - The lister must obtain from the seller a signed disclosure or disclaimer form along with the signed listing agreement. The disclosure must be signed by the buyer before contract acceptance. The appropriate form should be available at the property. If the selling agent does not have the form, the listing agent must deliver the form to the selling agent to get the buyer's signature prior to acceptance of the contract. If any disclosure changes at any time before settlement, the seller must complete an updated disclosure and provide it to the buyer.
3. **Cancellation of the Contract** - If the buyer receives the disclosure after contract ratification, then the buyer may cancel the contract by the earliest of the following:
 - a. Three days after hand delivery

- b. Five days after the postmark if mailed
- c. Settlement
- d. Occupancy
- e. Execution of a written waiver
- f. Loan application where the application discloses that the right of termination shall terminate with application.

The buyers do not have to give a reason for canceling. The buyers must cancel in writing, by signing and delivering a release, before the expiration of the above deadline. The buyer may waive the right to terminate the contract, but any waiver must be in a written document separate from the contract.

Regardless of owner compliance with the Virginia Residential Property Disclosure Act, under Chapter 21 of 54.1, Code of Virginia a licensee shall disclose to all parties all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee.

E. Disclosure of Lead-Based Paint and Lead-Based Hazards

- 1. **Housing covered** - Most private housing, public housing, Federally owned housing, and housing receiving Federal assistance are affected by the rule if they were built before 1978.
- 2. **Housing not covered** -
 - a. Housing built after 1977.
 - b. Zero-bedroom dwellings, such as efficiencies, studio apartments, and rentals of individual rooms in dwellings.
 - c. Short term leases of 100 days or less where there is no possibility of renewal or extension.
 - d. Housing for the elderly or persons with disabilities, unless any child who is less than 6 years of age resides or is expected to reside in the dwelling.
 - e. Leases of target housing that have been found to be lead-based

paint free by a certified inspector.

f. Renewals of existing leases in which the landlord previously disclosed and possesses no new information or records.

g. Foreclosure sales (sale of a property by the Trustee)

3. Sellers, landlords and real estate licensees share responsibility for ensuring compliance with the law. Accordingly, both the parties and the agents involved must sign the lead-based paint statement and disclosure form. A buyer (not a tenant) has a 10-day or other mutually agreed upon period of time in writing to conduct a lead-based paint inspection or risk assessment at the buyers expense or the buyer may waive the opportunity for the inspection or risk assessment. The law gives the two parties the flexibility to negotiate key terms of the evaluation. The law does not require any testing or removal of lead-based paint by the sellers or landlords.

Persons who knowingly violate the requirements of the lead-based paint law may be liable to the purchaser or tenant in an amount equal to 3 times the actual damages, plus court costs, reasonable attorneys' fees and expert witness fees. Licensees who fail to retain a copy of the completed lead-based paint disclosure documents in the brokerage files may be subject to a fine of up to \$10,000 per violation.

F. Consumer Real Estate Protection Act (CRESPA) - A contract for the sale of real estate containing not more than four residential dwelling units must contain the CRESPA disclosure, found in the Virginia Jurisdictional Addendum. The CRESPA disclosure notifies the parties of the right to choose a settlement agent, defines the role of the settlement agent, and notifies the parties of the availability of guidelines published by the Virginia State Bar to prevent the unauthorized practice of law.

VI. SHOWING PROPERTIES

A. Procedures, Courtesies and Precautions

1. Make every effort to accompany your prospective buyers to open houses, new homes projects, etc.
2. **Check Accuracy of Information.** Make sure that the information about the properties you plan to show is correct prior to showing. Print out a copy of the current MLS listing for the Property. Prior to showing, examine the listing status in the computer for compensation, price or status changes and showing instructions. If possible verify with the listing agent directly the availability of the property before showing and/or writing a contract for your client.

3. **Make Appointments to Show.** Always make an appointment with the occupant. Try to give as much notice as possible. If you cannot keep an appointment, call the occupant at the earliest possible time to cancel or reschedule.
4. **Listing Company Obligations.** The listing company should provide all pertinent information and promptly indicate the current status. Listing companies should reveal to other REALTORS[®] whether offers have been registered or are in the counter-offer stage. Price and other terms should not be revealed, however.
5. **Identify Yourself.** Always identify yourself, your firm, and your agency status when calling about a property.
6. **Actions While Showing.** Leave the property as you found it, i.e., doors locked or unlocked, lights off or on, pets in or out. Do not smoke when showing the property or permit prospects to smoke in the property. Do not allow the prospect or the prospect's children to wander through the property unattended. Stay with the prospect as long as the prospect is at the property.
7. **Discussion of Terms.** Do not discuss terms with the sellers when showing property. These should be discussed only with the listing agent.
8. **Business Cards.** Always leave a business card each time you show or preview a property whether it is vacant or occupied. This alerts the listing agent or seller that someone was in the property. If you are acting as a buyers' representative, your business card should indicate this. Do not leave a personal brochure.
9. **Information on the Listing Handout.** If information represented on the listing handout appears inadequate or incorrect, make no derogatory remarks to the prospects or the sellers. Call the listing agent for clarification if necessary.
10. **Contacting the Seller.** Never contact the sellers directly without the permission of the listing company, except to show the property. Instruct the prospective buyers not to contact the sellers directly either.
11. **Seller's Castle.** Never disparage a seller's home in the seller's presence.
12. **Note Problems at the Property.** Promptly notify the listing agent or listing broker of any problems you encounter at the property. Examples:
 - a. Leaking pipes (cut off the water if possible)
 - b. Heat off when cold outside

- c. Lockbox problems (not there, no key, jammed, etc.)
 - d. Hostile pet or tenant
 - e. Flooded basement
 - f. Broken window(s)
 - g. Evidence of vandalism, etc.
13. **Condos. Familiarize Yourself With Issues Involving Condo Transactions.**
- a. Common elements
 - b. Condo fee and what it provides; any special assessments
 - c. Amenities
 - d. Changes to the interior that may not have been authorized
 - e. Restrictions - pets, age restrictions, rentals, parking, etc.
 - f. Owner Occupancy/Investor Ratio

B. Suggested Safety and Security Procedures

1. Meet prospects at your office. If this is not practical, agents and prospects should meet at a branch office or any other real estate firm in the vicinity of the listings to be shown.
2. A Safety Log should be maintained in the office for all agents to complete each time they go out to view properties with a prospect. Information could include: date, destination, agent's name, prospect's name, car make, model, year, and color. If you don't use a safety log, always tell someone where you are going, with whom, and when you expect to return.
3. All offices should maintain a current list of their agents' vehicle information as suggested in the Safety Log above.
4. Use extreme caution should you decide to meet prospects at any property. When showing, allow prospects to enter the room first. This reduces the chance of your being pushed into a room and the door being closed behind you.

5. Avoid meetings and property showings at potentially unsafe times. Agents should consider their own safety and the safety of their prospects when arranging for meetings and showings. The times considered safe or unsafe may vary widely depending upon the circumstances. Generally, agents might try to schedule showings of vacant properties at times when neighbors are likely to be at home, and bring along another agent for after-dark showing of properties or for showing vacant properties at any time of the day.
6. Use your own car to show properties and do not ride in the prospect's car.
7. When unusual or suspicious incidents occur during the course of business, agents should report them immediately to their own offices, the police, neighboring offices or new home subdivisions and/or NVAR.
8. Member offices should be maintained in a safe and secure manner to promote the safety of their agents. Use of the following should be considered: door locks, proper lighting, peep holes, and mail drops. Crime prevention officers at the local police departments are available to perform an individual safety walk through for offices.

VII. Writing the Contract

The agent should choose the forms appropriate to the property and the purchase and should go over the contract, and all addenda and attachments thoroughly to ensure that the buyer(s) understand the implications to them of the documents that they are signing. All offers should be in writing on the most current NVAR Forms, signed by all buyers and with the appropriate earnest money deposit. It is helpful to write the contract in the Agent's office, with the availability of copiers and fax machines.

- A.** The agent should make copies for the buyer(s) of every document that they sign, including the deposit check. The contract package should include the following:
 1. Regional Sales Contract
 2. Virginia Jurisdictional Addendum
 3. Residential Property Disclosure Statement
 4. Proof of Financial Capability
 5. Copy of the Earnest Money Deposit

B. The following may also be included in the contract as needed:

1. NVAR Contingencies/Clauses Addendum
2. Lead Base Paint Sales Disclosure
3. Lead Based Paint Contract Addendum
4. Other Addenda as needed

VIII. PRESENTING THE CONTRACT

A. Check the Status of the Listing – Print out a copy of the current MLS listing just prior to writing the offer. This confirms the availability status as well as confirming the compensation being offered. Retain this copy in the case file.

B. The buyer's agent should contact the listing agent to ascertain the manner in which a contract may be presented. Presentations may be made in person, by telephone, or by fax. (If the contract is to be faxed, a "fine" setting on the fax machine should be used to preserve legibility of the documents.) If the listing agent can not be reached after concerted efforts, the agent may contact the sales manager or broker of the listing firm to arrange for a presentation. It is suggested that in-person presentations be held in the listing broker's office. Professional courtesy requires that everyone be on time for all appointments.

Generally, the buyer (or the seller) may withdraw a contract or addendum at any time prior to Ratification and Delivery. This withdrawal should be in writing and should be accomplished by Delivery of Notice to the other party prior to receipt of notice of ratification.

The procedures for presentations should be in accordance with the desires of the sellers. The listing agent will conduct the contract presentation, and may allow the buyer's agent to present and explain the offer, unless the sellers request otherwise or unless it is a multiple offer presentation.

Listing agents should review the offer to ensure it is drafted on current NVAR forms. All purchase offers on forms other than NVAR forms should be carefully reviewed by the seller and perhaps reviewed by seller's legal counsel.

The listing agent should provide the seller with a seller's closing cost sheet showing net proceeds, along with other terms and conditions, for each offer. Listing agents should explain the implications of the terms of the contract(s) and may give advice, but should not give legal or tax advice. The seller finally determines decisions regarding contract terms

and acceptance.

- C. Presentations of Multiple Offers** - Multiple offers should be presented in the order that they have been registered. Unless the seller objects, the listing agents should notify all buyer's agents, as soon as possible, of the existence of multiple offers.

If the sellers wish to accept and/or counter more than one contract, the listing agent must make certain that the parties have written notice as to which are primary or backups, and how or when their position may be changed. Agents should neither make nor rely on oral representations. Any contract(s) ratified by the seller should be immediately forwarded to the appropriate buyer's agent. Those contracts not accepted by the seller should be returned to the appropriate buyer's agent immediately and marked appropriately.

- D. Company Policy** - The listing agent will conduct the contract presentation according to listing company policy and the desires of the sellers. Selling agents should not try to enforce their own company's policy on others involved in presentations. However, this does not preclude suggesting changes for the protection of the various parties.

- E. Counter-offers** - If a counter-offer is made by the sellers, have the sellers date, time, sign and initial the original with each change noted. Leave a copy with the sellers and immediately present the counter-offer to the buyers.

Time is of the essence. The agents are responsible for prompt follow-up on all counter-offers. If the counter is accepted, all initials should be executed in the proper place with the date of ratification indicated. The agent for the other party should be immediately notified, and then the agent should immediately notify his or her client. If any counter-offer is not accepted by one party, the other party and his or her agent must be notified immediately. "Rejected" should be written across the face of any rejected offer, and should be dated and signed. Copies should be delivered to all parties.

- F. Ratification** – Ratification occurs when final acceptance in writing of all the terms of the contract is delivered to the party that presented the last offer (or counter-offer), not the date of expiration or removal of any contingencies. Listing agents should immediately notify all selling agents of the status of their offer. Because the contract is not a legally binding document until it is both ratified and delivered, copies of the accepted contract (ratified) must be delivered to all parties immediately, preferably on the same day the contract is ratified.

IX. PROCESSING THE CONTRACT AND SETTLEMENT

- A. MLS Procedures.** As soon as a contract is accepted, the listing agent should promptly change the status of the listing in the MLS. If the settlement date in the sales contract is beyond the expiration date, the listing agent should get written permission from the seller to extend the listing agreement beyond the settlement date. If the sale is not consummated, and the listing has not expired, return it to an available status.
- B. Processing Procedures.**
- 1. Changes to the Contract.** After a contract has been accepted by all parties, never make any changes to the agreement except by amendment. Any deletions, additions, changes or extensions must be agreed to in writing and signed by both the sellers and buyers in order to be in effect. The changes must be dated and copies must be immediately delivered to all parties to the transaction.
 - 2. Earnest Money Deposits.** Earnest money deposits should be deposited immediately following contract acceptance even if some contingencies remain, unless the parties direct otherwise in writing.
 - 3. Promissory Notes.** When a promissory note is used as the earnest money deposit, the broker holding the note must notify the seller through the listing broker when the note is redeemed. If not redeemed when due, the broker must notify the seller immediately in writing.
 - 4. Condominium and Property Owners' Association Disclosures.** Follow up to ensure delivery of a complete set of the condo or property owners' association disclosures to the buyers at the place designated for delivery in the contract. Obtain a written acknowledgment of delivery or receipt of condo or POA disclosures and add it to the case file with the contract. You may be asked to obtain an endorsement to a condo association's master insurance policy. This may be obtained from the Condo Association's management company. You should review the documents for any pending assessments or property condition violations.
 - 5. Release of Sales Contract.** The buyers and sellers must execute a written release to cancel a contract that was previously accepted. *Prior to finalizing the release, a review should be completed regarding fee services performed that may not be assigned to a subsequent contract, e.g. H.O.A. or condo documents, title abstract, survey, termite inspection, etc.* When all copies have been signed by and delivered to all parties, the earnest money should be disbursed in accordance with the terms of the release.
 - 6. Responsibility of the buyer's agent & listing agent.** Unless otherwise agreed to, it is the obligation of the buyer's agent to forward the contract to the settlement agent. See that the buyers take immediate steps to make loan application, and arrange any buyer inspections (home inspection, radon, lead-based paint, well & septic, termite, etc.). The

listing agent and buyer's agent should cooperate in ordering the appropriate inspections (well & septic, termite, etc.) if called for in the contract.

Note: Full communication between the agents, and through them with the sellers and buyers, will prevent confusion and duplication of effort. Keep everyone advised of the status and progress of the case. All amendments, addenda, limited access agreements or releases, etc. should be prepared *promptly* and delivered in accordance with the contract.

7. **Power of Attorney.** If any party is not going to be at settlement, the agent should notify the settlement agent and the lender well in advance. The Power of Attorney needs to be prepared, pre-approved by the settlement agent (and also by the lender if the buyer is not present) and sent to the appropriate parties to be signed, notarized, and the original returned prior to the settlement date. Unless they are an Attorney or a principal in the transaction, agents should not prepare a power of attorney for their clients since this could constitute the unauthorized practice of law.

Note: Check with your manager before agreeing to act via a Power of Attorney to sign papers on behalf of your client.

8. **Time and Place of Settlement.** The buyer's agent should coordinate the date, time and place of settlement with all parties.
9. **Utilities.** The buyers should be advised by the buyer's agent and the sellers by the listing agent to have all utilities changed to the buyers' name as of the day of settlement or occupancy. Seller must have all utilities on for all inspections including the walk-through. If the settlement date is changed the shut off date for all utilities should be adjusted accordingly.
10. **Insurance.** The selling company should advise the buyers to obtain insurance in accordance with the lenders requirements. Have the buyers check with the lender for the wording of any endorsements and also for the date by which the lender must receive the policy and/or binder and receipt. *The listing agent may want to advise the sellers not to cancel their present hazard insurance policy until several days after the projected settlement date.*
11. **Access to the Property.** At no time are the buyers to be given a key for access to the property without written permission from the sellers (NVAR recommends using the *Purchaser's Limited Access to Premises Agreement* or the *Purchasers' Pre-Settlement Occupancy Agreement*). The buyers should not be allowed entry to the property prior to settlement unless accompanied by an agent with the permission of the sellers through the listing agent. The sellers should be reminded by the listing agent to be completely out of the property prior to the time of settlement, unless there is a written, post-

settlement occupancy agreement.

12. **Buyers' Funds.** The buyers should have the balance of the down payment in either a cashier's or certified check, or bank wired funds by settlement. Notify the buyers to check with the settlement agent regarding the amount and form of payment of closing costs *and to whom to make the check payable*. If the buyers are to use a letter of assignment, written agreement must be obtained from the sellers prior to settlement. Notify the settlement agent that the buyers will be bringing a letter of assignment to settlement. *If the buyers' earnest money deposit is greater than the commission due the selling company, ensure the excess amount is forwarded to the settlement agent prior to closing.*
13. **Keys to the Property and Parking Passes.** Transfer of keys and parking passes to the property should be made from the sellers to the buyers at settlement. In the event of a post-settlement occupancy agreement, the buyers are entitled to one or more keys and parking passes for access during the occupancy period. *As appropriate, the listing agent should remind the sellers to bring the mail box, storage room and laundry room keys as well as any garage door remotes and parking passes.*

C. Pre-Settlement Walk-Through Inspection. It is the duty of the selling company to arrange with the listing company a complete checkout (walk-through) of the property by the buyers prior to settlement, for the protection of both the buyers and the sellers. It is incumbent upon the buyers to be satisfied that all equipment, as addressed by the contract, is in normal working order. The buyer's agent must accompany the buyers on the inspection and may provide a checklist (NVAR recommends using the *Walk-Through Inspection* form), to guide them, but should not perform the inspection.

1. If there were complicated or extensive repairs to be completed, the buyers may want to consider employing a home inspector or appropriately certified technician to confirm the repairs were satisfactorily completed.
2. Try the existing appliances, heating, cooling, plumbing, electrical, systems, and equipment and smoke and heat detectors.
3. Try all lights and switches.
4. Try the furnace and the central air conditioning (note: in cold winter weather, operating the air conditioning unit may damage the system. It is suggested that a professional company be employed in cold weather to certify proper function).
5. Test high, low and medium heat switches on stove burners, the oven at bake and broil, and the rotisserie and the self-cleaning oven, if any.

6. Check the sink disposal by running ice cubes through the blades.
7. Try everything, including keys and request missing or replacement keys.

D. Other procedures

1. When the inspection has been completed, have the buyers sign a walk-through inspection report, noting any deficiencies. Immediately notify the listing agent *and the settlement agent* of any walk-through deficiencies. Any deficiencies should be resolved between the parties. If there are walkthrough items to be negotiated or discussed prior to closing, the agents should attempt to mediate a successful resolution prior to coming to the table. One copy should be given to the buyers, the sellers, the settlement agent and the listing agent and one retained for your records.
2. If funds are withheld for repairs, written agreement should be reached as to whose responsibility it is to see that the repairs are taken care of immediately and all bills taken to the settlement agent. The settlement agent should be notified in writing when the repairs are completed so that the sellers can be given the balance of funds due them.
3. When there is a post-settlement occupancy agreement, a preliminary walk-through inspection should be done shortly before settlement. A final walk-through inspection should be done promptly, after the seller has vacated the property. The selling agent should deliver the final signed copies to the settlement office, listing agent and the parties in order to speed final release of sellers' security deposit.

E. Settlement. Settlement should be an enjoyable experience for all parties. The primary role of the agent is to review the HUD-1 Form to ensure that it correctly reflects all the terms of the contract including credits, debits, fees and adjustments. Allow the settlement agent explain all items and answer questions. The agents should provide the settlement agent with a business card to facilitate follow up. If you have specific instructions for the delivery of the commission checks, written instructions should be provided to the settlement agent.

X. NEW HOMES - This material has been developed as a guide to assist the general brokerage community in doing business with new homes developers and their site agents with the goal of developing, maintaining and improving professionally cooperative and mutually beneficial relationships among them.

A. Responsibility of the Buyer's Agent

1. Determines whether or not the builder will pay a commission and what procedures you must follow in order to earn a commission. (You should accompany the buyers to the new home project for the initial visit to register them with the site agent. If unable to

accompany the buyers on the initial visit, determine whether telephone registration is acceptable.) If telephone registration is possible, the general brokerage agent (selling agent) should make a follow-up visit at the earliest practical time after the visit of the buyer to the new homes site and prior to the new homes agent writing a contract.

2. Discloses their brokerage relationship in writing to the new homes agents at the earliest practical time.
3. Introduces the buyers to the site agent.
4. Informs the site agent of the buyers' needs and wants, such as architectural style, price range, delivery date, lot size, special features, etc. Also informs the site agent of the buyers' status (whether the buyers have a house on the market, one that is under contract, one that is already settled; or is in a rental property and how soon the buyers' lease obligation is up, etc.)
5. Advises the prospective buyers that although the buyer's agent will make the appropriate introductions at the new home project, the new homes site agent, as the expert concerning that project and that builder, will be the primary provider of information and of follow-up after that introduction, to all the parties.
6. Allows the site agent to make the presentation.

B. General Procedures of the New Homes Site Agent - After receiving the previously outlined assistance from the buyer's agent, the new homes site agent:

1. Advises prospective buyers about the product, models, options, costs, price ranges, location, community features, financing offered (if any), etc.
2. Offers to walk the models and/or a sample house under construction (if available) and tour the overall project with the buyers and the buyer's agent to point out important features and construction techniques, indicate available lots and amenities, and answer all questions.
3. Offers to prepare a price sheet based on the buyers' desired model, preferred lot and options, as well as a financial worksheet indicating estimated settlement costs and monthly payments.
4. Assists the buyers in writing a new home contract and submits it to the builder for approval. The site agent should be prepared to explain the various clauses in the builder's contract, give an estimate of time needed for the builder to review and ratify the contract, and reaffirm the necessity for all agreements to be in writing in order to be binding. The buyers should also be informed of the various factors that may affect the

actual completion and delivery date of the home.

C. Contract Processing:

1. The site agent should promptly present all offers to the builder, either in person or by telephone.
2. After a contract has been accepted by all parties, any deletions, additions, changes or extensions are not binding unless agreed to in writing by the buyers and the sellers. The dated copies should be delivered promptly to all parties and the selling agent.
3. The buyer's agent should learn from the site agent what procedures the builder has established for processing the contract, helping the buyers obtain financing, and permitting visits to the site during the construction period.
4. The buyer's agent should keep in touch with the site agent to stay fully informed on all matters relating to the entire transaction.

D. Pre-Settlement Inspection:

1. The buyer's agent may attend the inspection. If the agent attends, the agent should remember that the individual who is conducting the inspection knows how the house is built and how it operates, and is the technical representative of the builder, the subcontractors and the appliance manufacturers. The buyer's agent should therefore adopt a background posture, although this does not preclude a buyer agent from representing the interests of the client.
2. All builders have their own procedures for handling punch out work and repairs identified as necessary prior to settlement, and the buyers and buyer's agent should be informed of these procedures well in advance by the site agent and/or whoever conducts the inspection.

- E. Settlement:** Buyers should be informed that the builder or a builder's representative may not be at settlement and also be reminded about punch lists, time delays for repairs, and any other applicable builder policies.

XI. LEASING *(The NVAR Property Management & Leasing Committee contributed to this portion of the Suggested Procedures Manual.)*

A. General

1. **Property Management & Leasing Committee** - The REALTOR[®] is encouraged to be

familiar with and/or participate on the Committee. It is an excellent source of information and clarification on subjects pertaining to rental transactions. Contact NVAR for further information.

2. **Local Codes and Ordinances** - Member firms and agents who engage in rentals and property management activities should familiarize themselves with the following:

- a. The REALTOR[®] Code of Ethics
- b. The Code of Virginia, Title 55, Chapter 13 Landlord Tenant and Chapter 13.2, the Virginia Residential Landlord Tenant Act (VRLTA)
- c. Virginia Real Estate Board Regulations
- d. HUD Rental Fair Housing Guidelines
- e. Local jurisdiction codes and ordinances such as smoke detector requirements and additional Fair Housing protected classes

3. **Education.** Check with your sales manager on company policies regarding Rentals prior to listing or showing property.

- a. The REALTOR[®] is encouraged to take:
 - i) Property Management and Leasing Continuing Education
 - ii) Agency Courses
 - iii) Fair Housing Classes

4. Suggested Forms - To assist members in the development or improvement of their property management departments, NVAR provides forms which are listed and updated on their website. You can access them behind the Members Only section of the site. Use of the above mentioned forms would greatly assist in the professional conduct of business.

5. **Landlord-Tenant Relations** - Assistance may be obtained from the Landlord-Tenant Relations office of the jurisdiction where the property is located. Telephone numbers are as follows:

Alexandria	(703) 838-4545
Arlington	(703) 228-3765

Fairfax County	(703) 222-8435
State Consumer Affairs	(804) 786-2042
All Jurisdictions	(800) 552-9963

6. **Fair Housing** - Fair housing information, regulations, and phone numbers are available on the NVAR web site, <http://www.nvar.com>.

B. Listing Rental Property

1. **Written Authority to Lease** - Written authorization, signed by the Landlord of a property, must be obtained in order to rent or lease a property; e.g., Residential Property Management Agreement or Listing Agreement Exclusive Right to Lease. Verify ownership of the property through the tax records. The agreement should specify the agent's responsibilities: marketing the property, finding a Tenant, preparing the Deed of Lease, etc. The agent should review the Fair Housing laws in the jurisdiction of the property with the Landlord.
2. **Duties of the Listing Agent.** Refer to Section IV (A) "Listing Properties For Sale" for additional procedures.
 - a. All questions concerning the property are normally referred to the listing agent. The listing agent is expected to prepare a complete information form on the property and to know if the Landlord allows pets (if so, an additional deposit is normally required), proximity to schools and shopping areas, transportation, types of utilities, availability period, term of the lease; what will convey with the property and any legal restrictions, covenants and any other relevant information. Landlord must supply Tenant with a copy of Rules and Regulations, if any, that apply to the property.
 - b. The listing agent should prepare a Comparative Market Analysis for the Landlord to help determine the listing rental price. The final decision on the rental price however, is the Landlord's.
 - c. Commissions should be paid to the cooperating broker according to the listing firm's procedures and as offered in MLS. Make the terms of the offer of compensation through MLS explicitly clear and detailed, i.e., if accepting applications for varying lease periods; e.g., 6 months, 1 year or 2 years, clearly indicate the compensation for each period in the remarks.

3. **Occupied Properties** - If the property is occupied, the agent should review showing procedures. Indicate showing instructions in the listing such as the use of a lockbox/keysafe or by appointment only.

C. Showing Rental Property

1. **Agency Disclosure** - Review Section I “Establishing Brokerage Relationships” and your company policy regarding rental showings and agency. Explain the agent's role in the transaction and have the prospective Tenant sign an Exclusive Right to Represent Tenant Agreement or an agency disclosure statement if the prospective Tenants do not wish to sign a brokerage agreement. Under the Virginia Real Estate Board regulation, if there is an agency disclosure statement on the rental application or the Deed of Lease, whichever is executed first, then a separate agency disclosure statement is unnecessary. The NVAR Rental Application and the Deed of Lease both contain agency disclosures.
2. **Qualifying Applicants** - Pre-qualify the applicant(s) by calling the listing agent to find out what criteria the Landlord uses for qualification. The objective standards for qualifying an applicant include: verification of income and employment, information provided on current and previous residences, and review of credit report.
3. **Coordination with Listing Firms** - Coordinate in advance with the listing agent such matters as the availability of the property, showing instructions, any restrictions on pets or smoking, application requirements, compensation for cooperating companies, lease preparation, monetary deposits, payee, and rental processing fees.
4. **Appointments to Show** - Call for an appointment to show the property if it is occupied. Note that an occupant is only obligated to permit showing the property during reasonable hours, and after reasonable notification. Call to cancel the appointment if it cannot be kept. If applicable, coordinate the showing of the property through the listing firm or agent.
5. **Showing Rental Property** - Always leave your business card when previewing or showing the property. Be sure the property is left in the same condition in which you found it, i.e., locks, lights on or off, pets in or out. Make no commitments regarding redecorating, furnishings to convey or utility costs unless you are confident the information is accurate.

D. Taking and Submitting the Rental Application

1. **Follow the Listing Firm's Procedures** - Before the applicant fills out a rental application form the agent should contact the listing agent to determine the required procedures pertaining to the application and lease (some firms require their own application form and/or their lease, and others will require a personal consultation with the applicant). The agent should contact the listing agent for instructions regarding the amount of the rental processing fee (non-refundable) and to whom the earnest money deposit and first month's rent will be made payable. A copy of the lease form may be reviewed through the listing firm.
2. **Rental Application** - The applicant should complete and sign a written application. The rental application should indicate the amount of time the applicant has to execute the Deed of Lease after the Landlord has accepted the application. The rental application should address the disposition of the earnest money deposit if the applicant does not execute the Deed of Lease. Each rental application must be accompanied by the proper monetary consideration and the agent's business card. Print out and attach a copy of the MLS listing. A copy of the signed application form must be provided to each individual applicant. An agency disclosure form should accompany the rental application unless the rental application itself contains an agency disclosure clause.
3. **Contingencies/Requests** - Applications containing requirements for special terms or improvements by the applicant must be in writing on the application itself or referenced therein and attached. The Landlord has the right to decide whether to accept these conditions, and if they are not acceptable the applicant has the right to withdraw the application without penalty. Under the Americans with Disabilities Act, any individual with physical or mental impairments must be given the opportunity, at his own expense, to make any changes as long as the Tenant agrees, upon owner request, to return the property to its original condition. Agents should ask the property manager for more detailed information.
4. **Submitting Rental Applications** - When delivering the rental application, the listing agent should note the date and time the application is received. Make sure the leasing agent's business card is attached to the application. Most firms will not process an application without funds in hand.
5. **Time Required to Process** - Determine from the listing agent, then advise the applicant, the number of days that will be required to process the application.
6. **Payments Due Before Occupancy** - Advise the prospective Tenant of any payments due prior to occupancy. Note that many companies require certified funds for earnest money deposit and first month's rent. Many condos, cooperatives or apartments have

move-in fees.

XII. PROPERTY MANAGEMENT

A. Processing the Rental Application. The listing agency or property management firm processes the application.

1. **Computer Update** - The current status of the property should be accurately reflected in the computer.
 - a. Within 48 hours of the listing company receiving a rental application meeting objective qualifying criteria, the listing company shall change the listing in the computer to Application Registered status in accordance with MRIS regulations.
 - b. When the lease has been signed, change the status to "Rented" and remove the "for rent" sign and lockbox from the property.
2. **Verify Data in the Application**
 - a. This includes verifying the employment, Landlord references, obtaining the credit report and reviewing with the Landlord the information obtained on the applicant.
 - b. The listing agent should communicate with the applicant through the cooperating leasing agent unless instructed by the agent to deal directly with the applicant.
3. **Selecting the Applicant**
 - a. When qualifying the applicant the same objective standards should be applied by the listing firm to each and every applicant for a given property. Applicants should be advised of the existence of competing applications and the time frame in which a decision will be made. All applicants should be advised as expeditiously as possible of the decision on their applications.
 - b. If the Landlord decides to accept the application in spite of derogatory information about the applicant, a hold-harmless statement should be signed by the Landlord to release the listing and leasing firms of liability should the Tenant violate the lease.

4. **Acceptance of the Application** - Once the Landlord has accepted an applicant the listing agent should notify the applicant or the leasing agent that the application has been accepted and make an appointment for the lease to be signed by the applicant. Continue to accept (but not process) applications until the lease is ratified unless the Landlord indicates otherwise. All qualified applications must be presented to the Landlord until the lease is signed by the tenant. Accepted applicants should be informed of this, to encourage prompt signing of the lease.
5. **Rejection of an Application** - If the application is not accepted, the listing agent should immediately change the status of the listing back to available and notify the leasing agent who should notify the rejected applicant. The applicant's earnest money deposit check should be returned promptly, pursuant to the terms set forth in the rental application. Rejection caused by unsatisfactory credit must be in accordance with the Federal Fair Credit Reporting Act, and may be oral, electronic, or written. The rental processing fee is not refundable.

B. Preparation and Execution of the Deed of Lease

1. **Provisions of the Deed of Lease** - The lease should contain specific instructions indicating to whom, where and when the rent is paid. Any addenda to the application, along with any waivers or rent escalation clauses that are accepted by the Landlord, should be incorporated into the lease. The lease must state who is to hold the security deposit.
2. **Changes to the Deed of Lease** - Landlord and Tenant must sign all copies of the Deed of Lease and any addenda. Any subsequent additions, deletions, or changes to the lease are not binding unless agreed to in writing by all parties.
3. **Distribution of Copies** - Provide copies of lease and addenda to both Landlord and Tenant at the time of signature. The originals should be retained by the managing party - either the property manager or the Landlord. The application will be given to the Landlord if there is no professional property manager.
4. **Additional Funds From the Landlord** - As per the listing agreement, be sure to collect additional funds from the Landlord when appropriate. Inform the leasing agent of your firm's policy regarding disbursement of the commission; e.g., commission check is held until the rent check clears the bank, etc.

C. Escrow Accounts. All real estate brokers must hold all monies belonging to the Landlord

and/or Tenant in an escrow account. This account must be clearly specified as an escrow account on all documents (checks, statements, etc.).

D. Security Deposits - The security deposit, and any additional deposits paid to the Landlord at the beginning of a tenancy, is to cover physical damage beyond normal wear and tear or monetary damages. The deposit is not the Tenant's last month's rent. Carefully document any deductions, and be prepared to defend these deductions in the event of a court action by the Tenant. Allowable deductions are determined by the terms of the Deed of Lease and applicable laws.

E. Transfer of Possession to and from a Tenant

1. **Receipt of Security Deposit and Acquisition of Keys** - Never allow a Tenant to move into the property unless the earnest money deposit or the security deposit and rent have been received by the agent or Landlord and the lease has commenced.
2. **Utility Bills and Tenant Insurance** - Advise the Tenant that as of the date indicated in the Deed of Lease the Tenant is responsible for payment of utility bills and obtaining proper insurance coverage as indicated in the Deed of Lease and providing a copy to Landlord or property manager.
3. **Check-in Inspection of the Property** - Turn the key over to the Tenant on the day the Lease begins, not before. Only the Landlord or the property manager should issue or receive keys. For the protection of all parties, a joint check-in inspection of the property should be conducted by the Tenant and the Landlord, or the property manager, prior to or at the time of initial occupancy. The results of the inspection should be recorded on an appropriate signed form. A copy of the report should be given to the Tenant along with the advice that it will be used as the basis for assessing any damages not classified as normal wear and tear upon termination of tenancy. As an alternative, the Tenant, upon initial occupancy, may complete a check-in inspection report and provide a copy to the Landlord within the time specified in the Deed of Lease.
4. **Repairs and Maintenance** - Advise the Tenant on procedures and responsibility for reporting required repairs and maintenance.
5. **Termination of Tenancy** - Upon appropriate written notice of termination of tenancy under the terms of the lease, the Tenant should be notified of time and date of the check-out inspection. An inspection report should be completed after the Tenant's furniture and belongings have been removed and the keys returned.

6. **Return of the Security Deposit** - On the basis of the inspection report prepared at the time of the initial tenancy, evaluate the relative condition of the property. If the property is in the same condition as it was when the Tenant received it, normal wear and tear excepted, and the final water company bill has been paid, return the Tenant's security deposit within 30 days, with appropriate interest if the Landlord is subject to the VRLTA regulations.
7. **Damages to the Property** - If there is any damage to the property not considered to be normal wear and tear or if there are any utility bills with attendant lien capabilities still outstanding, give the Tenant an itemized list of the chargeable damages. Even if none of the deposit is to be returned because of damages, an itemized list must be given to the Tenant within 30 days.

F. Landlord/Property Manager Duties

1. **Maintenance of Records** - Maintain accurate and current records of all transactions pertaining to the management of rental property. Provide periodic financial statements to the Landlord. Provide the Landlord with IRS form 1099 by January 31st of each year. Report the Landlord's state residency status as required.
2. **Inspections of the Property** - Conduct periodic inspections of the property to determine if the property is being properly maintained by the Tenant or if any routine maintenance or repairs are required.
3. **Default of the Tenant** - Take prompt corrective actions if the Tenant becomes delinquent in the payment of rent, fails to maintain the property in a proper, reasonable manner, or violates any of the conditions of the Deed of Lease.

XI. NVAR AWARD DESIGNATIONS IN ADVERTISING

- A. **Use In Advertising** - The use of NVAR Awards designations in advertising is reserved for active NVAR members only. NVAR awards must be identified with the designation of the year in which the award was earned. Exception: NVAR Life Members and recipients of a current award. Samples of correct usage include:
 1. Member, NVAR Multi-Million Dollar Sales Club, 2007
 2. Member, NVAR Top Producers Club, 2007

3. 2007 NVAR REALTOR[®] of the Year
4. 2002 NVAR Rookie Sales Associate of the Year (No longer awarded; previous recipients may continue to use)

Exceptions are:

1. Life Member, NVAR Multi-Million Dollar Sales Club
2. Life Member, NVAR Million Dollar Sales Club (No longer awarded; previous recipients may continue to use)
3. Life Member, NVAR Top Producers Club
4. NVAR Hall of Fame
5. NVAR Pioneer Club
6. NVAR, Lifetime Honorary Member

B. Misrepresentation - Recipients of NVAR awards must, when citing the awards in advertising, be sensitive at all times to misrepresentation when more than one REALTOR[®] is a recipient of the same award - such as:

1. “Number One Real Estate Agent” when, in fact, the agent is a recipient alphabetically with all other recipients.
2. “Top Producer, NVAR,” when in fact the agent is one of many members so honored. This should read instead, “Member, NVAR Top Producers Club”.

C. Advertising Prior to Announcement - NVAR members and member firms must refrain from advertising the names of recipients of any NVAR awards prior to the date they are officially announced.

For a COMPLETE list of forms, please check our NVAR website.