

**VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION**

**REGULATORY REVIEW: FINDINGS AND RECOMMENDATIONS FOR
OPTIMIZING STATE REGULATION OF REAL ESTATE BROKERS AND
SALESPEOPLE**

Pursuant to 26 V.S.A. ch. 57, and with support from a grant by the United States Department of Labor, the Office of Professional Regulation has reviewed State regulation of real estate brokers and salespeople. We find that regulation of the field remains necessary to protect the public from harm. We find a generally functional regulated marketplace for professional services, but one in which high competition for clients fails to provoke price competition or a-la-carte service offerings.

A substantial majority of consumers report overall positive experiences with their real estate agents. Nonetheless, significant defects in the regulatory system are seen in unduly rigid models of agency representation, price opacity, and consumer confusion about agency and the incentives influencing other participants in residential real estate transactions. These defects can result in price insensitivity, as well as suboptimal matching between providers and clients, or clients and properties. We recommend allowing more flexible forms of representation, requiring more thorough price-and-incentive disclosures, and improving regulatory communication and awareness, including of the enforcement process. Regulators also must remedy the neglect of commercial brokerage.

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The Regulatory Review Process

Vermont law explains the policy and purpose of professional regulation:

(a) It is the policy of the State of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The General Assembly believes that all individuals should be permitted to enter a profession or occupation unless there is a demonstrated need for the State to protect the interests of the public by restricting entry into the profession or occupation.

(b) If such a need is identified, the form of regulation adopted by the State shall be the least restrictive form of regulation necessary to protect the public interest. If regulation is imposed, the profession or occupation may be subject to review by the Office of Professional Regulation and the General Assembly to ensure the continuing need for and appropriateness of such regulation.

-26 V.S.A. § 3101.

Among the responsibilities of the Office of Professional Regulation (OPR or “the Office”) is periodic review of existing regulatory programs¹ for fidelity to that policy and purpose. *Id.* § 3104. “The Office shall base its review on the criteria and standards set forth in section 3105.” *Id.* § 3104(a).

Section 3105 directs us to inquire into two keystone elements: First, whether continued regulation remains necessary to protect the public (§3105(a)); and second, whether the regulation implemented is “the least restrictive method ... consistent with the public interest,” (§3105(b)) in view of civil and criminal remedies for wrongdoing and alternative forms of regulation.²

The review also may inquire into discretionary elements, specifically:

- (1) the extent to which a regulatory entity's actions have been in the public interest and consistent with legislative intent;*
- (2) the extent to which the profession's historical performance, including the actual history of complaints and disciplinary actions in Vermont, indicates that the costs of regulation are justified by the realized benefits to the public;*
- (3) the extent to which the scope of the existing regulatory scheme for the profession is commensurate to the risk of harm to the public;*
- (4) the extent to which the profession's education, training, and examination requirements for a license or certification are consistent with the public interest;*
- (5) the extent to which a regulatory entity's resolutions of complaints and disciplinary actions have been effective to protect the public;*
- (6) the extent to which a regulatory entity has sought ideas from the public and from those it regulates, concerning reasonable ways to improve the service of the entity and the profession or occupation regulated;*
- (7) the extent to which a regulatory entity gives adequate public notice of its hearings and meetings and encourages public participation;*
- (8) whether a regulatory entity makes efficient and effective use of its funds and meets its responsibilities; and³*

¹ The process of periodically reexamining existing regulatory programs for opportunities to improve is known informally as “sunset review,” a counterpart to the “sunrise” analysis applied to proposals for new regulation.

² The law addresses three specific methods of regulation, in order of increasing restriction: registration, certification, and licensure.

³ Elements (8) and (9) receive little attention because the entity under review is attached to the umbrella administrative agency that is OPR, which maintains its budget and balances that budget by asking the General

(9) whether a regulatory entity has sufficient funding to carry out its mandate.

--26 V.S.A. § 3104(b)

On December 7, 2018, the Office of Professional Regulation gave written notice to the Vermont Real Estate Commission (“the Commission” or “REC”) and the dominant professional society representing Vermont real estate professionals, the Vermont Association of Realtors (VAR), that the Office intended to conduct such a review. 26 V.S.A. § 3104(c) (requiring such notice). The Office has taken extensive measures to solicit comments from the public and members of the profession. *Id.* The Office is directed to “give the [Vermont Real Estate Commission] a chance to present its position and to respond to any matters raised in the review.” *Id.* After feedback from the Commission, the report is required to be filed with the legislative committees of jurisdiction. 26 V.S.A. § 3104(d).

Three unexpected events influenced the course of this review. First, the Office was awarded a grant from the United States Department of Labor, enabling us to expand considerably the scope of review and efficacy of public outreach, all without drawing on State funds. Second, the 2020 COVID-19 pandemic provoked historic social disruption, including radical changes in the operation of government and the practice of real estate brokerage and a global shift toward remote work.⁴ Third, on November 19, 2020, the United States Department of Justice filed suit against, and simultaneously announced a proposed settlement with, the National Association of Realtors (NAR).⁵ If adopted, the settlement would mitigate some of the consumer harms identified in this review, changing the nature of the improvements available to state legislatures and real estate commissions.

Real Estate Regulation in Vermont and Elsewhere

Vermont Statute & Rules

In Vermont, real estate brokerage is governed by 26 V.S.A. § 2211 *et seq.*⁶, which requires licensure of those who, for compensation or the expectation of it, work to facilitate the sale or exchange of real estate.⁷ The State issues licenses to salespersons, brokers—the people authorized to engage in brokerage—as well as to brokerage firms and their branch offices. Licensure is not required of leasing agents and persons selling their own property for commercial purposes, such as a salesperson for a developer. The statutory scheme generally defers practice governance to administrative rules promulgated by the Vermont Real Estate Commission, a seven-member public body created by 26 V.S.A.

Assembly to adjust licensing fees. *See* 3 V.S.A. § 122. Consequently, fees are a relatively good indicator of the balance of resources. Those are addressed at p.3.

⁴ As related lockdown measures were implemented by Executive Order of the Governor, the VAR played a crucial role in the field, conveying accurate information to its diverse membership, encouraging fair and equitable subordination of commercial interests to the requirements of the public health emergency, and promoting compliance that made all Vermonters more safe.

⁵ See Appendix J, or use embedded links to view the [complaint](#) and [proposed settlement](#). A DOJ press release explains and includes the preceding links; available at: https://www.justice.gov/opa/pr/justice-department-files-antitrust-case-and-simultaneous-settlement-requiring-national?distinct_id=S1XleYLuH&user_email=joncmcbride@hpw.com. The relevance of the settlement is explained at pp. 7-8.

⁶ Available at: <https://legislature.vermont.gov/statutes/fullchapter/26/041>

⁷ The full definition is found at § 2211(a)(4).

§ 2251. Membership consists of one attorney; two members of the public with no financial interest in real estate brokerage; three real estate brokers, of whom one “shall not be a member of a professional real estate association,”⁸ and one salesperson. *Id.* § 2251.

For brokers and salespeople, initial licenses are \$100 and biennial renewal is \$240 thereafter. 26 V.S.A. § 2255. Brokerage firms register for \$200 and pay \$400 at each biennial renewal. *Id.* This means the ongoing cost of licensure is approximately \$120/yr. for an individual and \$200/yr. for a firm.⁹ *Id.*

License Type	Initial License Fee	Biennial Renewal Fee
Broker (Individual)	\$100	\$240
Broker (Firm)	\$200	\$400
Salesperson	\$100	\$240

Though most practice governance is delegated to the Commission, the General Assembly has specified the way trust and escrow accounts are to be managed (*id.* § 2214) and has specifically defined as unprofessional conduct¹⁰ various forms of misconduct with those funds. *Id.* § 2296(1)&(2) Similarly, statute proscribes “failing to fully disclose to a buyer all material facts within the licensee’s knowledge concerning the property being sold; and [] failing to fully disclose to a buyer the existence of an agency relationship between the licensee and the seller.” *Id.* § 2296(5).¹¹

Most all other governing rules are found in the Administrative Rules of the Vermont Real Estate Commission, CVR 04-030-290.¹² Those set up licensure of brokers, salespeople, firms, and the branch offices of firms. *Id.* § 2.3. Brokers and salespeople are to have completed a prelicensing course of 40 hours; brokers are distinguished by having practiced for at least two years as a salesperson, including closing at least eight unrelated transactions. *Id.* § 2.3; 26 V.S.A. § 2292 (establishing 40-hour course and experience requirements). Brokerage firms may be registered by designating a principal broker for the firm and a broker in charge for each branch; registering the brokerage as a corporation if required; and designating the name under which the firm will practice. *Id.* § 2.6. State and national exams are required to qualify for either individual license as a broker or salesperson.

With respect to conduct and practice, the Commission’s rules trace the statute by requiring that a licensee disclose known defects in a property, maintain trust accounts in an orderly manner, and provide a mandatory consumer disclosure at the first opportunity. *Id.* §§ 4.5-4.7.

Other rules govern the forms of representation a brokerage may practice and the service agreements a brokerage may make with buyers and sellers. *Id.* §§ 4.3, 4.4, 4.8, 4.9. The Rules require that, “Licensees owe a fiduciary duty to their clients.” *Id.* § 1.8(g). And no matter the form of brokerage chosen, no firm may “provide or offer to provide services as an Intermediary, a Transactional Broker, a Facilitator or any other form of representation not involving an agency relationship for which fiduciary duties are owed.”

⁸ To say that a Commissioner must be unaffiliated with the Association is, for practical purposes, to say that he or she must be a commercial real estate broker.

⁹ A firm with branch offices must register those at the same cost as a separate firm registration.

¹⁰ The term for conduct that may subject a licensee to discipline.

¹¹ Although it gets little space here, the simple prohibition on concealing latent defects is an important feature of the regulatory program, and it does seem to be working.

¹² See Appendix I.

Id. §§ 4.3(d)(3) & 4.4(e)(3). In other words, the rules disallow representation that is not fiduciary agency, so a real estate professional operating under the rules must be an agent on the “side” of the buyer or the seller.¹³

The rules are notable for going beyond the statute to require written agreements before rendering services (*Id.* § 4.8); to limit the duration of a brokerage service agreement to one year, with automatic renewal prohibited (*Id.* § 4.8(b)); to require designated agents be named (*id.* § 4.8(c)); to require that all parties receive copies of brokerage service agreements (*id.* § 4.8(d)); and to prohibit net listing, a type of agreement in which a seller’s agent keeps any amount of a sale in excess of a specified price (*id.* § 4.8(e)).

National Context

Vermont’s approach to the regulation of real estate brokerage and sales is broadly consistent with and typical of that in other states. Most observers would conclude Vermont is moderately more protective of consumers than is average among states.

The State is not an outlier among states, but the field is an outlier among regulated fields. The most common criticism of professional self-regulation in any industry is that it invites incumbent professionals to place barriers in the way of new entrants to the field, resulting in perpetually increasing degree requirements, testing requirements, and continuing education mandates. Real estate regulation stands nearly alone among professional licensing programs in bucking this tendency, and we are not the only state where it does. Vermont fits among the overwhelming majority of jurisdictions that require just 40 to 90 hours of prelicensure education, a standard which incumbent practitioners rarely agitate to change.

Few professional licenses are as accessible to ambitious Vermonters, or to Vermonters looking for a mid-career change, as real estate licenses. In terms of licensing requirements, the landscape looks very much as Chapter 57 says it should—enough required training to protect the public from the unprepared, but scarcely an inch more. Whatever else the regulation of real estate practice is doing in Vermont, it clearly is *not* harming consumers by restricting the number of people able to access the State’s license to practice. However, although barriers are low, unique characteristics of the professional marketplace prevent open access from delivering the consumer benefits most typically associated with competition: choice and variety.

In Vermont, as elsewhere in the United States, licensing regulations governing the way clients can be represented interact with close industry control of the property marketplace to deliver artificially narrow options for engaging providers and selecting professional services. Tightly controlled practice models yield an ample supply of licensed real estate brokers and salespeople who compete intensely for clients based on reputation, but almost never based on price or a-la-carte service offerings. Imagine a row of restaurants where twenty chefs of markedly different skill vie for each diner’s business, yet each offers the same entrée, the same sides, the same portion size, and the same price. The Vermont real estate market offers Vermont consumers the same limited range of choices.

¹³ Because agency is the only kind of brokerage allowed under the current rules, “agent” is used throughout this report as a shorthand for “broker or salesperson.”

Antitrust Events

The unusual juxtaposition of low barriers to entry with low practice-model innovation results from close industry control of the preeminent digital marketplace for residential property listings, called the Multiple Listing Service or MLS. The National Association of Realtors (NAR) and its state and regional affiliates own and administer the MLS, which is actually a network of almost 700 regional services woven together under NAR rules. The Vermont Association of Retailers is the state affiliate of the NAR.

According to its most recent membership report, the NAR ended January with 1,450,817 members, 1,757 of them Vermonters.¹⁴ For practical purposes, it is nearly impossible to practice residential real estate brokerage without joining a NAR affiliate as a REALTOR--the trademarked name for a licensed real estate agent who is an NAR member --thereby receiving full access to relevant MLSs. The MLS for Vermont is administered by the New England Real Estate Network (NNEREN), a corporation with offices in Concord, New Hampshire, whose shareholders are 24 REALTOR boards throughout New England.

The NAR's control of the MLS places the Association in ongoing conflict with the Federal Trade Commission (FTC) and private plaintiffs over whether non-members may access the MLS and on what terms.¹⁵ And MLS access is a fulcrum for broader ethics and conduct enforcement. The near universality of NAR membership among residential agents means that, unseen to legislators, courts, and the general public, a significant portion of *de facto* practice governance—what people outside the industry expect would be the Real Estate Commission's prerogative—is actually occurring privately through industry-association rules and arbitration.

In the 1990s, private plaintiffs found limited success challenging the bundling of NAR membership and access to MLSs. In 2006, the FTC brought a series of administrative antitrust complaints against regional MLSs throughout the United States, including the Northern¹⁶ New England Real Estate Network. In its complaint against the New Hampshire-based MLS, the FTC charged that “NNEREN adopted a rule that limited the publication of certain listing agreements on popular internet real estate web sites, in a manner that injured real estate brokers that use such listing agreements to offer lesser services at a lower price compared to the full service package.”¹⁷

The FTC's 2006 enforcement cases and a consent decree that followed somewhat improved marketplace access for brokers offering unconventional listing models. Today, consumers can select a

¹⁴ See <https://cdn.nar.realtor/sites/default/files/documents/Monthly-Membership-01-2021.pdf>. OPR recorded 2,226 active brokers and salespeople in February 2021. Commercial brokers and out-of-state residents licensed in Vermont likely explain the difference. Consistent with low entry barriers and high competition for business, year-over-year figures show that membership rapidly increases in hot markets and rapidly declines in recessions.

¹⁵ Litigation support is so central to the Association's service offering that it offers an online scorecard to help members and observers keep track. See, <https://www.nar.realtor/about-nar/grants-and-funding/legal-action-program/legal-action-case-support-scorecard>.

¹⁶ The Northern New England Real Estate Network dropped *Northern* from its name in 2015, following several mergers of shareholder boards.

¹⁷ See FTC Complaint, *In the Matter of Northern New England Real Estate Network, Inc.*, Docket No. C-4175, available at: <https://www.ftc.gov/sites/default/files/documents/cases/2006/12/0510065complaint061128.pdf>; Decision and Order available at: <https://www.ftc.gov/sites/default/files/documents/cases/2006/12/0510065do061128.pdf>.

“listing only” brokerage that will place a property on the MLS for a flat fee, leaving the seller to do the rest, including negotiating with buyer’s agents who expect compensation for bringing a buyer.

As this review was well underway, a period of relative quiet from federal regulators ended. In November 2020, the United States Department of Justice simultaneously filed suit against the NAR and filed a proposed settlement of that suit. If adopted, the Proposed Final Settlement will address problematic practices related to the compensation of buyer’s agents; specifically:

NAR and its Member Boards must not adopt, maintain, or enforce any Rule, or enter into or enforce any Agreement or practice, that directly or indirectly:

- 1. prohibits, discourages, or recommends against an MLS or MLS Participant publishing or displaying to consumers any MLS database field specifying the compensation offered to other MLS Participants;*
- 2. permits or requires MLS Participants, including buyer Brokers, to represent or suggest that their services are free or available to a Client at no cost to the Client;*
- 3. permits or enables MLS Participants to filter, suppress, hide, or not display or distribute MLS listings based on the level of compensation offered to the buyer Broker or the name of the brokerage or agent; or*
- 4. prohibits, discourages, or recommends against the eligibility of any licensed real estate agent or agent of a Broker, from accessing, with seller approval, the lockboxes of those properties listed on an MLS.¹⁸*

In other words, the pending settlement would get at oddities of agent compensation by improving transparency about commission splits, prohibiting misleading claims that buyer agents do not cost buyers anything, reducing automated sorting by commission, and requiring that MLSs offer lockbox access to all licensed agents a seller approves, not just MLS members.

The purpose of this review is to assess *State* regulation of real estate brokerage and how it might be optimized, taking for granted that federal antitrust enforcement is beyond our control. The Vermont Real Estate Commission is but one player on a field also occupied by an exceptionally engaged national industry association in a decades-long negotiation with federal regulators and competing commercial interests over the extent to which the association may leverage its control over the digital marketplace for real estate. This context explains a great deal of what we see at the state level. For example, association arbitration of disputes and ethics complaints almost certainly reduces complaints to the Commission; the centrality of the MLS as a proprietary walled garden influences the kind of continuing education available to Commission licensees; and industry anxiety about service unbundling manifests directly in State regulations that carefully define permissible and impermissible agency models, insisting on fiduciary responsibilities some agents do not want to offer and some clients do not want to buy.

Methods

Public Hearings

The first phase of fact-finding involved convening two heavily noticed public meetings at the Office of Professional Regulation in Montpelier. Invitations to comment were not only sent to Commission

¹⁸ Proposed Final Settlement, p. 4; See Appendix I. Also available at: <https://www.justice.gov/opa/press-release/file/1338631/download>.

licensees, but also to consumer groups and professionals peripheral to brokers, such as real estate appraisers, attorneys, and property inspectors. Hearings occurred on November 5th and 14th of 2019, with webinar broadcast for the benefit of those who could not travel to Montpelier.

This outreach generated excellent attendance by real estate licensees and thoughtful contributions from licensees who are not regular attendees of Real Estate Commission meetings. Maybe unsurprisingly, though, invitations did not drive significant participation from those outside the world of residential real estate brokerage. Nonetheless, licensees, Commissioners, Association leadership, and State regulators enjoyed a rare opportunity for open and unstructured conversation about how regulation could be improved, and much was learned to inform this report. Additionally, invitees were encouraged to share written commentary and criticism to a dedicated email address.

Surveys

Survey outreach became a key source of findings. Because the perspectives of practitioners tend to be very well represented and familiar to regulators—indeed, practitioners dominated public hearings despite outreach to consumers and peripheral providers—this review took pains to seek out perspectives not often represented in monthly meetings of the Real Estate Commission or the halls and committee rooms of the Capitol. With grant support from the United States Department of Labor, in the summer of 2020, the Office purchased online advertising through a statewide community bulletin, using this vehicle to reach and solicit feedback from Vermonters with recent experience buying or selling a home.

The Office conducted five individual and targeted surveys of marketplace participants to gauge the perceptions, opinions, and experiences of those in different positions relative to brokerage. Surveys targeted the following demographics: licensed real estate brokers and salespersons, members of other real estate industry professions, real estate industry organizations, real estate attorneys, Vermont public-interest organizations, and Vermonters who recently bought or sold a home.

Because this review is to focus on alignment between regulation and the public interest, surveys were exploratory in nature. Unlike forced-choice polls, questions were designed to elicit open-ended feedback about subjects specific to each target demographic. The exploratory nature of the questions was necessary and effective at provoking broad discussion of issues on the minds of survey respondents, not just survey drafters. Details as to survey methods and responses are available in the Appendices.¹⁹

Research

Finally, OPR undertook legal review and research of statutes, rules, litigation, legislation, minutes, and orders related to the regulation of real estate brokers and salespeople, as well as outreach to national consumer groups and direct contact with key stakeholders, such as advocacy groups and think tanks. In this phase, we attempted to situate Vermont's regulatory program relative to those in other states, as well as to gather established recommendations from institutions long engaged in similar discussions, such as the Consumer Federation of America and the Brookings Institution.²⁰

¹⁹ For survey methodology, see [Appendix A](#). The five survey questionnaires are attached as [Appendices C – G](#).

²⁰ Consumer Federation of America reports are linked as follows: report on [mandatory disclosures](#), on [representation models](#), on [commission transparency](#), and on [referral fees](#). Additionally hyperlinked is the Brookings Institution's report by Barwick and Wong (2019) on real estate brokerage competition, available [here](#).

Limitations

Grant-supported survey outreach offered us insight into the experiences of recent homebuyers, home sellers, and other participants in real estate transactions. Readers should understand that opinions collected in self-selecting or opt-in settings—open meetings and targeted online surveys are two examples—are not likely to be representative of the distribution of opinion in relevant target groups or in the general population. Those with strong opinions or commercial interests are more likely to participate. This phenomenon can exaggerate the apparent concern and upset about popular topics. Although response rates reported above are exceptional—approaching 50% in some cases—it remains the case that most invitees did not elect to contribute. For these reasons, the collection of survey responses should be understood as a qualitative endeavor, not an empirical gauge of prevailing opinion.

With that caveat, it must also be observed that the many Vermont professionals and consumers who participated in review meetings and responded to review surveys tended—even when expressing criticism of the Office or discussing the most contentious issues in their field—to be civil, thoughtful, and giving of their time. This remained true even among anonymous survey respondents.

Findings

I. The continued necessity of regulation is clear.

The broad questions presented by 26 V.S.A. §3105 are (1) whether regulation of real estate practice remains necessary to protect the public, and (2) if so, whether the system now in place is the least restrictive necessary to accomplish the task. Both are answered with a clear yes.

Every state regulates real estate brokerage to some degree. The practice calls on professionals to guide often-naïve consumers through uniquely high-dollar, high-stress transactions, in which consumers buy or sell the most valuable asset most will ever own, while simultaneously determining where they will live. Were those an insufficient number of stressors, consider that such transactions typically occur under external pressure, provoked by major life changes, such as the birth of a child, a new job, or the disability or death of a loved one. A residential real estate agent may wind up playing some version of counselor, confidant, combatant, chauffer, and trustee. Without professional regulation of some form, the potential for harm to the public is self-evident.

As discussed above, the remarkable characteristic of real estate licensure—both in Vermont and throughout the United States—is how *low* the barriers are for entry. Although licensure is nominally a more restrictive regulatory alternative to certification,²¹ broker and salesperson licenses are accessible. In hours-and-dollars terms, real estate licensing requirements are less burdensome than OPR's certification requirements. Thus, we can conclude the current form of regulation, licensing, is the least

²¹ In *licensing*, one may not do the regulated thing without a license. In *certification*, anyone may do the regulated thing, but only holders of the certificate may represent that they have government-verified training requirements. Dietetics and most forms of counseling, for example, are fairly described as *certification* programs. Those certifications take years of training manifest in accredited graduate degrees, whereas a determined applicant can qualify for a real estate license in a few months.

restrictive model necessary for the purpose of protecting the public.

II. The regulatory framework serves the public interest in ensuring competence and deterring frank misconduct, but at a high cost to innovation, choice, and transparency.

Review of the regulatory program under the more nuanced criteria set forth in 26 V.S.A. § 3104(b) unsurprisingly delivers more complex findings as to the alignment of the regulatory model with the interests of the consumer public.

Happily, 78% of consumer survey respondents (i.e., Vermont real estate buyers and sellers) report a positive overall experience with Vermont brokers and salespersons. However, responses make clear that homebuyers and sellers seeking an agent often do so without information necessary to make informed choices, such as what kind of professional services they want to buy, what price is reasonable for those services, what elements of an agency relationship are negotiable, and what incentives influence their own agents and others in the transaction.

People with different professional roles in the same industry usually see most of their shared world the same way. But with regard to the adequacy of consumer protection, Vermont real estate agents and Vermont real estate attorneys have strikingly different perspectives.

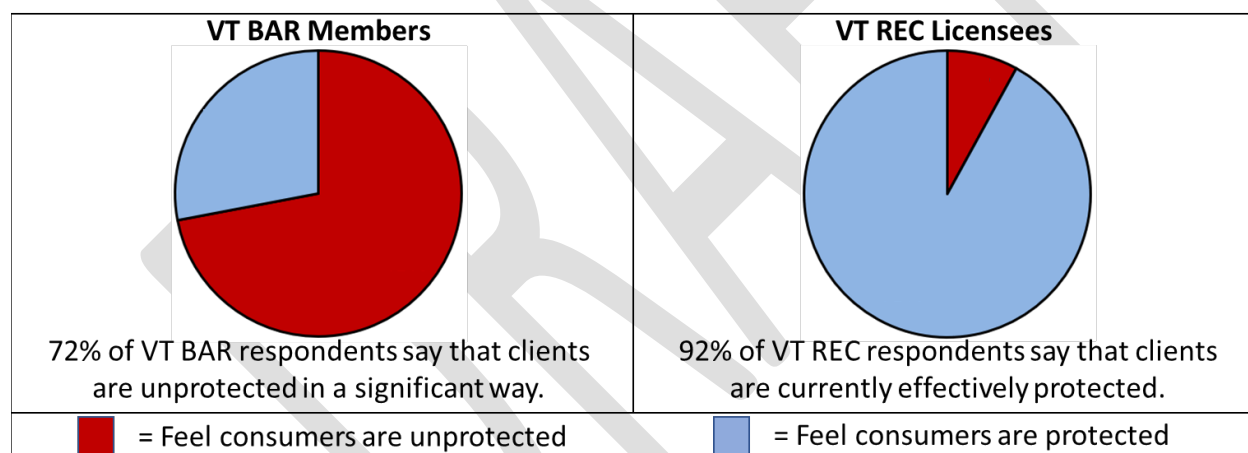


Figure 1: There is disagreement between VT BAR members and VT REC Licensees regarding real estate brokerage regulation, and public protection.

a. The mandatory consumer disclosure omits key agency concepts.

The Real Estate Commission has attempted to protect inexperienced consumers by providing basic information about agency. The cornerstone of that effort is the Vermont Real Estate Mandatory Consumer Disclosure (MCD), a single-page document with simple headlines.²² It is meant to explain (1) agency, and (2) the two forms of agency available in Vermont. In addition, it informs the consumer:

²² For the full document, refer to Appendix H, or <https://sos.vermont.gov/media/bxijibfw/mandatory-consumer-disclosure-for-a-non-designated-agency-brokerage-firm-9-24-2015.pdf>

- *You are not required to hire a brokerage firm for the purchase or sale of Vermont real estate.*
- *You may represent yourself.*
- *If you engage a brokerage firm, you are responsible for compensating the firm according to the terms of your brokerage service agreement.*
- *Before you hire a brokerage firm, ask for an explanation of the firm's compensation and conflict of interest policies.*

The MCD is ubiquitous in the real estate market, because regulations require that it be given to a consumer at the first reasonable opportunity, and always before entering into a service agreement or showing a property.²³ Similar documents struggle to balance brevity with adequacy, but this one is creditable: consumer advocates regard it as above average among those promulgated by other states, some of which do not require disclosures, or require them later, when they are less useful.²⁴ Nonetheless, the MCD could be more clear and transparent.

The MCD tells consumers what they need to know in a technical sense, but it stops short of explaining why that information matters. This is particularly consequential in light of Vermont's 2015 adoption of designated agency, an agency model that allows one firm to represent the buyer and the seller in the same transaction.

Designated agency was intended to offer a novel solution to the common conflict of interest that can arise if a buyer becomes interested in a property listed by the firm representing her. Conventionally, such a conflict was resolved by notifying the parties of the conflict and allowing one to choose between limited representation and a release to look for another agent. In some states, parties can consent to dual agency, meaning openly conflicted representation. By imagining that a firm could erect a wall between agents, designated agency was meant to allow more uninterrupted representation without the bad look of dual agency. Proponents of designated agency see it as preferable to disclosed dual agency or constant interruption of established representation agreements. In practice, however, designated agency can look a lot like pre-cleared dual agency.

Here is how the MCD explains the distinction between conventional agency and designated agency:

**Brokerage Firms May Offer
NON-DESIGNATED AGENCY or DESIGNATED AGENCY**

- **Non-designated agency** brokerage firms owe a duty of loyalty to a client, which is shared by all agents of the firm. No member of the firm may represent a buyer or seller whose interests conflict with yours.
- **Designated agency** brokerage firms appoint a particular agent(s) who owe a duty of loyalty to a client. Your designated agent(s) must keep your confidences and act always according to your interests and lawful instructions; however, other agents of the firm may represent a buyer or seller whose interests conflict with yours.

Although the key information is not kept from consumers, only the most sophisticated consumer is apt to think through what it means: because a firm doubles its revenue on one transaction by representing both the buyer *and* the seller, a designated agency firm of even the highest integrity faces extraordinary incentives to: (1) steer buyer clients toward the firm's own listings; (2) promote its listings assertively to

²³ Rule 4.6.

²⁴ Brobeck, Steven. January 2020 "Why Required Real Estate Agent Disclosures About Representation Fail and How They Can Be Improved" *Consumer Federation of America*.

its buyer clients and less enthusiastically to the full market,²⁵ and (3) to favor quick closing over zealous advocacy.

To be sure, no agency model is perfect. Natural incentives always will exist for agents to go easy on counterparts and to favor quick closings over protracted negotiations. The designated agency model, however, is uniquely pernicious to the consumer, because it amplifies those incentives, adds new incentives to *steer*, and then conceals the full suite of conflicts behind the veil of agency, thereby disclaiming on the part of a firm and its agents any obligation to disclose them and obtain the client's agreement to proceed at the point a conflict actually manifests. Consequently, the MCD, which was meant to protect consumers, operates as a form of regulatory dark matter; a signed don't-say-I-didn't-tell-you that doesn't actually tell you.

Vermont agents take the concepts of agency and fiduciary responsibility very seriously. Many are offended by the suggestion that designated agency is harmful to consumers, because they get up every day, put their clients first, and work hard to resist the innate pressures of the model. But the licensees are not under review; the regulations are. Sound regulation incentivizes licensees to avoid the conflicts of interest they can avoid, and to disclose the ones they can't. By contrast, the designated agency model incentivizes licensees to maximize conflicts of interest, disadvantages small brokerages, rewards consolidation, and then calls upon agents and their growing firms to resist the pull of anti-consumer incentives through the exercise of personal virtue. It is not reasonable to expect professionals to perform reliably as fiduciaries while placing themselves in circumstances that call for otherworldly forbearance.²⁶ A fiduciary should avoid those circumstances; designated agency makes them a business model. If this is to be allowed, consumers should be told of it in terms they can understand.

b. Regulation fails to explain contract types.

Rules 4.9(a) and 4.10(a) specify the types of brokerage service agreements permitted, recognizing three each for buyer and seller. These and their consequences are not explained in the MCD.

The seller service agreement types are:

- NONEXCLUSIVE (Open) AGENCY MARKETING, in which the client may list with other firms or sell the property on the client's own.
- EXCLUSIVE AGENCY MARKETING, in which the client agrees to list only with the party brokerage but may sell on the client's own without liability for a commission or fee.
- EXCLUSIVE RIGHT TO MARKET, in which the client agrees to list only with the party brokerage, and to be liable for a commission even if the client sells the property on the client's own

²⁵ Once a listing is in the MLS and therefore exposed to the full market, this is a bigger risk in a cold market than a hot one. Among the commandments of real estate education and ethics is that one is to convey all offers. Vermont agents reliably do.

²⁶ Survey feedback from consumers, REC licensees, and real estate attorneys, all suggest that designated agency is a direct conflict of interest for fiduciaries: Appendix B, Table 9. Those practicing under the model do tend to find it less disruptive to relationships and preferable to alternatives. Some argue that it facilitates representation in rural areas served by few firms. Defenders remind critics that informed consumers can and do opt to engage a non-designated agency firm, and non-designated agency firms can and do market themselves on that basis.

The buyer service agreement types are:

- NONEXCLUSIVE (Open) BUYER AGENCY AGREEMENT, in which the client may obtain brokerage services from other firms or purchase a property on the client's own.
- EXCLUSIVE BUYER AGENCY AGREEMENT, in which the client agrees not to use any other broker but may purchase on the client's own without liability for a commission or fee.
- EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT, in which the client agrees not to use any other broker and to be liable for a commission even if the client buys property on the client's own.

Vermont's consumer disclosure is notable for what is and is not talked about. The MCD informs potential clients of the distinction between customer and client,²⁷ as well as between conventional and designated agency, but it does not address the dramatic distinctions between the service agreement types above. First-time buyers and sellers are apt to enter the form that guarantees a commission to the agent—for sellers, exclusive-right-to-market; for buyers, exclusive-right-to represent—without understanding they have other options.²⁸

c. Broker fee splitting practices are poorly communicated to and understood by consumers.

In addition to exhibiting little appreciation of the distinction between firm models and contract types, consumers exhibit little understanding of details about how real estate brokers are compensated.²⁹ Price opacity, in turn, contributes to the absence of meaningful price competition. In much of conventional real estate practice, a seller's agent determines how much to offer a buyer's agent at closing, an inducement known as a "split" of the commission the seller has agreed to pay his agent. The amount of the inducement can be posted in a non-public section of the Multiple Listing Service, so agents can see how much is on offer for bringing a buyer to a particular listing, and can even sort properties on that basis, while public users of the MLS cannot.³⁰

The Commission's administrative rules are clear about whether agents' splits are the business of their clients:

*The brokerage firm representing a seller may compensate a brokerage firm representing a buyer out of the brokerage fee without thereby creating an agency relationship. The brokerage firm representing a buyer may compensate a brokerage firm representing a seller out of the brokerage fee without thereby creating an agency relationship. **Consent of the client is not required in either case.***

-Rule 4.13(d) (emphasis added).

²⁷ The MCD and many licensees' consumer communications assign conspicuous primacy to confidentiality and the risk of remaining a "customer" without it, with the effect that some consumers will be encouraged to rush into agency agreements to talk at all.

²⁸ Some respondents recounted "waiting out" bad matches and recommended shortening the present, one-year maximum commitment period: Appendix B; Table 3.

²⁹ Outreach feedback regarding consumer confusion about fee splits is available in Appendix B; Table 7.

³⁰ As explained above, precisely this scenario garnered the attention of federal antitrust regulators, and it appears soon to change.

Even when consumers understand splits, they mistakenly believe those are always 50/50.³¹ In Vermont, fee sharing conventions vary by region and listing brokerage, and friction periodically arises when a buyer's agent invests effort in a listing before discovering the split on offer is lower than expected.³²

The Mandatory Consumer Disclosure reminds consumers that “If you engage a brokerage firm, you are responsible for compensating the firm according to the terms of your brokerage service agreement.” But the terms of those brokerage service agreements go mostly unregulated. Consequently, a buyer's agent may represent to a client that the seller pays his fees, effectively desentizing the buyer to the price of professional services. Paying nothing does not feel like a monumental commitment, so price negotiation does not occur at the point it otherwise might. But the typical next step in the process *is* a significant commitment: The buyer conventionally is presented an “exclusive right to represent buyer agreement”—the last and most restrictive of the three options unexplained by the MCD—in which the buyer agrees that only the broker may represent the buyer, and the broker will receive the split on offer at closing, whether that occurs in three days or six months, and even if the buyer locates a property unassisted.

Of course, the services of the buyer's agent are not free to the buyer, because they are charged back in the form of a higher sale price. In the setting of a negotiable price, the parties always split the transaction costs. The question is whether they know it.³³

Allowing seller's agents to pay buyer's agents fees is an effective way to promote buyer representation, and often defended by industry for this reason,³⁴ but the practice conceals from buyers costs of which they should be aware, while exposing buyer's agents to conflicts of interest unseen by their clients.

For example, sellers as well as buyers often do not understand that splits occur, what a normal amount is, that the amount is variable, or the extent to which raising or lowering the amount may influence the market appeal of their property to agents representing prospective buyers.³⁵ Finally, survey respondents remind us, commission splitting creates a strong incentive for seller's agents to prefer sales to unrepresented buyers, as those buyers often do not know to seek the portion of the seller's agent's contractual commission that a buyer's agent, if present, would take as the split.³⁶

³¹ Evidence of consumer confusion over fee splits is available in Appendix B: Section 2(b).

³² Evidence of agent frustration is available in Appendix B: Section 2(b).

³³ Consistent with the findings of the [Consumer Federation of America](#) and the [Brookings Institution](#), listing agent brokerage rates have held close to 6% for decades and are effectively factored into seller price tolerances.

³⁴ In public hearings and in survey feedback, some real estate attorneys, as well as brokers, lauded the increase in buyer representation as an improvement for consumers.

³⁵ Evidence of consumer confusion over fee splits is available in Appendix B: Section 2(b).

³⁶ This phenomenon considerably weakens the dominant justification for splits: that they *encourage* buyer representation. They may, but they also encourage seller's agents to discourage it. Appendix B, Section 2(b).

d. Standard form contracts contain unreasonable waivers of consumer rights.

Limitation-of-liability clauses in Vermont representation agreements and purchase and sale contracts require that consumers, who are not typically represented by an attorney at the point of selecting an agent, sign away their rights to recover damages from real estate brokers, almost unconditionally. A standard representation contract provides:

*13. **Limitation of Liability.** In recognition of the relative risks, rewards and benefits of this Agreement to **Owner and Listing Agency**, **Owner** agrees that **Listing Agency**, its agents, associates or affiliates, including designated agents, together with any other brokers, salespersons or brokerage firms acting as **Broker's Agents** pursuant to this Agreement shall in no event be liable to **Owner** either individually or jointly and severally in an aggregate amount in excess of the compensation to be paid to **Listing Agency** or such broker(s) pursuant to this Agreement or Five Thousand Dollars (\$5,000), whichever is greater, by reason of any act or omission, including breach of this Agreement, negligence, misrepresentation, error or omission, breach of any undertaking or any other cause of action or legal theory unless such act or omission amounts to willful or intentional misconduct.*

Similarly, a standard Vermont purchase and sale contract provides:

13. Limitation of Liability: *Seller and Purchaser each agree that the real estate brokers identified in Section 31 hereof have provided both Seller and Purchaser with benefits, services, assistance and value in bringing about this Contract. In consideration thereof, and in recognition of the relative risks, rewards, compensation and benefits arising from this transaction to said real estate brokers, **Seller and Purchaser each agree that such brokers, their agents, associates or affiliates, shall in no event be liable to either Purchaser, Seller or both, either jointly, severally or individually, in an aggregate amount exceeding the total compensation to be paid to such brokers on account of this transaction or \$5,000, whichever is greater, by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of any undertaking whatsoever, except for intentional or willful acts.** This limitation shall apply regardless of the cause of action or legal theory asserted against the real estate brokers unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature whatsoever from any cause or causes, except intentional or willful acts, so that the total aggregate liability of all real estate brokers identified in Section 31 hereof shall not exceed the amount set forth herein. Seller and Purchaser each agree that there is valid and sufficient consideration for this limitation of liability and that the real estate brokers are the intended third-party beneficiaries of this provision.*

Unless the client knows to demand removal of these provisions, they are standard fare.³⁷ It is expected that one cannot buy or sell residential property in the State of Vermont without waiving the right to recover more than \$5,000 in civil damages from any involved real estate agent or brokerage, no matter the act or omission, and no matter how much damage is caused by even the grossest negligence or recklessness. By way of context, consider that \$5,000 is the jurisdictional cap in small claims court. An attorney requesting such a waiver of a party without separate representation would be in violation of the Rules of Professional Conduct that govern attorneys—even if the limitation were less audacious than those above.³⁸

e. Commercial brokers are regulated like residential brokers.

To Vermont law, interests in real property are interests in real property, and there is not a difference to be seen between residential and commercial real estate brokerage. In practice, those can be different worlds with different risks to practitioner and client. For example, it makes a great deal of sense to limit

³⁷ Evidence of consumer frustration over limitation of liability clauses is available in Appendix B, Section 1(a).

³⁸ Vermont Rules of Professional Conduct, Rule 1.8(h)(1), provides that “A lawyer shall not [] make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless the client is independently represented in making the agreement.”

the maximum term of exclusive engagement between a first-time homebuyer and a residential agent. Less so, however, to apply that same limit to a commercial broker's contract with a multinational corporation, wherein the parties may contemplate an indefinite working relationship. To the commercial broker, licensure calls for adherence to rules and requirements written substantially by, for, and about others.³⁹

f. The efficacy of conduct enforcement is diminished by inconsistent reporting.

Licensing enforcement protects consumers by deterring and addressing misconduct. An aggrieved person can file a complaint online at sos.vermont.gov/opr/complaints-conduct-discipline/. In the event investigation reveals actionable wrongdoing, known to the licensing law as unprofessional conduct, State Prosecuting Attorneys may bring formal charges against a licensee, asking that the Real Estate Commission take appropriate regulatory action to protect the public. If, after a hearing, the Commission finds unprofessional conduct, it may impose discipline, from issuing a warning or reprimand, to imposing conditions or peer supervision, to suspending or revoking a license. Survey and hearing feedback about enforcement was mixed, with participants generally expressing a sense that enforcement against perceived rule violators is too lenient and inadequate to deter unprofessional conduct.⁴⁰ Some skepticism is to be expected. The nature of enforcement is that those seeking it think the system is weak; those subject to it think the system is draconian; and those unfamiliar with it can only say what they've heard. It is clear, though, that when misconduct occurs, consumer and licensee uncertainty about the disciplinary process, together with fear of retaliation in small referral-reliant professional circles, contribute to inconsistent reporting. Because OPR and the Commission rely on complaints to prompt investigation, inconsistent reporting can have serious consequences for the State's ability to protect the public through licensing regulation.

Additionally, State disciplinary oversight is complicated by a parallel, private system of ethics enforcement administered by the NAR and VAR through regional boards of REALTORS. The private Boards enforce the Association's Code of Ethics and coordination of complaints among organizations is not required. Aggrieved consumers can be confused about where best to bring a problem and what might happen once they do.

Each complaint involves some degree of presumed risk to the complainant, who may fear that an effort to right a wrong will lead the accused to sue or retaliate in the marketplace. Consequently, it is important that those aware of misconduct feel comfortable reporting it and confident the report will lead to an appropriate resolution. We find that comfort and confidence less than complete, contributing to inconsistent reporting and diminished enforcement efficacy.

³⁹ Survey feedback regarding the regulation of commercial brokerage is available in Appendix B, Section 6.

⁴⁰ See Appendix B, Tables 12 & 13.

Recommendations

Based on the findings above, this review recommends the following nine proposals to better align regulation of real estate brokerage with the interests of the public. Some of these recommendations would require statutory changes however we do not recommend legislative action until the second half of the '21-22 biennium, when the scope of impending national changes can be better understood:

I. Require that clients pay their own agents.

The strongest recommendation arising from our review is apt to be the most controversial: Require that buyer's agents be compensated only by buyers and seller's agents only by sellers. So-called "uncoupling" is, to consumer advocates, the holy grail of real estate reform.⁴¹ In the words of the Consumer Federation of America:

Separating commissions would immediately reduce the commission expenses of sellers and would give buyers the opportunity to negotiate buyer commission splits that previously had been difficult, often impossible, to negotiate. This uncoupling would also greatly free discounters and tech companies to offer an array of service options at lower prices. CFA estimates that the average commission would decline from the current 5.7 percent level to about 4 percent, saving consumers 20-30 billion dollars annually in lower commissions.⁴²

Because it disrupts a longstanding model and facilitates downward pressure on commissions, uncoupling is likely to be unpopular with licensees, who will argue that it disadvantages buyers, especially inexperienced ones. That does not have to be the case, as mortgage funds could finance buyer's commission obligations as such. They are already doing that in a sense: the buyer's agent's split is implicitly built into each sale price.

Replacing commission splitting with uncoupled compensation of agents by their own clients is a powerful pro-consumer reform because it immediately removes the root cause of downstream issues. Gone would be the buyer's agent's incentive to steer toward high-commission listings; gone would be the listing agent's incentive to prefer unrepresented buyers; and gone would be most inter-broker disagreements about who was the procuring cause of a transaction.

⁴¹ A favored recommendation of the Brookings Institution. See, [Barwick, P. & Wong, M. "Competition in the real estate brokerage industry: A critical review"](#) December 12, 2019. Available at:

<https://www.brookings.edu/research/competition-in-the-real-estate-brokerage-industry-a-critical-review/>.

Also recommended by the Consumer Federation of America. See, press release at:

https://consumerfed.org/press_release/doj-settlement-with-nar-will-discourage-steering-and-discrimination-against-discount-brokers-but-will-not-significantly-advance-price-competition-in-the-real-estate-brokerage-marketplace/

⁴² Consumer Federation of America, Press Release, fn. 40, *supra*.

Implementation

Either the General Assembly or the Commission could specify that licensees must be compensated for brokerage services only by their clients. In the context of professional self-regulation, however, consumer advocates have tended to assume that legislative or regulatory interruption in established industry practices is so unlikely that they have looked to the courts, rather than to legislatures or real estate Commissions, for change. Ongoing class action antitrust suits outside Vermont aim to achieve some version of uncoupling, and the recent NAR/DOJ settlement proposal would blunt some of its worst effects. For these reasons, Vermont authorities should watch and wait while national litigation unwinds, but they should do so with awareness that uncoupling, though highly unpopular with incumbent industry, would be singularly effective at making the regulated market for real estate services look a bit more like others.

II. Disallow designated agency or improve disclosure of what it means.

The 2015 introduction of designated agency in Vermont accrued to the benefit of large brokerage firms and to the detriment of consumers and small brokerage firms.

Especially in Vermont's small communities, there are circumstances in which brokers and clients alike do not want, need, or expect a true agency relationship. When fiduciary obligations are undesired or impossible to maintain, it is best that consumers know it. Rather than demanding fiduciary representation in impossible circumstances, real estate rules should be candid with consumers and allow representation models that do not feature a fiduciary relationship. We explain one—a model of non-fiduciary, facilitative brokerage—in the recommendation that follows.

Implementation

Either the General Assembly or the Commission could require a return to the pre-2015 administrative rules, which solved conflict-of-interest problems in a more conventional and straightforward manner; specifically, by allowing clients to seek new representation or agree clearly in writing to receive limited services that acknowledge the conflict. See Appendix __. Designated agency is very popular with those firms practicing the model, and having adjusted to their benefit, those firms will oppose returning to the pre-2015 world. An alternative solution, likely less controversial, would be to retain designated agency but make the MCD much clearer about what it means.

III. Allow facilitative brokerage.

To promote innovation and choice, Vermont should join the majority of states in permitting facilitative brokerage, a non-adversarial model in which a real estate professional offers expert transaction

facilitation to a buyer and seller, but without representing either as an agent, advocate, or fiduciary.⁴³ The current prohibition on facilitative brokerage (also called transactional brokerage) is an unnecessary restriction on the way professionals can serve clients. Preserving it tends to reinforce a rigidly adversarial system while slowing practice innovation.

Facilitative brokerage would allow consumers who feel comfortable advocating for themselves to work with a guide rather than an agent expected battle on their behalf. For many real estate professionals, facilitative brokerage may also be desirable change of bearing, an offering of the same substantive professional expertise, but more in the nature of mediation than litigation. As the Consumer Federation of America notes, “Transactional agents face fewer conflicts of interest, have less related legal liability, and have more flexibility to negotiate sales than do fiduciary agents.”⁴⁴

Perhaps more important, facilitative brokerage—currently disallowed by administrative rule—is an intermediate professional-service offering of the type survey respondents indicate they would like. Current practice offers sellers who would like property listed in the MLS two choices: (1) engaging a full-service listing broker, who, respondents consistently report, will offer a non-negotiable 6% commission in an exclusive-right contract; or (2) engaging a listing-only brokerage that will place a property on the MLS and perhaps review contracts for \$400-\$1,000, but will provide no in-person services in a market where agents for represented buyers will expect to be paid by the seller for bringing a buyer. Facilitative brokerage offers less personalized advocacy than conventional agency, but much more assistance with a transaction than can be had from online, listing-only services. This may tend to allow consumers to buy what they want, without buying more than they want.

Implementation

Either the General Assembly or the Commission could strike the parallel provisions in Rules 4.3 & 4.4 that prohibit “provid[ing] or offer[ing] to provide services as an Intermediary, a Transactional Broker, a Facilitator or any other form of representation not involving an agency relationship for which fiduciary duties are owed.” Slightly more than half of the states allow non-agency brokerage services, and those states have established regulatory models that address related issues without restricting provider and consumer choice.

⁴³ According to the Consumer Federation of America, facilitative brokerage, also known as transaction brokerage, is permitted in 25 states. However, due to terminology differences among states, and a combination of limited agency agreements therein, some form of neutral facilitation is available in at least 30 states, many of which directly allow dual agency.

⁴⁴ Brobeck, Stephen, Senior Fellow, Consumer Federation of America, “The Agency Mess: Home Buyer and Seller Confusion and Costs Related to Divers and Poorly Enforced State Laws about the Role and Responsibility of Real Estate Agents,” p. 7. January 14, 2019. Available at: [the-agency-mess-home-buyer-and-seller-confusion-report.pdf](https://www.consumerfed.org/wp-content/uploads/2019/01/the-agency-mess-home-buyer-and-seller-confusion-report.pdf) ([consumerfed.org](https://www.consumerfed.org)).

IV. Recognize distinctions between residential and commercial practice.

The Administrative Rules of the Real Estate Commission should be revised to address the unique characteristics of commercial brokerage. In the alternative, the General Assembly could consider exempting commercial brokers, or an appropriate subset of them, from licensure. Complaints about commercial brokerages and brokers are extremely rare and historically have related to oversized advertising, a matter local highway departments can manage under the Vermont Billboard Law, 10 V.S.A. § 495 *et seq.* A longstanding vacancy in the Commission seat conventionally filled by a commercial broker has left that practice area unrepresented. The Commission and the Office should look for other ways to elicit input from the world of commercial brokerage.

Implementation

Our historical inattention to commercial practice stems directly from underrepresentation of commercial brokers. The General Assembly could amend 26 V.S.A. § 2251(b) to point more specifically at commercial brokerage. The relevant text could be amended as follows: “At least one of the broker members shall ~~not be a member of a professional real estate association~~ at the time of appointment or at any time during tenure as a member dedicate his or her brokerage practice to commercial real estate.” In addition, the Commission could establish a subcommittee of commercial brokers, appointed by the Commission Chair and Director of Professional Regulation, to advise the Commission and OPR on matters pertaining to commercial real estate practice.

V. Prohibit unreasonable waivers of consumer rights.

The standard real estate contracts offered to consumers by residential brokers contain unreasonable provisions limiting the accountability of real estate licensees for civil damages they may cause. If licensing is justified in the first instance by a need to protect the inexperienced consumer in a high-stakes transaction, and if real estate agents are the fiduciaries of their clients, it is irrational that the regulatory regime would permit agents to excuse themselves from accountability to the civil justice system for harms they may cause their clients. The practice is contrary to the public interest as well as the concept of fiduciary responsibility, and the Commission’s rules should be amended to prohibit it.

Implementation

Either the Commission or the General Assembly could act to expressly prohibit real estate licensees from including liability waivers in service agreements with clients not separately represented by counsel. The prevalence of these provisions points to a more general need for the State to periodically scrutinize standard-form residential contracts promulgated by industry associations. Joint consultation between the Commission and the Attorney General’s Consumer Protection Division, for example, could lead to productive oversight. It could be helpful if statute were to expressly require that consultation at particular intervals.

VI. Use regulation and consumer disclosures to encourage informed entry into exclusive representation agreements, as well as softer landings and equitable compensation when they fail.

The all-or-nothing model of at-closing compensation brought about by exclusive-right-to-market and exclusive-right-to-represent contracts distorts incentives and makes it difficult for consumers and licensees alike to end unsatisfactory professional engagements. Brokers and clients tend to make exclusive-right agreements precipitously and prior to legal consultation, resulting in commitments that can be disadvantageous for both in case of a mismatch.

Survey respondents suggest protections for real estate consumers in the same manner that consumers of at-home-sale products are protected: by legislating a cancellation period, an attorney-review period, or both.⁴⁵ It would also be helpful for legislators or regulators to define just cause for termination of exclusive agreements. Providing for easier termination of exclusive agreements not only would reduce the harm of bad matches, but also would encourage real estate professionals to move toward service-based contracts for services that ensure equitable payment in the event they expend resources for the benefit of a client who does not close. In other words, if exclusive representation were less airtight, a-la-carte service contracts would carry more appeal, improving flexibility for providers and consumers.

We have found that consumers typically engage attorneys to represent them in real estate transactions after many of the most consequential commitments have been made. If statute or administrative rule were to require attorney-review clauses in purchase and sale agreements, representation contracts, or both, agents would have an incentive to encourage, rather than discourage, earlier engagement of counsel.

The most common kinds of representation agreements in residential real estate are terminable only by mutual consent and commit a client to paying the specified commission regardless of his or her agent's role in actually drawing a buyer or locating a suitable property. Particularly if attorney-review clauses are not to be included in representation contracts, there is much to recommend expanding the Mandatory Consumer Disclosure to explain representation agreements in clear terms.

Implementation

New Jersey requires a three-day attorney review clause in purchase and sale contracts prepared by real estate licensees for unrepresented clients. Were the General Assembly or Commission to follow the recommendation of many Vermont real estate attorneys surveyed by requiring an attorney-review clause, New Jersey's tested model is the obvious one to follow. Separately, the General Assembly or the Commission could encourage service-based compensation models by making exclusive representation

⁴⁵ Vermont's Consumer Protection Act entitles a buyer in a "home solicitation sale" to cancel "until midnight of the third business day after the day on which the consumer has ... agreed to buy ... services from the seller," as well as to give the consumer written notice of that right. 9 V.S.A. § 2454. Contracts for real estate services almost always will fall outside the statutory definition of a "home solicitation sale." *Id.* § 2451a(d) (defining the term). But the idea is a useful one in cases where a consumer may jump unprepared into a significant commitment.

agreements less airtight, or by directly requiring that service agreements specify fees for certain discrete real estate services short of closing.

VII. Codify immunity for good-faith complaints; define misconduct to include retaliation; and inform consumers how to make conduct complaints.

Professional communities in Vermont are so small and referral-oriented that survey respondents report unwillingness to risk calling problems to the attention of regulators. This is a problem not easily fixed with a single solution; however, partial solutions are recommended.

First, the law should expressly afford good-faith reporters of professional misconduct immunity from civil damages. State law offers immunity to hospitals required to report staff misconduct. 3 V.S.A. § 128(d)). Surely, a voluntary complainant in the real estate marketplace will feel at least as much risk taking a voluntary step as a hospital administrator would taking a mandatory one. Such a complainant deserves the same statutory protection. This could be accomplished by amendment of *id.* § 128(d). Because this section is applicable to all OPR-regulated professions, protection would flow to voluntary reporters in those fields as well.

Second, the law should define unprofessional conduct by real estate professionals to include retaliation, by boycotting or otherwise, against good-faith reporters of professional misconduct.

Third, consumer confusion about whether to lodge complaints with the Commission or a regional board or REALTORS can be reduced by including within the Mandatory Consumer Disclosure simple information about how to file a complaint with the Office and Real Estate Commission—a measure common in other regulated fields.

Implementation

The General Assembly could amend § 128(d), as recommended above, to protect good-faith reporters of misconduct from civil liability. The Commission could add content to the Consumer Information Disclosure specifying that real estate regulation is administered by OPR and the Commission, and explaining where to file a complaint.

VIII. Adapt regulation to the virtual office.

Licensees participating in this regulatory review have called attention to administrative rules that can and should be reconsidered in light of technological developments and changes in the practice environment.

The Commission could consider changing Rules 2.3(c) and 4.1 (d) to allow one person to be principal broker for multiple firms in appropriate circumstances—for example, if a principal wishes to be involved in one commercial brokerage and one residential brokerage.

Broker supervision is an important part of the regulatory structure that makes low entry barriers possible and compatible with public protection; however, there are fewer and fewer reasons to associate supervision with shared physical space. The requirement that a branch office have a broker in charge, codified in Rules 2.6(a), 4.1(b), makes less sense in a world where there is no physical office. Rule 2.8 calls for the display of licenses at a physical office, but customers and clients rarely go there, and a website is where they would best verify active licensure and find disciplinary information. Finally, Rule 4.1(c) calls for a physical office when a designated address for service would accomplish the same purpose at lower expense. By updating the relevant rules to reflect the reality of virtual work and mobile brokerage, we can reduce compliance costs and facilitate innovation.

Implementation

The ideas above are but a few of the ways the Commission could consider adapting regulation to the virtual office while preserving appropriate oversight of less experienced licensees. The Commission could establish a working group to make comprehensive recommendations in that regard.

IX. Evaluate the adequacy of salesperson and broker training.

Although Chapter 57 directs us to focus on minimizing barriers to licensure, it does so based on an assumption that a generous supply of professional service providers will accrue to the benefit of the consumer and the public by driving prices down and rewarding innovation. Stakeholders have reported that this assumption does not hold for real estate brokerage. Supply is virtually unrestricted; competition for clients high; innovation and price competition notably low. Industry stakeholders in particular have encouraged us to consider that exceptionally low barriers to entry may have something to do with this paradox. As we examine “the extent to which the profession's education, training, and examination requirements for a license or certification are consistent with the public interest” (26 V.S.A. § 3104(b)), we must consider the possibility that two weeks of training, backed only by a brief period of broker supervision, may be inadequate to protect consumers from inexperienced new entrants to the field.

However fond we are, as a State and agency, of low barriers for entry, oversupply of underexperienced practitioners is a risk particular to real estate brokerage. First, the real estate market is infamously cyclical. If new entrants can come when things look attractive and flee when things get hard, net experience will suffer. Second, because the most experienced and the most inexperienced salespeople and brokers typically contract for the same commission percentage at closing, with virtually no negotiation occurring, the per-transaction compensation of inexperienced entrants is artificially inflated vis-à-vis that of more experienced peers, effectively incentivizing experimentation by new entrants.

This report coincides with a peak in the residential real estate values. Popular media have noticed, for example, that the membership of the NAR vastly exceeds the number of homes for sale in the United

States.⁴⁶ Regulators and professional associations have long known that licenses and memberships boom and bust with the market with a consistency and volatility unseen in other regulated professions. But more important, persuasive economic and policy research indicates that excessively *low* barriers to entry may harm market liquidity, expose consumers to inadequately prepared practitioners,⁴⁷ and compel even experienced practitioners to divert resources and attention away from productive service to clients and toward marketing to prospects.

Implementation

The Commission could work with OPR's policy analyst, real estate educators, and peripheral stakeholders, to assess whether enhanced pre-licensure education requirements would benefit consumers.

Conclusions

There are many successful and effective components of Vermont's current system of regulation for real estate brokerage. A strong majority of recent real estate clients surveyed report positive experiences dealing with licensees of the Real Estate Commission. Laws and rules governing the practice of the profession effectively protect consumers from serious misconduct. Regulation is not unduly restrictive with respect to entry into the field, but it does tend to reward consolidation while restricting innovation, price competition, and unbundling of services. Credible arguments exist for increasing educational requirements for entry—something that can be said of few other regulated professional fields. Regulators should do more to improve consumer insight and to promote fee-for-service compensation models.

We do not recommend that the General Assembly contemplate statutory reforms until the second half of the '21-22 biennium, when the scope of impending national changes can be better understood. Federal antitrust litigation, including a settlement between the National Association of Realtors and the United States Department of Justice announced just months prior to publication of this review, is likely to alter the practice of residential real estate brokerage throughout the United States and may obviate parts of those recommendations.

⁴⁶ National Public Radio, *Planet Money*, "Too Many Real Estate Agents" Woods, D. & Hershops, S., April 21, 2021. Available at: <https://www.npr.org/2021/04/21/989588150/too-many-real-estate-agents>.

⁴⁷ See, e.g., the working paper introduced by the report *supra*: Gilbukh, S and Godsmith-Pinkham, P., *Heterogeneous Real Estate Agents and the Housing Cycle*; available at [https://paulgp.github.io/papers/Heterogeneous Real Estate Agents and the Housing Cycle.pdf](https://paulgp.github.io/papers/Heterogeneous%20Real%20Estate%20Agents%20and%20the%20Housing%20Cycle.pdf). The authors find three interventions effective to combat the negative effects of experience on liquidity, and implicitly, on consumers: reducing commissions, informing clients that experience matters, and increasing entry costs. Higher entry costs, conceived primarily in terms of fees but not educational requirements, "may be the most politically expedient." *Id.*, p. 4. Higher entry costs in term of educational requirements, not fees, reasonably might be expected to be of even greater benefit to the general public, as well as more popular with incumbent practitioners.

While the national picture settles, the unprecedented consumer and provider feedback collected during the review may offer insight to the Vermont Real Estate Commission as it considers amendments to administrative rule. Based on public hearings, commentary, research, and survey feedback from more than 1,750 market participants, we have identified specific opportunities to improve alignment between regulation and the public interest, generally by reducing conflicts of interest and breaking from compensation and agency practices that obscure costs and confuse consumers. Measures like authorizing facilitative brokerage and expanding consumer disclosures to explain contract types are susceptible to near-term implementation in rule. In the second half of the biennium, after the Commission has had time to debate issues raised by this review, it would be appropriate to assess what work, if any, remains for the General Assembly to ensure the optimal function of Vermont’s regulated market for professional real estate services.

Respectfully submitted to the House and Senate Committees on Government Operations.

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION

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Appendix A: Outreach Methodology

To provide the most effective public outreach, as well as garner the greatest possible feedback, OPR conducted two public hearings, as well as five separate online surveys. Hearings were held on November 5th and 14th of 2019. In-person and online/call-in participation was offered. Hearing participants included licensed real estate brokers and salespeople, consumers, and industry professionals such as real estate appraisers. Due to the emergence of the COVID-19 pandemic, additional efforts related to the REC regulatory review were delayed.

On August 12th 2020, OPR requested feedback from four distinct groups. First, OPR surveyed all actively licensed real estate brokers and salespersons in Vermont. Similarly, OPR surveyed other industry members, including all actively licensed real estate inspectors, real estate appraisers, land surveyors, and related industry groups such as the Vermont Mortgage Bankers Association, Vermont Bankers Association, and Picket Fence Preview. Another survey was sent to the Vermont Bar Association, requesting feedback from attorneys who specialize in real estate transactions. Finally, OPR sent questionnaires to Vermont's real estate consumer organizations, including but not limited to Vermont Legal Aid, Vermont Affordable Housing Coalition, the Vermont Attorney General's office, and the Vermont Housing Finance Agency. On August 30th, OPR launched a two-part outreach effort in order to survey Vermont's recent home buyers and sellers. This involved both a two-week advertising campaign on the popular *Front Porch Forum* social media platform, as well as postal mailings, which directed consumers to OPR's online survey. Using real estate transfer tax data from the Vermont Department of Taxes, OPR was able to send postal mailings to the 5,000 most recently sold residences in Vermont, where both the buyer and seller had Vermont mailing addresses (in an effort to target Vermont residents, rather than out-of-state owners of second/vacation homes).

Responses

In total, the Office received 1,763 survey responses. This includes partial survey responses, as many participant groups were allowed the freedom to provide feedback on only those topics which they deemed relevant. The decision to maximize feedback through partial survey participation, rather than prioritizing survey completion, was based on this study's qualitative, exploratory design. In our opinion, incomplete submissions are better than none.

Of the REC's 1,990 licensed professionals, 856 participated in the survey (a 43% response rate). Specifically, there was an equal number of broker participants (428/857 total licensed population; 49.9% response rate) and salesperson participants (428/1,133 total licensed population; 37.8% response rate). The survey of real estate industry members yielded 175 responses. A response rate is not available for this survey due to the unknown sample size.⁴⁸ The survey of Vermont real estate attorneys yielded 35 responses. Likewise, a response rate is not available for this survey due to the unknown sample size.⁴⁹ The survey of consumer groups yielded 2 just responses. A response rate is not available for this survey due to the unknown sample size.⁵⁰

⁴⁸ The industry groups survey benefitted from facilitation by the Vermont Mortgage Bankers Association and Vermont Bankers Association. It is unclear how many individuals received survey invitations, and thus neither sample size nor response rate are calculable.

⁴⁹ The Vermont Bar Association facilitated the real estate attorney's survey by disseminating the survey invitation among its membership. It is unclear how many attorneys specialize in real estate law, or how many individuals received survey invitations. Thus, neither sample size nor response rate are calculable.

⁵⁰ A response rate is not possible because the surveys allowed participants to provide feedback as either individuals working in the industry, or as representatives of their respective organizations (8 total).

Finally, the consumer survey of Vermont real estate buyers and sellers yielded 695 responses. A response rate for this survey is unknown due to unknown sample size.⁵¹ However, based on survey data, certain participant demographic information is available. For example, 55% of all participants reported that their most recent real estate transaction was in the year 2020, 23% reported the year 2019, and in total, 94% of participants reported their most recent transaction occurred within the last 5 years. This data indicates that the feedback from consumers not only refers to recent experiences, but to the current real estate regulations and administrative rules.

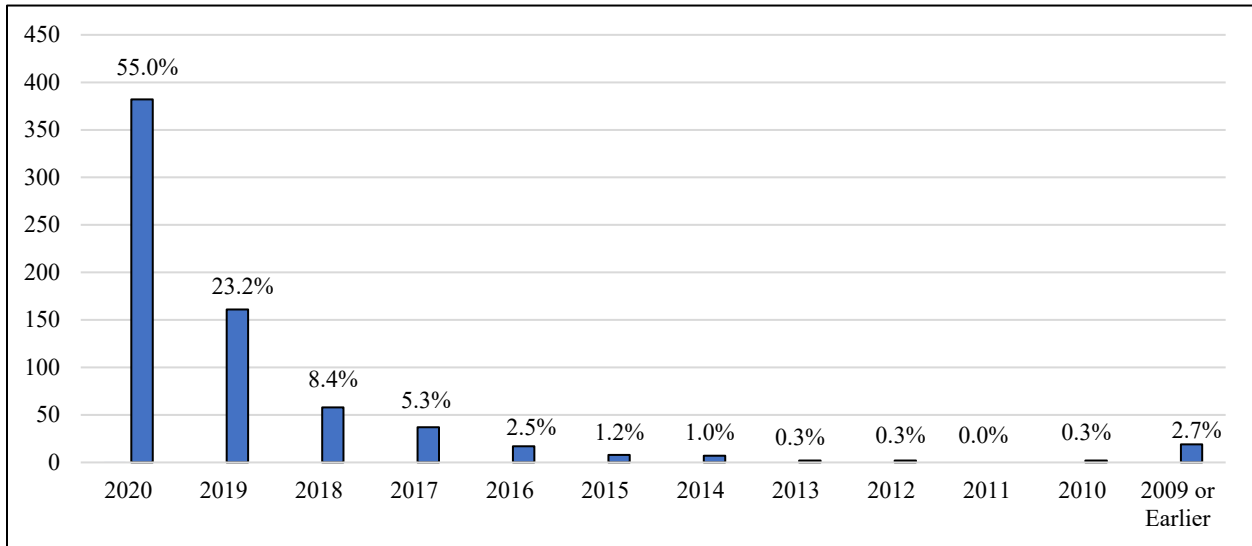


Figure 2: Consumer survey participants' self-report data on most recent real estate transaction.

Limitations

As with any study which relies on self-report data, there is the risk of self-reporting bias. However, given the exploratory nature of this review, the focus on qualitative analysis, and generally high response rates, these concerns are largely mitigated. Survey responses and compendia should not be mistaken for a scientifically sound measure of opinion within target groups.

⁵¹ The consumer survey included outreach advertisements on the *Front Porch Forum* social media platform, as well as 5,000 postal mailers. Thus, neither sample size nor response rate are calculable.

APPENDIX B: Sample Survey Feedback by Theme

Table 1: Common Feedback on Transparency of Representation Contracts	
Consumer	Omg so much paper work it was like being in a lecture for hours, by the end we signed without realizing what we got ourselves into. We feel that our realtor did all she could to hurry the process so we would sign without asking questions. And we need to ask questions!
Consumer	They were with the second realtor we worked with, the one who ultimately represented us in the purchase of our home. With the first realtor, we got conned into signing a one-year exclusive contract to work just with her. We were overwhelmed at the time and couldn't parse all the legalese of what we were signing with her. Her layperson verbal explanation didn't at all make clear what we were actually getting into by signing it.
Consumer	I am unusually scrupulous about reading fine print. Normal people need something more clear and plain English.
Attorney	Frequently but not always - many attorneys (including me) have found clients to be woefully ignorant of what they agreed to with their realtor or how the purchase or sale process works because the realtor focuses more on the "shiny prize" instead of how to get there

Table 2: Common Feedback Regarding Liability Limitation Clauses	
Consumer	"I didn't realize that the brokers liability was only \$5,000 in the case of a dispute. In my case, the seller lied on the disclosure regarding a water problem with my property. I sued the seller and their broker who advised her to lie, and that is when I learned about the \$5,000 limit. Very unfair and not right"
Consumer	"Are you kidding? How can a person review and understand everything they have to sign to close?? Lawyers should explain arbitration clauses, that's a big issue. People are signing away their rights to sue for poor construction etc and don't realize it until their house fails 4 months or a year after they move in. It's a horrible deal for the consumer for whom this is the most expensive purchase they will make."
Attorney	"Most real estate purchase and sale form contracts immunize brokers from their errors/omissions"
Attorney	"In my opinion paragraph #13 which limits the liability of brokers does not belong in a contract between the parties (or in any contract involving a licensed professional for that matter) and should be replaced with a REQUIRED attorney review provision. The Contract is the most important document in any real estate transaction and should have a provision allowing for attorney review. People often think that because it's a form, it's OK to sign. It's not, but also realtors are drafting a lot of addendums with important provision without a sufficient understanding of contract law. They need more contract law CLE as well."
Attorney	"Rules do not protect consumers when rules allow real estate licensees to include in their standard contracts, exculpatory language, relieving them from all liability for things such as misrepresentation about the property being sold. Also rules allow a single real estate firm to represent both buyer and seller - an unavoidable conflict - no mater how you try to create an artificial "Chinese Wall.""

Attorney	“Strongly urge that all form real estate purchase and sale agreements delete the limitation of liability paragraph (usually Paragraph # 13) as it offers no protection to the buyers and sellers. Lawyers are forbidden to limit their liability to their clients by contract; Realtors should not be allowed to either. I also recommend the addition of an attorney review clause providing for all signed purchase and sale contracts be subject to attorney review within a specified period as to all provisions except the purchase price.”
Attorney	“The purchase and sale of residential property is typically a significant event in the life of a seller or buyer. Sellers and buyers should be given the opportunity to have all proposed contracts reviewed by their own attorney. And, as I stated previously, if a seller or buyer is required to agree to a limitation of liability for a realtor, an attorney review should be a requirement.”
Attorney	“Frequently but not always - many attorneys (including me) have found clients to be woefully ignorant of what they agreed to with their realtor or how the purchase or sale process works because the realtor focuses more on the "shiny prize" instead of how to get there”
Attorney	“They are asked to sign a form P&S prepared by the realtor association that includes language limiting the liability of the real estate agent who is not even a party to the contract. It is self serving and when the clients sign they have typically not yet engaged counsel and don't understand what they are waiving in terms of rights. The paragraph should be prohibited.”
Attorney	“Section 13 of the standard Vermont Realtor's contract still persists in making the realtors a protected beneficiary to the contract by reducing or eliminating their liability to the parties in the event of negligence or error. While we frequently seek to remove it on a case-by-case basis, most realtors point to nearly exactly identical language in the listing and buyer-broker agreements, all of which reduce protections due for the parties.”
Attorney	“Brokers who refused to delete Paragraph 13 of the standard Purchase & Sale Contract is an example of a broker trying to override the legal advice a lawyer gives his/her buyer or seller client. Some brokers insist on drafting the language of Addenda, and then draft language which is vague. Brokers are very good about drafting routine Addenda, but in some instances should either use attorney language or defer to the attorney's suggestions as to the content of an Addendum.”
Attorney	“Regs should prohibit waiver of liability provisions in listings and in contracts. They serve neither the buyer nor the seller and do not protect the public. Lawyers are prohibited from disclaiming liability. If real estate licensees are to be "professionals" with fiduciary responsibilities, they should be held to the same standard”
Attorney	“Paragraph #13 of the standard broker contract needs to be removed from the form. Serves only broker interest, has no place in a contract between buyers and sellers.”
Attorney	An independent body should approve the standard real estate contract, instead of having the Realtors' Association attorney draft this document

Table 3: Common Feedback on the capture effect in representation contracts	
Consumer	There really needs to be a way for buyers to easily break these exclusive contracts with agents if the agent is not meeting the buyer's needs. We originally worked with an agent whose dismissal of our needs really bordered on negligence and she wouldn't even discuss with us the possibility of making lower offers on houses that had been languishing on the market for a long time. The whole exclusive buyer's agent contract is flawed, especially in that agents can make them last a really long time (like one year) and it's not immediately clear to buyers just what rights they are signing away
Consumer	We actually found and toured the house we purchased on our own and had to pay the realtor the same amount in commission as if he found it. That didn't feel right.
Consumer	Exclusive contracts should have the following limitations: Either they should be limited to no more than 3 months (renewable only by buyer signing again) and should be easy to terminate if there's not a good fit between buyer and agent OR the exclusive agreement should *only* apply to houses the agent actually shows to the buyer (the current wording means that ANY house the buyers purchase while under the exclusive agreement means the buyer's agent is owed a fee)
Consumer	Fees yes. Some of the terms in the contract about what happens if the house sells after the contract expires and the agent getting some commission (section 6, I think it was) were not clear. They need to be simpler.
Consumer	We started with an agent and were not sure how to get out of the contract. We were lucky the agent left the company. The company offered another agent but we had an option to decline. We end up finding a new house and closing the transaction on our own
Consumer	It's complicated. For buying, we represented ourselves with the sellers agent. For selling, we started with an agent, got under contract and then it fell through. We waited out our contract with that person and then sold ourselves.
Consumer	Limit exclusivity to 60-day terms, requiring both parties to opt into a continued relationship on a more regular basis
REC Licensee	It is also too easy for agents to trap clients into representation that they cannot get out of when they want out for justified reasons.
REC Licensee	I don't think buyers understand that when they sign the ETRR how important it is to shorten the time to represent or make the agreement for specific homes. We have had potential buyers that have signed wide open agreements with Brokers that last almost a year. They did not understand that this agreement meant they couldn't look with another agent. The agreement should be for a very limited number of homes. Not for every home on the market.
REC Licensee	I believe buyers and sellers should have the ability to terminate representation with their Realtor. If this is not possible I believe that representation contracts should be shortened. The public is often unaware of the time frame that they are binding themselves to a Realtor. I firm receives multiple inquiries a year from customers asking us to counsel them on how to get out of representation agreements with Realtors who are not providing good service. We cannot help them. Binding clients to bad representation hurts us all.

Table 4: Sample Feedback about Purchase and Sales Agreements	
Consumer	We thought they were clear. As the buyer we would stated the give we'd negotiate and then ended up not being in the contract. Also the contract left off statement that building rights on another property were not part of the sale. Because this was left off the contract and part of the deed, in the end were were legally bound to have the building rights part of the negotiated sale. In other words, we were locked into selling a house and building rights at a much lower price than ever intended.
Attorney	I almost never see the initial agreements signed by the sellers when they get ready to list their house. I actually had a broker refuse to provide me with the agreement. I've also had people uncertain of what their obligations are if a buyer comes along who had no contact with the broker whatsoever (including after the listing was terminated).
Attorney	Standard listing and sales contracts are more complicated than necessary, not clearly understood by public and contain mediation and limited broker liability provisions that are unreasonable given the nature of the subject matter that is the largest asset most customers deal with in their lifetimes. Although opportunity for review by attorney is given with respect to such contracts in some situations, it does not appear to be the rule.
Attorney	Although efforts have been made to address this situation, done deals, i.e. signed contracts, both listing and sales, are the rule as the practice is to get the papers signed and let others work out any issues without sufficient third party input and thought up front.
Attorney	There are too many errors in the P&S agreements that we get. Knowing that someone will need an attorney, it would behoove everyone if as soon as a Realtor has a listing, the Realtor makes sure that the Seller has legal representation. Often, days prior to a closing, we get calls advising a Seller needs an attorney last minute, because they weren't told they needed an attorney.
Attorney	Real estate transactions are almost always conducted in accordance with contracts drafted by attorneys for the realtors. The provision in the contract attempting to protect realtors from liability is of no benefits to the seller or buyer and should not be permitted in the contract. When the buyer and seller attorneys are known or ascertainable at the time of signing the sales agreement, they should be automatically afforded a reasonable time (e.g., 3 business days) to review and comment (e.g., often a Warranty Deed is in appropriate or there are addenda for Common Use which should be attached or occasionally are attached and should be omitted, etc.).
Attorney	A rule should be considered making inclusion of a mandatory contingency to have a purchase and sales agreement reviewed by attorneys.
Attorney	Brokers too often tell buyers not to hire an attorney before the P&S is signed because They just screw up the deal.

Attorney	Many do not recommend attorney review of contracts. Many draft contingencies in addendums which are unclear in terms of who is to do what, when, and what happens if the what isn't OK - and provisions which do not adequately protect either party. One I know of actually drafted a lease.
Attorney	I almost never see the initial agreements signed by the sellers when they get ready to list their house. I actually had a broker refuse to provide me with the agreement. I've also had people uncertain of what their obligations are if a buyer comes along who had no contact with the broker whatsoever (including after the listing was terminated).
REC Licensee	In my opinion, contracts used are inadequate to provide clear and simple explanations, and template forms for protecting buyers and sellers likewise

Table 5: Common Feedback on Mandatory Consumer Disclosures

Consumer	The disclosures are written like legal documents and as a result, are particularly challenging for the average person to understand.
Consumer	I'm an educated and experienced home buyer (this was my sixth real estate transaction) and still the paperwork is unbelievably opaque.
Consumer	The broker agreements were confusing and we met with different brokers in the beginning and they all struggled to explain it clearly
Consumer	Well...Lots of "boiler plate" stuff not recognizable to the common person.
Consumer	However, I do feel that the "buyer-broker" relationship is unclear, and not sure what advantage or disadvantage that represents for buyers and sellers.
Attorney	I regularly find that Buyers believe the selling agent to be "their" agent, despite mandatory disclosure forms signed by the same Buyers indicating the opposite.
Attorney	Many buyers still don't understand that the broker is not working for them.
REC Licensee	In my experience, very few agents fully and thoughtfully explain the VRCIDisclosure, so right out of the gate, the consumer is ignorant to the nuances of designated agency.

Table 6: Common feedback indicating consumers don't know agent responsibilities

Consumer	It did not show that they were negotiable on any document
Consumer	There was a reasonably clear contract about what a buying and selling agent does, but I think a clear disclosure of how information about properties are stored/available to buyers and sellers would be helpful. Consumers Need to be informed about what kinds of information their agent can ethically provide, what they can't
Consumer	I don't know. I thought she was supposed to help me, she did not. I thought she was supposed to protect my interests, she did not.
Consumer	Vague, other than our obligation towards choosing that real estate agent

Consumer	Cannot elaborate because I really did not know what the roles entailed.
Consumer	Only because I am in the industry, brokers do a very poor job of clearly (in plain language not legalese) describing their role.
Consumer	I wasn't sure if the broker was working for me or for the seller (the broker was not the listing agent)
Consumer	Originally we thought that they were, but as time went on, and dealings with the seller became more and more hostile, we felt that we were not being fairly represented
Consumer	Perhaps I misunderstood them. When I was interviewing them they each said they would work just for me. That they would look out for my best interest.
Consumer	My broker was very busy and I felt all they did was market my house and I did the rest
Consumer	As an out of state buyer, I do not feel I was fairly represented. The realtor had recommended her friend as a home inspector, and the home inspector did not report issues with electrical, heating or water systems. I did not have heat until the middle of November and went with out water for a week. I paid top asking price for a property that was marketed as "pristine".
Consumer	The broker who sold my house also represented the buyer and in the end she said she was not my salesperson. I had asked first day if she could represent both and said yes. She mostly ignored my needs and focused on buyers. My agent when i bought my home was great.
Consumer	We did most of the work in finding homes. Broker was poor advocate for our needs in the process. Misrepresented highest priced properties and dissed lower priced properties. Did not follow Covid protocols. Seller brokers rarely showed up for showings.
Consumer	I think the days of a broker honestly earning commission are far gone, brokers are now sales people only with poor property and transactional knowledge. Brokers continue to insist on a 6% commission or more (they frequently pressure sellers into sales concessions). Brokers need to be salaried, fee based and the ethics of how they price homes needs to be seriously evaluated. They slipped out of the regulations of Dodd Frank, and that was a huge miss by the federal government. Brokers are negligent, price fix and manipulate markets (and reap the benefits in all types of markets).
Consumer	Neutral. The whole industry of brokerage seems like a scam to me. 6% customary commission for sales is really preposterous. I did 98% of the work.
Attorney	I'm going to say "I don't know." I almost never see the initial agreements signed by the sellers when they get ready to list their house. I actually had a broker refuse to provide me with the agreement. I've also had people uncertain of what their obligations are if a buyer comes along who had no contact with the broker whatsoever (including after the listing was terminated)
REC Licensee	The problem as I see it is that members of the public generally do not know the "rules of the game," or how to seek redress when needed. This lack of knowledge can cut both ways: It can mean that legal and ethical violations go by unaddressed; but also it is quite common for a member of the public to incorrectly believe that an agent has committed a foul violation, when in fact that agent has vigorously promoted the best interests of his or her client, legitimately. It may be that "eyes glaze over" when reading the Mandatory Disclosure. And that might be acerbated by agents who just treat the disclosure as "paperwork" to be signed "for the file."

Table 7: Common Survey Feedback Regarding Fee Splits	
Consumer	Though as purchasers we were not responsible for them
Consumer	But the buyers realtor on the sale property made me sign a contract to pay him 5% commission. I objected but he insisted or I could not sell.
Consumer	I felt the fees paid to my broker were fair but I did not feel they were fair to the other seller's broker. We did most of the work on our end and she injected a lot of stress and unprofessional behavior into the situation.
Consumer	Especially if the two agents work in the same office, some things might be off the books or unofficial.
Consumer	I never use a broker to buy. I just call the listing agent or I am likely to lose the home to someone else who didn't bring a buyer's broker b/c the selling broker can keep all the commission if there is no other broker involved. I've never lost a purchase yet with this approach, so as they say, you do the math. Selling- Now that one can list on MSL for as little as \$199, I post on Zillow and Craigslist (the latter resulting in a scam rental posting about my home), Picket Fence, then MLS. Sale was via Zillow, saving me \$33,900 in commissions
Consumer	We saw mention of it in a document, but we had to bring it up, the broker didn't. We were also told conflicting information about what they would get if it were a for sale by owner versus a listed property.
Consumer	I was not aware this is how it works.
Consumer	I thought the 50-50 split was by law
Consumer	I wasn't aware that was they determined that. I thought it was a 50%/50% split
Consumer	That's between realtors though would hate to see a sale not happen because of conflict between agents
Consumer	They do not determine the splits independent of the seller/clients input.
Consumer	I didn't know that can happen. I thought it was always split down the middle
Consumer	The seller should have input.
Consumer	I did not have a seller's agent, so I determined the buyer's agent commission, although he would not have shown my house if I did not agree to his price.
Consumer	If it isn't equal across the board, however, some buyers' agents may steer their clients away from certain properties
Consumer	Realtors would steer buyers to properties of other realtors that share more of the commission.
Consumer	I thought this was a standard 50/50 split. That would seem more fair in the long run.
Consumer	I don't understand this question. We signed the listing agreement which had the commission amount in it.
Consumer	the commission was not split. The seller paid all.
Consumer	I believe that there is the 'potential' for conflict of interest if the Listing Agent determined the commission split in some instances
Consumer	I think there is also a conflict of interest in that the more you purchase a property for, the more commission the agent gets. The buyers' agent is doubly incentivized to get the buyer to pay a higher price. 1. A higher offer is now likely to be accepted so the real estate agent is then done and gets paid. 2. The agent receives more money if the offer is higher.
Consumer	It should be fair and everyone should know ahead of time. The buyers' agent could influence the buyers not to purchase solely because they don't like the split.
Consumer	Does that happen? [do listing agents determine fee split]

Table 7 Continued: Common Survey Feedback Regarding Fee Splits	
Consumer	Could be, if the offered split is low and provides less incentive for them to mention a house to potential buyers. Don't think it was an issue for us
Consumer	It should obviously be 50-50. the listing agent should not determine the split.
Consumer	The realtors are all in each other's pockets. They only want the sale to close so they get paid. The selling agent should not get to monkey with the split. Should be a flat fee. If the selling agent puts a low split, the buyers agent will not show the buyer the property- this is not a fair process for the buyer
Consumer	I didn't know that [fee split] was negotiable.
Consumer	DEFINITELY ! THIS SHOULD END
Consumer	Fees paid on behalf of the buyer should be clear, otherwise it's a license to STEAL!
Consumer	Yes. I think there should be a way of paying the buyer's agent that isn't a percentage of the sales price so that they aren't incentivized to encourage their clients to offer a higher amount than is necessary to close the deal.
Consumer	They should only get commission from the party who hired them
Attorney	Despite receiving mandatory disclosures, they really don't get the difference between client level representation and customer level service. In their zeal to keep customers from going out and getting their own representation (thus protecting a listing agents claim to a 100% commission), the agent does not really advance the cause of educating the consumer. However, rules are limited in their ability to control ethics and over time I can see things improving, slowly. I'm happy with that progress
Attorney	My only concern here is that there are still some old school agents out there who feel like they own their customers and actually end up discouraging them (subtle style) from engaging an agent to represent them as buyer. I PRAISE THE TREND of having more buyer representation, but often the fee being offset by seller or seller's agents is confusing to a buyer
Attorney	Absolutely not. They encourage Listing agents to try to talk Buyers out of getting their own broker, since that cuts their fees in half. They also often suggest cash back to the Buyer from Seller so the purchase price is higher, and then they collect a fee based on the higher price. I push back about this, and have had a couple of brokers who have refused to work with me if I don't allow them the higher commission
Attorney	Again, it depends. Most of the time, a buyer understands that their realtor's commission comes out of the commission the seller pays. But not always.
Attorney	I am convinced they do not recognize the full import of the "split-no split" decision. But this is not the fault of the rules. The rules clearly require agents representing sellers to discuss this decision and then to implement it as part of their service agreement (and ultimately through the MLS). I view all of this as being a logical transition between a time when buyers were left totally in the cold, and the emerging trend to have buyers represented
Attorney	Some do, but many still do not understand either the fee split or what happens when both realtors are from the same firm

Table 7 Continued: Common Survey Feedback Regarding Fee Splits

REC Licensee	<p>The system allows the Realtors Association to control the commission dispute process. Instead of following the precedent set by the Vermont Supreme Court for the "law of procuring cause", the Realtors Association and the MLS dispute process puts customers and the public at a competitive disadvantage by locking them into relationships for which they did not intend to engage. Most agents will tell a buyer that if they show them a property once under Vermont law they are the "procuring cause" of the sale, which is not the law set by the precedent of the Vermont Supreme Court. The mandatory arbitration makes it so that any firm challenging the Realtors Association and their intentional misinterpretation of the law of procuring cause is silenced by their current dispute process.</p>
REC Licensee	<p>Many firms offer the "real" commission to "sub-agent" or "sub-agent type" on the MLS listing sheet, and a very small commission to a buyer's agent. That small commission is generally fictional, because they will pay the "real" commission to a buyer's agent, if that buyer's agent brings about the sale to a buyer whom the listing agency has not previously shown the house. What they are doing, is using a fictional interagency compensation offer in order to enforce the legally-flawed theory that Procuring Cause is established by "first across the threshold," rather than by who has initiated an unbroken chain of events which brought about the sale. If the buyer calls an agency, makes an appointment on the phone to see their listing, and then decides that they would never make an offer through the listing agent but only through a buyers agent of their own choice: then that " first across the threshold" agent did not initiate an unbroken chain of events leading to the sale, and therefore is not the procuring cause. (In fact, if the first time the buyer sees the mandatory disclose is when they meet the listing agent to see the house, it may be that they had not even realized that they can have a buyer's agent, until after it is too late because they have gone "across the threshold" with the listing agent. It would not be too late if the Commission would actively take measures to correct this common practice of playing with the commission in order to discourage buyer agency.) I suspect that the Commission does not understand the legal doctrine of Procuring Cause, and the Commission clearly looks the other way (perhaps inadvertently) while the MLS interagency compensations offers are being manipulated to restrain trade and discourage & deprive the ability of members of the public to retain their own agent to represent their interests. Has the Commission never wondered why so many listing sheets — from a variety of competing firms -- have very same, low number for the interagency compensation offer to a buyer's agent?</p>

Table 8: Survey Feedback about agent Compensation based on sales price	
Consumer	Not really. When buying, it seems like no one has your interest in mind because everything is contingent on the sale price of the house. Everyone is working for the seller to get the highest price possible. No one is working to support the buyer.
Consumer	Of course all real estate agents end up working for the buyer wanting to please the buyer because that's where the money comes from.
Consumer	General feeling about real estate people is they only know what interests them and have experienced. Our closing had issues and the agent could have and should have explained some things better - in the end it was all about making the sale.
Consumer	They were working in their own interest.
Consumer	She just wanted her commission
Consumer	we felt they were working for a profit and pushed us into accepting the first offer. She even said it would be unethical to wait to another even though we had 48 hours to respond
Consumer	I felt like he was really just representing himself trying to get us to pay the highest price and rush us through the purchase and inspection process. It seemed like he was working with the inspector to just get it all done.
Consumer	It appeared she was was working only with the buyers broker in order to secure their commissions. We were wondering if she was trying to sabotage us at various points. We've bought and sold many properties with ease- This realtor made this sale worse than hell.
Consumer	our real estate agent , did not look after our interest she just wanted house sold
Consumer	The main concern that the broker had was the commission they would earn.
Consumer	They prioritized making the sale go smoothly over addressing my needs.
Consumer	They were working for the seller... But did hint at some information about price negotiations that were helpful to me
Consumer	Frankly, she felt put out only wanting to show a few properties and complained how much work it was to set up. She made me feel like I was being difficult. I was looking at \$400,000 homes. And neither she or listing agent (who never showed up) were willing to walk boundary lines on land
Consumer	I didn't feel like he was working for me -- I felt like he was just trying to get his commission and get us to pay a high price and rush the process to get it done.
Consumer	Yes and No. I was an out of state buyer and I bought a house sight unseen and relied on the realtor for an honest representation of the property. Problems arose when bargaining for the sale price. The realtor representing the seller and my realtor were unwilling to try to negotiate a lower price. This led to me buying a house for more than it was worth.
Consumer	In most areas, the real estate agents cooperate with each other so as not to create an adversarial climate. They collaborate and compromise on pricing and then pressure both the buyer and seller to accept the deal. In my case, both agents made extreme efforts to keep me from talking directly to the buyers.
Consumer	Compensation should not be tied to sales price, at least on the buyers side. Fees should not be so high as the job has changed so much Spence they were set
Attorney	Too often, people are just told what they need to sign, and not what it means. The Brokers often encourage clients to sign P&S agreements with cash back for closing costs and then the Broker ends up trying to get commission on the sale price, not the sale price minus the cash back, for example. The commission system means that they get more money if they craft contracts in certain ways.

Table 8: Continued: Survey Feedback about agent Compensation based on sales price	
Attorney	When they charge commission on the total sale price when there is a Seller contribution
Attorney	I am aware of Agents advising clients they can't back out of a P&S (even when there is cause) because the agent wants the commission.
Attorney	Many (but not all) agents believe that their job is done when the Purchase and sale agreement is signed, and take no actions to complete the sale, they just want their commission check.
REC Licensee	Vermont has no guidelines for multiple offers, which are many of the problems. This is where agents can and do really screw people over. I offer Maine guidelines, they have similar agency law....this really needs to be written out.

Table 9: Survey Feedback regarding Designated Agency	
Consumer	I do not feel that brokers should have "both sides" of the deal. I understand that they are obliged to tell the buyer that they represent the seller. But, in my experience, they end up (perhaps unconsciously) wanting/pushing the deal to go through, so that they have both sides of the deal, and this doesn't end up necessarily representing the seller's best interests. In many states, this is prohibited.
Consumer	Both agents worked for same agency. Said that's the only reason we got our house.
Consumer	It was stated up front how commission would be split. In my case all agents were from the same agency. That felt a bit of a conflict. I felt seller brokers deferred to buyer broker. Is he the golden boy in the office?
Consumer	Our seller was the same agency as us (buyers) I felt as though they only had the sellers interest in mind
Consumer	Brokers from the same agency should not rep both buyer and seller.
Attorney	Permitting a single agency to represent a seller and a buyer ignores an inherent conflict of interest. The argument brokers have provided to justify the practice has everything to do with profits and little to do with protecting the consumer the broker represents. The brokers tell that the old rule meant brokers lost an opportunity for profit. Brokers have told me that they are good people and would not be affected by the conflict of interest. Lawyers could make the same argument, and have. I think the real estate commission lacks insight into how conflicts of interest work insidiously, undermining the public's confidence that the broker is working in the best interests of the buyer or the seller.
Attorney	In that you allow the same firm to essentially represent both sides. That allows the large firms to grow while pushing out the smaller firms.

Table 9 Continued: Survey Feedback regarding Designated Agency

Attorney	Allow a single firm to represent the buyer and and seller is an inherent conflict of interest. A consumer cannot trust a brokerage firm that represents both, especially when the broker is an employee of the firm. This is an example of profits over people. Paragraph 13 of the standard Purchase & Sale Contract distributed by the Association of Realtors is intended to protect brokers from their errors, omissions and misconduct, to the detriment of the seller and buyer who signed the Contract. Sellers sign a listing agreement, which contain protections for the agent and broker. If a buyer enters into a buyer-broker agreement, the agreement contains protection for the broker. Agents should not offer their client a P&S Contract which limits the liability of the other broker. To do so is a disservice to the broker's client. In one instance, when my client objected to Paragraph 13 and asked for its removal, the broker said the Paragraph could not be removed and would not be removed. The P&S Contract is a contract between buyer and seller, and only the buyer and seller should have control over the terms of the Contract.
Attorney	As stated earlier, this practice [dual agency] involves an inherent conflict of interest, especially when one or both of the brokers representing buyer and seller are employees, not owners, of the agency. This is an example of the real estate commission putting profits ahead of customers.
Attorney	They should not be able to represent both sides of a transaction.
Attorney	Much as attorneys from the same firm cannot represent the buyer and the seller due to a possibility or appearance of conflict of interest, designated agency looks like a conflict to many consumers and sometimes results in one, particularly where there is an imbalance of power between the parties (e.g., developer seller with multiple units to sell v. one-time buyer - agent will trend towards the developer due to more fruitful and/or longer relationship).
Attorney	the designated agency model does not serve the interests of either seller or buyer. It appears to only serve the interests of the real estate office engaged in it. Especially in Vermont in where offices are small it is difficult to preserve confidentiality so there is no way to represent both buyer and seller. Similarly it does a disservice to the Seller if information about their property is not distributed to all brokers in the office to sell the property listed with the office.
Attorney	This [designated agency] is an unavoidable conflict of interest. Surprised the this practice is allowed
Attorney	Absolutely not. I have worked with agents in these situations very frequently, and it is typically one agent that seems to handle everything since they are from the same office. Attorneys can't do it, and we get paid much less per transaction than agents. This has always worried me
Attorney	What they [consumers] don't understand is that because the agent only gets paid if the closing happens, there is a high motivation to push to closing by the agents. In certain circumstances this leads to an agent glossing over what might be a real problem.

Table 9 Continued: Survey Feedback regarding Designated Agency	
REC Licensee	Designated Agency is allowing a widespread abuse of Consumer protection advancing only the greed of those practicing it.
REC Licensee	I don't think it has much impact
REC Licensee	With the increasing development of Real Estate "Teams", I believe Ethics and Conduct can be compromised and Clients can be easily misled.
REC Licensee	Designated agency in large firms that pay a bonus for in-house sales is counter intuitive to both parties truly being represented properly due to the appearance of a financial benefit to the Agency.
REC Licensee	Have not seen it to be a negative.
REC Licensee	I also believe especially in a Designated agency "team" members should NOT be able to represent buyers when their team broker has the listing and the sale is reported under the broker. It should be Mandatory when a husband and wife or partner to partner team be disclosed up front and they should not be able to represent buyers on their significant other's listings.
REC Licensee	In my experience, very few agents fully and thoughtfully explain the VRCIDisclosure, so right out of the gate, the consumer is ignorant to the nuances of designated agency.
REC Licensee	The current representation of buyer/seller model I believe adversely affects very small offices
REC Licensee	it just makes it easier to represent a buyer and that's good
REC Licensee	Yes, it also opens up more properties to them. I work from home and dont even know more than 5 agents at my 200 agent company. It would be ridiculous to limit my buyers from seeing other KW agents listings, I think this rule is great.
REC Licensee	Some offices having offers on their listings from their agents are not being fair in presenting or advising their sellers correctly in order to keep the sale in house
REC Licensee	The recently adopted Designated and Non-Designated Agency rule has allowed real estate firms to pretend the consumer is being protected. However that not the case. At minimum the consumer is confused by what the terms mean. In reality a fantasy has been created that a buyer and a seller can be fairly represented by two different agents in the same office. That is simply not the case. As a principal broker for a Non-Designated Agency firm I am frequently communicating with consumers who after the fact feel they were "duped".
REC Licensee	The present limit to single agency and designated agency is a distinct disadvantage to small firms and an unfair competitive advantage to larger firms.

Table 9 Continued: Survey Feedback regarding Designated Agency	
REC Licensee	Designated Agency allows for real estate companies to keep more deals "in-house" by being able to offer buyer and seller representation within the company. But this is merely a convenience and money grab for those agencies, and not in the best interest of the consumer. For example, agents have access to their company's seller client files electronically, but they can the represent a Purchaser without any conflict of interest having access to those seller client files...
REC Licensee	brokers are attempting to keep deals 'in house'; which may not be in the best interest of the clients.
REC Licensee	With the increasing development of Real Estate "Teams", I believe Ethics and Conduct can be compromised and Clients can be easily misled. I do not feel Agents on the same team can effectively represent different clients in the same transaction.
REC Licensee	absolutely. It has been a great improvement for consumers.
REC Licensee	Designated agency is not the way Vermont Realtors should be representing our customers or clients. People talk! In an office situation in particular, people talk. Even if inadvertently an agent lets out a bit of information a client's position can be compromised. We would hope that all agents would be scrupulously honest but in a 'Designated' office are not the listing agent and the buyers agent trying to sell that property and make a commission? Our agency has elected to go the route of non-designated agency let's avoid the temptation. Please change these agency rules
REC Licensee	Yes, GREAT improvement. It is a much more accurate reflection of who consumers understand the agents to be. "imputed knowledge" was a lawyers term that consumers never got.

Table 10: Feedback on Pocket Listings	
Consumer	My home was under contract before it was ever listed on the MLS and I believe I did not receive fair market value due to a poor BOI and was also pressured into sales concessions.
Attorney	Unwillingness to list and aggressively market properties for full value. There should be more transparency with respect to whether or not broker has access to or knowledge of a stable of buyers that will potentially yield a quick sale. The tails on contracts (additional period of responsibility for fee after listing ends) are not well understood.
REC Licensee	Seller's who list their property and go under deposit before the property had the benefit of full market exposure and sold in-house. We see numerous property enter the MLS system on day one as pending.

Table 11: Common Feedback about Service Options and Compensation Rates	
Consumer	6% is punitive. We attempted to negotiate the fee to no avail. In the digital world brokers offer less value other than access the MLS system
Consumer	Brokers should be required to itemize what goes into their fee and provide paper trail. Buyers should also start paying their broker fee, the tradition of a seller paying all is outdated and aligns with a different time when homes appreciated at a very different rate, home buying today is not a guaranteed money maker and sellers should not foot the entire bill.
Consumer	The internet and our attorney did 95% of the work. Realtor fees need to start reflecting that. it's not 1985 anymore.
Consumer	Times have changed, people find the house they want online and ask the realtor to show them what they've already seen. Percentages are ridiculous considering most work is done by buyer now and everything is online.
Consumer	See previous comment. The VT brokers hold the line on their 6% fee. There simply isn't any price competition in the marketplace other than going FSBO
Consumer	After selling my own home (and tracking my time investment carefully on my phone), I would have to pay myself over \$200/hr to justify the commission at 3%. In the case of the purchase, I would never do that again, or if I did, I would negotiate a flat rate. The advice provided was lacking in expertise or knowledge about key building systems, design flaws, and inspection options in our agents primary territory and type of construction.
Consumer	No, we believe it would have been [easy] for us as buyers and sellers to do the process on our own a realtor is nothing more then a middle man that we felt caused hard feelings between sellers and buyers, once we got to know our buyer we realized he was amazing but we got to know him without our realtor knowing it was like they didn't want us to talk to each other it was horrible
Consumer	Given that our house was under contract within 5 days of it being posted, it seemed like the fee was a bit high. I realize it probably averages out but it's not like the house was on the market for months with a lot of potential buyers. Could there be some sort of sliding scale depending on variables?
Consumer	Reduce commissions or make it more transparent and at the choice of seller and buyer. I would willing pay for extras, but only if they delivered value
Consumer	Not sure if this is due to regulations or not, but the entire process was set up to make us and the buyer adversaries. We were not allowed to have any contact or discussion, and many messages that we tried to send to the buyers were never passed along. The lack of communication and the adversarial structure created a lot of frustration and loss on both sides

Table 11 Continued: Common Feedback about Service Options and Compensation Rates

Consumer	I feel that fees should be a la cartel for services performed. Ex. Show me x number of houses, fee is x. Paperwork to sell is x, etc. Then you can select the services that you want and need. There is almost no need in Chittenden county at this point to have a realtor who commands tens of thousands of dollars, when houses fly off the shelves with little to no work
Consumer	Real estate agents commission is OVERpriced for the amount of work they do - its hurting the economy.
Consumer	Reduce commissions or make it more transparent and at the choice of seller and buyer. I would willing pay for extras, but only if they delivered value
Consumer	I wish there was more variance in fee based on the amount of work the brokers put in: ie different for a buyer you have to help for months and months before they find a house, and less for people who do most of their own research and just need help at the end
Consumer	I feel they are very high for the work involved. Given that we (and most folks) are able to peruse the listings online just as well as the agents, and in fact mostly scanned them and then asked for showings ourselves, I feel the agents job responsibilities have shifted since these percentages were set. The percentage of sales price model also encourages both the buyers and sellers agents to settle at a high price, which is definitely against the best interest of the buyers
Consumer	Almost, but the rise in value of a home far exceeds the extra requirements of realtors (comparing to 30 years ago). In fact buyers can look on line and preselect houses saving realtors time. Their knowledge of the details of the paperwork is worth a lot as well.
Consumer	I would much prefer you also have a Transactional Brokerage category as they do in so many states which limits seller and buyer fiduciary.
Consumer	I would prefer a flat rate as is done in NYC and CA increasingly
Consumer	When listing was not 3% our broker asked for remaining amount from us- buyer/client unaware of commission fee on listing
Consumer	They were explained up front but it was still a shock when closing cost me over \$11,000
Consumer	Brokerage fees were not explained in detail.
Consumer	Our personal attorney was more helpful than either of the brokers
Consumer	Fees yes. Some of the terms in the contract about what happens if the house sells after the contract expires and the agent getting some commission (section 6, I think it was) were not clear. They need to be simpler.
Consumer	They were separated into so many different categories, I wished that everything for each distinct office/person had been summed up at the end to see where in fact all of the closing costs were going without having to do that mathematical legwork myself. Especially given that the document was probably 15 pages long.
Consumer	Some brokers wanted 6% and would require the buyer to make up 1% if the seller wouldn't pay it. I only signed a broker agreement with an agent that agreed to 5% because of this
Attorney	Clients never seem to know what is included in the fees.

Table 11 Continued: Common Feedback about Service Options and Compensation Rates	
Attorney	There has been a general unwillingness and inflexibility with regard to costs and fees. Percentage fees ought to be negotiable especially where buyer and seller brokers inhabit the same entity. Also the trend to having a seller pay buyer's closing costs - an often ill defined item - is not well understood and burden some, especially when there a mortgage broker fee added in. This cost shifting needs to be better explained and understood before contracts are finalized.
Attorney	There is confusion here and the sellers don't know that fees may be negotiated. Fees are high
Attorney	Generally speaking, but it might be more transparent if the standard P&S included the commission information within the P&S itself and not as part of an addendum. My experience is that realtors don't typically share the commission addendum/statement when sharing the P&S- usually have to ask for it to be able to verify
Attorney	Most listing agreements do spell out a commission rate, but buyers' side and the attorney never see them. The contract itself may or may not spell out commissions and how commissions may change due to seller concessions or fees incurred by the realtor. A simple commission section could be added to the VT Realtor contract to spell out the complete state of commissions and fees for all parties to the contract (and thus the attorneys who prepare the closing statements) to see
Attorney	I think this [transaction brokerage] is a wonderful idea. The incentive already exists for brokers to pursue closing as an end to itself as that is where broker fees get paid. Why not allow this formula where the parties agree to use it?
Attorney	If no compensation if sale does not go through so really working the sale not the best interests of parties
Attorney	I think this could be very useful. It would certainly make things go more smoothly for many transactions, however, I see a problem with it because if an issue does arise, then the neutral would have a conflict as they can't take sides, so how would they get paid? An attorney would need to withdraw completely.
REC Licensee	No competition. Market should be opened up. Beyond just one group. Yes- I 'm a member
REC Licensee	The Associations and MLS fix prices
REC Licensee	I am licensed in more than one state and have experienced transactional brokerage, which is far simpler for the layman to understand and far easier for the agent to navigate. In fact, in some other states single agency (ie, representing a seller or representing a buyer) is not practiced, despite being allowed, due to the liability that comes with it.
REC Licensee	If a willing buyer and a willing seller wish to engage a broker as a facilitator or a neutral party, they should have the ability to do so.

REC Licensee	Agency in VT should be expanded. Not all customers want buyer agency. Facilitation is what would make sense to add
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Table 12: Survey Feedback that consumers don't know they can file misconduct complaints	
Consumer	From past experience over the years in Vt. It seems some real estate agents have their own set of rules concerning sales of homes. Hind sight wish I known about the Complaint option with OPR.
Consumer	The How to file a Complain information link should be clearly printed on the closing papers. Therefore if you find a problem "after" the closing, and find out one of the brokers knowing was involved in a "cover up" of the problem you can submit a complaint. I didn't even know this information was available.
Consumer	Question 14 reminded me that no one else is aware they can make complaints on bad agents. Overall I think many agents are probably holding good intentions but I have identified some with bad intent and confirmations from other locals who've had the same experiences. Most other agents I believe need more support to advance and improve this expertise in good practices but do not require punitive action.
Attorney	The process to do so is not well known - this should be made part of the broker contract and listing agreements, much like every mortgage loan package has a notice about how to file a complaint due to unlawful discrimination.

Table 13: Survey Feedback that professionals do not file complaints against brokers/salespersons	
Attorney	The regulatory environment is likely satisfactory, but the lack of enforcement or self-enforcement reduces the public's protections.
Attorney	Agents are often the first point of contact for Buyers and Sellers, and if an attorney files a complaint, then the attorney will no longer receive any referrals. I have seen this happen to an attorney, who ended up changing his practice to focus more on Probate law after getting shunned by all real estate agents by filing a complaint against one.
REC Licensee	We continue to be a self policing industry which can work if the process of issuing a complaint on another agency wasn't so comprehensive and could be anonymous. Smaller firms risk retaliation when issuing a complaint since the larger companies control a large majority of the listings and who's agents seem to have little supervision or guidance when it comes to practice or advertising/self promotion.
REC Licensee	In commercial real estate. You would never work again if you reported another broker.
REC Licensee	If you are a small agency, you are not going to complain about one of the big agencies. If you do, your listings will be boycotted and not shown.
REC Licensee	There is probably a feeling that agents don't want to turn other agents in because then you can be marked, or your agency can be marked for retaliation. How many complaints were filed for agents showing homes to out of staters that should have been quarantined for instance?

REC Licensee	I think that agents often do not file complaints against another agent or Broker because of fear of retribution. I have heard it said, "because we have to work together (on other sales) ..." is the reason.
REC Licensee	As agents, if you file a complaint against another agent, you could negatively impact your future clients if you're submitting offers, etc. and don't have a good working relationship with the other agent. If initial complaints could be submitted without the name of the person filing the complaint, this may change
REC Licensee	I filled out my first complaint in 22 years against another Agent/Broker for breaking the NAR Code of Ethics
REC Licensee	I chair professional standards for VAR and I speak with a lot of folks that have or have had problems and to a person I have never heard one say that they would go to the state for help.
REC Licensee	I hear a lot of complaints, and not once have I heard someone from the public bring their complaint to the OPR. I am not sure if it is because they are afraid or don't want the person to know, or they are not aware of their rights, or aware they can make a claim. I wish more did, as I hear a lot of stories that are very unprofessional
REC Licensee	Depends on how serious the allegation is and how it is handled through the Local Board with presentation to the Grievance Committee and then to Professional Standards Committee for a hearing if complaint deemed actionable. Findings can then be referred to OPR if indicated
REC Licensee	State and national Realtors associations and online services (Zillow, etc) are self-serving and blur the accessibility and role of VT RE Commission
REC Licensee	Licensed individuals who are realtors are required to work within the Realtor organization's ethics committee to resolve issues. I suspect the largest number of complaints originate with part-time agents and brokers.
REC Licensee	I've only had one interaction with the Commission when I reported another agent for many violations and the back lash I received from the agent wasn't worth it, so I'm not sure I would do it again

Table 14: Feedback concerning the disciplinary process

Consumer	I once did send in a written complaint on an agent who wrote a contract with another purchaser AFTER my offer and contract had been accepted. I was told by agent the sellers changed their mind, and I learned later they turned around and sold to someone else (through my agent) it was a higher price. The regulatory commission did nothing. I, though I guess there was (was there.) some formal process. She got a slap on her wrist and that was it.
REC Licensee	Real estate agents generally know the OPR has recently taken a lackadaisical approach to complaints and otherwise does not take complaints seriously. Indeed OPR broadcast a letter to real estate agents a few years ago stating it was taking a more education based approach to enforcement rather than a punitive approach. That was a great mistake and has led real estate agents to believe they can push the limits of the regulations and in many cases ignore the regulations altogether.

REC Licensee	The resource for filing a complaint I think is well understood. Brokers tend to not file complaints because 1) the impression that competitors complaints can be framed as motivated to create competitive annoyances and 2) the typical punishments resulting from violations (such as "additional professional education") are basically less than a slap on the wrist so perpetrators don't have any real fear of an REC complaint
REC Licensee	As Realtors, we have our own arbitration system which we utilize before OPR. In reading the newsletters which I used to receive from the Commission, and in watching a few meetings, the public seems to utilize OPR to file complaints at times.
REC Licensee	Fines are too low to be a disincentive for poor behavior
REC Licensee	I have never seen or heard of any broker, salesman or agency taken to task for being bad actors. A slap on the wrist and business as usual
REC Licensee	I have witnessed violations that are not punished. The Realtor Association takes action but I have seen how they fail to find justice.
REC Licensee	Even if they are reported there are no consequences, i.e., loss of license to sell real estate. Why not?

Table 16: Common Feedback regarding property disclosures

Consumer	The house was for sale by owner and the owner was not forthright. I feel the law is not strong enough on requiring disclosures for sales, particularly for unrepresented sellers. The broker and seller should ultimately be responsible for disclosures about the property.
Consumer	The broker and seller should ultimately be responsible for disclosures about the property.
REC Licensee	There are also no real property disclosure requirements, which can harm buyers.
REC Licensee	Seller disclosures should be mandatory, not optional, for ALL properties including vacant land. This document forces the seller to be honest about what they know about the property. So many cases have arisen where the seller was aware of an issue but refused to complete a disclosure and agents/brokers are the ones left dealing with the nightmare days/months after the sale.
REC Licensee	Seller property disclosure requirements should be more comprehensive to protect buyers

Table 17: Common Survey Feedback about Broker and Salesperson Credentials	
REC Licensee	The first years of a licensee's practice benefit greatly from broker supervision
REC Licensee	The Principal Broker system is good
REC Licensee	You wouldn't want a first year "salesperson" running the Company.
REC Licensee	as in any other business/profession, entry-level people have much to learn that is not in the textbook; and this requires the actual on-the-job experience
REC Licensee	Brokers should have a higher level of experience, and education. They should also be able to provide a supervisory function for less experienced agents
REC Licensee	The consumer wants to know they are working with a professional. The title is not important
REC Licensee	Not really. It just means they have taken a course and passed another test. Some Brokers have less experience than salespeople
REC Licensee	Only if the broker is the managing broker or owner
REC Licensee	most people don't know the difference between the two
REC Licensee	don't see much difference.. Have been both
REC Licensee	we all do the same work
REC Licensee	It is antiquated. A salesperson could have more years of experience than a broker. The only reason to have a broker's license would be to own your own practice or to be the managing broker.
REC Licensee	if you're a broker in a firm and not managing, what's the point of being a broker?

Table 18: Common Feedback about CE Courses	
REC Licensee	10% of the educational classes are worthwhile. Brokers keep having to complete more hours of education and the classes keep offering fewer credits. The teachers are now able to make a business out of just giving these classes and they love the fact that the hours required are increased and credits are fewer. It is a broken system. We are brokers are so busy that trying to attend a 4 hour class several times a year has become more of a hurdle compared to helpful. IF we learned anything it might be worthwhile.
REC Licensee	I feel that commercial realtors should be allowed to take CCIM and SIOR certification classes, and have other options, since commercial CE aren't offered
REC Licensee	24 hours for a broker is far to onerous, there are too few options for classes. I find myself taking a lot of the same classes every two years. 12 plus core is plenty
REC Licensee	For some things it is good to have refreshers. But it would be nice to have some new areas

Table 18 Continued: Common Feedback about CE Courses	
REC Licensee	However, after more than 40 years as a licensee, I often end up having to take courses I have already taken multiple times, which is tedious and boring, plus a waste of money
REC Licensee	Huge waste of time. It is a money grab. I compare it to the test you have to pass to get your drivers permit. It is knowledge, but not at all relevant to actually being a good driver. But at least with driving you only have to take it once, not every other year you have a license. If people want to go ahead and take classes on ethics and different obscure topics, that is fine. But I do not believe it should be mandated
REC Licensee	I feel 24 credits are a bit much for Brokers. I have been doing Real Estate for over 45 years and think the cost and time to me is a waste of my time. When new regulations are instigated then i understand the need to take the course. Many of the courses i have taken over and over
REC Licensee	I find the online classes more challenging as you have to take the tests and don't get a certificate by just sitting in a chair for a specified time
REC Licensee	I would like to say yes, as I am a huge advocate of education and of striving to grow, evolve and continuing to be the best you can be in your profession. However, a lot of the classes are only mediocre and most of the most meaningful learning happens on the job and from colleagues. Please do keep offering CE classes, but make sure they are evolved. I would like to recommend one that addresses how important and vital it is to be a respectful "partner" in a transaction. Both the Buyers Agent and the Listing Agent should have an attitude toward each other that they are a team with a similar end goal in mind. That they help to guide their client with the most expertise, ethics and respect and also to try to be respectful and communicative to the other agent and work together toward a positive outcome. At times it feels as though we are in a courtroom and that the other agent has attitude, is rude or belligerent and it is their intention to intimidate you and your client. NOT the way it should be!
REC Licensee	It is needless busywork with no real added value. Any true real estate professional will challenge themselves to continually learn the areas where they have a weakness. Most agents I have to interact with are incompetent. If I died tomorrow, there is only one other agent out of the 140 plus agents in our county that I would be comfortable sending my family to. Most are either incompetent or only focus on their own profitability, not what is in their client's best interest.
REC Licensee	Many times a course would be helpful and does not get CE credits because the speaker can not justify to the VT real estate commission that it helps the consumer. Often I will take these courses for credit in NH and learn a great deal
REC Licensee	not always - not a lot to choose from
REC Licensee	redundant after so many years in the business
REC Licensee	Requirements for retired agents who cannot practice real estate except as referral agents seem not applicable
REC Licensee	Some of the CE is pretty easy to get, and isn't super challenging

Table 18 Continued: Common Feedback about CE Courses	
REC Licensee	Some of the classes are just not relevant in the current marketplace, but we have to take them just to "get credits". I think the mandatory classes are the most important and usually the most relevant, so that should be the only requirement, along with the ethics class
REC Licensee	Sometimes. But we should have a broader range of CE opportunities. This has improved in recent years. Sometimes agents take the courses just to get them done. In our firm, we offer a menu of courses that are relevant to their day to day practice. Not sure what other firms do. I do not think it would be smart to eliminate the requirement
REC Licensee	The education requirements for license renewal have become too extensive at 24 hours. It seems as though the requirements have been raised in recent years because the commission can do it, with little evidence that the additional time and expense does anything
REC Licensee	The number of hours required is extreme
REC Licensee	There should be a differential between Licensed agents and broker who strictly do commercial real estate and those who are residential
REC Licensee	There should be a sliding scale as new agents and brokers need knowledge based reinforcement however much of the content becomes redundant for professionals with many years of practice
REC Licensee	Three comments: 1. Some in-person classes are conducted in an atmosphere of "please don't ask questions or discuss anything because I am just reciting the course material as quickly as possible so that you can get your CE certificate and leave." 2. There is no control over licensees repeating the same course each cycle, rather than learning new material. I don't think you can do much about that, though, as sometime someone might repeat a course because they just need reinforcement. 3. It was a great idea to increase the number of hours required.
REC Licensee	To a certain degree. A lot of the learning is in practice. I would recommend to referring to the first two years as a salesperson as an apprenticeship
REC Licensee	Yes but as a land broker the continuing education offered is inadequate
REC Licensee	Yes, but the "Mandatory" class content should be updated. Less about the history of Act 250 and more about rules, regulations and guidelines that impact Real Estate today.
REC Licensee	Yes, but the Mandatory and Ethics class are the same thing every time. Maybe a few new sections. Continuing Education should be fun and improving you as a Realtor

Appendix C: Survey to Real Estate Buyers and Sellers

Thank you in advance for taking the time to fill out this anonymous survey.

The Office of Professional Regulation (OPR) is reviewing the quality and effectiveness of State regulation of real estate brokerage, with particular attention to the administrative rules governing real estate practice, which have been in place since 2015. As part of this process, we are seeking feedback from Vermonters who have recently bought or sold a home.

* 1. In what year did you most recently buy or sell your home?

* 2. Were you a buyer, a seller, or both?

Purchase

Sale

Both

* 3. Did you use a real estate broker or salesperson to buy or sell your real estate? (If yes for any/all of your recent real estate transactions, please select "yes")

Yes

No

Additional comments (optional):

* 4. Overall, was the experience of working with your broker or salesperson positive?

Yes

No

Other (please specify)

* 5. Did you feel well represented by your broker or salesperson and that they were working in your best interest?

Yes

No

Additional comments (optional):

* 6. Were the role and responsibilities of your broker/salesperson clear?

Yes

No

Additional comments (optional):

* 7. Were the disclosures you received prior to buying/selling your home easy to read and understand?

Yes

No

Additional comments (optional):

* 8. Do you feel that applicable brokerage fees were transparent and adequately explained?

Yes

No

Additional comments (optional):

* 9. Do you feel that the brokerage fees paid by the parties to the transaction fairly reflected the value of the work contributed by the brokers and salespeople involved?

Yes

No

Additional comments (optional):

* 10. Were you aware of the commission split—the proportion of brokerage fees awarded to each agent—in your transaction?

Yes

No

There was only one agent in the transaction (one party was not represented)

Additional Comments (optional):

* 11. Do you feel that the brokerage fees paid by the parties to the transaction fairly reflected the value of the work contributed by the brokers and salespeople involved?

Yes

No

Additional Comments (optional):

* 12. Do you feel there is a conflict of interest if the listing (selling) agent determines the commission split offered to buyers' agents, independent of the seller's input?

Yes

No

Additional Comments (optional):



* 13. Do you feel that there are any specific changes which should be made to the regulation of real estate brokers and salespeople?

Yes

No

* 14. Are you aware of the process for submitting misconduct complaints against a real estate broker/salesperson to the State? (If not: [How to File a Complaint with OPR](#))

Yes

No

* 15. Additional comments? Please use the space below.

To follow the real estate regulatory review process and for information about any upcoming public hearings and comment periods please visit: www.sos.vermont.gov/real-estate-brokers-salespersons

Appendix D: Survey of REC Licensees

Thank you for taking the time to complete this anonymous survey.

The Office of Professional Regulation (OPR) is reviewing the quality and effectiveness of State regulation of real estate brokerage, with particular attention to the administrative rules governing real estate practice, which have been in place since 2015. As a licensed broker or salesperson, we value your experience and appreciate your participation in this process.

Regulatory reviews help us to understand what policies are working well and poorly, and reviews can provoke to innovative changes and smarter, more efficient government. The process the Office follows for regulatory reviews is further laid out in Vermont statutes.

Section 1: Public Interest and Legislative Intent

* 1. Are you currently licensed as a Real Estate Broker or Salesperson?

- Broker
- Salesperson

Additional comments (optional):

* 2. Does the State's current regulation of real estate brokerage effectively protect the public from professional incompetence, misconduct, and commercial exploitation?

- Yes
- No

Additional comments (optional):

* 3. Does the current regulatory program unduly restrain competition or prevent real estate firms from serving their customers in the way firms and customers wish?

- Yes
- No
- Sometimes

Additional comments (optional):

* 4. Are real estate clients (buyers or sellers) currently unprotected in any significant way?

No

Yes

Yes (please explain how)

Section 2: Conduct Enforcement

* 5. Do members of the public and the real estate professionals file complaints with OPR when they become aware of misconduct?

- Always
- Usually
- Sometimes
- Rarely
- Never

Additional comments (optional):

* 6. Are misconduct complaints, investigations, and hearings handled fairly?

- Always
- Usually
- Sometimes
- Rarely
- Never

Additional comments (optional):

* 7. When the Commission sanctions licensees, are the penalties appropriate?

- Always
- Usually
- Sometimes
- Rarely
- Never
- Additional comments (optional):

* 8. Are brokerage firms held accountable for the conduct of their agents?

- Always
- Usually
- Sometimes
- Rarely
- Never

Additional comments (optional):

Section 3: Regulatory Burdens vs Public Protection

* 9. Do you feel that the continuing education requirements improve your practice?

Yes

No

Additional comments (optional):

* 10. Do you feel that the available continuing education offerings are relevant to your practice?

Yes

No

Additional comments (optional):

* 11. How do you feel about the quantity of continuing education required

Excessive

Appropriate

Insufficient

Additional comments (optional):

* 12. Is broker supervision meaningful and effective in large firms?

- Always
- Usually
- Sometimes
- Rarely
- Never

Additional comments (optional):

* 13. Do we have regulations we do not need?

- No
- Yes (please specify which)

* 14. Do we need regulations we do not have?

- No
- Yes (please specify which)

Section 4: Entry Requirements & Minimum Competency Standards

* 15. Are the entry-level educational and supervision requirements appropriate and necessary to ensure new licensees are ready to practice?

- Yes
- No (please specify how)

* 16. Regarding interstate mobility, are qualified salespeople and brokers easily able to endorse to/from Vermont?

- Always
- Usually
- Sometimes
- Rarely
- Never

Additional comments (optional):

Section 5: Accessibility

* 17. Do most practitioners understand real estate regulation?

- Yes
- No (please identify common misunderstandings)

* 18. Do most consumers understand real estate regulation?

- Yes
- No (please identify common misunderstandings)

* 19. Do the differences between brokers and salespeople make sense in real-world practice?

Yes, because...

No, because...

Final Questions (Optional)

Please share your views, if any, of the following broad policy questions:

20. Should the Real Estate Commission regulate leasing agents?

21. Should commercial real estate brokers be licensed separately from residential brokers and subject to different rules?

22. Has designated agency effectively protected consumers?

23. Is there any reason not to consider additional representation models?

Thank you for taking the time to complete this survey! To follow the real estate regulatory review process and for information about any upcoming public hearings and comment periods please visit: <https://sos.vermont.gov/real-estate-brokers-salespersons/>

Appendix E: Survey to Vermont Bar Association

Thank you in advance for taking the time to fill out this anonymous survey.

OPR will be conducting a full review of the Vermont Real Estate Practice Act, 26 V.S.A. 2211 et seq. and the Administrative Rules of the Vermont Real Estate Commission. We seek input and participation in this regulatory review process, not only from licensed real estate brokers and salespeople, but also from those who work in the industry in other roles, including attorneys.

*** 1. Does the State's current regulation of real estate brokerage effectively protect the public from professional incompetence and misconduct in the field?**

- Yes
- No
- Sometimes

Additional comments (optional):

*** 2. Does the current regulatory program unduly restrain competition or prevent real estate firms from serving their customers in the way customers wish?**

- Yes
- No
- Sometimes

Additional comments (optional):

*** 3. Are real estate clients (buyers or sellers) currently unprotected in any significant way**

- Yes
- No

Additional comments (optional):

* 4. In your experience, do members of the public and real estate attorneys file complaints with OPR when they become aware of misconduct?

- Always
- Usually
- Sometimes
- Rarely
- Never

Additional comments (optional):

* 5. Are misconduct complaints, investigations, and hearings before the Real Estate Commission handled fairly?

- Always
- Usually
- Sometimes
- Rarely
- Never

Additional comments (optional):

* 6. Does the participation of brokers and salespeople improve client understanding of the transaction process?

- Yes
- No

Additional comments (optional):

* 7. Based on your professional experience, do real estate brokers and salespeople maintain appropriate boundaries between the provision of brokerage services and the provision of legal advice?

- Yes
- No (When does this occur?)

* 8. Are brokerage fees transparent?

- Yes
- No

Additional comments (optional):

* 9. Do your real estate clients generally understand the fee split between agents in their transaction?

- Yes
- No

Additional comments (optional):

* 10. Do real estate clients generally understand the role of an agent?

- Yes
- No

Additional comments (optional):

* 11. Do agents consistently meet their fiduciary duties to clients?

- Yes
- No (when do they fail to do so?)

* 12. Do you find that designated agency—a model in which agents from the same firm may represent buyer and seller in the same transaction—serves the interests of consumers?

- Yes
- No

Additional comments (optional):

* 13. Some jurisdictions allow one broker to facilitate real estate transactions, assisting buyers and sellers without representing either. Would a neutral broker of this type, sometimes called a “transaction broker,” be desirable in the Vermont real estate market?

- Yes
- No

Additional comments (optional):

* 14. Do you have any additional comments or recommendations for regulatory changes? Please use the space below.

To follow the real estate regulatory review process and for information about any upcoming public hearings and comment periods please visit: <https://sos.vermont.gov/real-estate-brokers-salespersons/>

Thank you in advance for taking the time to fill out this anonymous survey.

The Office of Professional Regulation will be conducting a full review of the regulations for the real estate sector, specifically the administrative rules impacting brokers and salespeople. We are seeking feedback and input into this regulatory review process from not only licensed real estate brokers and salespeople, but also from those that work in the industry.

* 1. What is your role in the real estate sector?

- Appraiser
- Home Inspector
- Land Surveyor
- Other (please specify)
- Mortgage Broker
- Lender

* 2. Overall, do you believe Vermont real estate brokers and salespeople contribute to a fair and efficient market for real property?

Yes (in what way?)

No (in what way?)

* 3. Are there specific areas of representation or sales practice that you find to be problematic?

- No
- Yes (which?)

* 4. Are there specific areas of representation or sales practice that you find work well?

- No
- Yes (which?)

* 5. Have you ever witnessed brokers or salespeople failing to comply with the rules?

Yes

No

Additional comments (optional):

* 6. Have the actions taken by brokers or salespeople ever impeded your ability to carry out your job?

Yes

No

Additional comments (optional):

* 7. Do you feel the current system of broker and salesperson regulation adequately protects the public?

Yes

No

Additional comments (optional):

* 8. Are you aware of regulatory structures or approaches to real estate regulation in other states that should be considered in Vermont?

Yes

No

Additional comments (optional):

9. Do you have any additional comments? Please use the space below. (optional)

To follow the real estate regulatory review process and for information about any upcoming public hearings and comment periods please visit: www.sos.vermont.gov/real-estate-brokers-salespersons

Appendix G: Survey to Consumer Groups

Thank you in advance for taking the time to fill out this anonymous survey.

The Office of Professional Regulation will be conducting a full review of the regulations for the real estate sector, specifically the administrative rules impacting brokers and salespeople. We are seeking feedback and input in this regulatory review process from not only licensed real estate brokers and salespeople, but also from those who interact with the industry.

*** 1. Do you interact with brokers or salespeople in your operations?**

No

If yes, in what capacity?

*** 2. If you answered yes to Question 1, do you believe that brokers and salespeople contribute positively to fair and efficient real estate transactions?**

Yes

No

Other

Additional comments (optional):

*** 3. Have you experienced, observed, or heard of instances of professional misconduct by brokers or salespeople?**

Yes

No

Additional comments (optional):

* 4. Do you feel the public is adequately protected in real estate transactions?

Yes

No

Additional comments (optional):

* 5. Are your peers and the consumers with whom you work generally aware that misconduct by real estate brokers and salespeople can be reported to the Office of Professional Regulation? (Complaints may be filed [here](#))

Yes

No

Additional comments (optional):

* 6. Are consumers or professionals involved in real estate transactions deterred from making complaints that should be made?

No

Yes (in what way?)

* 7. Some jurisdictions allow one broker to facilitate real estate transactions, assisting buyers and sellers without representing either. Would a neutral broker of this type, sometimes called a “transaction broker,” be desirable in Vermont?

Yes

No

Additional comments (optional):

* 8. Are brokerage fees fair?

Yes

No

Additional comments (optional):

* 9. Are brokerage fees transparent to consumers?

Yes

No

Additional comments (optional):

* 10. Based on your professional experience, do consumers understand the role of real estate brokers and salespeople?

Yes

No

Additional comments (optional):

* 11. Are you aware of approaches to real estate regulation in other states that should be considered in Vermont?

No

Yes (please specify)

12. Additional comments or recommendations for improving State regulation of real estate brokerage? Please use the space below.

To follow the real estate regulatory review process and for information about any upcoming public hearings and comment periods please visit: <https://sos.vermont.gov/real-estate-brokers-salespersons/>



Appendix H: Vermont Real Estate Commission Mandatory Consumer Disclosure



[This document is not a contract.]

This disclosure must be given to a consumer at the first reasonable opportunity and before discussing confidential information; entering into a brokerage service agreement; or showing a property.

RIGHT NOW YOU ARE NOT A CLIENT

The real estate agent you have contacted is not obligated to keep information you share confidential. **You should not reveal any confidential information that could harm your bargaining position.**

Vermont law requires all real estate agents to perform basic duties when dealing with a buyer or seller who is not a client. All real estate agents shall:

- Disclose all material facts known to the agent about a property;
- Treat both the buyer and seller honestly and not knowingly give false or misleading information;
- Account for all money and property received from or on behalf of a buyer or seller; and
- Comply with all state and federal laws related to the practice of real estate.

You May Become a Client

You may become a client by entering into a written brokerage service agreement with a real estate brokerage firm. Clients receive the full services of an agent, including:

- Confidentiality, including of bargaining information;
- Promotion of the client's best interests within the limits of the law;
- Advice and counsel; and
- Assistance in negotiations.

You are not required to hire a brokerage firm for the purchase or sale of Vermont real estate. You may represent yourself.

If you engage a brokerage firm, you are responsible for compensating the firm according to the terms of your brokerage service agreement.

Before you hire a brokerage firm, ask for an explanation of the firm's compensation and conflict of interest policies.

Brokerage Firms May Offer NON-DESIGNATED AGENCY or DESIGNATED AGENCY

- **Non-designated agency** brokerage firms owe a duty of loyalty to a client, which is shared by all agents of the firm. No member of the firm may represent a buyer or seller whose interests conflict with yours.
- **Designated agency** brokerage firms appoint a particular agent(s) who owe a duty of loyalty to a client. Your designated agent(s) must keep your confidences and act always according to your interests and lawful instructions; however, other agents of the firm may represent a buyer or seller whose interests conflict with yours.

THE BROKERAGE FIRM NAMED BELOW PRACTICES NON-DESIGNATED AGENCY

I / We Acknowledge Receipt of This Disclosure

This form has been presented to you by:

Printed Name of Consumer

Printed Name of Real Estate Brokerage Firm

Signature of Consumer

Date

Printed Name of Agent Signing Below

[] *Declined to sign*

Printed Name of Consumer

Signature of Agent of the Brokerage Firm

Date

Signature of Consumer

Date

[] *Declined to sign*

ADMINISTRATIVE RULES OF THE VERMONT REAL ESTATE COMMISSION

Effective: December 1, 2015

Part 1 General Information

1.1 The Commission's Purpose

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

1.2 Business Address

Vermont Real Estate Commission
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402

These rules and more information about the Commission and its requirements and procedures are available at www.sec.state.vt.us/professional-regulation or by contacting the office.

1.3 Commission Members

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

1.4 Regular, Special and Emergency Meetings

The Commission usually meets monthly. The chair or two of the members may call a special or emergency meeting. A majority of the Commission constitutes a quorum for all meetings. No formal action at any meeting is valid unless a majority of those present and voting concur. Meeting dates and locations can be obtained from the Commission's website at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

1.5 Laws That Govern the Commission

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

(b) The Vermont Statutes Annotated contain the complete text of these laws. They can usually be found in any Town Clerk’s office or public library. The Vermont Statutes Online are also available at legislature.vermont.gov. The Commission’s statutes and rules may be accessed through the Commission’s website at sec.state.vt.us/professional-regulation/profession/real-estate-commission.

1.6 Rules

(a) The Commission is authorized to make these rules under Title 26, V.S.A., Section 2252. These rules are approved by the Vermont Legislative Committee on Administrative Rules and have the effect of law and govern the Commission’s proceedings. Rules are made following the Administrative Procedure Act (“APA”). The Office of Professional Regulation (“OPR”) helps the Commission to comply with the Act. Rules are reviewed and revised periodically.

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

1.7 Making and Resolving Complaints

(a) Any person may make a complaint against a broker or salesperson by contacting OPR or obtaining a copy of the complaint form from the Commission’s website at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

(b) The Commission follows the current investigation and disciplinary procedure adopted from time to time by OPR, except where the Commission’s published procedures provide otherwise. Copies of the procedure, complaint forms, and more information about the complaint process may be found at www.sec.state.vt.us/professional-regulation.

1.8 Definitions

As used in these rules:

- (a) “Advertising” includes print ads of any type, internet, email, or electronic media, stationery, business cards, individual “For Sale” signs and other audio, visual or print

depictions or notices of real estate offered for sale or brokerage services.

- (b) “Broker in Charge” means the individual broker responsible for a single office.
- (c) “Broker Prelicensing Course” means a course of instruction to become a broker, at least 40 hours long, which has been approved by the Commission.
- (d) “Brokerage Services” means those activities requiring a license, specifically listed in 26 V.S.A. §2211(a)(4).
- (e) “Brokerage Firm” means a business entity which is engaged in brokerage services.
- (f) “Buyer” includes a person who buys, offers to buy, intends to buy, or is interested in buying real estate.
- (g) “Client” means the person(s) with whom a brokerage firm and its licensees, or designated licensees, has an agency relationship related to the negotiation, sale, purchase, or exchange of an interest in real estate. Licensees owe a fiduciary duty to their clients.
- (h) “Continuing Education” means instruction approved by the Commission.
- (i) “Designated Agency” means the practice by which one or more licensees affiliated with a brokerage firm is appointed to act as an agent of the brokerage firm’s buyer or seller client. Designated Agents owe the client the duties of a fiduciary.
- (j) “Exclusive Agency Marketing Agreement” means a seller service agreement which expressly reserves to the owner the right to sell or market the property himself or herself without liability to the brokerage firm for a commission or fee, and which grants the brokerage firm the right to market the property, but which prohibits the owner from listing the property with any other brokerage firm for the term of the agreement.
- (k) “Exclusive Buyer Agency Agreement” means a buyer service agreement by which a buyer engages a single brokerage firm to provide brokerage services, and by which the buyer agrees not to obtain services from any other broker, but which expressly reserves to the buyer the right to purchase property himself or herself without liability to the brokerage firm for a commission or fee.
- (l) “Exclusive Right to Market Agreement” means a seller service agreement which grants to the brokerage firm the exclusive right to market the property, and which recognizes a liability on the part of the owner for a commission or fee to the brokerage firm, even if the property is sold by the owner.
- (m) “Exclusive Right to Represent Buyer Agreement” means a buyer service agreement

which grants to the brokerage firm the exclusive right to act on behalf of the buyer in a real estate purchase, and which recognizes a liability on the part of the buyer for a commission or fee to the brokerage firm, even if a property is purchased without assistance by the brokerage firm.

(n) “Fiduciary Duty” means the duty to act for the benefit of the client in all matters relating to the agency relationship. A fiduciary must put the interest of the client ahead of the interests of the agent and any third party. Fiduciaries must disclose all material facts the fiduciary learns about the transaction, must disclose any knowledge gained from other parties to the client’s transaction, must protect the client’s confidences and act with reasonable care, loyalty, and obedience toward the client. Unless otherwise agreed, the duty to protect a client’s confidences continues after the brokerage service agreement expires or is otherwise terminated.

(o) “Licensee” means a person holding any license issued by the Commission.

(p) “Material Fact” means a fact that might cause a buyer or seller to make a different decision with regards to entering into or remaining in a contract or affect the price paid or received for real property.

(q) “Net Listing” means a brokerage service agreement in which, at some point, the benefit of negotiating a higher price for the seller or a lower price for the buyer accrues only to the agent or brokerage firm and not to the client. Net listing is a prohibited practice. See Rule 4.8(e).

(r) “Non-Designated Agency” means the practice by which all licensees affiliated with a brokerage firm act as the agent of the brokerage firm’s clients. All licensees affiliated with the brokerage firm owe the client the duties of a fiduciary.

(s) “Nonexclusive” or “Open” with respect to a seller service agreement means a seller service agreement which expressly reserves to the owner the right to list the property with other brokerage firms or to sell the property himself or herself. It shall also mean a buyer service agreement that allows the buyer to obtain brokerage services from other brokerage firms or purchase a property himself or herself.

(t) “OPR” means the Office of Professional Regulation.

(u) “Principal Broker” means the individual broker responsible for the brokerage firm and all associated branch offices.

(v) “Salesperson Prelicensing Course” means a course of instruction to become a salesperson, at least 40 hours long, which has been approved by the Commission.

(w) “Salesperson Post-Licensure Education” means a course of instruction, which has been approved by the Commission, which satisfies, or counts toward satisfying, the hours of required education after obtaining an initial salesperson license.

(x) “Seller” includes a person who sells, offers to sell, intends to sell, or is interested in selling real estate.

(y) “Supervising Licensee” in a designated agency firm means a licensee of the brokerage firm who is selected by the brokerage firm’s principal broker or broker in charge to act in a supervisory capacity for different licensees within the brokerage firm whose clients wish to participate in the same transaction. This individual shall not be a licensee who represents one of the clients in the transaction.

(z) “Vicariously Responsible” means accountability of a principal broker or broker in charge for unprofessional conduct by a licensee.

(aa) “V.S.A.” means Vermont Statutes Annotated.

Part 2 Information for Applicants

2.1 Need for a License

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

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

(1) listing, offering, attempting or agreeing to list real estate or any interest therein for sale or exchange;

(2) selling, exchanging or purchasing real estate or any interest therein;

(3) offering to sell, exchange or purchase real estate or any interest therein;

(4) negotiating, offering, attempting or agreeing to negotiate, the sale, exchange or purchase of real estate or any interest therein;

(5) buying, selling, offering to buy or sell, or otherwise dealing in options on real estate or any interest therein;

(6) advertising or holding oneself out as being engaged in the business of buying, selling or exchanging real estate or any interest therein; or

(7) assisting or directing in the procuring of prospects, calculated to result in the sale or exchange of real estate or any interest therein; however, a non-licensed employee of a licensee shall be allowed to respond to inquiries from members of the public, so long as the employee makes it clear that he or she is not licensed and that any information provided should be confirmed by a licensed person.

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

(1) offering property for lease; and

(2) offering mobile homes or businesses for sale or lease, without also offering real property. See 26 V.S.A. §2211(b).

2.2 Where to Get an Application

Applications for a license or registration can be found at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission or by contacting:

Vermont Real Estate Commission
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402.

2.3 Types of Licenses and Registrations

(a) The Commission issues the following licenses:

(1) Broker;

(2) Salesperson; and

(3) Temporary Broker (26 V.S.A. §2299).

(b) The Commission issues the following registrations:

(1) Brokerage firm; and

(2) Branch office.

(c) Every licensee must be associated with a single registered brokerage firm, except that a

broker who also holds a temporary license under 26 V.S.A. §2299 may be associated with a second firm.

2.4 How to Become Licensed as a Salesperson

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

- (a) is at least 18 years old;
- (b) has completed the salesperson prelicensing course;
- (c) has passed the national and state examinations required by the Commission within the two years immediately preceding application;
- (d) has been employed by or become associated with a brokerage firm and that firm's principal broker;
- (e) is not precluded from licensure pursuant to 3 V.S.A. §129a; and
- (f) meets other requirements mandated by law.

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

2.5 How to Become Licensed as a Real Estate Broker

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

- (a) has completed the broker prelicensing course;
- (b) has passed the national and state examinations as required by the Commission, within the two years immediately preceding application;
- (c) has gained at least two years experience as a licensed salesperson, including at least eight separate and unrelated closed transactions among buyers and sellers bearing no familial or contemporaneous business relation to the applicant.

The Commission may waive all or a part of the national examination requirement and experience requirement for brokers if the applicant is a real estate broker regulated under the laws of another jurisdiction, and is licensed and in good standing to practice in that jurisdiction, and in the

opinion of the Commission, the other jurisdiction's licensure requirements are substantially equal to Vermont's. All applicants must complete the Vermont examination.

2.6 How to Register Real Estate Brokerage Firms

To obtain a brokerage firm or branch office registration a person must file a written application and must:

- (a) designate a principal broker for the main office and a broker in charge for each branch office;
- (b) register the firm with the Corporations Division of the Office of the Secretary of State, if required by law; and
- (c) specifically designate the brokerage firm name under which the firm will conduct business, register licensees, and advertise.

2.7 Examinations

All examinations for real estate broker's licenses and for salesperson's licenses are administered through OPR and information is available through the Commission's website at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission. A candidate who fails one part of the exam may retake that part within the next six months. After six months or two failures, the candidate must retake the full exam.

2.8 Display of Licenses for Brokers and Salespersons

A license issued by the Commission must be conspicuously displayed in the office where the licensee is associated.

2.9 Applicant's Right to a Written Decision and Personal Appearance

The Commission will notify applicants in writing of all decisions concerning the granting or denial of a license or registration. If a license or registration is denied, the applicant will be given specific reasons and informed of the right to request a review and personal appearance before the Commission before the decision becomes final.

2.10 Applicant's Right to Appeal

If the applicant is not satisfied with the Commission's final decision, the applicant may appeal within 30 days of the Commission's decision, to an appellate officer, by filing a notice of appeal with the Office of Professional Regulation, 89 Main Street, 3rd Floor, Montpelier, Vermont 05620-3402 Attention: Appeal. The appellate process is governed by 3 V.S.A. § 130a.

Part 3 Information for Licensed Brokers and Salespersons

3.1 Renewing a License or Registration

(a) Licenses and registrations renew on a fixed biennial schedule and must be renewed before they expire. The expiration date is stated on the license or registration. Before the expiration date, OPR will provide notification for renewal to the licensee's electronic mail address of record; however, failure to receive such notice shall not excuse any licensee from the obligation to maintain continuous licensure. Evidence of having completed the required hours of continuing and/or post-licensure education must be provided with license renewal applications. Prior to expiration, a licensee may request that the license be placed in an inactive status by paying the fee to transfer the license to inactive status. No continuing education is needed to become inactive. Unless a licensee requests to be placed on inactive status prior to expiration, the license shall be designated as "expired."

(b) When the license of a principal broker ceases to be active for any reason, all licensees associated with that brokerage firm shall lose authority to transact business in the firm's name.

(c) When the license of a broker in charge ceases to be active for any reason, all licensees associated with that branch office shall lose authority to transact business in the brokerage firm's name.

3.2 Reinstating an Expired or Inactive License or Registration

(a) A license that has been expired for less than five years may be reinstated by the licensee by paying the renewal fee and late renewal penalty, and providing proof of the required hours of continuing and/or post-licensure education taken within the previous 24 months.

(b) A licensee who requested the license be inactive, and reactivates during the same renewal period, may be reinstated by paying the reinstatement fee, renewal fee, and providing proof of the required hours of continuing and/or post-licensure education taken within the previous 24 months. A licensee who does not request reactivation during the same renewal period may not renew under this section and must qualify under 3.2(a).

(c) A brokerage firm whose registration has expired because it was not renewed by the expiration date may be reinstated by paying the renewal fee and late renewal penalty. When the registration of the brokerage firm is not renewed prior to expiration, all licensees associated with that brokerage firm shall lose authority to transact business in the brokerage firm's name.

3.3 Requests for Declaratory Rulings

(a) Requests for declaratory rulings as to the applicability of any statutory provisions or any rule or order of the Commission may be sent to the Commission office. Requests must be in writing,

and must show the existence of a real controversy, not just a hypothetical question. A declaratory ruling is binding upon the parties to the ruling and the Commission. The requests will be considered pursuant to the Administrative Procedure Act, 3 V.S.A. Chapter 25 and the Administrative Rules of the Office of Professional Regulation. The Commission may call witnesses in addition to those presented by the parties.

(b) In the absence of a real controversy, the Commission may, in its discretion, elect to issue a non-binding advisory opinion, or may decline to address the question presented. An advisory opinion is not binding on the requestor, other licensees, or the Commission.

3.4 Change of Name or Address

(a) A principal broker or broker in charge must notify OPR in writing within 30 days of any change in name, address, phone number or email address of the brokerage firm or any licensee associated with that brokerage firm.

(b) Each licensee shall notify OPR in writing within 30 days of any change of the licensee's principal business location, phone number or email.

3.5 Modifications of Conditions and Reinstating a Suspended License

The Commission may set forth a specific process in a disciplinary order for modification of that order or for reinstatement after suspension. A licensee who receives a warning, reprimand, suspension, or condition to continued practice, shall specifically refer to the Commission's order for the process for modification of that order or reinstatement after suspension.

Part 4 Conduct of Licensees

4.1 Offices and Branch Offices

(a) A principal broker shall be in charge of a brokerage firm. The principal broker must maintain his or her place of business at the brokerage firm's main office. The principal broker must notify the Commission of the brokerage firm's main office location.

(b) A brokerage firm which desires more than one office shall register a branch office. A branch office shall use the same name as the main office and shall designate a broker in charge. The broker in charge of a branch office must maintain his or her place of business at the branch office.

(c) The firm's licensees must have a primary place of business at one of the brokerage firm's locations but may work out of any of the brokerage firm's offices.

(d) A principal broker or broker in charge may not serve as principal broker or broker in charge

for more than one office or brokerage firm at any one time, except that a broker who also holds a temporary license under 26 V.S.A. §2299 may be associated with a second brokerage firm.

4.2 Broker Supervision

- (a) A principal broker may be vicariously responsible for the professional conduct of licensees and employees of the brokerage firm, including all branches; a broker in charge may be vicariously responsible for the professional conduct of all licensees and employees of the branch office.
- (b) Licensees must work under the supervision and training of the principal broker or broker in charge.
- (c) In a Designated Agency Firm, a principal broker or broker in charge who is the designated licensee for a client has the opportunity to create a conflict of interest if their client enters into a transaction with another client of the brokerage firm. In these instances, the principal broker or broker in charge must delegate their supervisory responsibilities, for the other licensee in the transaction, to a qualified supervising licensee.

4.3 Brokerage Firms Practicing Non-Designated Agency

- (a) All brokerage firms that are not under an election to practice Designated Agency are governed by this Rule as practicing Non-Designated Agency (see Rule 1.8 (r)). Any such brokerage firm shall be known as a Non-Designated Agency Firm and disclosure of this status shall be included in seller and buyer service agreements as required under Rule 4.8(c).
- (b) A Non-Designated Agency Firm is the agent of each client of the firm and on its behalf all licensees of the firm represent all clients of the firm pursuant to written agreements for brokerage services (see Rule 4.8). The firm and all its licensees owe the client the duties of a fiduciary (see Rule 1.8 (n)).
- (c) A Non-Designated Agency Firm and all its licensees shall:
 - (1) take ordinary and necessary care to protect all client confidences from disclosure to third parties, except disclosure may occur pursuant to authorization of all clients affected thereby;
 - (2) until closing, submit all offers to or from the client, with or without a deposit, whether oral or written, whether above or below the listed price; and
 - (3) if true, disclose the fact that the brokerage firm provides brokerage services to both buyers and sellers in the market. The disclosure shall be part of any seller or buyer service agreement executed on behalf of the brokerage firm.

(d) A Non-Designated Agency Firm and all its licensees shall not:

(1) practice dual or limited agency, acting as agent for both a buyer and seller in the same transaction. The firm may act as an agent for one party in a transaction where the other party is an unrepresented customer;

(2) practice Designated Agency; or

(3) provide or offer to provide services as an Intermediary, a Transactional Broker, a Facilitator or any other form of representation not involving an agency relationship for which fiduciary duties are owed. This provision does not preclude the right to make referrals as provided in Rule 4.13.

(e) A Non-Designated Agency Firm may retain and compensate another brokerage firm to assist it in providing services to its clients without thereby creating an agency relationship between the client and the other firm. This practice shall be known as broker agency and the relationship shall be governed by the provisions of Rule 4.11.

(f) A Non-Designated Agency Firm shall terminate the seller service agreement prior to a licensee associated with the brokerage firm entering into negotiations on his or her own behalf to purchase a property listed by the brokerage firm. In addition, the brokerage firm shall provide an opportunity for the client to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the client and the licensee. Prior to entering into negotiations for the sale of property owned by a licensee of the Non-Designated Agency Firm to a buyer under a buyer service agreement with the brokerage firm, the brokerage firm must terminate the buyer service agreement to provide the client an opportunity to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the client and the licensee. In these instances, a Non-Designated Agency Firm cannot advance the interests of the client and provide undivided loyalty while negotiating with a licensee associated with the brokerage firm. The client may elect to remain an unrepresented customer of the Non-Designated Agency Firm, and not seek outside representation, if the client provides informed written consent. A Non-Designated Agency Firm and its associated licensees must show affirmatively that they acted in good faith in the transaction.

4.4 Brokerage Firms Practicing Designated Agency

(a) If a brokerage firm has more than two licensees, the brokerage firm may elect to practice Designated Agency (see Rule 1.8 (i)). Any such brokerage firm shall be known as a Designated Agency Firm and disclosure of this status shall be included in seller and buyer service agreements as required under Rule 4.8(c).

(b) A Designated Agency Firm shall delegate to its individual licensees all brokerage firm

agency and fiduciary responsibilities for specific clients of the firm pursuant to written agreements for brokerage services (see Rule 4.8). Delegations may be made to a single licensee or to multiple licensees associated with the brokerage firm. The licensee(s) so delegated shall be known as designated agent(s). Only the designated agent(s) owe the client the duties of a fiduciary (see Rule 1.8 (n)).

(c) A Designated Agency Firm shall at all times ensure that there is a supervising licensee within the firm to provide guidance to the designated agent(s) in the event of a conflict where the principal broker and/or broker in charge is acting as a designated agent for one of the parties to the transaction (e.g. “in-house transaction”).

(d) A Designated Agency Firm and the designated agent(s) with respect to a specific client shall:

(1) obtain written consent of the client to the appointment of the initial and any subsequent designated agent(s) at the time the seller or buyer service agreement is executed or amended;

(2) take ordinary and necessary care to protect all client confidences from disclosure to third parties, except disclosure may occur pursuant to authorization of all clients affected thereby;

(3) take ordinary and necessary care to protect all client confidences from disclosure to other licensees of the firm who are not designated agents for the client, except disclosure may occur pursuant to authorization of all clients affected thereby;

(4) until closing, submit all offers to or from the client, with or without a deposit, whether oral or written, whether above or below the listed price; and

(5) if true, disclose the fact that the firm provides brokerage services to both buyers and sellers in the market. The disclosure shall be part of any seller or buyer service agreement executed on behalf of the firm.

(e) A Designated Agency Firm and its designated agent(s) for a particular client shall not:

(1) practice dual or limited agency by acting as agent for both a buyer and seller in the same transaction. The designated agent(s) may act as an agent for one party in a transaction where the other party is an unrepresented customer;

(2) practice Non-Designated Agency;

(3) provide or offer to provide services as an Intermediary, a Transactional Broker, a Facilitator or any other form of representation not involving an agency relationship for

which fiduciary duties are owed. This provision does not preclude the right to make referrals as provided in Rule 4.13.

(f) A Designated Agency Firm may retain and compensate another brokerage firm to assist it in providing services to its clients without thereby creating an agency relationship between the client and the other firm. This practice shall be known as broker agency and the relationship shall be governed by the provisions of Rule 4.11.

(g) A Designated Agency Firm may permit one of its licensees with a customer who may be interested in buying from or selling to a client of the firm to practice broker agency with the designated agent(s) of the client. No written cooperation agreement is required. In such case the licensee with a customer owes the designated agent(s), but not the firm's client, the duties of a fiduciary.

(h) All confidential information of the seller or buyer client may not go beyond the designated agent(s) or the supervising licensee, except with the client's prior authorization. A designated agent may reveal confidential information of a client to the extent reasonably necessary to obtain proper guidance from the supervisor in charge of such agent, as long as that supervisor is not acting as an agent for another party in a transaction with the client. The supervisor shall protect from further disclosure any confidential information received in a supervisory capacity. All seller and buyer service agreements shall contain clear language that notifies the client that this can occur.

(i) When a designated agent is appointed, information known to or acquired by the designated agent shall not be imputed to the brokerage firm or to other licensees within the same brokerage firm.

(j) The principal broker and broker in charge shall remain vicariously responsible for breach of duty in his or her supervisory capacity as provided in Rule 4.2, however, they do not by virtue thereof become dual agents.

(k) A Designated Agency Firm shall terminate the seller service agreement prior to a designated agent associated with the brokerage firm entering into negotiations on his or her own behalf to purchase a property in which he/she is a designated agent for the property listed by the brokerage firm. In addition, the brokerage firm shall provide an opportunity for the client to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the client and the licensee. Prior to entering into negotiations for the sale of property owned by a licensee of the brokerage firm who is the designated agent of the buyer under a buyer service agreement with the brokerage firm, the Designated Agency Firm must terminate the buyer service agreement. In addition, the brokerage firm shall provide an opportunity for the client to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the client and the licensee. In these instances, a Designated Agency Firm cannot advance the interests of the client and provide

undivided loyalty while negotiating with a licensee associated with the brokerage firm. The client may elect to remain an unrepresented customer of the brokerage firm, and not seek outside representation, if the client provides informed written consent. A Designated Agency Firm and its associated licensees must show affirmatively that they acted in good faith in the transaction.

4.5 Duty to Customers and the Public

(a) A licensee working for a brokerage firm employed by a seller or seller's agent must fully and promptly disclose to a prospective buyer all material facts within the licensee's knowledge concerning the property being sold. This obligation continues until the sale is closed or has been cancelled. Some examples of material facts (See Rule 1.8(p)) include, but are not limited to, the following:

(1) a defect that could significantly diminish the value of the land, structures, or structural components such as the roof, wiring, plumbing, heating system, water system, or sewage disposal system;

(2) a limitation in the deed that could substantially impair the marketability or use of the property and thereby diminish its value;

(3) a recognized or generally accepted hazard to the health or safety of a buyer or occupant of the property; or

(4) facts a licensee reasonably believes may directly impact the future use or value of the property.

(b) If the client refuses to consent to disclosure after being informed that the licensee considers disclosure to be necessary, then the licensee must withdraw from the agency relationship.

(c) A licensee, before showing real property, must disclose any known significant limitations on the seller's ability to convey a fee simple interest in the property, such as options, rights of first refusal, or being subject to prior closings.

(d) A licensee buying or selling on his or her own account shall disclose the existence of his or her real estate license and that the property under consideration belongs to the licensee or will be purchased for the licensee's use. These disclosures are to be made on initial contact with the seller, buyer, or their representatives.

(e) A licensee shall comply with all federal, state and local requirements related to the marketing, transfer or development of real estate.

4.6 Duty to Provide Mandatory Consumer Disclosure

- (a) At the time of first contact with a member of the public who expresses an interest in buying or selling real property, a licensee shall give an oral or written disclosure informing the person that there is no confidentiality between the licensee and the person until and unless there is a signed brokerage service agreement.
- (b) A brokerage firm, and its licensees, shall provide to any unrepresented person with whom a licensee of the brokerage firm has substantial contact, including via electronic communication, a true copy of the most recent consumer disclosure form adopted by vote of the Commission. The disclosure shall occur at the first reasonable opportunity, and it must occur before:
- (1) entering into a brokerage service agreement; or
 - (2) showing a property.
- (c) If it has been more than twelve (12) months since the consumer disclosure form was given, a new consumer disclosure form must be given.
- (d) The current consumer disclosure form adopted by the Commission can be accessed through the Commission's website at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.
- (e) For purposes of this rule, an unrepresented person means any person who:
- (1) is under a brokerage service agreement for representation, but is not at the time in the presence of their agent; or
 - (2) is not under contract with a brokerage firm for representation.
- (f) If the person required to receive the written disclosure form does not sign the form, the licensee shall:
- (1) note that information on the form;
 - (2) sign and date the form; and
 - (3) provide a copy of that form to the person.
- (g) The licensee's signature in 4.6(f)(2) above shall constitute a certification by the licensee that the form was provided to the person with the recommendation to read the disclosure.
- (h) The disclosure form is not required for unrepresented persons in the following instances:
- (1) for an open house where the host brokerage firm conspicuously displays a poster

containing a replica of the disclosure form, with copies available on request;

(2) for any Vermont broker or salesperson licensee; or

(3) for any customer of a cooperating firm brought to a principal firm pursuant to a cooperation agreement between brokerage firms (see Rule 4.11) when that customer has already received the disclosure form from the cooperating firm.

4.7 Trust Accounts

(a) Every brokerage firm shall maintain a pooled interest-bearing trust account in a bank or other regulated financial institution licensed in Vermont, so long as the firm holds the funds of others in the course of its real estate business, and shall establish individual interest-bearing trust accounts as needed to comply with these rules. Interest on the pooled trust account shall be remitted as provided by 26 V.S.A. §2214.

(b) All deposits in the possession of a brokerage firm to be held as an escrow agent under a Purchase and Sale Agreement shall be deposited in the firm's trust or escrow account not later than five (5) banking days after the Purchase and Sale Agreement is executed by both seller and buyer. Any licensee affiliated or associated with that brokerage firm is required to utilize the brokerage firm's accounts in the discharge of his or her responsibility under this rule and under 26 V.S.A. §2214. Unless otherwise agreed to in writing, all deposits held by any licensee shall be placed in the account of the brokerage firm with which the seller has a seller service agreement, or, if there is no listing broker, in the account of the buyer's brokerage firm. No earnings of the accounts shall be made available to the brokerage firm or any associated licensee.

(c) If a deposit is reasonably expected to earn more than \$100, it shall be transferred to or placed in an individual interest-bearing trust account, if requested by the person making the deposit, specifying the Social Security account number or taxpayer identification number of the person who paid the money or is entitled to receive the interest. A deposit which is not reasonably expected to earn more than \$100 shall be placed in the brokerage firm's pooled trust account.

(d) Disputed deposits--When the brokerage firm learns of a dispute concerning the proper party to receive a deposit held in a trust account, the broker shall notify the parties, in writing, that the deposit will remain in the trust account until (1) the parties to the disputed deposit give written authority to the broker to disburse the funds, or (2) a court of competent jurisdiction determines the proper party entitled to the proceeds of the disputed deposit.

(e) Augmented deposit--When a person making a deposit increases the amount of the deposit for any reason, it shall be deposited in the firm's trust account not later than five (5) banking days after receipt thereof. If the recalculated interest is reasonably expected to exceed \$100, the brokerage firm shall transfer the principal amount of the total deposit to an individual interest bearing trust account, if requested by the person making the deposit.

(f) When a payment is made out of an individual interest bearing trust account to the person entitled to it, any interest accrued on that account shall be paid out simultaneously to that person or to such other person designated in the contract.

(g) The brokerage firm shall keep accurate records of all deposits held by it. Such records shall include:

- (1) the name(s) from whom the money was received and to whom it was disbursed;
- (2) the amount of each deposit;
- (3) the amount of each disbursement;
- (4) the date each amount was received, the date disbursed and the amount of any interest earned on an individual interest bearing trust account; and
- (5) all contracts, documents and other records related to a trust account and all its activity, including copies of all related brokerage service agreements, deposit receipts, withdrawal receipts and sales agreements.

(h) The responsibility for the account and all transactions concerning the account remains with the principal broker or broker in charge.

(i) A brokerage firm may deposit its own funds in the account to cover bank service charges or meet a minimum balance to avoid bank service charges. Check printing charges, wire transfer charges, overdraft charges, and other charges for specialized services are a business expense of the brokerage firm. Ordinary bank service charges may be offset against the interest in the account, but the brokerage firm shall not permit the principal amount of the trust funds to be depleted.

4.8 Agreements for Brokerage Services

(a) Before rendering any brokerage services, a brokerage firm must have:

- (1) a written seller service agreement; or
- (2) a written buyer service agreement; or
- (3) a written cooperation agreement between brokerage firms.

(b) Agreements for brokerage services shall contain a specific expiration date not to exceed one (1) year from the effective date of the agreement. A brokerage service agreement shall not

contain any provision for automatic extension or renewal. All information in a brokerage service agreement shall be current as of the date signed, and shall be current as of the date of the most recent extension or renewal. Any limitation on the scope of services to be provided shall not compromise any of the duties required under Rules 4.3, 4.5 and/or 4.6.

(c) All seller and buyer service agreements shall contain clear language that states whether the firm is a Designated or Non-Designated Agency Firm. If the firm elects to practice designated agency, the designated agent(s) must be named in the seller or buyer service agreement. Any changes to the designated agent(s) shall be in writing and approved by the client. Brokerage service agreements must contain a provision indicating that a designated agent may reveal confidential information of the client to the extent reasonably necessary to obtain proper guidance from any supervising licensee in charge of such agent, as long as that supervising licensee is not acting as an agent for another party in a transaction with the client. The supervising licensee shall protect from further disclosure any such confidential information received in a supervisory capacity.

(d) Copies of all agreements for brokerage services shall be given to all parties to the agreements at the time of execution, or as soon as possible thereafter.

(e) Use of a net listing or any variation is prohibited.

4.9 Seller Service Agreements

(a) Each type of seller service agreement shall be on a separate form and identified with only one of the titles below in boldface type at the top of the agreement:

**NONEXCLUSIVE (Open) AGENCY MARKETING AGREEMENT;
EXCLUSIVE AGENCY MARKETING AGREEMENT; or
EXCLUSIVE RIGHT TO MARKET AGREEMENT**

(b) A seller service agreement shall contain:

- (1) a clear description of the property and its location;
- (2) the price, terms and conditions upon which the brokerage firm has authorization to market the property;
- (3) the specific brokerage services the firm will provide, including any limitation on services;
- (4) the agreement date, specific expiration date and the effective date if different from the agreement date;

- (5) a provision for avoiding dual agency and other conflicts with respect to the brokerage firm's buyer service agreements, including the requirements of subsection 4.3(e) and 4.4 applicable to representation of sellers;
- (6) a statement of the amount of transaction fee or other compensation to be paid the brokerage firm, the method of computation and the person who will pay it;
- (7) the signatures of all owners or their authorized agents and a licensee associated with the brokerage firm;
- (8) a clear description of whether, and how, cooperating brokerage firms will be compensated; and
- (9) a clear description of whether, and how, a brokerage firm representing the buyer will be compensated.

(c) A seller service agreement may contain a clause which provides for compensation following expiration or termination when:

- (1) a purchase and sale agreement is signed, a closing held, or the property is otherwise conveyed, within a specified number of months following the expiration or termination date of the seller service agreement, but not to exceed twelve months;
- (2) the brokerage firm, during the term of the seller service agreement, was procuring cause of the sale;
- (3) the brokerage firm provided the name of the purchaser to the seller in writing not later than 10 days after the expiration or termination date of the seller service agreement; and
- (4) the property has not been listed with another brokerage firm under a valid, exclusive right to market agreement with terms and conditions similar to those contained in the expired or terminated seller service agreement.

(d) No other provision for compensation following expiration or termination is authorized.

4.10 Buyer Service Agreements

(a) Each type of buyer service agreement shall be on a separate form and identified with only one of the titles below in boldface type at the top of the agreement:

NONEXCLUSIVE (Open) BUYER AGENCY AGREEMENT;
EXCLUSIVE BUYER AGENCY AGREEMENT; or

EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT

- (b) A buyer service agreement shall contain:
- (1) the agreement date, specific expiration date, and the effective date if different from the agreement date;
 - (2) all terms of the agency authorized;
 - (3) a description of the services that the brokerage firm will perform under the agreement, including any limitations on services;
 - (4) a provision for avoiding dual agency and other conflicts with respect to the brokerage firm's seller service agreements, including the requirements of subsection 4.3(e) and 4.4 applicable to representation of buyers;
 - (5) a statement of the amount of transaction fee or other compensation to be paid the brokerage firm, the method of computation and the person who will pay it;
 - (6) the signatures of all parties to the buyer service agreement and a licensee associated with the brokerage firm; and
 - (7) a clear description of whether, and how, cooperating agents will be compensated.
- (c) A buyer service agreement may contain a clause which provides for compensation following expiration or termination when:
- (1) a purchase and sale agreement is signed, a closing held, or a property is otherwise purchased, within a specified number of months following the expiration or termination date of the buyer service agreement, but not to exceed twelve months;
 - (2) the brokerage firm, during the term of the buyer service agreement, was procuring cause of the purchase;
 - (3) the brokerage firm provided the name of the seller and identification of the property to the buyer in writing not later than 10 days after the expiration or termination date of the buyer service agreement; and
 - (4) the buyer has not retained another brokerage firm under a valid exclusive right to represent buyer agreement with terms and conditions similar to those contained in the expired or terminated buyer service agreement.
- (d) No other provision for compensation following expiration or termination is authorized.

4.11 Cooperation Agreements between Brokerage Firms

- (a) A cooperation agreement between brokerage firms shall contain:
 - (1) identification of the brokerage firm acting as principal and the brokerage firm acting as agent;
 - (2) the agreement date and a provision for termination, however it need not have a specific expiration date;
 - (3) a description of the services which the cooperating firm will perform under the agreement, including any limitation on services;
 - (4) a statement of the amount of transaction fee or other compensation to be paid the brokerage firm and the method of computation;
 - (5) a provision for avoiding dual agency conflicts with respect to each brokerage firm's other brokerage service agreements; and
 - (6) signatures of each party.
- (b) The cooperating firm under a cooperation agreement is the agent of the principal's firm, and not the agent of the buyer or seller for whom the principal is working.
- (c) A principal firm under a cooperation agreement shall not reveal any confidences of a client to a cooperating firm.
- (d) A cooperating firm which has accepted an offer of broker agency with respect to a particular property must notify the principal firm before representing a buyer with respect to the same property.
- (e) Participation agreements in multiple listing services are an acceptable broker cooperation agreement for creating an agency relationship between brokerage firms.
- (f) In a designated agency firm, when a licensee is representing a client and another licensee of the brokerage firm has a customer interested in participating in a transaction with the client, the licensee with the customer is a broker agent for the first agent. No cooperation agreement is required in this scenario.

4.12 Advertising

- (a) Every real estate advertisement shall conspicuously display the brokerage firm's registered

name. This is the name that appears on the brokerage firm's registration issued by OPR. The brokerage firm's registered name shall be the most prominent and largest identifier. This means the brokerage firm's registered name shall be larger than items such as the agent's name, phone number, team name and web address.

(b) When property in which a licensee has an ownership interest is marketed, all advertisements shall disclose the fact that said owner is a Vermont licensee.

(c) Signs used in advertising must comply with Vermont state and municipal sign laws, including but not limited to the following:

(1) a "for sale" sign, or multiple signs on the same premises taken together, shall not have an area of more than six (6) square feet, including panel, frame and riders (See also 10 V.S.A. §493(2));

(2) signs attached to "for sale" signs which state "sold," "sale pending," "sale under contract," or similar messages shall not be permitted (See also 10 V.S.A. §493(2));

(3) a "for sale" sign may only be erected and maintained on the same premises that is for sale and may not be erected or maintained off-premise (See also 10 V.S.A. §493); and

(4) a "for sale" sign may not be erected and maintained along a highway and visible from the highway which is located upon a tree, or painted or drawn upon a rock or other natural feature (See also 10 V.S.A. §495(a)(5)).

(d) Advertisements of properties listed by another brokerage firm shall also conspicuously display that listing brokerage firm's registered name and listing agent's name.

4.13 Compensation

(a) A licensee shall not pay or otherwise compensate an unlicensed person, either directly or indirectly, for the performance of brokerage services. This section shall not prohibit a licensee from reducing or sharing a portion of a commission otherwise owed to the licensee in the transaction, to the benefit of the seller or buyer, so long as it is not compensation for the performance of brokerage services.

(b) A referral fee may be paid or received for referring a prospect to another brokerage firm licensed in Vermont or another jurisdiction. A referral fee agreement must be in writing. A referral does not create an agency relationship. A licensee making a referral is not a sub-agent. A licensee from another jurisdiction may observe, but not perform, brokerage services in Vermont.

(c) A brokerage firm may only receive the compensation provided in: (1) a written brokerage

service agreement signed by the brokerage firm and its client; or (2) an agency agreement with a brokerage firm that has a written agreement described in (1). A brokerage firm shall not collect any compensation for brokerage services except as provided by these rules.

(d) The brokerage firm representing a seller may compensate a brokerage firm representing a buyer out of the brokerage fee without thereby creating an agency relationship. The brokerage firm representing a buyer may compensate a brokerage firm representing a seller out of the brokerage fee without thereby creating an agency relationship. Consent of the client is not required in either case.

4.14 Records

(a) A brokerage firm shall maintain for at least seven years at its usual place of business all records (paper or electronic) of brokerage services provided and they shall be available to the Commission and its agents during regular business hours.

(b) The principal broker, broker in charge, or a designee must cooperate in good faith with the Commission's agent during any inspection, and the principal broker, broker in charge, or a designee may remain present during any inspection. The Commission's agent may not be denied access to the records if the principal broker, broker in charge, or a designee is not present.

4.15 Timely Response to Commission Inquiry

As soon as reasonably practicable or within 30 days, whichever is sooner, a licensee shall respond in good faith when contacted regarding any matter related to the regulation of the licensee's profession by the Commission, or the Office of Professional Regulation acting on behalf of the Commission.

Part 5 Education

5.1 Initial Salesperson and Broker Education

All applicants for a salesperson or broker license must complete the salesperson or broker prelicensing course, which will consist of at least forty hours of instruction approved by the Commission. A list of approved courses can be found at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

5.2 Continuing Education for Renewals

(a) Salespersons renewing for the first time must provide evidence of having completed the required hours of post-licensure education, approved by the Commission, within ninety (90) days of obtaining their initial salesperson's license. A real estate salesperson regulated under the laws of another jurisdiction, licensed and in good standing to practice in that jurisdiction, and

who has been licensed for at least twenty-four months in that jurisdiction, is not required to complete the required post-licensure education.

(b) Salespersons or brokers applying for renewal of licenses must complete the required hours of continuing education during the two-year period immediately preceding renewal. Four hours of the instruction required of brokers and salespersons must be in a subject designated by the Commission for that licensing period. The courses taken must be approved by the Commission as continuing education courses. A list of approved continuing education courses can be found at www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

(c) Any person may seek individual approval of a course by petitioning the Commission no later than 90 days before licensing renewal.

(d) The Commission may appoint an education committee to advise the Commission on standards for approval of courses and the application of those standards.

5.3 Compliance Audits

(a) The Commission will conduct continuing education audits of randomly selected licensees and licensees whose licenses are conditioned. The Commission may also audit late renewing licensees and licensees who in any of the preceding 2 renewal cycles were initially found to have not met continuing education renewal requirements.

(b) If an audit shows that the licensee has not acquired the required hours of acceptable continuing education, the Commission will inform that licensee. The licensee may be given an opportunity to develop and complete a plan to correct the deficiencies. An opportunity to correct continuing education deficiencies, however, does not preclude disciplinary action against the licensee for unprofessional conduct during the renewal process, including fraudulent or deceptive procurement of a license.

Effective Date: December 1, 2015

Appendix J: DOJ v. NAR Antitrust Complaint

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL ASSOCIATION OF
REALTORS®,

Defendant.

Case No. 1:20-cv-3356

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on November 19, 2020, alleging that Defendant, National Association of REALTORS®, violated Section 1 of the Sherman Act, 15 U.S.C. § 1,

AND WHEREAS, the United States and Defendant have consented to the entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law, and without Defendant admitting liability, wrongdoing, or the truth of any allegations in the Complaint;

AND WHEREAS, Defendant agrees to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1.

II. DEFINITIONS

As used in this Final Judgment:

A. “NAR” and “Defendant” mean the National Association of REALTORS®, a non-profit trade association with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Agreement” means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. “Broker” means a Person licensed by a state to provide services to a buyer (“buyer Broker”) or seller (“listing Broker”) in connection with a real estate transaction. The term includes any Person who possesses a Broker’s license and any agent or sales associate who is affiliated with such a Broker.

D. “Client” means the person(s) with whom a REALTOR® is contracted with or otherwise has an agency or legally recognized non-agency relationship with respect to the purchase or sale of real property.

E. “Management” means NAR’s President, President Elect, First Vice President, Treasurer, VP of Advocacy, VP of Association Affairs, Chief Executive Officer, and Executive Committee.

F. “Member Board” means any state or local Board of REALTORS® or Association of REALTORS®, including any city, county, inter-county, or inter-state Board or Association, and any multiple listing service owned by, or affiliated with, any such Board of REALTORS® or Association of REALTORS®.

G. “MLS Participant” means a member or user of, a participant in, or a subscriber to an MLS.

H. “MLS” means a multiple-listing service owned or controlled by a Member Board.

I. “Person” means any natural person, trade association, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

J. “Rule” means any final rule, model rule, ethical rule, bylaw, policy, definition, standard, or guideline, and any interpretation of any Rule issued or approved by NAR.

III. APPLICABILITY

A. This Final Judgment applies to NAR, as defined above, and all other Persons, including all Member Boards and MLS Participants, in active concert or participation with NAR who receive actual notice of this Final Judgment. A Member Board or MLS Participant shall not be deemed to be in active concert with NAR solely as a consequence of its receipt of actual notice of this Final Judgment or its affiliation with or membership in NAR.

IV. PROHIBITED CONDUCT

NAR and its Member Boards must not adopt, maintain, or enforce any Rule, or enter into or enforce any Agreement or practice, that directly or indirectly:

1. prohibits, discourages, or recommends against an MLS or MLS Participant publishing or displaying to consumers any MLS database field specifying the compensation offered to other MLS Participants;
2. permits or requires MLS Participants, including buyer Brokers, to represent or suggest that their services are free or available to a Client at no cost to the Client;
3. permits or enables MLS Participants to filter, suppress, hide, or not display or distribute MLS listings based on the level of compensation offered to the buyer Broker or the name of the brokerage or agent; or
4. prohibits, discourages, or recommends against the eligibility of any licensed real estate agent or agent of a Broker, from accessing, with seller approval, the lockboxes of those properties listed on an MLS.

V. REQUIRED CONDUCT

A. By not later than 45 calendar days after entry of the Stipulation and Order in this matter, NAR must submit to the United States, for the United States' approval in its sole discretion, any Rule changes that NAR proposes to adopt to comply with Paragraphs V.C-I of this Final Judgment.

B. By not later than thirty calendar days after entry of the Stipulation and Order in this matter, NAR must furnish notice of this action to all its Member Boards and MLS Participants in a form to be approved by the United States in its sole discretion.

C. By not later than five business days after the later of the entry of this Final Judgment or the United States' approval of the Rules proposed in Paragraph V.A of this Final Judgment, NAR must adopt one or more Rules, the content of which must first have been approved in writing by the United States in its sole discretion, that repeal any Rule that prohibits, discourages, or recommends against an MLS or MLS Participant publishing or displaying to consumers any MLS database field specifying compensation offered to other MLS Participants.

D. By not later than five business days after the later of the entry of this Final Judgment or the United States' approval of the Rules proposed in Paragraph V.A of this Final Judgment, NAR must adopt one or more Rules, the content of which must first have been approved in writing by the United States in its sole discretion that require all Member Boards and MLSs to repeal any Rule that prohibits, discourages, or recommends against an MLS or MLS Participant publishing or displaying to consumers any MLS database field specifying compensation offered to other MLS Participants.

E. By not later than five business days after the later of the entry of this Final Judgment or the United States' approval of the Rules proposed in Paragraph V.A of this Final Judgment, NAR must adopt one or more Rules, the content of which must first have been approved in writing by the United States in its sole discretion, that require all MLS Participants to provide to Clients information about the amount of compensation offered to other MLS Participants.

F. By not later than five business days after the later of the entry of this Final Judgment or the United States' approval of the Rules proposed in Paragraph V.A of this Final Judgment, NAR must adopt one or more Rules, the content of which must first have been approved in writing by the United States in its sole discretion, that:

1. repeal any Rule that permits all MLSs and MLS Participants, including buyer Brokers, to represent that their services are free or available at no cost to their Clients;
2. require all Member Boards and MLSs to repeal any Rule that permits MLSs and MLS Participants, including buyer Brokers, to represent that their services are free or available at no cost to their Clients; and
3. prohibit all MLSs and MLS Participants, including buyer Brokers, from representing that their services are free or available at no cost to their Clients.

G. By not later than five business days after the later of the entry of this Final Judgment or the United States' approval of the Rules proposed in Paragraph V.A of this Final Judgment, NAR must adopt one or more Rules, the content of which must first have been approved in writing by the United States in its sole discretion, that require all Member Boards and MLSs to:

1. prohibit MLS Participants from filtering or restricting MLS listings that are searchable by or displayed to consumers based on the level of compensation offered to the buyer Broker or the name of the brokerage or agent; and
2. repeal any Rule that permits or enables MLS Participants to filter or restrict MLS listings that are searchable by or displayed to consumers based on the

level of compensation offered to the buyer Broker, or by the name of the brokerage or agent.

H. By not later than five business days after the later of the entry of this Final Judgment or the United States' approval of the Rules proposed in Paragraph V.A of this Final Judgment, NAR must adopt one or more Rules, the content of which must first have been approved in writing by the United States in its sole discretion, that require all Member Boards and MLSs to allow any licensed real estate agent or agent of a Broker, to access, with seller approval, the lockboxes of those properties listed on an MLS.

I. By not later than 10 business days after the later of the entry of this Final Judgment or the United States' approval of the Rules proposed in Paragraph V.A of this Final Judgment, NAR must furnish notice of this action to all its Member Boards and MLS Participants through (i) a direct communication, in a form to be approved by the United States in its sole discretion, that must contain this Final Judgment; the new Rule or Rules NAR devises in compliance with Paragraphs V.E., V.H., and V.I; and the Competitive Impact Statement; and (ii) the creation and maintenance of a page on NAR's website, that must be posted for no less than one year after the date of entry of this Final Judgment, and must contain links to this Final Judgment; the new Rule or Rules NAR devises in compliance with Section V; the Competitive Impact Statement; and the Complaint in this matter.

J. By not later than 30 calendar days after the later of the entry of this Final Judgment or the United States' approval of the Rules proposed in Paragraph V.A of this Final Judgment,

NAR must publish to all Member Boards, in a manner subject to approval by the United States in its sole discretion, this Final Judgment and the NAR Rules adopted in compliance with Section V.

K. By not later than 60 calendar days after the later of the entry of this Final Judgment or the United States' approval of the Rules proposed in Paragraph V.A of this Final Judgment, NAR must require all Member Boards to publish, in a manner subject to approval by the United States in its sole discretion, to all MLS Participants this Final Judgment and the NAR Rules adopted in compliance with Section V.

L. The United States, in its sole discretion, may agree to one or more extensions of each of the time periods set forth in this Section V.

VI. ANTITRUST COMPLIANCE

A. By not later than 30 calendar days after entry of the Stipulation and Order in this matter, Defendant must (i) appoint an Antitrust Compliance Officer and (ii) identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within thirty days after the Antitrust Compliance Officer position becomes vacant, the Defendant must (i) appoint a replacement Antitrust Compliance Officer and (ii) must identify to the United States the replacement Antitrust Compliance Officer's name, business address, telephone number, and email address. The Defendant's initial appointment and replacement of an Antitrust Compliance Officer is subject to the approval of the United States in its sole discretion.

B. The Antitrust Compliance Officer must:

1. by not later than 30 calendar days after entry of this Final Judgment, furnish to all of Management a copy of this Final Judgment, the Competitive Impact

Statement filed by the United States in connection with this matter, and a cover letter in a form attached as Exhibit 1;

2. by not later than 30 calendar days after entry of this Final Judgment, in a form and manner to be approved by the United States in its sole discretion, provide Management and employees with reasonable notice of the meaning and requirements of this Final Judgment;
3. annually brief Management on the meaning and requirements of this Final Judgment and the antitrust laws;
4. brief any person who succeeds a Person in any Management position on the meaning and requirements of this Final Judgment by not later than 30 calendar days after such succession;
5. obtain from all members of Management, by not later than 30 calendar days after that Person's receipt of this Final Judgment, a certification that the Person (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) has reported any violation of this Final Judgment to Defendant or is not aware of any violation of this Final Judgment that has not been reported to the Defendant; and (iii) understands that his or her failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against the Defendant and any other Person bound by the Final Judgment who violates this Final Judgment;

6. maintain a record of certifications received pursuant to this Section and a copy of each certification;
7. annually communicate to Management and employees that they must disclose to the Antitrust Compliance Officer information concerning any potential violation of this Final Judgment or the antitrust laws and that any such disclosure will be without reprisal by Defendant; and
8. by not later than 90 calendar days after entry of this Final Judgment and annually thereafter, the Antitrust Compliance Officer must file reports with the United States describing that Defendant has met its obligations under this Paragraph.

C. Immediately upon Management's or the Antitrust Compliance Officer's learning of any violation or potential violation of any of the terms of this Final Judgment, NAR must take appropriate action to investigate and, in the event of a potential violation, must cease or modify the activity so as to comply with this Final Judgment. NAR must maintain all documents related to any potential violation of this Final Judgment for the term of this Final Judgment.

D. Within 30 calendar days of Management's or the Antitrust Compliance Officer's learning of any potential violation of any of the terms of this Final Judgment, Defendant must file with the United States a statement describing the potential violation, including a description of (1) any communications constituting the potential violation, the date and place of the communication, the persons involved in the communication, and the subject matter of the communication, and (2)

all steps taken by the Antitrust Compliance Officer or Management to remedy the potential violation.

E. Defendant must have its CEO or CFO, and its General Counsel certify in writing to the United States, no later than 60 calendar days after the Final Judgment is entered and then annually on the anniversary of the date of the entry of this Final Judgment, that the Defendant has complied with the provisions of this Final Judgment.

F. The United States, in its sole discretion, may agree to one or more extensions of each of the time periods set forth in this Section VI.

VII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendant, Defendant must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendant must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained pursuant to this Section VII may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If a third party requests disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Defendant submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, “unless the submitter requests and provides justification for a longer designation period.” *See* 28 C.F.R. § 16.7(b).

E. If at the time that Defendant furnishes information or documents to the United States pursuant to this Section VII, Defendant represents and identifies in writing information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, “Subject to

claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,” the United States must give Defendant ten calendar days’ notice before divulging such material in any legal proceeding, other than a grand jury proceeding.

VIII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendant agrees that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and

in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs, including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four years following the expiration or termination of this Final Judgment, if the United States has evidence that Defendant violated this Final Judgment before it expired, the United States may file an action against Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action, (2) all appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of this Final Judgment, and (4) fees or expenses as called for in this Section IX.

X. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire 7 years from the date of its entry, except that after 5 years from the date of its entry, this Final Judgment may be

terminated upon notice by the United States to the Court and Defendant that the continuation of this Final Judgment no longer is necessary or in the public interest.

XI. UNITED STATES' RESERVATION OF RIGHTS

Nothing in this Final Judgment shall limit the right of the United States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any Rule or practice adopted or enforced by NAR or any of its Member Boards.

XII. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States must be sent to the person at the address set forth below (or such other address as the United States may specify in writing to Defendant):

Chief
Office of Decree Enforcement and Compliance
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

XIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, any public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to
procedures of Antitrust Procedures
and Penalties Act, 15 U.S.C. § 16]

United States District Judge

Appendix K: Pre-2015 REC Administrative Rules

**ADMINISTRATIVE RULES OF THE
VERMONT REAL ESTATE COMMISSION**

Part 1 General Information

1.1 The Commission's Purpose.

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

1.2 Business Address.

Vermont Real Estate Commission
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402

~~Copies of these~~ These rules and more information about the Commission and its requirements and procedures are available at ~~www.vtprofessionals.org~~ www.sec.state.vt.us/professional-regulation or by contacting the office.

1.3 Commission Members.

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

1.4 Regular, Special and Emergency Meetings.

The Commission usually meets monthly. The chair or two of the members may call a special or emergency meeting. A majority of the Commission constitutes a quorum for all meetings. No formal action at any meeting is valid unless a majority of those present and voting concur. Meeting dates and locations can be obtained from the Commission's website at www.vtprofessionals.org www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

1.5 Laws That Govern the Commission.

(a) The Commission is created by law, Title 26, V.S.A., Chapter 41, which establishes its responsibilities for setting standards, issuing licenses and regulating the profession. In addition, the Commission is subject to several other state laws such as the Administrative Procedure Act (Title 3, V.S.A., Chapter 25), the “Law of Professional Regulation” (Title 3, V.S.A., Sections

121-131), the “Right to Know Law” (Title 1, V.S.A., Sections 311-314), and the “Access to Public Records Law” (Title 1, V.S.A., Sections 315-320). These laws spell out the rights of applicants, licensees, and members of the public.

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

1.6 Rules.

(a) The Commission is authorized to make these rules under Title 26, V.S.A., Section 2252. These rules are approved by the Vermont Legislative Committee on Administrative Rules and have the effect of law and govern the Commission's proceedings. Rules are made following the Administrative Procedure Act (“APA”). The Office of Professional Regulation (“OPR”) helps the Commission to comply with the Act. Rules are reviewed and revised periodically.

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

1.7 Making and Resolving Complaints.

(a) Any person may make a complaint against a broker or salesperson by contacting OPR or obtaining a copy of the complaint form from the Commission’s website at www.vtprofessionals.org www.sec.state.vt.us/professional-regulation.

(b) The Commission follows the current investigation and disciplinary procedure adopted from time to time by OPR, except where the Commission's published procedures provide otherwise. Copies of the procedure, complaint forms, and more information about the complaint process may be found at www.vtprofessionals.org www.sec.state.vt.us/professional-regulation.

1.8 Definitions.

As used in these rules:

(a) “Advertising” includes print ads of any type, internet, email, or electronic media, stationery, business cards, individual “For Sale” signs and other audio, visual or print depictions or notices of real estate offered for sale or brokerage services.

(b) “Broker in Charge” means the individual broker responsible for a single office.

(c) “Broker Prelicensing Course” means a course of instruction to become a broker, at least 40 hours long, which has been approved by the Commission.

(d) “Brokerage Services” means those activities requiring a license, specifically listed in 26

V.S.A. §2211(a)(4).

(e) "Brokerage Firm" means a business entity which is engaged in brokerage services.

(f) "Buyer" includes a person who buys, offers to buy, intends to buy, or is interested in buying real estate.

(g) "Client" means the person(s) with whom a brokerage firm and its licensees, or designated licensees, has an agency relationship related to the negotiation, sale, purchase, or exchange of an interest in real estate. Licensees owe a fiduciary duty to their clients.

(h) "Continuing Education" means instruction approved by the Commission.

(i)

"Designated Agency" means the practice by which one or more licensees affiliated with a brokerage firm is appointed to act as an agent of the brokerage firm's buyer or seller client. Designated Agents owe the client the duties of a fiduciary.

(j) "Exclusive Agency Marketing Agreement" means a seller service agreement which expressly reserves to the owner the right to sell or market the property himself or herself without liability to the brokerage firm for a commission or fee, and which grants the brokerage firm the right to market the property, but which prohibits the owner from listing the property with any other brokerage firm for the term of the agreement.

(k) "Exclusive Buyer Agency Agreement" means a buyer service agreement by which a buyer engages a single brokerage firm to provide brokerage services, and by which the buyer agrees not to obtain services from any other broker, but which expressly reserves to the buyer the right to purchase property himself or herself without liability to the brokerage firm for a commission or fee.

(l) "Exclusive Right to Market Agreement" means a seller service agreement which grants to the brokerage firm the exclusive right to market the property, and which recognizes a liability on the part of the owner for a commission or fee to the brokerage firm, even if the property is sold by the owner.

(m) "Exclusive Right to Represent Buyer Agreement" means a buyer service agreement which grants to the brokerage firm the exclusive right to act on behalf of the buyer in a real estate purchase, and which recognizes a liability on the part of the buyer for a commission or fee to the brokerage firm, even if a property is purchased without assistance by the brokerage firm.

(n) "Fiduciary Duty" means the duty to act for the benefit of the principal client in all matters relating to the agency relationship. A fiduciary must put the interest of the principal client ahead of the interests of the agent and any third party. Fiduciaries must disclose all material facts the fiduciary learns about the transaction, must disclose any knowledge gained from other parties to the principal's transaction, must protect the principal's confidences and act with

reasonable care, loyalty, and obedience toward the principal client. Unless otherwise agreed, the duty to protect a principal client's confidences continues after the brokerage service agreement expires or is otherwise terminated.

(~~m~~o) "Licensee" means a person holding any license issued by the Commission.

(~~n~~p) "Material Fact" means a fact that might cause a buyer or seller to make a different decision with regards to entering into or remaining in a contract or affect the price paid or received for real property.

(~~o~~q) "Net Listing" means a brokerage service agreement in which, at some point, the benefit of negotiating a higher price for the seller or a lower price for the buyer accrues only to the agent or brokerage firm and not to the principal client. Net listing is a prohibited practice. See Rule 4.8(~~e~~e).

(r) "Non-Designated Agency" means the practice by which all licensees affiliated with a brokerage firm act as the agent of the brokerage firm's clients. All licensees affiliated with the brokerage firm owe the client the duties of a fiduciary.

(~~s~~p) "Nonexclusive" or "Open" with respect to a seller service agreement means a seller service agreement which expressly reserves to the owner the right to list the property with other brokerage firms or to sell the property himself or herself. It shall also mean a buyer service agreement that allows the buyer to obtain brokerage services from other brokerage firms or purchase a property himself or herself.

(~~q~~t) "OPR" means the Office of Professional Regulation.

(~~r~~) "Principal" (a.k.a. "Client") means the person(s) with whom a brokerage firm and its licensees has an agency relationship related to the negotiation, sale, purchase or exchange of an interest in real estate. Licensees owe a fiduciary duty to their principals

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(~~e~~s) "Principal Broker" means the individual broker responsible for the brokerage firm and all associated branch offices.

(~~t~~v) "Salesperson Prelicensing Course" means a course of instruction to become a salesperson, at least 40 hours long, which has been approved by the Commission.

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(w) "Salesperson Post-Licensure Education" means a course of instruction, which has been approved by the Commission, which satisfies, or counts toward satisfying, the hours of required education after obtaining an initial salesperson license.

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(~~x~~) "Seller" includes a person who sells, offers to sell, intends to sell, or is interested in selling real estate.

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(v)

(y) "Supervising Licensee" in a designated agency firm means a licensee of the brokerage firm who is selected by the brokerage firm's principal broker or broker in charge to act in a supervisory capacity for different licensees within the brokerage firm whose clients wish to participate in the same transaction. This individual shall not be a licensee who represents one of the clients in the transaction.

(z) "Vicariously Responsible" means accountability of a principal broker or broker in charge for unprofessional conduct by a licensee.

(~~waa~~) "V.S.A." means Vermont Statutes Annotated.

Part 2 Information for Applicants

2.1 Need for a License.

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

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

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

(1) listing, offering, attempting or agreeing to list real estate or any interest therein for sale or exchange;

(2) selling, exchanging or purchasing real estate or any interest therein;

(3) offering to sell, exchange or purchase real estate or any interest therein;

(4) negotiating, offering, attempting or agreeing to negotiate, the sale, exchange or purchase of real estate or any interest therein;

(5) buying, selling, offering to buy or sell, or otherwise dealing in options on real estate or any interest therein;

(6) advertising or holding oneself out as being engaged in the business of buying, selling or exchanging real estate or any interest therein; or

(7) assisting or directing in the procuring of prospects, calculated to result in the sale or exchange of real estate or any interest therein; however, a non-licensed employee of a licensee shall be allowed to respond to inquiries from members of the public, so long as the employee makes it clear that he or she is not licensed and that any information provided should be confirmed by a licensed person.

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

(1) offering property for lease; and

(2) offering mobile homes or businesses for sale or lease, without also offering real property. See 26 V.S.A. §2211(b).

2.2 Where to Get an Application.

Applications for a license or registration can be found at www.vtprofessionals.org www.sec.state.vt.us/professional-regulation/profession/real-estate-commission or by contacting:

Vermont Real Estate Commission
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402

2.3 Types of Licenses and Registrations.

(a) The Commission issues the following licenses:

(1) Broker;

(2) Salesperson; and

(3) Temporary Broker (26 V.S.A. §2299).

(b) The Commission issues the following registrations:

(1) Brokerage firm; and

(2) Branch office.

(c) Every licensee must be associated with a single registered brokerage firm, except that a broker who also holds a temporary license under 26 V.S.A. §2299 may be associated with a second firm.

2.4 How to Become Licensed as a Salesperson.

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

(a) is at least 18 years old;

(b) has completed the salesperson prelicensing course;

- (c) has passed the national and state examinations required by the Commission within the two years immediately preceding application;
- (d) has been employed by or become associated with a brokerage firm and that firm's principal broker;
- (e) is not precluded from licensure pursuant to 3 V.S.A. §129a; and
-
- (f) meets other requirements mandated by law.

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

2.5 How to Become Licensed as a Real Estate Broker.

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

- (a) has completed the broker prelicensing course;
- (b) has passed the national and state examinations as required by the Commission, within the two years immediately preceding application;
- (c) has gained at least two years experience as a licensed salesperson, including at least eight separate and unrelated closed transactions among buyers and sellers bearing no familial or pre-existing business relation to the applicant.

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

2.6 How to Register Real Estate Brokerage Firms.

To obtain a brokerage firm or branch office registration a person must file a written application and must:

- (a) Designate a principal broker for the main office and a broker in charge for each branch office;
- (b) Register the firm with the Corporations Division of the Office of the Secretary of State, if required by law; and
- (c) Specifically designate the brokerage firm name under which the firm will conduct business,

register licensees, and advertise.

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

2.7 Examinations.

All examinations for real estate broker's licenses and for salesperson's licenses are administered through OPR and information is available through the Commission's website at ~~www.vtprofessionals.org~~ www.sec.state.vt.us/professional-regulation/profession/real-estate-commission. A candidate who fails one part of the exam may retake that part within the next six months. After six months or two failures, the candidate must retake the full exam.

2.8 Display of Licenses for Brokers and Salespersons.

A license issued by the Commission must be conspicuously displayed in the office where the licensee is associated.

2.9 Applicant's Right to a Written Decision and Personal Appearance.

The Commission will notify applicants in writing of all decisions concerning the granting or denial of a license or registration. If a license or registration is denied, the applicant will be given specific reasons and informed of the right to request a review and personal appearance before the Commission before the decision becomes final.

2.10 Applicant's Right to Appeal.

If the applicant is not satisfied with the Commission's final decision, the applicant may appeal within 30 days of the Commission's decision, to an appellate officer, by filing a notice of appeal with the Office of Professional Regulation, ~~National Life Bldg., North FL289 Main Street, 3rd Floor,~~ Montpelier, Vermont 05620-3402 Attention: Appeal. The appellate process is governed by 3 V.S.A. § 130a.

Part 3 Information ~~F~~for Licensed Brokers ~~A~~and Salespersons

3.1 Renewing a License or Registration.

(a) Licenses and registrations renew on a fixed biennial schedule, and must be renewed before they expire. The expiration date is stated on the license or registration. Before the expiration date, OPR will provide notification for renewal to the licensee's electronic mail address of record; however, failure to receive such notice shall not excuse any licensee from the obligation to maintain continuous licensure. Evidence of having completed the required hours of continuing ~~and/or~~ post-licensure education must be provided with license renewal applications. Prior to expiration, a licensee may request that the license be placed in an inactive status by paying the fee to transfer the license to inactive status. No continuing education is needed to become inactive. Unless a licensee requests to be placed on inactive status prior to expiration,

the license shall be designated as “expired.”

(b) When the license of a principal broker ~~is not renewed prior to expiration~~ ceases to be active for any reason, all licensees associated with that brokerage firm shall lose authority to transact business in the firm's name.

(c) When the license of a broker ~~is not renewed prior to expiration~~ ceases to be active for any reason, all licensees associated with that branch office shall lose authority to transact business in the brokerage firm's name.

3.2 Reinstating an Expired or Inactive License or Registration.

(a) A license that has been expired for less than five years may be reinstated by the licensee by paying the renewal fee and late renewal penalty, and providing proof of the required hours of continuing and/or post-licensure education taken within the previous 24 months.

(b) A licensee who requested the license be inactive, and reactivates during the same renewal period, may be reinstated by paying the reinstatement fee, renewal fee, and providing proof of the required hours of continuing and/or post-licensure education taken within the previous 24 months. A licensee who does not request reactivation during the same renewal period may not renew under this section and must qualify under 3.2(a).

(c) A brokerage firm whose registration has expired because it was not renewed by the expiration date may be reinstated by paying the renewal fee and late renewal penalty. When the registration of the brokerage firm is not renewed prior to expiration, all licensees associated with that brokerage firm shall lose authority to transact business in the brokerage firm's name.

3.3 Requests for Declaratory Rulings.

(a) Requests for declaratory rulings as to the applicability of any statutory provisions or any rule or order of the Commission may be sent to the Commission office. Requests must be in writing, and must show the existence of a real controversy, not just a hypothetical question. A declaratory ruling is binding upon the parties to the ruling and the Commission. The requests will be considered pursuant to the Administrative Procedure Act, 3 V.S.A. Chapter 25 and the Administrative Rules of the Office of Professional Regulation. The Commission may call witnesses in addition to those presented by the parties.

(b) In the absence of a real controversy, the Commission may, in its discretion, elect to issue a non-binding advisory opinion, or may decline to address the question presented. An advisory opinion is not binding on the requestor, other licensees, or the Commission.

3.4 Change of Name or Address.

(a) A principal broker or broker in charge must notify OPR in writing within 30 days of any change in name, address, phone number or email address of the brokerage firm or any licensee associated with that brokerage firm.

(b) Each licensee shall notify OPR in writing within 30 days of any change of the licensee's principal business location, phone number or email.

3.5 Modifications of Conditions and Reinstating a Suspended License.

The Commission may set forth a specific process in a disciplinary order for modification of that order or for reinstatement after suspension. A licensee who receives a warning, reprimand, suspension, or condition to continued practice, shall specifically refer to the Commission's order for the process for modification of that order or reinstatement after suspension.

Part 4 Conduct of Licensees

4.1 Offices and Branch Offices.

(a) A principal broker shall be in charge of a brokerage firm. The principal broker must maintain his or her place of business at the brokerage firm's main office. The principal broker must notify the Commission of the brokerage firm's main office location.

(b) A brokerage firm which desires more than one office shall register a branch office. A branch office shall use the same name as the main office and shall designate a broker in charge. The broker in charge of a branch office must maintain his or her place of business at the branch office.

(c) The firm's licensees must have a primary place of business at one of the brokerage firm's locations but may work out of any of the brokerage firm's offices.

(d) A principal broker or broker in charge may not serve as principal broker or broker in charge for more than one office or brokerage firm at any one time, except that a broker who also holds a temporary license under 26 V.S.A. §2299 may be associated with a second brokerage firm.

4.2 Broker Supervision.

(a) A principal broker may be vicariously responsible for the professional conduct of licensees and employees of the brokerage firm, including all branches; a broker in charge may be vicariously responsible for the professional conduct of all licensees and employees of the branch office.

(b) Licensees must work under the supervision and training of the principal broker or broker in charge.

(c) —In

~~4.3 Duty to Principals/Clients.~~

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(a) A brokerage Designated Agency Firm, a principal broker or broker in charge who is the designated licensee for a client has the opportunity to create a conflict of interest if their client

enters into a transaction with another client of the brokerage firm. In these instances, the principal broker or broker in charge must delegate their supervisory responsibilities, for the other licensee in the transaction, to a qualified supervising licensee.

4.3 Brokerage Firms Practicing Non-Designated Agency

(a) All brokerage firms that are not under an election to practice Designated Agency are governed by this Rule as practicing Non-Designated Agency (see Rule 1.8 (r)). Any such brokerage firm shall be known as a Non-Designated Agency Firm and disclosure of this status shall be included in seller and buyer service agreements as required under Rule 4.8(c).

(b) A Non-Designated Agency Firm is the agent of each person with whom it has entered into a brokerage service agreement (see 4.8). Only client of the firm and on its behalf all licensees associated with a brokerage firm employed under a brokerage service agreement may of the firm represent the firm's all clients. As an agent, of the firm pursuant to written agreements for brokerage services (see Rule 4.8). The firm and all associated its licensees owe that person the client the duties of a fiduciary (see Rule 1.8(f)(n)).

(c) A Non-Designated Agency Firm and all its licensees shall:

(1) Take ordinary and necessary care to protect all client confidences from disclosure to third parties, except disclosure may occur pursuant to authorization of all clients affected thereby;

(2) Until

(b) A brokerage firm must, until closing, submit all offers to or from the principal client, with or without a deposit, whether oral or written, whether above or below the listed price; and

(3) If true, disclose the fact that the

(e) A brokerage firm that provides brokerage services to both buyers and sellers must disclose that fact in writing in a brokerage the market. The disclosure shall be part of any seller or buyer service agreement executed on behalf of the brokerage firm.

(d) A brokerage Non-Designated Agency Firm and all its licensees shall not:

(1) Practice dual or limited agency, acting as agent for both a buyer and seller in the same transaction. The firm may act as an agent for one party in a transaction where the other party is an unrepresented customer;

(2) Practice Designated Agency; or

(3) Provide or offer to provide services as an Intermediary, a Transactional Broker, a Facilitator or any other form of representation not involving an agency relationship for which fiduciary duties are owed. This provision does not preclude the right to make referrals as provided in Rule 4.13.

~~(e) A Non-Designated Agency Firm may retain other and compensate another brokerage firm to assist it in providing services to its principals and compensate those firms, clients without thereby creating an agency relationship between the principal and the other firm and the other firm. This practice shall be known as broker agency and the relationship shall be governed by the provisions of Rule 4.11.~~

~~(ef) A brokerage firm Non-Designated Agency Firm shall terminate the seller service agreement prior to a licensee associated with the brokerage firm entering into negotiations on his or her own behalf to purchase a property listed by the brokerage firm. In addition, the brokerage firm shall provide an opportunity for the principal client to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the principal client and the licensee. Prior to entering into negotiations for the sale of property owned by a licensee of the brokerage firm Non-Designated Agency Firm to a buyer under a buyer service agreement with the brokerage firm, the brokerage firm must terminate the buyer service agreement to provide the principal client an opportunity to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the principal client and the licensee. In these instances, a brokerage firm Non-Designated Agency Firm cannot advance the interests of the principal client and provide undivided loyalty while negotiating with a licensee associated with the brokerage firm. The principal client may elect to remain an unrepresented customer of the brokerage firm Non-Designated Agency Firm, and not seek outside representation, if the principal client provides informed written consent. A brokerage firm Non-Designated Agency Firm and its associated licensees must show affirmatively that they acted in good faith in the transaction.~~

~~4.4 Limited Agency.~~

~~(a) Dual Brokerage Firms Practicing Designated Agency is prohibited.~~

~~(b) A brokerage firm shall not act as an agent for both a buyer and a seller in the same transaction, except as a limited agent in conformance with (c) below.~~

~~(c) When a brokerage firm already represents both a seller and a buyer, under separate brokerage service agreements, and the seller and buyer later want to participate in the same real estate transaction, the firm may act as a limited agent on behalf of both the seller and the buyer with the informed consent of each. A firm representing both parties in a transaction is a limited agent because of the inherent contradiction in the roles of seller's agent and buyer's agent. In order to obtain informed consent required by this rule, the firm must at a minimum explain all of the following to both the seller and the buyer:~~

~~(1) Each is entitled to be represented by his or her own brokerage firm, and may refuse consent.~~

~~(2) Each is surrendering their right to demand undivided loyalty from the brokerage firm and its licensees, although the brokerage firm must advance the interest of each party so long as it does not conflict with the interest of the other party, and must otherwise act~~

impartially.

~~(3) There will be a conflict as to a brokerage firm's duties of confidentiality and full disclosure. The firm must explain the types of information which will be held confidential and the types of information which will be disclosed if revealed by either the buyer or the seller. The brokerage firm may not disclose any information given by either principal which would likely weaken that party's bargaining position if it were known, unless the brokerage firm has permission from the principal to disclose the information.~~

~~(4) The brokerage firm will be required to disclose information given in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations.~~

~~(5) After these effects of limited agency have been explained, both parties may give written consent to the termination of their agency relationship for the transaction between them and agree that the firm may act as a limited agent. If either the seller or the buyer declines or fails to give written consent, the firm must terminate its agency relationship with one of the principals, or if necessary to protect a principal's confidences, shall terminate its agency relationship with both principals. A termination for a specific transaction must be acknowledged in writing.~~

~~(d) A limited agent has a duty—~~

(a) If a brokerage firm has more than two licensees, the brokerage firm may elect to practice Designated Agency (see Rule 1.8 (i)). Any such brokerage firm shall be known as a Designated Agency Firm and disclosure of this status shall be included in seller and buyer service agreements as required under Rule 4.8(c).

(b) A Designated Agency Firm shall delegate to its individual licensees all brokerage firm agency and fiduciary responsibilities for specific clients of the firm pursuant to written agreements for brokerage services (see Rule 4.8). Delegations may be made to a single licensee or to multiple licensees associated with the brokerage firm. The licensee(s) so delegated shall be known as designated agent(s). Only the designated agent(s) owe the client the duties of a fiduciary (see Rule 1.8 (n)).

(c) A Designated Agency Firm shall at all times ensure that there is a supervising licensee within the firm to provide guidance to the designated agent(s) in the event of a conflict where the principal broker and/or broker in charge is acting as a designated agent for one of the parties to the transaction (e.g. "in-house transaction").

(d) A Designated Agency Firm and the designated agent(s) with respect to a specific client shall:

(1) Obtain written consent of the client to the appointment of the initial and any subsequent designated agent(s) at the time the seller or buyer service agreement is executed or amended;

(2) Take ordinary and necessary care to protect all client confidences from disclosure to

third parties, except disclosure may occur pursuant to authorization of all clients affected thereby;

(3) Take ordinary and necessary care to act with reasonable care and obedience, protect all client confidences from disclosure to other licensees of the firm who are not designated agents for the benefit of the principals in matters related client, except disclosure may occur pursuant to the transaction, and authorization of all clients affected thereby;

(4) Until closing, submit all offers to put them on from the client, with or without a deposit, whether oral or written, whether above or below the listed price; and

(5) If true, disclose the fact that the firm provides brokerage services to both buyers and sellers in the market. The disclosure shall be part of any seller or buyer service agreement executed on behalf of the firm.

(e) A Designated Agency Firm and its designated agent(s) for a particular client shall not:

(1) Practice dual or limited agency by acting as agent for both a buyer and seller in the same transaction. The designated agent(s) may act as an agent for one party in a transaction where the other party is an unrepresented customer;

(2) Practice Non-Designated Agency;

(3) Provide or offer to provide services as an Intermediary, a Transactional Broker, a Facilitator or any other form of representation not involving an agency relationship for which fiduciary duties are owed. This provision does not preclude the right to make referrals as provided in Rule 4.13.

(f) A Designated Agency Firm may retain and compensate another brokerage firm to assist it in providing services to its clients without thereby creating an agency relationship between the client and the other firm. This practice shall be known as broker agency and the relationship shall be governed by the provisions of Rule 4.11.

(g) A Designated Agency Firm may permit one of its licensees with a customer who may be interested in buying from or selling to a client of the firm to practice broker agency with the designated agent(s) of the client. No written cooperation agreement is required. In such case the licensee with a customer owes the designated agent(s), but not the firm's client, the duties of a fiduciary.

(h) All confidential information of the seller or buyer client may not go beyond the designated agent(s) or the supervising licensee, except with the client's prior authorization. A designated agent may reveal confidential information of a client to the extent reasonably necessary to obtain proper guidance from the supervisor in charge of such agent, as long as that supervisor is not acting as an agent for another party in a transaction with the client. The supervisor shall protect from further disclosure any confidential information received in a supervisory capacity. All

seller and buyer service agreements shall contain clear language that notifies the client that this can occur.

(i) When a designated agent is appointed, information known to or acquired by the designated agent shall not be imputed to the brokerage firm or to other licensees within the same brokerage firm.

(j) The principal broker and broker in charge shall remain vicariously responsible for breach of duty in his or her supervisory capacity as provided in Rule 4.2, however, they do not by virtue thereof become dual agents.

(k) A Designated Agency Firm shall terminate the seller service agreement prior to a designated agent associated with the brokerage firm entering into negotiations on his or her own behalf to purchase a property in which he/she is a designated agent for the property listed by the brokerage firm. In addition, the brokerage firm shall provide an opportunity for the client to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the principals ahead of the client and the licensee. Prior to entering into negotiations for the sale of property owned by a licensee of the brokerage firm who is the designated agent of the buyer under a buyer service agreement with the brokerage firm, the Designated Agency Firm must terminate the buyer service agreement. In addition, the brokerage firm shall provide an opportunity for the client to seek outside representation, and disclose in writing that a conflict of interest is automatically created due to the competing interests of the agent, brokerage firm, or any fourth party client and the licensee. In these instances, a Designated Agency Firm cannot advance the interests of the client and provide undivided loyalty while negotiating with a licensee associated with the brokerage firm. The client may elect to remain an unrepresented customer of the brokerage firm, and not seek outside representation, if the client provides informed written consent. A Designated Agency Firm and its associated licensees must show affirmatively that they acted in good faith in the transaction.

4.5 Duty to Customers and the Public.

(a) A licensee working for a brokerage firm employed by a seller or seller's agent must fully and promptly disclose to a prospective buyer all material facts within the licensee's knowledge concerning the property being sold. This obligation continues until the sale is closed or has been cancelled. Some examples of material facts (See Rule 1.8(h)) include, *but are not limited to*, the following:

(1) A defect that could significantly diminish the value of the land, structures, or structural components such as the roof, wiring, plumbing, heating system, water system, or sewage disposal system;

(2) A limitation in the deed that could substantially impair the marketability or use of the property and thereby diminish its value;

(3) A recognized or generally accepted hazard to the health or safety of a buyer or

occupant of the property; or

(4) Facts a licensee reasonably believes may directly impact the future use or value of the property.

(b) If the ~~principal client~~ agent licensee refuses to consent to disclosure after being informed that the ~~agent licensee~~ agent licensee considers disclosure to be necessary, then the ~~agent licensee~~ agent licensee must withdraw from the agency relationship.

(c) A licensee, before showing real property, must disclose any known significant limitations on the seller's ability to convey a fee simple interest in the property, such as options, rights of first refusal, or being subject to prior closings.

(d) A licensee buying or selling on his or her own account shall disclose the existence of his or her real estate license and that the property under consideration belongs to the licensee or will be purchased for the licensee's use. These disclosures are to be made on initial contact with the seller, buyer, or their representatives.

(e) A licensee shall comply with all federal, state and local requirements related to the marketing, transfer or development of real estate.

4.6 Duty to Provide Mandatory Consumer Disclosure.

(a) At the time of first contact with a member of the public who expresses an interest in buying or selling real property, a licensee shall give an oral or written disclosure informing the person that there is no confidentiality between the licensee and the person until and unless there is a signed brokerage service agreement.

(b) A brokerage firm, and its licensees, shall provide ~~a written the consumer disclosure form that includes the content established by the Commission~~ to any unrepresented person with whom a licensee of the brokerage firm has substantial contact, including via electronic exchanges communication, a true copy of the most recent consumer disclosure form adopted by vote of the Commission. The disclosure shall occur at the first reasonable opportunity, and it must occur before:

(1) entering into a brokerage service agreement; or

(2) showing a property; ~~or,~~

~~(3) requesting information regarding a consumer's buying or selling requirements as they pertain to real property.~~

(c) If it has been more than twelve (12) months since the consumer disclosure form was given ~~to the unrepresented person,~~ a new consumer disclosure form must be given.

(d) ~~An example of a~~ The current consumer disclosure form adopted by the Commission can be

accessed through the Commission's website at www.vtprofessionals.org
www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

(e) For purposes of this rule, an unrepresented person means any person who:

(1) is under a brokerage service agreement for representation, but is not at the time in the presence of their agent; or

(2) is not under contract with a brokerage firm for representation.

(f) If the person required to receive ~~at~~ the written disclosure form ~~refuses to~~ does not sign the form, the licensee shall:

(1) Note that information on the form;

(2) Sign and date the form; and

(3) Provide a copy of that form to the person.

(g) The ~~agent's~~ licensee's signature in 4.6(f)(2) above shall constitute a certification by the ~~agent~~ licensee that the form was provided to the person with the recommendation to read the disclosure.

(h) The disclosure form is not required for unrepresented persons in the following instances:

(1) For an open house where the host brokerage firm conspicuously displays a poster containing a replica of the disclosure form, with copies available on request;

(2) For any Vermont broker or salesperson licensee; or

(3) For any customer of a cooperating firm brought to a principal firm pursuant to a cooperation agreement between brokerage firms (see Rule 4.11) when that customer has already received the disclosure form from the cooperating firm.

4.7 Trust Accounts.

(a) Every brokerage firm shall maintain a pooled interest-bearing trust account in a bank or other regulated financial institution licensed in Vermont, so long as the firm holds the funds of others in the course of its real estate business, and shall establish individual interest-bearing trust accounts as needed to comply with these rules. Interest on the pooled trust account shall be remitted as provided by 26 V.S.A. §2214 ~~and 8 V.S.A. §920~~.

(b) All deposits in the possession of a brokerage firm to be held as an escrow agent under a Purchase and Sale Agreement shall be deposited in the firm's trust or escrow account not later than five (5) banking days after the Purchase and Sale Agreement is executed by both seller and buyer. Any licensee affiliated or associated with that brokerage firm is required to utilize the

brokerage firm's accounts in the discharge of his or her responsibility under this rule and under 26 V.S.A. §2214. Unless otherwise agreed to in writing, all deposits held by any licensee shall be placed in the account of the brokerage firm with which the seller has a seller service agreement, or, if there is no listing broker, in the account of the buyer's brokerage firm. No earnings of the accounts shall be made available to the brokerage firm or any associated licensee.

(c) If a deposit is reasonably expected to earn more than \$100, it shall be transferred to or placed in an individual interest-bearing trust account, if requested by the person making the deposit, specifying the Social Security account number or taxpayer identification number of the person who paid the money or is entitled to receive the interest. A deposit which is not reasonably expected to earn more than \$100 shall be placed in the brokerage firm's pooled trust account.

(d) Disputed deposits--When the brokerage firm learns of a dispute concerning the proper party to receive a deposit held in a trust account, the broker shall notify the parties, in writing, that the deposit will remain in the trust account until (1) the parties to the disputed deposit give written authority to the broker to disburse the funds, or (2) a court of competent jurisdiction determines the proper party entitled to the proceeds of the disputed deposit.

(e) Augmented deposit--When a person making a deposit increases the amount of the deposit for any reason, it shall be deposited in the firm's trust account not later than five (5) banking days after receipt thereof. If the recalculated interest is reasonably expected to exceed \$100, the brokerage firm shall transfer the principal amount of the total deposit to an individual interest bearing trust account, if requested by the person making the deposit.

(f) When a payment is made out of an individual interest bearing trust account to the person entitled to it, any interest accrued on that account shall be paid out simultaneously to that person or to such other person designated in the contract.

(g) The brokerage firm shall keep accurate records of all deposits held by it. Such records shall include:

- (1) the name(s) from whom the money was received and to whom it was disbursed;
- (2) the amount of each deposit;
- (3) the amount of each disbursement;
- (4) the date each amount was received, the date disbursed and the amount of any interest earned on an individual interest bearing trust account; and
- (5) all contracts, documents and other records related to a trust account and all its activity, including copies of all related brokerage service agreements, deposit receipts, withdrawal receipts and sales agreements.

(h) The responsibility for the account and all transactions concerning the account remains with the principal broker or broker in charge.

(i) A brokerage firm may deposit its own funds in the account to cover bank service charges or meet a minimum balance to avoid bank service charges. Check printing charges, wire transfer charges, overdraft charges, and other charges for specialized services are a business expense of the brokerage firm. Ordinary bank service charges may be offset against the interest in the account, but the brokerage firm shall not permit the principal amount of the trust funds to be depleted.

4.8 Agreements for Brokerage Services.

(a) Before rendering any brokerage services, a brokerage firm must have ~~executed~~:

- (1) a written seller service agreement; or
- (2) a written buyer service agreement; or
- (3) a written cooperation agreement between brokerage firms.

~~(b) Copies of all executed~~

~~(b) agreements for brokerage services shall be given to all parties to the agreements at the time of execution, or as soon as possible thereafter.~~

~~(c) Use of a net listing or any variation is prohibited.~~

~~(d) Agreements for brokerage services shall contain a specific expiration date not to exceed one (1) year from the effective date of the agreement. A brokerage service agreement shall not contain any provision for automatic extension or renewal. All information in a brokerage service agreement shall be current as of the date signed, and shall be current as of the date of the most recent extension or renewal. Any limitation on the scope of services to be provided shall not compromise any of the duties required under Rules 4.3, 4.5 and/or 4.6.~~

(c) All seller and buyer service agreements shall contain clear language that states whether the firm is a Designated or Non-Designated Agency Firm. If the firm elects to practice designated agency, the designated agent(s) must be named in the seller or buyer service agreement. Any changes to the designated agent(s) shall be in writing and approved by the client. Brokerage service agreements must contain a provision indicating that a designated agent may reveal confidential information of the client to the extent reasonably necessary to obtain proper guidance from any supervising licensee in charge of such agent, as long as that supervising licensee is not acting as an agent for another party in a transaction with the client. The supervising licensee shall protect from further disclosure any such confidential information received in a supervisory capacity.

(d) Copies of all agreements for brokerage services shall be given to all parties to the agreements at the time of execution, or as soon as possible thereafter.

(e) Use of a net listing or any variation is prohibited.

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4.9 Seller Service Agreements.

(a) Each type of seller service agreement shall be on a separate form and identified with only one of the titles below in boldface type at the top of the agreement:

**NONEXCLUSIVE (Open) AGENCY MARKETING AGREEMENT;
EXCLUSIVE AGENCY MARKETING AGREEMENT; or
EXCLUSIVE RIGHT TO MARKET AGREEMENT**

(b) A seller service agreement shall contain:

- (1) A clear description of the property and its location;
- (2) The price, terms and conditions upon which the brokerage firm has authorization to market the property;
- (3) The specific brokerage services the firm will provide, including any limitation on services;
- (4) The agreement date, specific expiration date and the effective date if different from the agreement date;
- (5) A provision for avoiding dual agency and other conflicts with respect to the brokerage firm's buyer service agreements, including the requirements of subsection 4.3(e) and 4.4 applicable to representation of sellers;
- (6) A statement of the amount of transaction fee or other compensation to be paid the brokerage firm, the method of computation and the person who will pay it;
- (7) The signatures of all owners or their authorized agents and a licensee associated with the brokerage firm;
- (8) A clear description of whether, and how, cooperating brokerage firms will be compensated; and
- (9) A clear description of whether, and how, a brokerage firm representing the buyer will be compensated.

(c) A seller service agreement may contain a clause which provides for compensation following expiration or termination when:

- (1) a purchase and sale agreement is signed, a closing held, or the property is otherwise conveyed, within a specified number of months following the expiration or termination

date of the seller service agreement, but not to exceed twelve months;

(2) the brokerage firm, during the term of the seller service agreement, was procuring cause of the sale;

(3) the brokerage firm provided the name of the purchaser to the seller in writing not later than 10 days after the expiration or termination date of the seller service agreement; and

(4) the property has not been listed with another brokerage firm under a valid, exclusive right to sell~~market~~ agreement with terms and conditions similar to those contained in the expired or terminated seller service agreement.

(d) No other provision for compensation following expiration or termination is authorized.

4.10 Buyer Service Agreements.

(a) Each type of buyer service agreement shall be on a separate form and identified with only one of the titles below in boldface type at the top of the agreement:

NONEXCLUSIVE (Open) BUYER AGENCY AGREEMENT;
EXCLUSIVE BUYER AGENCY AGREEMENT; or
EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT

(b) A buyer service agreement shall contain:

(1) The agreement date, specific expiration date, and the effective date if different from the agreement date;

(2) All terms of the agency authorized;

(3) A description of the services that the brokerage firm will perform under the agreement, including any limitations on services;

(4) A provision for avoiding dual agency and other conflicts with respect to the brokerage firm's seller service agreements, including the requirements of subsection 4.3(e) and 4.4 applicable to representation of buyers;

(5) A statement of the amount of transaction fee or other compensation to be paid the brokerage firm, the method of computation and the person who will pay it;

(6) The signatures of all parties to the buyer service agreement and a licensee associated with the brokerage firm; and

(7) A clear description of whether, and how, cooperating agents will be compensated.

(c) A buyer service agreement may contain a clause which provides for compensation following

expiration or termination when:

(1) a purchase and sale agreement is signed, a closing held, or a property is otherwise purchased, within a specified number of months following the expiration or termination date of the buyer service agreement, but not to exceed twelve months;

(2) the brokerage firm, during the term of the buyer service agreement, was procuring cause of the purchase;

(3) the brokerage firm provided the name of the seller and identification of the property to the buyer in writing not later than 10 days after the expiration or termination date of the buyer service agreement; and

(4) the buyer has not retained another brokerage firm under a valid exclusive right to represent buyer agreement with terms and conditions similar to those contained in the expired or terminated buyer service agreement.

(d) No other provision for compensation following expiration or termination is authorized.

4.11 Cooperation Agreements between Brokerage Firms.

(a) A cooperation agreement between brokerage firms shall contain:

(1) Identification of the brokerage firm acting as principal and the brokerage firm acting as agent;

(2) The agreement date and a provision for termination, however it need not have a specific expiration date;

(3) A description of the services which the cooperating firm will perform under the agreement, including any limitation on services;

(4) A statement of the amount of transaction fee or other compensation to be paid the brokerage firm and the method of computation;

(5) A provision for avoiding dual agency conflicts with respect to each brokerage firm's other brokerage service agreements; and

(6) Signatures of each party.

(b) The cooperating firm under a cooperation agreement is the agent of the principal's firm, and not the agent of the buyer or seller for whom the principal is working.

(c) A principal firm under a cooperation agreement shall not reveal any confidences of a client to a cooperating firm.

(d) A cooperating firm which has accepted an offer of broker agency with respect to a particular property must notify the principal firm before representing a buyer with respect to the same property.

(e) Participation agreements in multiple listing services are an acceptable broker cooperation agreement for creating an agency relationship between brokerage firms ~~as long as the requirements of Rule 4.11(a)-(d) are met.~~

(f) In a designated agency firm, when a licensee is representing a client and another licensee of the brokerage firm has a customer interested in participating in a transaction with the client, the licensee with the customer is a broker agent for the first agent. No cooperation agreement is required in this scenario.

4.12 Advertising.

(a) Every real estate advertisement shall conspicuously display the brokerage firm's registered name. This is the name that appears on the brokerage firm's registration issued by OPR. The brokerage firm's registered name shall be the most prominent and largest identifier. This means the brokerage firm's registered name shall be larger than items such as the agent's name, phone number, team name and web address.

~~(b) If a broker is a sole proprietor, all advertisements shall indicate the sole proprietor's name, and the words "real estate," "realty," or "licensed broker."~~

~~(c)~~

(b) When property in which a licensee has an ownership interest is marketed, all advertisements shall disclose the fact that said owner is a Vermont licensee.

~~(d)~~ Signs used in advertising must comply with Vermont state and municipal sign laws, including but not limited to the following:

(1) a "for sale" sign, or multiple signs on the same premises taken together, shall not have an area of more than six (6) square feet, including panel, frame and riders (See also 10 V.S.A. §493(2));

(2) signs attached to "for sale" signs which state "sold," "sale pending," "sale under contract," or similar messages shall not be permitted (See also 10 V.S.A. §493(2));

(3) a "for sale" sign may only be erected and maintained on the same premises that is for sale and may not be erected or maintained off-premise (See also 10 V.S.A. §493); and

(4) a "for sale" sign may not be erected and maintained along a highway and visible from the highway which is located upon a tree, or painted or drawn upon a rock or other natural feature (See also 10 V.S.A. §495(a)(5)).

(d) Advertisements of properties listed by another brokerage firm shall also conspicuously

display that listing brokerage firm's registered name and listing agent's name.

4.13 Compensation.

(a) A licensee shall not pay or otherwise compensate an unlicensed person, either directly or indirectly, for the performance of brokerage services. This section shall not prohibit a licensee from reducing or sharing a portion of a commission otherwise owed to the licensee in the transaction, to the benefit of the seller or buyer, so long as it is not compensation for the performance of brokerage services.

(b) A referral fee may be paid or received for referring a prospect to another brokerage firm licensed in Vermont or another jurisdiction. A referral fee agreement must be in writing. A referral does not create an agency relationship. A licensee making a referral is not a sub-agent. A licensee from another jurisdiction may observe, but not perform, brokerage services in Vermont.

(c) A brokerage firm may only receive the compensation provided in: (1) a written brokerage service agreement signed by the brokerage firm and its client; ~~or (2) in the case of a brokerage firm acting as a limited agent under Rule 4.4(c), a written agreement signed by the brokerage firm and the buyer and seller; or (3) an agency agreement with a brokerage firm that has a written agreement described in (1) or (2).~~ A brokerage firm shall not collect any compensation for brokerage services except as provided by these rules.

(d) The brokerage firm representing a seller may compensate a brokerage firm representing a buyer out of the brokerage fee without thereby creating an agency relationship. The brokerage firm representing a buyer may compensate a brokerage firm representing a seller out of the brokerage fee without thereby creating an agency relationship. Consent of the ~~principal~~ client is not required in either case.

4.14 Records.

(a) A brokerage firm shall maintain for at least seven years at its usual place of business all records (paper or electronic) of brokerage services provided and they shall be available to the Commission and its agents during regular business hours.

(b) The principal broker, broker in charge, or a designee must cooperate in good faith with the Commission's agent during any inspection, and the principal broker, broker in charge, or a designee may remain present during any inspection. The Commission's agent may not be denied access to the records if the principal broker, broker in charge, or a designee is not present.

4.15 Timely Response to Commission Inquiry.

As soon as reasonably practicable or within 30 days, whichever is sooner, a licensee shall respond in good faith when contacted regarding any matter related to the regulation of the licensee's profession by the Commission, or the Office of Professional Regulation acting on behalf of the Commission.

Part 5 Education

5.1 Initial Salesperson and Broker Education.

All applicants for a salesperson or broker license must complete the salesperson or broker prelicensing course, which will consist of at least forty hours of instruction approved by the Commission. A list of approved courses can be found at www.vtprofessionals.org www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

5.2 Continuing Education for Renewals.

~~(a) Salespersons or Brokers~~

(a) Salespersons renewing for the first time must provide evidence of having completed the required hours of post-licensure education, approved by the Commission, within ninety (90) days of obtaining their initial salesperson's license. A real estate salesperson regulated under the laws of another jurisdiction, licensed and in good standing to practice in that jurisdiction, and who has been licensed for at least twenty-four months in that jurisdiction, is not required to complete the required post-licensure education.

(b) Salespersons or brokers applying for renewal of licenses must complete the required hours of continuing education during the two-year period immediately preceding renewal. Four hours of the instruction required of brokers and salespersons must be in a subject designated by the Commission for that licensing period. The courses taken must be approved by the Commission as continuing education courses. A list of approved continuing education courses can be found at www.vtprofessionals.org www.sec.state.vt.us/professional-regulation/profession/real-estate-commission.

~~(be)~~ Any person may seek individual approval of a course by petitioning the Commission no later than 90 days before licensing renewal.

~~(ed)~~ The Commission may appoint an education committee to advise the Commission on standards for approval of courses and the application of those standards.

5.3 Compliance Audits.

(a) The Commission will conduct continuing education audits of randomly selected licensees and licensees whose licenses are conditioned. The Commission may also audit late renewing licensees and licensees who in any of the preceding 2 renewal cycles were initially found to have not met continuing education renewal requirements.

(b) If an audit shows that the licensee has not acquired the required hours of acceptable continuing education, the Commission will inform that licensee. The licensee may be given an opportunity to develop and complete a plan to correct the deficiencies. An opportunity to correct continuing education deficiencies, however, does not preclude disciplinary action against the licensee for unprofessional conduct during the renewal process, including fraudulent or

deceptive procurement of a license.

Effective Date: ~~September 1, 2013~~