

# ARTICLE 8. OPERATION OF BROKER COMPANIES AND OTHER PROVISIONS CONCERNING REAL ESTATE PRACTICE

## Rule 1. Operation of Broker Companies

### 876 IAC 8-1-1 Supervision of broker company

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-3-4.1; IC 25-34.1-4-2

Sec. 1. (a) Every broker company shall be directed, supervised, and managed by an individual broker. For a sole proprietorship, the sole proprietor shall be the individual broker. For partnerships, limited liability companies, and corporations, the individual broker shall be the licensed individual broker designated to the commission under IC 25-34.1-4-2. The broker company shall constitute the individual broker's principal and sole place of real estate business. This subsection shall not prohibit the individual broker from being the individual broker for more than one (1) broker company located at the same address.

(b) A sole proprietor individual broker, and, as provided for in IC 25-34.1-4-2, the designated individual broker described in subsection (a) shall be primarily responsible to the commission for the broker company's actions.

(c) The individual broker described in subsection (a) may also be a branch manager under section 2 of this rule. (*Indiana Real Estate Commission; 876 IAC 8-1-1; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

### 876 IAC 8-1-2 Supervision of office by licensed broker; branch offices; notice by managing broker

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-3-4.1

Sec. 2. (a) Any branch office that a broker company maintains shall be managed by a branch manager. The broker company shall submit to the commission a Branch Office Registration Form prior to opening any branch office. The broker company shall notify the commission when:

(1) a branch office has a new branch manager; and

(2) any individual broker associated with the broker company transfers from one (1) branch office to another branch office within that broker company.

(b) An individual broker may be a branch manager of more than one (1) branch office under this section. (*Indiana Real Estate Commission; 876 IAC 8-1-2; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

### 876 IAC 8-1-3 Association with broker company; duties of parties

Authority: IC 25-1-8-2; IC 25-34.1-2-5

Affected: IC 25-34.1-3-4.1

Sec. 3. (a) An individual newly licensed as a broker shall choose either to be unassigned or to be assigned to a broker company.

(b) If the broker wishes to be assigned, the broker's licensure application shall also be signed by the broker company's individual broker described in section 1(a) of this rule attesting to the assignment.

(c) If an unassigned broker subsequently wishes to be assigned, it shall be the responsibility of the broker to have a reassignment application signed by the broker and the new broker company's designated individual broker described in section 1(a) of this rule and to pay the reassignment fee established in 876 IAC 5-3-1.

(d) An inactive broker who reactivates the inactive license and qualifies for reactivation shall be treated in the same manner provided for in subsections (a) through (c).

(e) A broker who reinstates an expired license and qualifies for reinstatement shall be treated in the same manner as provided for in subsections (a) through (c).

(f) A broker in referral status who wishes to resume active status (and therefore be eligible to perform acts that require a broker's license under IC 25-34.1 beyond making referrals to brokers) and qualifies to resume active status shall be treated in the same manner as provided for in subsections (a) through (c). (*Indiana Real Estate Commission; 876 IAC 8-1-3; filed May 22, 2014,*

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**876 IAC 8-1-4 Termination of association with broker company; duties of parties**

Authority: IC 25-1-8-2; IC 25-34.1-2-5

Affected: IC 25-34.1-3-4.1

Sec. 4. (a) Any broker, upon termination of the broker's association with a broker company, shall submit to the commission within five (5) business days of the termination, a reassignment application attesting to the termination and electing either to be unassigned or to be assigned to a new broker company. An unassigned broker may not practice real estate until the broker is assigned under the provisions of subsection (c).

(b) Subsection (a) shall not prohibit an unassigned broker from practicing real estate as a sole proprietor broker company if eligible to do so under IC 25-34.1-3-4.1(f)

(c) If a terminated broker is transferring to a new broker company upon departure from the broker's previous broker company, it shall be the responsibility of the broker to have the reassignment application signed by the broker and the new broker company's designated individual broker described in section 1(a) of this rule attesting to the assignment and to pay the reassignment fee established in 876 IAC 5-3-1.

(d) If a broker who has become unassigned under subsection (a) is subsequently transferring to a new broker company, it shall be the responsibility of the broker to have the reassignment application signed by the broker and the new broker company's individual broker described in section 1(a) of this rule attesting to the assignment and to pay the reassignment fee established in 876 IAC 5-3-1. (*Indiana Real Estate Commission; 876 IAC 8-1-4; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

**876 IAC 8-1-5 Association with broker company; duties of parties**

Authority: IC 25-1-8-2; IC 25-34.1-2-5

Affected: IC 25-34.1-3-4.1

Sec. 5. A broker may not be associated with more than one (1) Indiana broker company at the same time. (*Indiana Real Estate Commission; 876 IAC 8-1-5; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

**876 IAC 8-1-6 Termination of association with broker company; disposition of listings**

Authority: IC 25-1-8-2; IC 25-34.1-2-5

Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1

Sec. 6. Any broker, upon termination of the broker's association with a broker company, shall turn over to the broker company any listings obtained during the broker's association unless otherwise stipulated by a written contract. The listings shall remain the property of the broker company. (*Indiana Real Estate Commission; 876 IAC 8-1-6; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

**876 IAC 8-1-7 Unlicensed assistants; functions; responsibility of broker**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-3-2

Sec. 7. Brokers may not allow an unlicensed assistant to perform any act that would require licensure under IC 25-34.1-3-2, including the following functions:

- (1) Prepare promotional materials or advertisements without the review and approval of the supervising broker.
- (2) Show real property.
- (3) Answer questions about listings other than those concerning list price, address, property features, or geographic directions.
- (4) Discuss or explain a contract, listing, lease, agreement, or other real estate document with any person outside the broker's

broker company.

(5) Conduct open houses.

(6) Conduct telemarketing or telephone canvassing to schedule appointments in order to seek listings.

(7) Negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of a broker.

*(Indiana Real Estate Commission; 876 IAC 8-1-7; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014)*

**876 IAC 8-1-8 Advertising requirements; name of broker company; prohibitions**

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1

Affected: IC 25-34.1-3-4.1

Sec. 8. (a) Any display, classified advertising, signs, Internet advertising, or business cards that carry a broker's name must contain the name of the broker company with whom the broker is associated, and said broker company's name must be clearly visible. All advertising shall be under the direct supervision and in the name of the broker company.

(b) Any advertising by a broker company must reveal the name of the broker company either as it appears on the broker company's license issued by the commission or by its publicly known name.

(c) Any Internet, television, or radio advertising that carries the name of any broker associated with a broker company must carry the name of the broker company either as it appears on the broker company's license issued by the commission or by its publicly known name. However, if disclosing the name of the broker company is not practical in electronic displays of limited information (such as thumbnails, text messages, and tweets) the broker company's name does not need to be included if the electronic display is linked to a display that includes the broker company's name.

(d) A broker shall not advertise in a manner indicating that the property is being offered by a private party not engaged in the real estate business.

(e) Advertising where only a post office box number, telephone number, or street address appears shall not be used.

(f) No broker shall place a sign on any property, advertise, or offer any property for sale, lease, or rent without the written consent of the owner or the owner's authorized agent. *(Indiana Real Estate Commission; 876 IAC 8-1-8; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014)*

**876 IAC 8-1-9 Splitting commissions**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-3-4.1

Sec. 9. A listing broker may offer a portion of the broker's commission as an inducement to selling brokers to sell a particular property. Such commission must be paid to the selling broker, and in no case shall it be paid directly to a broker associated with the selling broker. *(Indiana Real Estate Commission; 876 IAC 8-1-9; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014)*

**876 IAC 8-1-10 Referral service participation; written agreement**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-3-4.1

Sec. 10. A broker company may participate in a referral service, or a franchise that provides a referral service, provided the participating broker company possesses a written agreement with the client and has a written agreement with the cooperating broker or brokers as to the fees to be paid. *(Indiana Real Estate Commission; 876 IAC 8-1-10; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014)*

**876 IAC 8-1-11 Participation of brokers with securities brokers; sale of securities involving real estate**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-3-2

Sec. 11. Notwithstanding any provision contained within this title to the contrary, a broker may participate or associate with a person registered to act as a broker-dealer, agent, or investment advisor under the Indiana and federal securities laws in the sale of, or offer to sell, real estate where such real estate is a necessary element of a security, as that term is defined by the Securities Act of 1933 and the Securities Exchange Act of 1934. Any fee for services received by a registered securities broker-dealer, agent, or investment advisor in connection with the above-described activities shall not be construed to constitute the receipt or payment of a commission from a broker in contravention of 876 IAC 8-2-7(12). (*Indiana Real Estate Commission; 876 IAC 8-1-11; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

**876 IAC 8-1-12 Associating with unlicensed person; penalty**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-6-1.1

Sec. 12. A broker shall not knowingly associate with any unlicensed person who is required to have a license, or allow such an unlicensed person to perform any of the acts that require a license. (*Indiana Real Estate Commission; 876 IAC 8-1-12; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

**876 IAC 8-1-13 Investigation of escrow or trust accounts**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-2-5

Sec. 13. (a) A broker company shall provide a detailed summary of the broker company's escrow/trust account upon request by an authorized representative of the commission or by the office of the attorney general for investigative purposes.

(b) A broker company that engages in activities constituting acts as prescribed in IC 25-34.1 involving monies being collected in the performance of such activities shall establish an escrow/trust account with a federally insured financial institution as required by IC 25-34.1 and this title. (*Indiana Real Estate Commission; 876 IAC 8-1-13; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

**876 IAC 8-1-14 Broker cooperation with investigation**

Authority: IC 25-34.1-2-5

Affected: IC 25-1-7; IC 25-1-11; IC 25-34.1

Sec. 14. A broker who is the subject of an investigation by the office of the attorney general into possible violations of IC 25-34.1, IC 25-1-11, or this title shall cooperate with the investigation. Lack of cooperation may include failure to submit a requested written response to a pending investigation or failure to comply with any lawful demand for information made by the office of the attorney general, including failure to comply with any lawfully issued subpoena. (*Indiana Real Estate Commission, 876 IAC 8-1-14; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

**Rule 2. Listing Agreements, Offers to Purchase and Other Provisions Concerning Real Estate Practice**

**876 IAC 8-2-1 Listing agreements; prohibition**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-2-5

Sec. 1. (a) All listing agreements or any authority to sell shall show a definite date of expiration and shall be in writing, either on paper or in electronic format, with one (1) copy to go to the owner within three (3) business days of the time of signing, and the original and all electronic files shall be retained in the office of the listing broker.

(b) No listing agreements shall be accepted by a broker company or by an associated broker on the broker company's behalf that provides for a net return to the seller, unless said listing agreement provides for a maximum commission to be paid by the seller to the broker company. (*Indiana Real Estate Commission; 876 IAC 8-2-1; filed May 22, 2014, 11:50 a.m.: 20140618-IR-*

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**876 IAC 8-2-2 Written offers to purchase; disposition of money received**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-2-5

Sec. 2. (a) Any written offers to purchase or authorization to purchase shall be communicated to the seller for the seller's formal acceptance or rejection immediately upon receipt of the offer. The listing broker shall, on or before the next two (2) banking days after final acceptance of the offer to purchase, do one (1) of the following:

- (1) Deposit all money received in connection with a transaction in the listing broker's escrow/trust account.
- (2) Deposit money received in connection with a transaction to whoever is indicated in the purchase agreement to receive the deposit.

The commission shall hold any broker with whom money is deposited responsible for the money.

(b) If the earnest money deposit is other than cash, check, or its equivalent, this fact shall be:

- (1) communicated to the seller before the seller's acceptance of the offer to purchase; and
- (2) shown in the earnest money receipt.

(c) All money shall be retained in the escrow/trust account so designated until disbursement of the money is properly authorized. If the beneficiary agrees in writing, the listing or selling broker holding the earnest money may voluntarily transfer any interest earned on the broker's escrow/trust account to a fund established for the sole purpose of providing affordable housing opportunities in Indiana that meets the requirements of Internal Revenue Code 501(c)(3). The listing or selling brokers holding any earnest money are not required to make payment to the purchasers or sellers when a real estate transaction is not consummated unless the parties enter into a mutual release of the funds or a court issues an order for payment, except as permitted in subsection (d).

(d) Upon being notified that one (1) or more parties to an offer to purchase intend not to perform, the listing or selling broker, holding the earnest money, may release the earnest money deposit as provided in the offer to purchase or, if no provision is made in the offer to purchase, the selling or listing broker, holding the earnest money, may initiate the release process. The release process shall require the selling or listing broker to notify all parties at their last known address by certified mail that the earnest money deposit shall be distributed to the parties specified in the letter unless:

- (1) all parties enter into a mutual release; or
- (2) one (1) or more of the parties initiate litigation;

within sixty (60) days of the mailing date of the certified letter. If neither the buyer nor the seller initiates litigation or enters into a written release within sixty (60) days of the mailing date of the certified letter, the broker may release the earnest money deposit to the party identified in the certified letter. (*Indiana Real Estate Commission; 876 IAC 8-2-2; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

**876 IAC 8-2-3 Closing statements**

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1

Affected: IC 25-34.1-2-5

Sec. 3. Every listing and selling broker shall deliver to the broker's client in every real estate transaction at the time such transaction is consummated, a complete detailed closing statement showing all of the receipts and disbursements handled by such broker. The listing and selling broker shall retain copies of such statements for at least five (5) years. (*Indiana Real Estate Commission; 876 IAC 8-2-3; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

**876 IAC 8-2-4 Attendance at closings**

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1

Affected: IC 25-34.1-2-5

Sec. 4. (a) Except as provided for in subsections (b) through (d), the listing and selling broker shall attend all closings.

Instead of attending, the listing and selling broker both may send an associated broker or designate another broker to act on the broker's behalf.

(b) This section shall not apply to closings of commercial property. For purposes of this subsection, "commercial property" shall refer to any property other than one (1) to four (4) family residential.

(c) This section shall not apply if the broker is representing an institutional client such as a financial institution.

(d) This section shall not apply if the party represented by the broker or the party's authorized representative does not personally appear at the closing. (*Indiana Real Estate Commission, 876 IAC 8-2-4; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

#### **876 IAC 8-2-5 Restriction on broker acquiring interest in property**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-2-5

Sec. 5. A broker shall not directly or indirectly buy, offer to buy, sell, or offer to sell, for the broker property listed with the broker or the broker with whom the broker is associated, nor shall the broker acquire any interest in the property without first making the broker's true position clearly known to the owner or owners. (*Indiana Real Estate Commission; 876 IAC 8-2-5; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

#### **876 IAC 8-2-6 Disclosure of interest by broker**

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-2-5

Sec. 6. A broker shall not directly or indirectly buy, offer to buy, sell, offer to sell, or receive compensation for real estate in which the broker owns an interest, unless the broker discloses in writing the:

- (1) broker's interest in the real estate to all parties to the transaction; and
- (2) fact that the broker holds a valid real estate license.

(*Indiana Real Estate Commission; 876 IAC 8-2-6; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014*)

#### **876 IAC 8-2-7 Incompetent practice**

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1

Affected: IC 22-9; IC 25-34.1

Sec. 7. Incompetent practice of real estate includes the following:

- (1) Failing to account for and remit any funds or documents belonging to others that come into the broker's possession.
- (2) Accepting or offering any inducement or rebate for the purpose of obtaining a listing or inducing a sale, where full disclosure in writing has not been given to all parties to the transaction at the time of the offer or acceptance.
- (3) Receiving, accepting, or giving an undisclosed direct profit on expenditures made in conjunction with a real estate transaction.
- (4) Acting in dual capacity of broker and undisclosed client in any transaction.
- (5) Guaranteeing, authorizing, or permitting any person to guarantee future profits that may result from the resale of real property.
- (6) Listing or offering real property for sale, exchange, option, rent, or lease without the written consent of, or on any terms other than those authorized by, the owner or the owner's authorized agent.
- (7) Inducing any party to a written agency agreement or a contract of sale to breach such agreement or contract for the purpose of substituting a new contract with another person.
- (8) Accepting employment or compensation that is contingent upon the issuance of an appraisal report on real estate at a predetermined value.
- (9) Issuing an appraisal report on real property in which the broker holds an interest and fails to disclose the interest in writing to all parties.

(10) Soliciting or negotiating, or both, a written agency agreement, a sale, exchange, or lease of real property directly with lessor, lessee, seller, or buyer if the broker knows that the party has a written contract in connection with the property that guarantees an exclusive agency to another broker unless the seller, buyer, lessor, or lessee initiates the action in writing prior to expiration of the agreement.

(11) Except as allowed by 876 IAC 8-1-1(a), as a broker representing, or attempting to represent, more than one (1) Indiana broker company.

(12) Paying a commission to or otherwise compensating a person who is not licensed for performing the services that, by law, require a license.

(13) Committing any act of fraud or material deception while engaged in acts that, by law, require a license.

(14) Otherwise violating IC 25-34.1 or this title.

(15) Having been finally determined to have engaged in an unlawful discriminatory practice under the Indiana Civil Rights Act, IC 22-9.

*(Indiana Real Estate Commission; 876 IAC 8-2-7; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014)*

**876 IAC 8-2-8 Fee appraisals conducted by licensed brokers**

Authority: IC 25-34.1-2-5.1

Affected: IC 25-34.1

Sec. 8. Any broker who appraises real estate in Indiana must comply with the Uniform Standards of Professional Appraisal Practice as adopted in 876 IAC 3-6-2 and 876 IAC 3-6-3. *(Indiana Real Estate Commission; 876 IAC 8-2-8; filed May 22, 2014, 11:50 a.m.: 20140618-IR-876140061FRA, eff Jul 1, 2014)*

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