

Evaluation and interpretation of the Brokerage Licensee Contract:

NOTE: This information is designed to correlate directly to the sample brokerage agreement included directly after this interpretation and overview. The sample brokerage licensee contract is titled "Contract between Any Realty and Licensee."

Section 1

This section includes a legal description of the brokerage contract and the parties involved within the contract. Defining the contract as a legal and binding element in its first section is important to identify the legality and binding quality of the document instilling in the licensee that policies can and will be enforced. It is recommended that the beginning of an independent contracting agreement include information pertaining to action by the real estate brokerage in the case of breach by the licensee for terms within the initial contract. Though the brokerage always has legal recourse and the contract does explore some of the recourse in later sections, this recourse can come at much less expense when the action by the brokerage is spelled out in the beginning of the contract. Many licensees claim to be uninformed of the brokerages legal ability to reconcile damages in the case of breach.

Section 2

1 and 2 – These first sections indicate the monetary fees payable to the brokerage and any penalties that are not paid in a timely fashion. It has become very popular for brokerages to charge a monthly fee, allowing for static revenue outside of the variable commission structure. The balance between monthly office fees and private office fees has been a tenuous balance in the marketplace. A salesperson often selects their brokerage based on the anticipated net after these office fees. Commission splits can often seem or be much higher at companies that require monthly fees. The brokerage has to profit from its licensees activity but the explanation of the profit margin within the original independent contractors agreement can be the turning point of a licensees willingness to commit to a brokerage.

3 - A document control fee is another way of acquiring additional fees from the salesperson or client in a real estate transaction. Salespersons are often forced to evaluate a companies true commission split based on the document fee per transaction, the office fee or monthly rent and the commission structure presented by the brokerage. The \$500 per \$500,000 noted per transaction seems to be the industry standard for a graduated commission structure in an established brokerage. But, the transaction fee can be as much as \$1,500 at some brokerages with 100% commissions.

4 - Requiring the licensee to maintain easily identifiable and obtainable contact information is key to client and broker correspondence. Most brokerages have developed their own domain name so the licensee can obtain an email address and often their own personal efax through the company domain. Such as SamJones@AnyRealty.com Though brand recognition is important, the cost and ease of generic extensions often persuade brokerages to use free extensions such as yahoo or hotmail email accounts.

5 - Defining what products or services will be supplied to the licensee is an important part of the initial contract as salespersons often compare brokerage services when making the decision of the brokerage to conduct business under.

6 - It is recommended that subjects such as support personnel be more narrowly defined so a prospective licensee who may be shopping for a brokerage can easily identify a brokerage strength such as support.

7 - Self explanatory

8 - This section needs to be much more explicit. It is suggested that the initial contract provide samples of what contracts should be used or where these contracts can be found online etc. The salesperson does not know what contracts are required by the office unless samples or some formal training of this method is provided to the student.

9 - This clause is designed to protect the brokerage interests in the commission structure noted in the future sections. Without such a clause, salespersons may sell their own property or provide such at discount that little or no tuition is paid to the licensee and therefore the broker fails to retain any monetary compensation.

10 - Since a graduated commission split is used in this agreement, it is important for a clause to note the recognition of a completed contract when multiple licensees have participated in the sale. This section is also extremely important to defend the recent trend of agent pyramids. Agent pyramids are formed when a particular agent is noted at 100% and the agent forms an alliance with other agents who have less in commission structure to participate under the 100% agent name.

Example: Mr. Jones and Mr. Brown have just signed on to work with Any Realty. Mr. Smith has worked at Any Realty long enough to be at a commission rate of 100%. Mr. Smith informs Mr. Jones and Mr. Brown that they will receive 80% of the total commission paid per transaction if they elect to list Mr. Smith as the agent of record. This circumvents the brokerage but allows Mr. Smith and the licensees to retain a higher commission split than the structure agreed upon under the brokerage. This section should include additional information on methods used by the brokerage to combat such pyramid schemes.

11 through 16 – The commission structures are graduated in a system that allows the salesperson to develop under the brokerage tutelage. When larger commissions are paid to the brokerage in the initial licensing periods, the broker is prone to aid the licensee in the initial transaction period. An additional clause should be added to this contract for those licensees who have facilitated a number of transactions under another brokerage but have now elected to conduct business under this new brokerage. Most brokerages would not require the licensee to be subject to the same commission structure and this commission structure is often negotiated with the brokerage.

17 – Informing the licensee of the company tax policy is an important disclosure feature. The salesperson must be informed about all monetary occurrences.

18 – Most Brokerages are requiring some type of educational training program for new company licensees. The training helps the licensee to further understand company policy and procedure. This section also includes a clause pertaining to video recordings of the licensee presenting learned information. This common practice is used as an insurance policy by the brokerage. If the licensee can show this learned information on video, the licensee can not plea that they were not taught the ethical and procedural client processes by the broker if presented in a course of law.

19 – This statement is not necessary because multiple representation is legal in most states and the statement would only be required if multiple representation is not permitted in the brokerage.

20 – Informing licensees of potential fees required by law is a necessity. The brokerage may be responsible for transfer, termination or other miscellaneous required fees if the licensee does not acknowledge a statement similar to this in writing.

21 – It is suggested that the licenses or memberships that the sales associate is required to have or belong to be spelled out and more clearly defined. The contact information for each state body or private membership should be listed within the contract.

22 – Liability is an apparent danger when operating a brokerage. Statements that aid in the release of liability are an important element of the contract.

23 – This section should be self explanatory to the licensee and should be understood in the term independent contractor.

24 – This is one of the most important clauses in the agreement. It should include any information about the ability of brokerage to collect unpaid fees if the licensee is terminated.

25 – Automobile Insurance has become a cause for concern with specific brokerages who have company cars and allow the licensee to travel for company purposes. Driving to pick up a product on behalf of the brokerage can become a liability if the proper insurance and disclosures are not in place. Many brokerages require the licensee to supply a copy of their current auto insurance to the company for the licensee's personal file.

26 – Certified mailings are a necessity when running a brokerage. Keeping proof of filed notices can save a brokerage much hardship when dealing with legal issues or state required notifications to licensees.

27 – This clause is great, but it does not include the ramification if the documentation is not submitted to the brokerage in the time allotted.

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31 – This clause seems to bundle items 26 through 30 into one summarized statement.

32 – This clause includes a penalty for paperwork not supplied which seems pertinent to items 26 through 31. The contract still fails to mention the brokerages ability to reconcile any lack of payment such as retention of late fees through commission paid etcetera.

33 – The first statement confirms aw but the brokerage does an excellent job of providing an explanation of what will transpire to confirm the receipt of the deposit. Key Realty School would recommend the disclosure of repercussions if the deposit is not handled in the manner described in this section.

34 – Contracts can be canceled or fall through escrow. The most critical component of a canceled escrow is the deposit and the procedure of handling the deposit.

35 – This is a policy of the brokerage and not included in most state law, but few brokerages will allow the receipt on anything but a paper trail.

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37 and 38 – The completed file and completed paperwork is the most important aspect of the real estate brokerage from a liability standpoint. Having all of the necessary disclosures and files can save a brokerage from avoidable headache.

39 and 43 – Because paperwork and filing is so critical to operating a Brokerage, there must be strict penalties for non compliance.

44 – This clause can be reinforced by law. It is always helpful to include the law that defines this clause: Most state law requires notification of commissions, bonuses and other inducements to all principals for this real estate contract. Buyer acknowledges the disbursements listed below.

45 – This clause reinforces that information and change information must always be submitted to the brokerage within the allotted time.

46 – Deliveries are a touchy issue with Brokerages. The blame game will begin if appropriate action is not presented in writing on the policies concerning deliveries. Some brokerages do not allow any deliveries or faxes, these brokerages require everything to be sent directly to the licensee without exception.

47 – Many brokerages create a clause that allows an hourly rate to be subtracted from commissions paid if the brokerage is required to intervene with the transactional work. This clause seems unfair for new licensees which are already paying a large portion of their commission to the brokerage.

48 – This disclaimer reinforces most state and federal law, but some notice of penalty or corrective action should be also noted.

49 – This clause should never guarantee the delivery of a commission check. Though this clause is vague it should include information about the availability of commission checks relative to the funds released by the bank selected by the brokerage. Depending on the type of check or commission structure, check may not be

50 - This clause is extremely vague and should be more defined to prevent avoidable legal fees. The brokerage may be a primary reason attributed to the development of the client and the escrow in process and therefore the brokerage should require that commissions be paid to the brokerage in accordance with the independent contracting agreement. The brokerage will then pay the licensee through the new brokerage if the licensee departs during an escrow.

51 – Licensee may be concerned about the terms subject to change within a contract, but there really is no other way to anticipate instances that may call for modification. Key Realty would recommend that a brokerage include some type of automatic extension which is perfectly legal. Then the brokerage would not need to have a new contract resigned unless changes were made. Even in the even of change, a simple amendment to the original contract can be created.

Section 3

The signature of all parties involved is an important element of the transaction. Some brokerages require the sign document to be acknowledged by the company notary.

Section 4

Key Realty School recommends an agent information sheet for every licensee. Constant correspondence with the licensee is very important. Managing in today's real estate market involves supervising licensees through relationships developed under an equal playing field. Developing personal elements through aspects like birthdays and anniversary add the extra touch that competing brokers don't often use.