

# Concise Explanatory Statement

## Rhode Island Government Register

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In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, following is a concise explanatory statement:

**AGENCY:** Rhode Island Department of Business Regulation

**DIVISION:** Commercial Licensing

**RULE IDENTIFIER:** 230-RICR-30-20-2

**REGULATION TITLE:** **Real Estate Brokers and Salespersons**

**RULEMAKING ACTION:** Full Rulemaking - Amendment

**REASON FOR RULEMAKING:**

The Department proposed the following amendments:

- Updated statutory references throughout in accordance with current RICR styles.
- § 2.9 – Modified the renewal cycle for new licensees starting in 2020 so that renewal will occur every two years on the anniversary date of initial licensure. Currently, all licenses expire on April 30 in even numbered years.
- § 2.12(A) – Corrected an erroneous citation.
- § 2.21(F) & (G) – The repetitive content in paragraphs (F) and (G) was streamlined into a single new paragraph (F). We added an additional circumstance requiring disclosure if a licensee is representing a “household member” in a transaction. This amendment recognizes the diverse types of relationships that exist beyond traditional family/marriage relationships and that persons in the same household may have shared financial interests.
- § 2.21(H) – Deleted this paragraph. The provision was confusing for licensees because it was inconsistent with penalties set forth in R.I. Gen. Laws § 5-20.5-14, which apply to any statutory or regulatory violation by a licensee.
- § 2.24(I) – Deleted a phrase referring to branch offices which was inadvertently left in after all references to branch offices were deleted from this regulation in 2009.

**CHANGES TO TEXT OF THE RULE:**

A. Summary of Post-Comment Changes

There are three differences between the text of the proposed rule as published in accordance with R.I. Gen. Laws § 42-35-2.7 and the rule as adopted. These changes are all consistent with, and a logical outgrowth of, the amendments in the notice of proposed rulemaking in accordance with R.I. Gen. Laws § 42-35-6.1. In addition to this summary of changes, a redlined document showing the exact changes is attached (post-comment changes are highlighted in yellow).

1. *Means of disclosure pursuant to § 2.21(F).*

Commentary was received suggesting that the disclosure of any personal interest generally made along with a formal offer to purchase. A suggestion was made to modify

the timing of disclosure to include “at the first point of personal contact or delivered with a formal offer to purchase.”

In consideration of this commentary, the Department has expanded upon the time period for disclosure of personal interests in § 2.21(F) and added language regarding providing disclosure no later than when making an offer to purchase.

B. Summary of Comments Not Resulting in Regulatory Language Changes

Below is a summary of other public comments received (public hearing testimony, in addition to oral and written public comments) that did not result in changes to the text of the Regulation and a brief description of the Department’s reasons for not making any such changes after due consideration.

1. *Changes to the renewal cycle – For NEW license applicants in 2020 only. – § 2.9.*  
Commentary was received from existing licensees against changing their current renewal cycle.

The proposed changes to § 2.9 do not effect current licensees. Existing licensees have been renewing their two-year licenses by April 30 every even numbered year. There are no changes to the renewal cycles for existing licensees or anyone receiving an initial license prior January 1, 2020. The changes proposed will only effect new licensees who apply for licensure in Rhode Island after January 1, 2020.

2. *Anniversary date renewal cycle for licenses issued after January 1, 2020. – § 2.9.*  
Commentary was received suggesting using birthdates for renewals cycles rather than anniversary of the date the license was first issued.

Within the Division of Commercial Licensing many other license types renew on anniversary date and our database is programmed to process this type of renewal cycle. An anniversary date renewal is preferred over a birthdate renewal because we would not want to reveal a person’s birthday due to privacy concerns when listing the license expiration date on the public side of our database. Furthermore, this change simplifies the application process for Department staff and applicants by improving processing time by spreading out staff’s workflow throughout the course of the year. This also avoids having to prorate licensing fees for new applicants which can be a confusing part of the initial application process.

3. *Opposition to requiring disclosure of having a familial or business interest in a real estate transaction. § 2.21(F).*  
Commentary was received relating to this requirement not being necessary at all or only being necessary when the other party is not represented in the transaction by a real estate licensee.

The Department considers the disclosure requirements set forth and now clarified in § 2.21(F) as a necessary level of transparency for all real estate transactions, whether or not a real estate licensee is representing both parties.

4. *Comments regarding sections and questions regarding sections/subjects not proposed for amendment.*

Commentary was received about pre-licensing, continuing education requirements, the manipulation of photography in real estate listings and other sections not proposed for amendments. One comment also related to filing a potential complaint against a licensee.

In accordance with R.I. Gen. Laws § 42-35-6.1, the Department has declined to make any changes as a result of this commentary because they were not a logical outgrowth of the rule proposed in the notice of rulemaking.

### **REGULATORY ANALYSIS:**

Any impact on small business is positive. Overall, these changes benefit licensees by streamlining content, correcting a few errors and adding clarity. The changes to § 2.9 simplify the licensing cycle for the benefit of staff because staggering renewals leads to a more even workflow and improves processing time. The renewal cycle changes also benefit new licensees by simplifying application instructions because there will be no longer a need for prorating fees depending on when an applicant applies during in the existing 2-year licensing cycle. The renewal cycle changes have no impact on existing licensees. The changes to § 2.21 add clarity for licensees by simplifying the language and removing a confusing and unenforced penalty. The changes to § 2.21 also benefit the public by requiring a licensee to disclose any interest they may have in the transaction, including a household member. There are no costs to licensees as a result of these changes.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

## TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

### CHAPTER 30 – COMMERCIAL LICENSING

#### SUBCHAPTER 20 – REAL ESTATE

##### PART 2 – Real Estate Brokers and Salespersons

### 2.1 Authority and Purpose

- A. Authority: This regulation is promulgated pursuant to R.I. Gen. Laws §§ 5-20.5-6, 5-20.5-12, 5-20.5-19, 5-20.5-20, 5-20.5-26(a)(1)(v), 5-20.6-12, and 42-14-17.
- B. Purpose: The purpose of this regulation is to promote the general welfare of the citizens of Rhode Island by the implementation of R.I. Gen. Laws ~~§ Chapters~~ 5-20.5-1, ~~et seq.~~, and ~~§~~ 5-20.6-1, ~~et seq.~~, so that the provisions thereunder may be best effectuated and the public interest be most effectively served.

### 2.2 Definitions

- A. In addition to the terms defined in R.I. Gen. Laws §§ 5-20.5-1 and 5-20.6-2, when used in this Part the following terms shall have the following meanings:
1. “Appraisal” or “real estate appraisal” means an analysis, opinion, or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate prepared by a person licensed under R.I. Gen. Laws ~~§ Chapter~~ 5-20.7-1, ~~et seq.~~ and Part 1 of this Subchapter, that conforms to the standards adopted by the Uniform Standards of Professional Appraisal Practice (“USPAP”) in accordance with R.I. Gen. Laws § 5-20.7-19.
  2. “Broker price opinion” or “BPO” means an analysis, opinion, or conclusion prepared by a person licensed under R.I. Gen. Laws ~~§ Chapter~~ 5-20.5-1, ~~et seq.~~, in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of listing, purchase, or sale.
  3. “Clock hour” means a period of at least fifty (50) minutes of classroom instruction.
  4. “Comparative market analysis” or “CMA” means an analysis, opinion, or conclusion prepared by a person licensed under R.I. Gen. Laws ~~§ Chapter~~ 5-20.5-1, ~~et seq.~~, in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or

recently sold in the marketplace for the purpose of listing, purchase, or sale.

5. "Department" means the Department of Business Regulation.
6. "License" means a real estate salesperson or broker license issued by the Department.
7. "Net listing" means an agreement in which a prospective seller lists Real Estate for sale with an authorization to a Broker to sell at a specified net dollar return to the seller and which provides that the Broker may retain as Commission the difference between the specified dollar return to the seller and the actual sales price.
8. "Promptly" means not more than ten (10) calendar days.
9. "Real Estate Commission" means the Commission created pursuant to R.I. Gen. Laws § 5-20.5-12.

### **2.3 Licensee's Name and Address**

Upon initial licensure and at all times thereafter, every licensee shall ensure that the Department has on record the licensee's current personal name, firm affiliation, trade name, residence address and firm address. Every licensee shall notify the Department in writing of each change of personal name, firm affiliation, trade name, residence address and firm address within ten days of the change. All addresses shall be sufficiently descriptive to enable the Department to correspond with and locate the licensee.

### **2.4 Principal Brokers and Brokerages**

- A. The principal broker shall act in a supervisory capacity for every real estate transaction in which an affiliated licensee participates.
- B. The principal broker shall be responsible for the compliance of his or her affiliated licensees with the Rhode Island General Laws pertaining to real estate licensure and this regulation.
- C. The principal broker shall be responsible for the compliance of his or her non-licensed employees with the Rhode Island General Laws pertaining to real estate licensure and this regulation.
- D. The principal broker shall maintain an escrow account for the funds of others and shall make certain that no funds of others are disbursed or utilized without his or her express authorization and knowledge.
- E. The principal broker shall assume responsibility for:

1. The adequate supervision of each affiliated licensee and each office of the brokerage at which real estate activities requiring licensure are conducted;
  2. The filing of any change of business address or trade name of the brokerage and the registration of any assumed business name adopted by the brokerage for its use with the Department;
  3. The notification in writing of any change of his or her status as principal broker to the Department within ten (10) days following the change;
  4. The proper display of all licenses;
  5. The verification that each licensee affiliated with the brokerage has a license in good standing with the Department at the beginning of each renewal term;
  6. The proper retention and maintenance of records relating to transactions conducted by or on behalf of the brokerage at such office; and
  7. The preservation and safekeeping of the transaction and escrow account records upon termination of his or her status as principal broker until a new principal broker has been designated.
- F. If a principal broker, in his capacity as an insurance licensee of the Department, is authorized to place or procure insurance on the property being sold in a contract provided by the principal broker, he or she shall obtain written reaffirmation of such provision by the prospective insured within five (5) days prior to the closing of title.

## **2.5 Salespersons**

A licensed real estate salesperson must be affiliated with a licensed principal broker in order to engage in any real estate activity requiring licensure. A licensed salesperson shall not operate, supervise, or manage a real estate brokerage.

## **2.6 Examinations**

- A. Examinations may be written or oral. Requests for an oral examination or time extension may be made to and granted at the discretion of the Department.
- B. There shall be a one (1) year time limit for reexamination with regard to failure of any section of the Broker or Salesperson examination. If an applicant fails to pass any particular section, he or she may retake that section within the one (1) year time limit. If the one (1) year time limit for reexamination expires, he or she must retake the entire examination.

- C. If a license has expired for more than one (1) year, the former licensee must complete a new application and retake the examination in accordance with R.I. Gen. Laws § 5-20.5-11(b).

## **2.7 Education Requirements**

- A. Applicants for a real estate salesperson's license, including former licensees whose salesperson's license has expired for more than one (1) year, must submit satisfactory evidence of completion of a minimum of forty-five (45) classroom hours pursuant to R.I. Gen. Laws § 5-20.5-4(b). Classroom hours completed more than two (2) years from the date of the application will not be considered in meeting the 45-hour requirement.
- B. Applicants for a real estate broker's license, including former licensees whose broker's license has expired for more than four (4) years, must submit satisfactory evidence of completion of a minimum of ninety (90) classroom hours, unless exempted pursuant to R.I. Gen. Laws § 5-20.5-4(b).
- C. At no time shall the forty-five (45) classroom hours used to qualify for a salesperson's license be used to qualify for the ninety (90) hours required for a broker's license. In addition, classroom hours completed more than four (4) years from the date the application will not be considered in meeting the 90-hour requirement.
- D. All pre-licensing courses must be taken in a classroom, and taught by an instructor appearing in person. Online or distance education credits will not be accepted for new license applicants.

## **2.8 Fees**

- A. Before the Department issues an original license, the applicant shall pay a fee of twenty-five dollars (\$25.00) that shall be deposited into the Real Estate Recovery Fund Account.
- B. Any fees prescribed by statute shall be paid by check or money order made payable to the Rhode Island General Treasurer.
- C. If a check is not honored for payment by the endorser's financial institution, subsequent attempts to make payment must be in the form of a money order or cashier's check. Returned checks may subject licensees to disciplinary action pursuant to R.I. Gen. Laws § 5-20.5-14.

## **2.9 License Renewal Term**

- A. [Every real estate broker or salesperson who desires to renew a License shall apply for renewal by submitting a complete renewal application and paying the appropriate fee in accordance with R.I. Gen. Laws § 5-20.5-11.](#)

B. Licenses issued before January 1, 2020 shall be renewed every two (2) years on May 1 of each even numbered year.

~~B. Licenses shall be considered renewed upon the payment of the renewal fee by May 1 of each even numbered year.~~

C. Licenses issued after January 1, 2020 shall be renewed every two (2) years on the anniversary of the date the license was issued.

~~D.~~ Licensees are responsible for the timely renewal of their license. The Department may provide notice of the license renewal requirement as a courtesy, but the absence of such notice shall not be construed as relieving licensees from their responsibility for timely license renewal.

~~D.E.~~ Failure to renew prior to the expiration date of an issued license ~~May 1 of every even numbered year~~ shall result in the institution of administrative disciplinary proceedings in accordance with the Administrative Procedures Act, R.I. Gen. Laws ~~§ Chapter 42-35-1 et seq.~~, and the Department's Rules of Procedure for Administrative Hearings, Part 10-00-2 of this Title.

~~E.F.~~ The Department may impose administrative penalties as a condition of reinstatement of a license, taking into account any aggravating or mitigating facts and circumstances.

## **2.10 Disaffiliation of License**

A. When a licensee disaffiliates from a brokerage, the principal broker must send written notice to the Real Estate Section of the Department of the disaffiliation of the licensee. The principal broker of the licensee's new brokerage must sign and submit a transfer of license form to the Department.

B. Licensees are not required to return their license to the Department unless it has been revoked or they wish to surrender the license.

## **2.11 Dissolution of Brokerage**

The principal broker shall notify the Department in writing of the dissolution of the brokerage and return his or her license to the Department within ten (10) days. Upon the dissolution of a brokerage, all licensees affiliated with that brokerage must transfer their license to another brokerage or return it to the Department within ten (10) days for cancellation.

## **2.12 Property Management Companies**

A. Any person who performs any of the acts within the meaning of "real estate broker" pursuant to R.I. Gen. Laws § 5-20.5-1(45) in the regular course of, or as an incident to, the management of another person's real property are required to



be licensed as a real estate broker pursuant to R.I. Gen. Laws ~~§ Chapter 5-20.5-1 et seq.~~

- B. This section does not apply to a bona fide owner, lessor, or lessee of the real property being managed, or the regular employees thereof.

## 2.13 Reporting Convictions and Disciplinary Actions

Any licensee convicted of, or otherwise pleads guilty or nolo contendere to, any felony or misdemeanor, or is disciplined by any governmental agency in connection with any other occupational license, shall file with the Department a written report of such conviction or disciplinary action within sixty (60) days of the final judgment or final order in the case.

## 2.14 Discriminatory Practices Prohibited

- A. No licensee shall solicit the sale, lease, the listing for sale, or the lease of residential property due to the presence or prospective entry into the neighborhood of an individual or individuals of any protected class designated in the Rhode Island Fair Housing Practices Act, R.I. Gen. Laws ~~§ Chapter 34-37-1 et seq.~~; nor shall licensees distribute material or make statements designed to induce a residential property owner to sell or lease his or her property due to such change in the neighborhood.
- B. No licensee shall violate the Fair Housing Practices Act, R.I. Gen. Laws ~~§ Chapter 34-37-1 et seq.~~, the Civil Rights Act of 1866, 42 U.S.C. §§ 1981-1982, or the Civil Rights Act of 1968, Title VIII and Title IX, 42 U.S.C. §§ 3601-19, and 3631, to the extent that such violation constitutes a violation of the Rhode Island General Laws pertaining to real estate licensure and this regulation.
- C. No licensee or brokerage shall advertise or use any form of application or make any inquiry that expresses directly or indirectly any limitation, specification, or discrimination as to individuals of any protected class designated in the Rhode Island Fair Housing Practices Act R.I. Gen. Laws ~~§ Chapter 34-37-1 et seq.~~

## 2.15 Additional Grounds for Disciplinary Action

- A. No person shall engage in the business of licensed real estate activity while his or her license is expired, revoked, suspended, or otherwise not valid.
- B. A licensee who fraudulently certifies to the Department completion of the continuing education requirement described in § 2.30 of this Part may be subject to the suspension of his or her license following notice and an opportunity for a hearing until such time that the requirements of § 2.30 of this Part are satisfied.

## 2.16 Conduct of Contested Cases

- A. Powers and Proceedings. The Administrative Procedures Act, R.I. Gen. Laws § [Chapter 42-35, ~~1 et seq.~~](#), and the Department's Rules of Procedure for Administrative Hearings, Part [10-00-2](#) of this Title, shall govern all complaint and enforcement proceedings pursuant to R.I. Gen. Laws § [Chapters 5-20.5 and 5-20.6 ~~1 et seq.~~](#) and this Part.
- B. Complaints. Any person may file a complaint against any licensee or any person who is required to be licensed but is not licensed by the Department. Such complaint shall be in writing, signed by the Complainant, and on a form provided by the Department. The Department shall make an initial determination whether or not the complaint is within the Department's jurisdiction. If no jurisdiction exists, the Department shall notify the complainant in writing. If jurisdiction exists, the Department shall conduct whatever investigation it deems appropriate, including forwarding a copy of the complaint to the Respondent. If instructed to do so by the Department, the Respondent shall file a response to the complaint within fifteen (15) business days or such other time frame specified by the Department.
- C. Upon completion of its investigation, the Department shall take one (1) of the following actions:
1. If the Department determines that the complaint fails to establish probable cause of a violation of the Rhode Island General Laws pertaining to real estate licensure or this regulation, the Department shall take no action on the complaint and shall advise the Complainant and Respondent in writing of the determination; or
  2. If the Department determines that the complaint establishes probable cause, the Department shall take such action as it deems appropriate under applicable law and the rules and regulations adopted pursuant thereto.
- D. Department Investigations. The Department on its own authority may initiate an investigation and take action:
1. Against a licensee;
  2. Against an applicant for a license or for renewal of a license;
  3. Against any person who is required to be licensed but is not licensed; and
  4. Against any person who is subject to the regulatory authority of the Department.

5. All such actions shall be upon such terms and conditions as are permitted under applicable law and the rules and regulations adopted pursuant thereto.

## **2.17 License Restoration**

- A. Following the revocation or suspension of a license in accordance with any disciplinary action, the Director may impose certain conditions to any future license restoration.
- B. Such conditions for future license restoration may include, but are not limited to, the following:
  1. Successful completion of a written examination of the same type normally given to applicants for initial licenses;
  2. Successful completion of certain continuing education courses;
  3. Providing an updated criminal background check from the Attorney General's Bureau of Criminal Information (BCI);
  4. Sufficient evidence of rehabilitation where the nature of the offense so warrants; and/or
  5. Payment of an administrative penalty with consideration given to any aggravating or mitigating circumstances.

## **2.18 Client Funds**

- A. Escrow Accounts.
  1. The principal broker shall be responsible for each and every escrow account maintained on behalf of the brokerage and its offices.
  2. Escrow accounts shall be so designated by the financial institution in which the account is located, and on all deposit tickets and checks drawn on the account. In addition, the monthly bank statement for the account shall bear the words, "Trust Account" or "Escrow Account."
  3. Funds designated for escrow shall be deposited in the escrow account of the principal broker of the seller or landlord, unless otherwise agreed to in writing by the parties to the real estate transaction.
  4. Funds designated for escrow shall be deposited in the escrow account promptly after the execution of the purchase and sales agreement or, in the case of a rental, promptly after receipt of the funds.

5. Funds held in escrow may be applied to the commission when earned by the respective licensees only at the time of, or subsequent to, the closing of the real estate transaction.
  6. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.
  7. The maintenance of nominal amounts of the licensee's funds in escrow accounts solely to provide continuity in such accounts or to meet bank service charges shall not be construed to be commingling.
  8. In the absence of any agreement to the contrary, the interest on monies placed in an interest-bearing escrow account shall accrue to the licensee.
  9. If a statute or regulation compels the maintenance of a fixed amount of funds in a licensee's escrow account in addition to client or consumer funds, the maintenance of such fixed amount shall not be construed to be commingling.
- B. Salespersons Prohibited from Holding Client Funds. An affiliated licensee shall turn over all deposit monies received promptly to his or her principal broker or, at the direction of the principal broker, deposit the funds in the principal broker's escrow account.
- C. Sellers and Deposits.
1. A licensee may permit a buyer to draft a deposit check payable to seller only if:
    - a. The listing agreement so provides; and
    - b. The seller's designated client representative or the neutral transaction facilitator informs the buyer in writing that the seller does not have any obligation to place the deposit monies in an escrow account.
  2. When the listing agreement requires that the seller retain the deposit, the deposit check shall not be made payable to anyone but the seller.
  3. Except as provided herein, a licensee who receives deposit funds payable directly to him or her shall not turn the funds over to a seller.
- D. Dual activities.
1. In real estate transactions in which a principal broker and/or his or her affiliated licensees participate in additional capacities (e.g., seller, builder,

contractor, or insurance agent), all deposit monies received by the principal broker must be placed in his or her real estate escrow account, unless there is a contractual agreement between the principals to the contrary.

2. Any contractual agreement that provides for the deposit funds to be placed in an account other than the principal broker's escrow account must comport with the following:
    - a. The agreement must be in writing;
    - b. The agreement must include language that informs the buyer or renter that he or she forfeits the protections for monies placed in an escrow account in the event of a dispute over the real estate transaction; and
    - c. All parties to the real estate transaction must sign the agreement.
- E. Security Deposits Relating to a Lease or Rental Agreement. Security deposits held by a landlord following the execution of a lease are governed by R.I. Gen. Laws § 34-18-19. The requirements of this regulation apply only to deposit funds held by a licensee prior to the execution of the lease or rental agreement.

## **2.19 Release of Deposits**

- A. Forfeiture of Deposit. A principal broker may release a deposit to a seller or landlord only after the following steps have been taken:
1. The principal broker makes a good faith determination that the buyer or renter forfeited his or her rights to the deposit's return;
  2. The principal broker provides written notice to the buyer or renter by certified mail, return receipt requested, of his or her intent to release the deposit to the seller or landlord sixty (60) days from the date of receipt of the written notice; and
  3. The buyer or renter fails to notify the principal broker in writing within the sixty (60) day period that he or she disputes the ownership of the deposit.
- B. Return of Deposit. A principal broker may return a deposit to a buyer or renter only after:
1. The principal broker makes a good faith determination that the seller or landlord has forfeited his or her rights to the deposit;
  2. The principal broker provides written notice to the seller or landlord by certified mail, return receipt requested, of his or her intent to return the

deposit to the buyer or renter twenty-one (21) days from the date of receipt of the written notice; and

3. The seller or landlord fails to notify the principal broker in writing within the twenty-one (21) day period that he or she disputes the ownership of the deposit.
- C. Disputed Deposit. Whenever the parties to a real estate transaction dispute the ownership of any deposit monies received by a principal broker pursuant to R.I. Gen. Laws § 5-20.5-26, the following procedures shall apply:
1. The principal broker shall deposit the monies with the General Treasurer no later than one hundred eighty (180) days of the date of the original deposit. The form, entitled "Escrow Deposit Transmittal Form," available on the Department's website or by contacting the Department, shall accompany the transmittal.
  2. As soon as the principal broker determines that an unresolved dispute over ownership of the deposit funds exists, and at least thirty (30) days prior to transmittal of the funds, he/she shall by written letter inform the parties to the real estate transaction of the statutory requirements regarding disputed deposits. The letter shall contain the following language:
    - a. "I have yet to receive notice of a resolution allowing me to disburse the deposit monies being held in escrow pursuant to a purchase and sales agreement for real property located at [insert address]. In accordance with R.I. Gen. Laws § 5-20.5-26, I will transmit the deposit to the General Treasurer thirty (30) days from [insert date] unless I receive a written release signed by both the parties directing me to disburse the deposit monies. If I do not receive this release within thirty (30) days of [insert date], I will forward the deposit to the General Treasurer where it will be held in trust until the dispute is mediated, arbitrated, litigated, or otherwise resolved.
    - b. The parties may extend the time by which the deposit must be deposited with the General Treasurer by written agreement. If I do not receive a copy of any such agreement within thirty (30) days of [insert date], I will forward the deposit as required by R.I. Gen. Laws § 5-20.5-26."
  3. If the parties resolve the matter after the deposit has been forwarded to the General Treasurer, the parties must provide written proof in the form of a mutual written release, mediation agreement, arbitration award, or court order to the principal broker who then must promptly act to obtain the deposit by forwarding to the General Treasurer the form entitled "Claim for Return of Property," which is available on the Department's website or by

contacting the Department. Upon receipt of the deposit, the principal broker must disburse it to the parties according to the terms established in the written release, mediation agreement, arbitration award, or court order. If no time period for payment is stated, payment shall be made within seven (7) calendar days from the date such release, agreement or order is executed by all parties.

4. If the principal broker retires or dies after the deposit money has been transmitted to the General Treasurer but before the issue of ownership of the deposit is resolved, the "Claim for Return of Property" shall be submitted to the General Treasurer by the successor principal broker of the retired or deceased principal broker. If no successor principal broker exists, the parties shall provide written proof to the General Treasurer in the form of a mutual written release, mediation agreement, arbitration award, or court order with the direction of payment.

## **2.20 Records**

- A. Every principal broker shall ensure that his or her affiliated licensees keep records of all funds and property of others received by him or her for not less than three (3) years from the date of receipt of any such funds or property.
- B. A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others and the property associated with those funds. Such records shall be sufficient to show proper deposit of such funds in an escrow account and to verify the accuracy and proper use of the escrow account. The required records shall include:
  1. Bank statements.
  2. Canceled checks. Checks shall conspicuously identify the payee and shall bear a notation identifying the purpose of the disbursement. When a check is used to disburse funds for more than one sales transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the licensee's bank retains for a period of at least six years the original checks, or the capacity to provide substitute checks and makes the original or substitute checks available to the licensee and the Department upon request.
  3. Journal or check stubs. A journal or check stubs shall identify in chronological sequence each bank deposit and disbursement of monies to

and from the escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account.

4. Copies of contracts, leases and management agreements.
  5. Closing statements and property management statements.
  6. Other documents. Invoices, bills, and contracts paid from the escrow account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries. Records of all receipts and disbursements of escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the escrow account bank statements on a monthly basis. To be sufficient, records of escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.
- C. Inspection of Records. Every principal broker and his or her affiliated licensees shall make available for inspection by the Department all records of transactions, books of account, instruments, documents and forms utilized or maintained in the conduct of the licensed business activity. All records pertaining to escrow accounts shall be made available upon demand. All other records shall be open for inspection during regular business hours.

## **2.21 Commissions**

- A. Unless otherwise expressly provided by written agreement between the principal broker and an affiliated licensee and cooperating broker and referring broker, all commissions due to a licensee from the principal broker shall be subject to an accounting and payment to the affiliated licensee and cooperating broker and referring broker no later than ten (10) calendar days from the receipt of such commission by the principal broker.
- B. Every principal broker must promulgate a written policy for the payment of commissions to affiliated licensees upon their termination. Such policy must prescribe the rate of commission to be paid, if any, on termination. The principal broker must obtain the written signature of each affiliated licensee under such principal broker as soon as such affiliation is established to indicate that the affiliated licensee agrees to the policy. The policy shall include, but not be limited to, the following:



1. Upon termination of affiliation or employment, the principal broker shall make a complete accounting in writing of all commissions due to licensee;
  2. In the event any commission so accounted for is not in accord with the established commission schedule, the principal broker shall give a complete written explanation of any difference; and
  3. Such accounting shall be made within thirty (30) days after the termination of affiliation or employment of the licensee.
- C. In the event the seller offers an incentive payment beyond the agreed listing fee to the procuring licensee, the principal broker and the seller must have a written agreement describing the incentive payment and recognizing that if the sale is a cooperative sale, the incentive payment must be in conformity with R.I. Gen. Laws § 5-20.5-14(12) and must be distributed to the licensee by the principal broker with whom he or she is affiliated.
- D. An affiliated licensee of a principal broker may create a wholly owned corporation or limited liability company for the purpose of receiving commission payments from the principal broker. A corporation or limited liability company created for the purposes of § 2.21(D) of this Part may not be licensed or conduct licensed real estate activity in its own name. In addition, it may not have more than one shareholder in the case of a corporation or one member in the case of a limited liability company.
- E. A principal broker may pay the earned commission of an affiliated licensee to that person's wholly owned corporation or limited liability company. To do so, the affiliated licensee must submit written instructions to the principal broker directing him or her to pay the affiliated licensee's share of the commission to the wholly owned corporation or limited liability company. It is the principal broker's obligation to assure that the corporation or limited liability company is solely owned by the affiliated licensee.
- ~~F. In any real estate transaction, a licensee must disclose that he or she is licensed as a real estate broker or salesperson, even if no commission is at issue, when he or she is a party to the transaction as the following:~~
- ~~1. A buyer (regardless of the percentage of ownership at issue);~~
  - ~~2. A seller (regardless of the percentage of the ownership at issue);~~
  - ~~3. An owner of a business entity that is a buyer or seller; or~~
  - ~~4. A representative of a family member, which includes any person who is related to the licensee, whether by blood, marriage or adoption, as any of the following: spouse, father, step-father, father-in-law, mother, step-mother, mother-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, step-brother, brother-in-law, sister, step-sister,~~

~~sister-in-law, grandfather, step-grandfather, grandfather-in-law, grandmother, step-grandmother, grandmother-in-law, grandson, step-grandson, grandson-in-law, granddaughter, step-granddaughter, granddaughter-in-law, uncle, step-uncle, uncle-in-law, aunt, step-aunt, aunt-in-law, niece, step-niece, niece-in-law, nephew, step-nephew, nephew-in-law, first cousin, step-first cousin and first-cousin-in-law.~~

~~G.F.~~ In any real estate transaction~~In order to take a commission~~, a licensee shall, at the first point of personal contact, but no later than making an offer to purchase, disclose in writing whether the Licensee has any of the following interests in the transaction:

1. ~~He or she has a~~An ownership interest in the property being sold (regardless of the percentage or type of ownership, i.e. individual, corporate, trust, etc.);
2. ~~He or she is or w~~Will be purchasing any portion of the property being sold (regardless of the percentage of potential ownership, i.e. individual, corporate, trust, etc.);
3. ~~He or she has a~~A business interest (ownership or otherwise) in a business entity that is a buyer or seller; ~~or~~
- ~~4. He or she is acting on behalf of a family member which is defined in § 2.21(F) of this Part.~~
4. Is a representative of a family member, which includes any person who is related to the licensee, whether by blood, marriage or adoption, as any of the following: spouse, father, step-father, father-in-law, mother, step-mother, mother-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandfather, step-grandfather, grandfather-in-law, grandmother, step-grandmother, grandmother-in-law, grandson, step-grandson, grandson-in-law, granddaughter, step-granddaughter, granddaughter-in-law, uncle, step-uncle, uncle-in-law, aunt, step-aunt, aunt-in-law, niece, step-niece, niece-in-law, nephew, step-nephew, nephew-in-law, first cousin, step-first cousin and first-cousin-in-law; or
5. Is a representative of a household member, which includes any person having legal residence or living in a licensee's place of residence.

~~H. If the licensee does not disclose his or her position at the first point of personal contact and in writing as set forth in this section, the licensee shall not be entitled to a commission.~~

## **2.22 General Obligations of Licensees**

- A. All licensees shall deal fairly with all parties to a real estate transaction.
- B. Every licensee shall make a diligent effort to ascertain all pertinent information and facts, including but not limited to lot size, zoning, presence or absence of town water or sewer connection, and in the course of a new dwelling, municipal acceptance of the plat and certificate of occupancy, concerning every property in a real estate transaction in which he or she acts as a client representative. The client representative shall reveal, in writing, all information and facts material to any transaction to his or her client and when appropriate to any other party. This information shall include any actual or potential conflicts of interest that the licensee may reasonably anticipate.

## **2.23 Advance Fees**

- A. Any principal broker who charges or collects an advance fee for services to be rendered, including but not limited to, advertising costs under an advance fee agreement, shall at the time of accepting the advance fee furnish his or her buyer or seller with a list of services to be rendered.
- B. This section shall not apply to advance fees charged by a principal broker for the purpose of performing a market analysis of real property.

## **2.24 Prohibition Against Lending Name**

- A. No licensee shall enter into an arrangement, either directly or indirectly, to lend his or her name or license for the benefit of another person, or for the purpose of circumventing the Rhode Island General Laws pertaining to real estate licensure and this regulation.
- B. Any arrangement where a licensee affiliates with a principal broker not actively involved in real estate activity requiring licensure to circumvent the Rhode Island General Laws pertaining to real estate licensure and this regulation shall be grounds for disciplinary action.

## **2.25 Advertising**

- A. Unless otherwise stated herein, categories of advertising include but are not limited to any publication, radio or television broadcasts, business stationary, business cards, business and legal forms, electronic mail, web sites, twitter messaging, and other internet media, or documents.
- B. A licensee shall not advertise in any way that is false or misleading.
- C. All advertising shall include the name of the brokerage or principal broker under which the licensee is licensed to do business.

- D. When the name of a licensee is contained in any advertising, except on business cards, it shall be in print smaller and less conspicuous than that of the brokerage.
- E. The business card of any licensed salesperson shall clearly indicate that his or her license is as a Salesperson or an Associate Broker.
- F. Any advertisement shall contain the words "to a qualified buyer" if it refers to the amounts of down payment or the monthly payment carrying charges, or indicates that a mortgage is obtainable (where the mortgage referred to is not already a lien against the premises advertised).
- G. Any advertisement that sets forth amounts of down payment, monthly payment, carrying charges, taxes or mortgage money obtainable shall contain appropriate qualifying words such as "approximate" or "estimated." The qualifying words shall be clearly associated with the amounts set forth. If such amounts are mentioned without qualification, the licensee shall maintain written proof of the validity of such statements in his or her files. Such written proof shall be maintained for a period of three (3) years from the date upon which an advertisement containing such unqualified references shall have last appeared in any publication.
- H. With the exception of magazine or newspaper advertisements published under municipality headings, any advertisement for the sale, exchange, or rental of residential real property placed by a licensee, shall designate the municipality containing the property.
- I. Any use of an insignia, emblem, logo, trade name or other form of identification in any advertising or other public utterance, either by a single licensee or group of licensees, that suggests or otherwise implies common ownership or common management among such licensees, shall be prohibited, ~~except in the case of branch offices controlled by a principal broker and duly licensed as a branch office.~~ The use, advertising, or display of any insignia, emblem, logo, or trade name of any bona fide trade association by any licensee provided that the licensee is a member of such trade association is permitted.
- J. Any licensee advertising the trade name of an affiliated franchisor shall include in such advertising in a conspicuous manner the operating name of the brokerage that owns the franchise. Any licensee, including the franchisee using the trade name of a franchisor in any advertising, shall also include in a conspicuous manner the statement, "Each office independently owned and operated," except for the following categories of advertising:
1. "For Sale" signs located on the premises of specific properties for sale; and
  2. Small "spot" classified advertising by a single franchised licensee.
- K. Advertising by a licensee referring generally to membership in any real estate multiple listing service operation shall specify the complete name of the listing

service in which membership is held, except in the following categories of advertising:

1. "For Sale" signs located on the premises of specific properties for sale;
  2. Small "spot" classified advertising by a single licensee;
  3. Business cards; and
  4. Business signs.
- L. Any advertising that contains an offer for a home warranty contract shall specify the essential terms of the home warranty contract offer and shall also indicate whether the warranty offer is mandatory. Essential home warranty terms are limited to components/ structure in an inspection warranty and to components only in the case of a non-inspection warranty. Advertising shall comply with all Federal and State warranty legislation, including the Magnuson-Moss Warranty Act, Pub. Laws 93-637, 15 U.S.C. § 2301, *et seq.*
- M. A licensee may not advertise or distribute promotional material offering rebates or discounts including, but not limited to, discount plans or coupons redeemable for the discounted purchase of goods or services, if such advertisement or promotional material creates a likelihood of confusion or misunderstanding, or is false, deceptive or misleading to the reasonable person. Every advertisement or piece of promotional material shall clearly and completely disclose to the consumer all material terms and conditions of the offering.
- N. All licensees shall adhere to truth in lending requirements and shall not participate in paying of seller's costs or any payments to reduce interest costs.

## **2.26 Agreements**

- A. No listing agreement or contract for the sale of real property, or any interest therein, shall contain a pre-printed fee, commission rate or commission amount.
- B. Upon request, the principal broker shall advise the seller of the rate or amount of any commission split or distribution.
- C. All listing agreements that list property with a real estate multiple listing service operation shall specify the complete name of that listing service.
- D. No licensee shall enter into a "net listing" contract for the sale of real property, or any interest therein.
- E. A listing agreement that provides for the principal broker's retention of any portion of the deposit monies upon default by the buyer shall specifically state such in large type or bold print in such a manner as to inform the seller of this contingency.

## 2.27 Appraisals Prohibited

- A. Licensed real estate brokers and real estate salespersons not certified or licensed as an appraiser pursuant to R.I. Gen. Laws ~~§ Chapter 5-20.7-1, et seq.~~ are prohibited from describing or referring to any valuation of real estate as an appraisal.
- B. A real estate salesperson or real estate broker licensed under R.I. Gen. Laws ~~§ Chapter 5-20.5-1, et seq.~~ may provide his or her client with a Broker Price Opinion (“BPO”) or a Comparative Market Analysis (“CMA”) if he or she discloses that the BPO or CMA is not an appraisal that conforms to the standards adopted by USPAP and includes on the BPO or CMA the following disclaimer:
  - 1. “This opinion or analysis is not a certified appraisal or an appraisal that conforms to the Uniform Standards of Professional Appraisal Practice (USPAP). It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing offering, or sale price of the real property and not for any other purpose, including but not limited to, lending purpose excepting that specifically provided under R.I. Gen. Laws § 5-20.7-3.”
- C. No person, other than persons licensed or certified in accordance with the provisions of R.I. Gen. Laws ~~§ Chapter 5-20.7-1, et seq.~~ shall assume or use a title, designation, or abbreviation likely to create the impression of certification as a real estate appraiser by this state.
- D. This section shall not apply to appraisals of real property carried out for the purpose of municipal valuation.

## 2.28 Errors and Omission Insurance

- A. In accordance with R.I. Gen. Laws § 5-20.5-25, the Department establishes the following minimum requirements for coverage contained in a licensee’s errors and omissions insurance policy:
  - 1. In the case of an individual licensee, the insurance shall be in an amount for each claim of at least \$50,000 and in an aggregate amount of at least \$150,000.
  - 2. In the case of a principal broker’s blanket policy for his or her licensees, a brokerage, the minimum coverage shall be:
    - a. In an amount for each claim of at least \$50,000 multiplied by the number of individual licensees employed by or associated with the principal broker, and in an aggregate amount of at least \$150,000 multiplied by the number of individual licensees employed by or associated with the principal broker; or



- D. Each authorized school shall provide to the Department a list of all directors and owners of the school, including their names, addresses and license numbers, if applicable and shall maintain the record of each individual for at least three (3) years.
- E. The Department may suspend, revoke, fine, or refuse to renew the permit of any school that fails to adhere to the laws pertaining to real estate licensure, this regulation, or a directive of the Department, including:
1. Failure to maintain records as required by ~~this~~ § 2.29 of this Part;
  2. Failure to notify the Department of any change of address or telephone number of the authorized agent;
  3. Failure to provide the Department with copies of or access to requested information;
  4. Failure to use the exact name of the authorized school on any postings, advertisements, solicitations, or any other medium of communication;
  5. Failure to have a qualified instructor, in accordance with § 2.29(F) of this Part, in the classroom with the individuals taking the course during the time that the course is provided;
  6. Obtaining a school permit by false pretenses or substantial misrepresentation or omission;
  7. Any misleading or untruthful advertising;
  8. Discriminating against an individual based on any protected class designated in the Rhode Island Fair Housing Practices Act, R.I. Gen. Laws ~~§ Chapter~~ 34-37-1 ~~et seq.~~;
  9. Failing to provide the appropriate certification of completion to an individual completing the curriculum for licensure as a broker or salesperson or for continuing education;
  10. Providing certification of completion to an individual who has not completed such curriculum;
  11. Combining any part of the broker, salesperson, instructor, or continuing education curriculum into a single curriculum or offering; and
  12. Failure to offer the curriculum for licensure and renewal established by the Department.
- F. Instructor Qualification.



1. No person may act as an instructor of the salesperson or broker curriculum in any authorized real estate school unless such person:
  - a. Holds a real estate broker's license or salesperson's license in good standing in this state; and
  - b. Attests that he or she has worked as a licensed real estate broker or salesperson for a minimum of five (5) years at least twenty-five (25) hours per week.
2. The Department may authorize any person to act as an instructor notwithstanding the requirements of § 2.29 of this Part if he or she demonstrates that he or she has the equivalent qualifications to those required by this section. Equivalent qualifications may include, but are not limited to, the following:
  - a. Demonstrated knowledge in a particular subject matter (e.g., law, home inspection, accounting, lending, environmental issues);
  - b. Appointment to the faculty of an accredited college or university; or
  - c. Current teaching certificate with demonstrated real estate industry knowledge or experience.
3. Instructors may employ specialists to teach particular portions of the salesperson or broker curriculum and such specialists need not obtain authorization from the Department. Specialists may not be employed to teach the entire curriculum.
4. Current or prior real estate licensees whose licenses have been suspended or revoked as a result of disciplinary action by the Department, or the regulatory authority in another state, shall not qualify for approval as an instructor.

G. Requirements for Course Approval.

1. Courses must consist of at least one (1) hour of instruction.
2. Courses must be taught by an instructor pre-qualified by the Department in accordance with § 2.29(F) of this Part.
3. Courses must substantially relate to the sale, purchase, or leasing of real estate.
4. Courses submitted in the area of Ethics must comply with the standards established by the National Association of Realtors or its equivalent to qualify for approval by the Department.

5. Course materials and the instructor's resume must accompany the application for approval along with a written Request for Instructor Approval.
6. For each approved course, the school must maintain and make readily available to the Commission upon demand the following:
  - a. A detailed course outline with hours spent in each subject area;
  - b. Texts and materials utilized in the course;
  - c. Tests, examinations or other materials used to evaluate student performance;
  - d. A list of instructors for the course; and
  - e. Summaries of student evaluations of the course.
7. New or additional instructors for previously approved courses must be approved by the Department in accordance with § 2.29(F) of this Part.

### **2.30 Continuing Education**

- A. Prior to the renewal of any license, all licensees not specifically exempted shall make a positive affirmation, either in writing or electronically, certifying under penalty of perjury to the Department that the licensee has attended and successfully completed during the preceding two (2) year period, twenty-four (24) clock hours of real estate oriented educational sessions or courses of instruction.
- B. Only those courses previously approved by the Department in accordance with § 2.29(G) of this Part may be taken to fulfill the requirements of this section.
- C. Attorneys licensed by the Rhode Island Supreme Court, who obtained a real estate broker's license or real estate salesperson's license without examination pursuant to R.I. Gen. Laws § 5-20.5-4(d):
  1. Shall receive full credit for all Mandatory Continuing Legal Education ("MCLE") courses approved by the Rhode Island Supreme Court.
  2. May apply MCLE courses to the twenty-four (24) clock hours required by § 2.30 of this Part.
  3. Must obtain four (4) clock hours of credits from the subject areas listed in § 2.30(D) of this Part. MCLE courses are eligible for this requirement provided that they fall under the categories listed in § 2.30(D) of this Part.
- D. At least six (6) of the twenty-four (24) clock hours must come from the following subject areas

1. Rhode Island law defining relationships between licensees and consumers;
  2. Rhode Island law pertaining to real estate licensure;
  3. Rhode Island landlord-tenant law;
  4. The law of contracts;
  5. Federal, Rhode Island, and local law pertaining to fair housing and the treatment of any individual in a protected class as designated in the Rhode Island Fair Housing Practices Act, R.I. Gen. Laws ~~§~~ [Chapter 34-37-1 et seq.](#);
  6. Lead hazard mitigation or other environmental issues pertaining to real property;
  7. Local ordinances and regulations pertaining to residential real estate;
  8. Financing the purchase of real estate;
  9. Ethical considerations in real estate transactions; or
  10. Coastal real estate, wetlands, flood plains and sea-rise.
- E. Completion of the requirements of this section is a condition precedent to the renewal of a license. A licensee's misrepresentation or false certification as to course attendance and completion shall subject the licensee to disciplinary action.
- F. Licensees who hold a valid license originally issued prior to December 12, 1984, are not required to take continuing education courses for purposes of license renewal.

### **2.31 Subsequent Statutory Changes**

Any changes in the Rhode Island General Laws pertaining to real estate licensure that affect the content, language or intent of this regulation will be deemed adopted by the Department on the date of implementation of the statutory change.

### **2.32 Severability**

If any section, term, or provision of this regulation is adjudged invalid for any reason, all remaining sections, terms, and provisions shall remain in full force and effect.