

Reference Book for New Hampshire Real Estate Licensees

New Hampshire Real Estate License Law
Commission Rules and Regulations
Declaratory Rulings
Standing Orders

Produced by The Real Estate Learning Group LLC

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NH Real Estate License Laws

Section 331-A:1 Purpose

It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

Section 331-A:2 Definitions

In this chapter:

- I. **"Advance fees"** mean any fees charged for services including, without any limitation, any fees charged for listing, advertising, or offering for sale or lease any real property. Advance fees shall not include fees paid solely for advertisement in a newspaper or other publication of general circulation, including electronic publications.
 - a. **"Agency"** means a fiduciary relationship between a principal and an agent arising out of a brokerage agreement whereby the agent is engaged to do certain acts on behalf of the principal in dealings with a third party.
 - b. **"Appointing agent"** means a broker named by the principal broker who appoints individual real estate licensees to represent either the buyer or tenant, or the seller or landlord, in an office of a firm that practices designated agency.
 - c. **"Associate broker"** means any person who is licensed as a real estate broker, but who is employed by a principal broker or under contract, expressed or implied, to a principal broker and in addition operates under the supervision of a principal broker to participate in any activity described in paragraph III of this section.
- II. **"Branch office"** means a real estate broker's office other than the principal place of business.
- III. **"Broker"** means any person acting for another on commission or for other compensation, for the promise of such commission or other compensation, or any person licensed under this chapter acting on the licensee's own behalf who:
 - a) Sells, exchanges, purchases, rents, or leases real estate.
 - b) Offers to sell, exchange, purchase, rent or lease real estate.
 - c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate.
 - d) Lists, offers, attempts or agrees to list real estate for sale, lease or exchange.
 - e) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.
 - f) Collects, offers, attempts or agrees to collect rent for the use of real estate.

- g) Advertises or holds oneself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate.
- h) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, lease, or rental of real estate.
- i) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate.
- j) Engages in the business of charging an advance fee in connection with any contract whereby the person undertakes to promote the sale or lease of real estate, through its listing in a publication or data base issued for such purpose, through referral of information concerning such real estate to brokers, or both.

- a. **"Brokerage agreement"** means a written contract between a principal and a real estate brokerage firm intended to bring parties together for the sale, purchase, exchange, rent, or lease of real estate.
- b. **"Buyer"** means a party in the transaction involved in the purchase or exchange of real estate.
- c. **"Buyer agent"** means a licensee acting on the behalf of a buyer or tenant in the purchase, exchange, rent, or lease of real estate.

IV. **"Commission"** means the New Hampshire real estate commission.

- a. **"Commercial real estate"** means any real estate other than real estate containing one to 4 family dwelling units.
- b. **"Designated agent"** means a licensee who has been appointed by an appointing agent to represent one party of a real estate transaction and who owes that party fiduciary duties, whether or not the other party to the same transaction is represented by another individual licensee associated with the same brokerage firm.
- c. **"Disclosed dual agent"** means a licensee acting for more than one party whose interests may differ in a transaction with the knowledge and written consent of all parties for whom the licensee acts.

V. [Repealed.]

- a. **"Facilitator"** means an individual licensee who assists one or more parties during all or a portion of a real estate transaction without being an agent or advocate for the interests of any party to such transaction.
- b. **"Firm"** means any sole proprietorship, partnership, association, corporation, limited liability company, other business association, or other legal entity.
- c. **"Landlord"** means a party in a transaction who owns real estate intended for rental or leasing purposes. For the purposes of this chapter, "landlord" shall also mean "lessor."
- d. **"Licensee"** means a broker or salesperson licensed by the New Hampshire real estate commission under the provisions of this chapter.
- e. **"Limited electronic media"** means all electronic media that only allow for the presentation of limited amounts of information. Limited electronic media includes, but is not limited to, thumbnails, twitter messages, text messages, and other forms of electronic media existing now or in the future that similarly limit the amount of information that can be presented.

- VI. **"Managing broker"** means a broker who manages a branch office.
- a. **"Ministerial acts"** means acts of an administrative nature which licensees perform including showing property, preparing offers or agreements to sell, purchase, exchange, rent, or lease, and conveying those offers or agreements to the parties and providing information and assistance concerning professional services not related to the provisions of RSA 331-A.
 - b. [Repealed.].
 - c. **"Out-of-state broker"** means a person licensed in another state as a real estate broker who is not licensed as a real estate broker under this chapter.
 - d. **"Out-of-state salesperson"** means a person licensed in another state as a real estate licensee who is not licensed as a real estate licensee under this chapter.
- VII. **"Person"** means an individual, sole proprietorship, corporation, partnership, association, limited liability company, other business association, or other legal entity.
- a. **"Principal"** means the party or parties to a real estate transaction who contract the services of a real estate brokerage firm to act on their behalf in a fiduciary relationship.
- VIII. **"Principal broker"** means the individual broker, including the broker designated by a corporation, partnership or association, whom the New Hampshire real estate commission holds responsible for the actions of licensees who are assigned to such individual broker.
- IX. **"Real estate"** means and includes leaseholds or any other interest or estate in land and business opportunities which involve any interest in real estate. It also includes the sale and resale of time share units and manufactured housing units, affixed to real estate.
- X. **"Salesperson"** means an individual who is licensed under a broker to participate in any activity described in paragraph III of this section.
- XI. **"Seller"** means a party in the transaction who owns the real estate intended for the sale, exchange, rent, or lease of real estate.
- XII. **"Seller agent"** means a licensee acting on the behalf of a seller or landlord in the sale, exchange, rent, or lease of real estate.
- XIII. **"Subagent"** means any licensee engaged by the principal broker, under authority granted by the seller, landlord, buyer, or tenant, to perform agency functions on behalf of the seller, landlord, buyer, or tenant.
- XIV. **"Tenant"** means a party who has entered, or is intending to enter, into a rental or lease arrangement with a landlord. For purposes of this chapter, "tenant" shall also mean "lessee."
- XV. **"Unprofessional conduct"** means any action by a licensee or accredited individual, institution, or organization which is unlawful, dishonorable, unethical, or immoral.

Section 331-A:3 Prohibition

It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or real estate salesperson without a license and otherwise complying with the provisions of this chapter.

Section 331-A:4 Exempted Classes

The provisions of this chapter shall not apply to:

- I. An owner who is not a licensee, or the regular employees of an owner of real estate who are not licensees, with respect to the real property of the owner;
 - a. A prospective purchaser or tenant who is not a licensee, or the regular employees of a prospective purchaser or tenant who are not licensees, with respect to the real property of the owner;
- II. An attorney-in-fact who is not a licensee acting under a power of attorney with respect to real property of the principal of the attorney-in-fact;
- III. An attorney at law in the performance of duties as an attorney;
- IV. A licensed auctioneer selling real estate at public auction or otherwise authorized by RSA 311-B;
- V. A public official in the performance of the duties of the official;
- VI. A person or the regular employees of a person while the person is not acting as a licensee but is acting as a receiver, trustee, administrator, executor, conservator, guardian, or fiduciary, or while acting under court order, the authority of a will, trust instrument, or other recorded instrument containing a power of sale;
- VII. Any person owning or operating a park, including the person's regular employees, in which manufactured housing to be sold or leased is located, who may, for a fee or commission or other valuable consideration, list, sell, purchase, exchange, or lease such manufactured housing without a license of a broker or salesperson, and who does not hold himself or herself out as a real estate broker;
- VIII. A corporate consultant who receives a fee from a client based on site searching services rendered in accordance with a written contract, rather than on the completion of any particular transaction and who does not hold himself or herself out as a real estate broker; or
- IX. A condominium unit owners' association that rents condominium units for periods of 30 days or less for the exclusive benefit of the unit owners and the unit owners' association provided that such rentals are managed through an on-site rental office that is operated and controlled exclusively by the unit owners' association.

Section 331-A:5 Commission; Duty

- I. There is hereby created the New Hampshire real estate commission whose duty shall be to administer this chapter.
- II. The commission members shall include:
 - a) Two licensed real estate brokers.
 - b) One licensed real estate salesperson.

- c) One lawyer.
- d) One public member.
- III. Each member shall be appointed by the governor, with the approval of the council.
- IV. The licensed real estate salesperson shall be a member as long as such person maintains status as a licensed real estate salesperson. The public member shall be a person who is not, and never was, a member of the real estate profession or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision of real estate services or an activity directly related to real estate, including the representation of the commission or profession for a fee at any time during the 5 years preceding appointment.
- V. Each member of the commission shall be a resident of this state for at least 6 years prior to appointment. Each member of the commission shall serve for a term of 5 years and until a successor is duly appointed. Any vacancy shall be filled by appointment for the unexpired term. No member may serve more than 2 consecutive full terms. Members of the commission may be removed for good cause.
- VI. The commission shall annually elect, from among its members, a chairperson and a clerk. Each member of the commission shall receive \$50 for each day actually engaged in the duties of the office, and shall be reimbursed for actual travel expenses while performing official duties.
- VII. The commission shall adopt an official seal.
- VIII. The commission shall hold at least 4 regular meetings each year. A simple majority of the commission members currently serving shall constitute a quorum of the commission. Whenever a quorum of commission members is unable to hear a particular case, the commission may appoint one or more former commission members as alternates to hear that case, starting with the most recent member to leave the commission and proceeding in reverse chronological order of former members. Alternates shall be appointed and sworn in on a case-by-case basis only, and shall receive compensation as provided for members under RSA 331-A:5, VI.
- IX. The office of professional licensure and certification shall make a biennial report to the governor and council on or before September 1 of each odd-numbered year. The report shall include an account of its actions, its receipts and expenses, the practical effects of the application of this chapter, and any recommendations for legislation
- X. All administrative, clerical, and business processing functions of the commission shall be transferred to the office of professional licensure and certification established in RSA 310-A:1 through RSA 310-A:1-e.

Section 331-A:7 Powers

In addition to any authority provided by law, the commission shall:

- I. [Repealed.]
- II. Set all fees required in this chapter by rule under RSA 541-A.

- III. Publish information relative to the scope of the examination and suggested courses of study.
- IV. Charge a reasonable fee for the examination to cover the cost of administering the examination program. The commission may spend money from the examination fees to engage a qualified testing service selected by the commission to prepare, structure, administer and conduct the examination under the direction of the commission.
- V. Conduct a hearing on an appeal of a denial of a license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to RSA 541-A.
- VI. Issue orders, subpoenas, statements of charges, and statements of intent to deny licenses, and delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements of intent to deny licenses and conduct hearings in accordance with RSA 541-A, on the statements of charges and statements of intent to deny licenses.
- VII. Provide notice to all persons licensed under this chapter of any proposed rulemaking undertaken by the commission, any changes to administrative rules adopted by the commission, and any pertinent changes in New Hampshire law.

Section 331-A:9 Ethics Code

The commission shall adopt by rule under RSA 541-A an ethics code for commissioners and commission employees. This code shall include, but not be limited to, the following provisions:

- I. No commission member shall participate in any action related to the issuance of a license or disciplinary matter involving the member or a person with whom the member is personally or professionally associated, or in any such action in which the member has a direct financial interest.
- II. No commission member or commission employee shall, for compensation of any type, teach or participate in any preparatory or continuing education effort approved by the commission, except that a commission member or commission employee may, in such capacity, participate in a preparatory or continuing education program and receive such compensation as is normally authorized for commission-related business.
- III. No more than one commission member shall serve as an officer of a professional association which represents real estate brokers or salespeople.
- IV. No commission employee shall be issued an active real estate license throughout the duration of employment with the commission. A commission employee shall be allowed to apply for an inactive real estate license during employment with the commission, but the license shall remain inactive during such employment. A commission employee shall not obtain a real estate license in another state based on the inactive license obtained in New Hampshire during such employment with the commission.

Section 331-A:10 Qualifications for Licensure

- I. The commission, or designee, shall issue a salesperson's license to any applicant who:
 - a. Has attained the age of 18;
 - b. Has successfully completed an examination administered or approved by the commission which demonstrates satisfactory knowledge and understanding of the principles of real estate practice. The executive director shall only accept for licensure, an applicant who shows proof of completion of 40 hours of approved study which shall have been completed prior to the date of the applicant's examination;
 - c. Demonstrates no record of unprofessional conduct;
 - d. Furnishes any evidence required by the commission relative to good reputation for honesty, trustworthiness and integrity; and
 - e. Complies with the criminal records check under RSA 331-A:10-a.
- II. The commission, or designee, shall issue a broker's license to any applicant who:
 - a. Has attained the age of 18;
 - b. Has successfully completed an examination administered or approved by the commission which demonstrates satisfactory knowledge and understanding of the principles of real estate practice. The commission, or designee, shall only accept for licensure, an applicant who shows proof of completion of 60 hours of approved study which shall have been completed prior to the date of the applicant's examination;
 - c. **(1)** Has been employed full time by an active principal broker for at least one year within 5 years of the date of application; or
(2) Has at least 2,000 part-time hours as a licensed salesperson in this state within 5 years of the date of application; or
(3) Proves to the commission that the applicant has experience equivalent to the experience required by subparagraph (c)(1) or (c)(2);
 - d. Demonstrates no record of unprofessional conduct;
 - e. Furnishes any evidence required by the commission relative to good reputation for honesty, trustworthiness and integrity;
 - f. For a broker acting as a principal broker or a managing broker, but excluding associate brokers or a corporation, partnership, limited liability company, or association, files a surety bond with the commission which shall be held in accordance with RSA 331-A:14;
 - g. Submits evidence acceptable to the commission of at least 6 separate real estate transactions in which the applicant was actively involved and was compensated or proves to the commission that the applicant has equivalent experience; and
 - h. Complies with the criminal records check under RSA 331-A:10-a.

Section 331-A:10-a Criminal Records Check

- I. All applicants for a new salesperson or broker license shall submit to the New Hampshire department of safety, division of state police, a public criminal history record information

authorization form, along with the appropriate fee, prior to submitting an application for a real estate license. In addition, the applicant shall submit to the commission a criminal record report from any other jurisdiction in which the applicant has been convicted of a misdemeanor or felony offense.

- II. The commission shall supply the criminal record release authorization form to new salespersons and broker applicants.
- III. Upon receipt of an applicant's criminal record information, the commission shall make a determination of eligibility for licensure.

Section 331-A:11 Examinations

- I. Any applicant seeking an original salesperson's or broker's license shall first pass a reasonable written examination as to the applicant's qualifications to be a salesperson or broker.
- II. The form and style of the examination, as well as the preparation, grading and administration of the examination, shall be the responsibility of the commission, or its duly appointed employees or agents.
- III. The commission shall administer the examination at least 4 times a year.
- IV. Within 30 days after an examination, the commission shall notify each candidate of the results of the candidate's examination.
- V. Any person who has passed the examination for broker or salesperson shall become licensed within 6 months from the date of such examination. Any person who fails to become licensed within the 6-month period shall be required to retake the examination.

Section 331-A:11-a Reciprocity for Licensure

If an applicant holds an active real estate broker or salesperson license in good standing, and issued by examination in accordance with the laws of another jurisdiction, that applicant may apply for and be granted an original New Hampshire license by first taking the New Hampshire portion of the licensing examination, provided the jurisdiction that issued such nonresident license has previously entered into a licensing reciprocity agreement which has been approved by the commission, and provided that other requirements of the commission have been met. This section applies to nonresident salesperson applicants only when such applicants are applying for an original New Hampshire salesperson license.

Section 331-A:12 Application for Licensure

- I. Applications for licenses shall be made on forms adopted by the commission.
- II. The form for an individual applying for a license shall include affidavits from 3 character references. No person who is related by blood or marriage to an applicant may serve as a

character reference on the application, and this restriction shall appear on the application form.

- III. The commission may require each applicant to provide on the form additional information about the applicant's background and trustworthiness as is reasonably necessary to fairly inform a person requested to sign the application as a character reference and to fully complete the application before the character affidavits are signed.
- IV. Applicants for a broker license for a corporation, partnership or association shall designate on the application form a duly licensed broker within the partnership or corporation who shall serve as the principal broker for the firm. All corporations shall provide a copy of the certificate of incorporation with the application for licensure.

Section 331-A:12-a Inactive Licensure Status

- I. Any licensee who does not want to perform as a broker or salesperson as defined in RSA 331-A:2, and who wants to preserve the license while not engaged in any brokerage activities, including the receiving of referral fees or any other form of compensation, may surrender that license to the commission for placement on inactive status. The commission shall place the licensee on inactive status only upon a written request by the licensee. While on inactive status, the licensee shall renew the license biennially by satisfying the renewal requirements under RSA 331-A:19 and the continuing education requirements adopted by the commission, but is not required to maintain a place of business, or in the case of a licensed principal or managing broker, to maintain a surety bond pursuant to RSA 331-A:14.
- II. Any licensee on inactive license status may have the license reinstated to active status by demonstrating compliance in the previous biennium with the continuing education requirements adopted by the commission and requesting to change status from inactive to active, and, in the case of a licensed principal or managing broker, providing evidence of a surety bond as required by RSA 331-A:14.

Section 331-A:13 Escrow Accounts of Broker; Interest; Audit

- I. The principal broker shall maintain an escrow account or accounts, separate and apart from the individual or office account, in which all deposits on fully executed contracts shall be promptly deposited. The escrow account or accounts shall be maintained in an insured financial institution within the state of New Hampshire.
- II. The principal broker may place the deposit in an interest-bearing escrow or trust account or instrument. The interest earned shall accrue to the party making the deposit as a sum to be used toward the purchase price unless otherwise agreed in writing.
- III. No checks shall be drawn against uncollected contract deposits in the escrow account.
- IV. Withdrawal of contract deposits shall be allowed to be forwarded to the closing agent, title company, or attorney, prior to performance of a contract for the purpose of performance. Otherwise, none of the contract deposits shall be withdrawn until the contract has been

terminated by performance, by contemporaneous agreement in writing between all parties, or by order of a court of competent jurisdiction, except as provided by paragraph VI of this section.

- V.** On licensure, the principal broker shall sign a permit giving the commission permission to audit the escrow account or accounts.
- VI.** If a principal broker retains a contract deposit for a period exceeding 90 days from the contract closing date, without securing performance, a written agreement, or a court order as required in paragraph IV of this section, the principal broker may release the contract deposit to one or more parties to the contract by initiating a release process. The release process requires the principal broker to notify all parties by certified mail that the deposit will be distributed to the parties specified in the letter if the parties fail to perform, enter into a written mutual release, or initiate litigation within 60 days of the mailing date of the certified letter. If neither buyer nor seller initiates litigation or enters into a written release within 60 days of the mailing date of the certified letter, the principal broker may release the deposit without penalty under this section. The principal broker's release of this deposit under this paragraph releases the principal broker solely from liability under this chapter, as opposed to civil liability.
- VII.** A principal broker may deposit business or personal funds into an escrow account to cover service charges only, assessed to the account by the bank or depository where the account is located, or to maintain a minimum balance in the account as required by the regulations of the bank or depository.
- VIII.** If a principal broker licensed under this chapter holds funds entrusted to him or her pursuant to a written agreement for the sale or lease of real property and the written agreement expressly authorizes the principal broker, or firm, as escrow agent, to continue to hold the funds in the event of a dispute between the buyer or tenant and seller or landlord concerning entitlement to the funds, no claim shall be maintained against the principal broker, or firm, as escrow agent, whether as trustee, stakeholder, or otherwise, if the escrow agent has complied with the mutual written instructions of the buyer or tenant and seller or landlord, if any, and any order or judgment of a court or final decision of an arbitrator with regard to accounting for or disbursing the funds. In an action commenced with regard to entitlement to such escrowed funds, a party to the action may file a motion seeking an order to have the funds paid into court by the escrow agent. Written notice of the motion shall be given by the moving party to all other parties and to the escrow agent. The escrow agent shall pay the funds into court within 10 days of receipt of the order on the motion or within such other time as provided by the court.

Section 331-A:14 Bonds

No principal or managing broker's license shall be issued or renewed until the applicant gives to the commission a surety bond in any form approved by the commission in a sum of not less than \$25,000, executed by the applicant and by a surety company authorized to do business in this state. The bond shall be payable to the state of New Hampshire, for the benefit of any

person aggrieved, and shall be conditioned upon the faithful accounting by the broker for all funds entrusted to the broker in the broker's capacity as a principal or managing real estate broker. Any person so aggrieved may bring suit on the bond in the aggrieved person's own name; provided, however, that the aggregate liability of the surety to all persons shall, in no event, exceed the sum of such bond. The commission may revoke the license of any principal or managing broker whenever the bond filed by the broker ceases to be in full force and effect.

Section 331-A:15 Issuance of License; Certificates

- I. Upon receiving the completed application, the required fee and evidence that all other requirements have been met, the commission shall issue the appropriate license. Licenses shall expire 2 years from the date of issuance.
- II. No license shall be issued to a broker doing business under a trade name unless and until such trade name is lawfully registered as provided in RSA 349.
- III. Licenses shall be issued in the form of a certificate for wall display and a card to be carried on the person. Each licensed broker shall prominently display at the principal place of business the broker's certificate and those of all licensed salespersons and associate brokers associated with or under contract to the broker.
- IV. In the case of a branch office, the license of each broker and salesperson shall be delivered or mailed to the managing broker and be kept in the custody and control of the managing broker.

Section 331-A:16 Supervision of Real Estate Office; Branch Offices

- I. Every real estate office or real estate branch office, whether operated as a corporation, partnership or sole proprietorship, shall be directed, supervised and managed by a licensed real estate broker. The principal broker shall submit to the commission a branch office application form prior to the opening of any branch office. The principal broker shall designate a managing broker for each branch office the principal broker opens. The principal broker shall notify the commission when any licensee associated with the principal broker transfers from one branch office to another branch office within the same association.
- II. All licensees and employees associated with a real estate office shall be reasonably supervised by the principal broker or managing broker.
- III. All members and officers of a corporation, partnership or association, who actively participate in the business of real estate brokerage, shall possess an active broker's or salesperson's license.
- IV. **(a)** All advertisements by a broker or salesperson shall include the broker's or salesperson's legal name or reasonable derivative thereof and the regular business name of the firm or the principal broker's name when licensed under an individual principal broker license. The firm or principal broker's name, within the advertisement, shall be clearly identifiable. This

requirement shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including electronic mail and the Internet, business stationery, business and legal forms and documents, and signs and billboards.

(b) Any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, direct office number, electronic mail address, or any other means of contacting directly an individual salesperson or broker, or a team of such licensees, shall also include the name and telephone number of the individual principal broker or brokerage firm through which the advertising licensees operate. All such advertising shall contain language clearly identifying each number included in the advertising.

(c) With respect to limited electronic media, the requirements of subparagraphs (a) and (b) shall be satisfied if the limited electronic media includes a link to an Internet display that contains the required information.

Section 331-A:16-a Managing Broker Vacancy

In the event of the death, disability or change of affiliation of the managing broker of a real estate branch office, the principal broker may designate as a manager a person currently licensed with the New Hampshire real estate commission for a period not to exceed one year from the date of such vacancy. The appointment of a permanent branch managing broker shall be made within one year of the original vacancy.

Section 331-A:16-b Commission Payments to Unlicensed Entities

- I.** A principal broker may pay all or part of a fee, commission, or other compensation earned by his or her firm, broker, associate broker, or salesperson to a partnership, association, limited liability company, limited liability partnership, or corporation only if all of the following conditions are satisfied:
 - a.** All of the partners, members, officers, or shareholders of any unlicensed business entity, including a partnership, association, limited liability company, limited liability partnership, or corporation, hold a valid and active license issued under this chapter.
 - b.** At least one of the partners, members, officers, or shareholders of the unlicensed business entity, including a partnership, association, limited liability company, limited liability partnership, or corporation, is the licensee who earned the fee, commission, or other compensation.
 - c.** The partnership, association, limited liability company, limited liability partnership, or corporation does not engage in any of the prohibited acts specified in RSA 331-A:26 and the partnership, association limited liability company, limited liability partnership, or corporation is registered to do business in New Hampshire.
 - d.** The broker keeps a record of all of the following information for each transaction, for a period of 3 years after the date of the transaction:

1. The name of the licensee who earned the fee, commission, or other compensation;
 2. The amount of the fee, commission, or other compensation that was earned;
 3. The name of the partnership, association, limited liability company, limited liability partnership, or corporation to which the broker paid the licensee's fee, commission, or other compensation.
- II. Compliance with this section does not relieve a broker of any obligations to supervise a licensee, or of any other requirements of this chapter or rules adopted pursuant to this chapter.
- III. Compliance with this section does not render a broker or licensee exempt from any portion of the chapter, or immune from liability in a regulatory action against the broker or licensee for a violation of this chapter or rules adopted pursuant to this chapter.

Section 331-A:17 License Amendments

- I. Any principal broker who changes the place of business shall notify the commission of the change in writing within 10 days of the change.
- II. A real estate principal broker who proposes to use a registered trade name in connection with a firm broker license or individual principal broker license shall state that fact on an amendment form, and submit the form along with the appropriate fee, the firm broker license or individual principal broker license to be amended, and a trade name registration form. The firm broker license or individual principal broker license shall be amended to include the trade name.
- III. It is the responsibility of all licensees to notify the commission in writing of any changes to the licensee's resident address, mailing address and work location address.
- IV. The license of a real estate salesperson or associate broker shall be retained at all times by the principal broker and whenever a licensed salesperson or associate broker changes his or her affiliation from one licensed principal broker to another or ceases to represent the principal broker, the principal broker shall notify the commission in writing of the termination. Such notice shall be accompanied by the salesperson's or associate broker's license. Failure of any principal broker to notify the commission of such salesperson's or associate broker's termination within 5 days after the termination of the salesperson or associate broker shall be grounds to discipline the principal broker.
- V. The commission shall issue a new license for the unexpired term if the salesperson or associate broker meets all requirements of licensure, upon receipt of a statement from a principal broker, together with the appropriate fee, that such salesperson or associate broker has become affiliated with such principal broker.
- VI. When a salesperson's or broker's services are terminated by the principal broker for a violation of any of the provisions of this chapter, a written statement of the facts shall be submitted immediately to the commission by the principal broker.

Section 331-A:18 Lapse of License

- I. If a license is not renewed before the expiration date, then the license is deemed to have expired, and a licensee may renew an expired license up to 6 months after its expiration date by complying with the requirements of RSA 331-A:19 and by submitting the required late fee.
- II. If an expired license is not renewed within 6 months under paragraph I, then the license is deemed to have lapsed and such person may obtain a license only by qualifying anew as an original applicant. However, the commission may renew a lapsed license within a reasonable time from the date of lapse for good cause shown.
- III. If a license expires or lapses as a result of a person being ordered to active duty with the armed forces, the 6-month time period for complying with the requirement of RSA 331-A:19 shall begin upon the licensee's date of discharge or release from active duty, and the late fee shall be waived.
- IV. The rights of the licensee under such expired or lapsed license shall be terminated. It shall be unlawful to act or attempt or offer to act in any matter as a real estate broker or salesperson under an expired or lapsed license.

Section 331-A:19 Renewal of License

- I. The commission shall mail each licensee a renewal notice or, at the licensee's request, the commission may provide the renewal notice by other means acceptable to the commission, at least 60 days before expiration of the license.
- II. Upon receiving a completed renewal application, the required fees, certification of completion of required continuing education as set by the commission under RSA 331-A:20 and, in the case of a principal or managing broker licensee, evidence that the required bond is in full force and effect, the executive director shall issue the appropriate license for 2 consecutive years from the date of expiration.

Section 331-A:20 Programs of Study; Preparatory Education; Continuing Education

- I. An individual, institution, or organization seeking accreditation or renewal of accreditation to offer a preparatory or continuing education program of study shall meet criteria and submit documentation as required by the commission prior to approval. The commission shall require any individual, institution, or organization seeking accreditation or renewal of accreditation of a real estate course to submit documents, statements, and forms prior to approval.

- II.** In reviewing and approving an application for a continuing education course, the commission shall assess the content with the primary purpose of assuring that real estate licensees possess the knowledge, skills, and competence necessary to perform the licensee's duties in the real estate business. The subject matter of the course must be directly related to real estate practice in New Hampshire. Continuing education courses shall consist of the following:

 - a.** Continuing education 3-hour core courses shall cover, but not be limited to, changes in state and federal laws dealing with real estate brokerage, housing, financing of real property and consumer protection as well as changes in state enabling laws dealing with zoning and subdivision practices. The core courses shall be designed to assist the licensee in keeping abreast of changing laws, rules and practices which will affect the interest of the licensee's clients or customers.
 - b.** Continuing education elective courses shall cover, but not be limited to, property valuation, construction, contract and agency law, ethics, financing and investment, land use and zoning, property management, taxation, environmental issues, and supervision and office management. The elective courses shall be designed to assist the licensee in keeping abreast of changing laws, rules, and practices which affect the interest of the licensee's clients or customers.
- III.** The commission shall establish a program of continuing education for license renewal to be administered in at least 5 geographical locations including, but not limited to, locations in or near Berlin, Concord, Keene, Nashua and Portsmouth, depending upon local requirements and the ability to engage accredited individuals, corporations or educational institutions.
- IV.** The commission may establish a fee for educational program evaluation.
- V.** Any individual, institution, or organization offering a preparatory or continuing education program who commits any of the following acts, conduct, or practices shall, after a hearing under RSA 331-A:30, be subject to disciplinary action as provided in RSA 331-A:28:

 - a.** Obtaining or attempting to obtain an accreditation or re-accreditation by means of fraud, misrepresentation, or concealment.
 - b.** Violating any of the provisions of this chapter, or any rules adopted or order issued pursuant to this chapter.
 - c.** Advertising the availability of accredited courses in a false, misleading, or deceptive manner.
 - d.** Failing to include in any advertisement the individual, institution, or organization's legal name or reasonable derivative thereof accredited to teach the course.
 - e.** Offering or providing a course with curriculum or subject matter which is not the curriculum or subject matter submitted for accreditation.
 - f.** Engaging in conduct which demonstrates incompetence.
 - g.** Providing an affidavit of completion of an accredited course to a licensee or a potential licensee who has not completed the required hours of such course.
 - h.** Providing outdated, inappropriate, or inaccurate teaching materials or information.
 - i.** Receiving poor student evaluations or commission audits.
 - j.** Failing to take corrective action toward unsatisfactory performance or issues identified in commission audits.

- k.** Demonstrating unprofessional conduct as defined by RSA 331-A:2, XV, or, when presenting a course to licensees or potential licensees, engaging in inappropriate conduct.
- l.** Discriminating against an individual based on age, sex, race, creed, color, marital status, physical or mental disability, religious creed, national origin, or sexual orientation.
- m.** Offering or providing a course for credit that has not yet been accredited or whose accreditation has expired.
- n.** Failing to preserve, for at least 3 years from the beginning date of an accredited course, attendance records, documentation, and materials relating to the course.

Section 331-A:21 Temporary Licenses

In the event of the death or total incapacity of a licensed real estate principal broker of a real estate business, the commission may, upon application by the principal broker's legal representative, issue without examination a temporary license to such legal representative or to an individual designated by the legal representative and approved by the commission, and by the payment of the prescribed fee, which shall authorize such temporary licensee to continue to transact real estate business for a period not to exceed one year from the date of death or incapacitation.

Section 331-A:22 Nonresidents

- I.** An out-of-state broker may perform acts with respect to a commercial real estate transaction that require a license under this chapter, provided the out-of-state broker complies with the laws of this state with respect to the transaction and:
 - a.** Works in cooperation with a licensed New Hampshire broker, whether in a co-brokerage, referral, or other cooperative agreement or arrangement;
 - b.** Enters into a written agreement with a licensed New Hampshire broker that includes the terms of cooperation and any compensation to be paid by the licensed broker and a statement that the out-of-state broker and the out-of-state broker's agents will comply with the laws of this state;
 - c.** Provides the licensed New Hampshire broker a copy of the out-of-state broker's license or other proof of licensure from the jurisdictions where the out-of-state broker maintains a license as a real estate broker;
 - d.** Deposits all escrow funds, security deposits, and other money received pursuant to the commercial real estate transaction to be held as provided in RSA 331-A:13; and
 - e.** Complies with and is bound by and subject to New Hampshire law and the rules of the New Hampshire real estate commission and consents to the jurisdiction of the state of New Hampshire.

- II. An out-of-state salesperson may perform acts with respect to a commercial real estate transaction that require a license as a real estate salesperson under this chapter, provided the out-of-state salesperson complies with the laws of this state with respect to the transaction and:
 - a. Works under the direct supervision of an out-of-state licensed broker who complies with the requirements set forth in paragraph I; and
 - b. Provides the New Hampshire licensed broker who is working in cooperation with the out-of-state broker a copy of the out-of-state salesperson's license or other proof of licensure from the jurisdictions where the out-of-state salesperson maintains a license as a real estate salesperson.
- III. Each out-of-state broker or out-of-state salesperson who advertises for sale commercial real estate pursuant to this section shall include in any advertising material the name and contact information in equal prominence of the New Hampshire licensed broker with whom the out-of-state-broker has a written agreement.
- IV. The commission shall adopt rules, pursuant to RSA 541-A, relative to cooperative brokerage agreements under this section. Such rules shall include:
 - a. The form and content of a cooperative brokerage agreement.
 - b. The length of time an agreement may be effective.
 - c. The procedure for extension or early termination of an agreement.
 - d. Any fees which may be associated with a cooperative brokerage agreement.
 - e. The penalty, in addition to any other penalty under this chapter, for violation of the rules concerning cooperative brokerage agreements, and the procedure to appeal the commission's ruling.
- V. An out-of-state broker or out-of-state salesperson who fails to comply with any provision of this section shall be considered in violation of RSA 331-A:34.

Section 331-A:23 Denial of Reciprocity

No broker or salesperson applicant whose license as a broker or salesperson is under revocation or suspension in another state shall be granted a license as a broker or salesperson in this state; and, if already granted a license through reciprocity, it may be revoked or suspended as provided under this chapter upon proof of the other state's action.

Section 331-A:24 Fees

The commission shall establish fees sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the commission for the previous fiscal year, and sufficient to provide for periodic payments to reimburse the general fund for money appropriated for the purposes of this chapter.

Section 331-A:24-a Notice of Rulemaking Proceeding

Notwithstanding RSA 541-A:6, III, the notice of rulemaking proceedings shall be provided by U.S. mail by the commission to any person licensed under this chapter who pays a reasonable fee to the commission for the postage and preparation of such mailings. Such reasonable fee shall be set by the commission and adopted in its administrative rules under RSA 541-A.

Section 331-A:25 Rulemaking

The commission shall adopt rules, under RSA 541-A, relative to:

- I. Conduct of licensed brokers and salespeople.
- II. Administration of examinations.
- III. Eligibility of persons who have failed a salesperson or broker examination to be reexamined.
- IV. Fees for examinations, continuing education courses, licenses, late renewal penalty, educational course evaluations, administrative costs, transcripts, dishonored checks, and any other fees required under this chapter.
- V. Application forms for original and renewal licenses and registration forms for trade names.
- VI. Proof of an applicant's good character.
- VII. Form of license certificates and cards.
- VIII. Accreditation of programs of study in real estate, and the conduct of such programs.
- IX. A minimum of a 3-hour core course of continuing education for active and inactive license renewal, and an additional 12 elective hours of continuing education for active license renewals. The initial 12 hours of continuing education for salespersons prior to their first license renewal shall be established by the commission in specified topics or courses related to the salesperson's practice.
- X. Procedure in commission proceedings.
- XI. In addition to the requirements under RSA 331-A:30, procedures for the conduct of hearings consistent with the requirements of due process.
- XII. The ethics code as required under RSA 331-A:9.
- XIII. Procedures for applying for and renewing licenses.
- XIV. What constitutes adequate proof of the qualifications under RSA 331-A:10.
- XV. Distinctions for persons regulated by this chapter between practices concerning 1-4 family dwellings and practices for all other real estate.

Section 331-A:25-a Licensee; Scope of Agency; Interpretation

- I. A licensee who provides services through a brokerage agreement for a seller, landlord, buyer, or tenant is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting.
- II. A licensee may be a seller agent, a buyer agent, a disclosed dual agent, or a subagent. If another relationship between the licensee who performs the services and the seller, landlord, buyer, or tenant is intended, it must be described in writing and signed by all parties to the relationship prior to services being rendered.

Section 331-A:25-b Seller Agent; Duties

- I. A licensee engaged by a seller or landlord shall:
 - a. Perform the terms of the written brokerage agreement made with the seller or landlord.
 - b. Promote the interests of the seller or landlord including:
 - 1. Seeking a sale, lease, rent, or exchange at the price and terms stated in the brokerage agreement or a price and terms acceptable to the seller or landlord except that the licensee is not obligated to seek additional offers to purchase the real estate while the real estate is subject to a contract of sale unless the brokerage agreement so provides.
 - 2. Presenting in a timely manner all offers and agreements to and from the seller or landlord, even if the real estate is subject to a contract of sale.
 - 3. Accounting in a timely manner, during and upon termination, expiration, completion, or performance of the brokerage agreement for all money and property received in which the seller or landlord has or may have an interest.
 - 4. Informing the seller or landlord that such seller or landlord may be liable for the acts of the principal broker and subagents who are acting on behalf of the seller or landlord when the licensee is acting within the scope of the agency relationship.
 - 5. Informing the seller or landlord of the laws and rules regarding real estate condition disclosures.
 - c. Preserve confidential information received from the seller or landlord that is acquired during a brokerage agreement. This obligation continues beyond the termination, expiration, completion, or performance of the fiduciary relationship. Confidentiality shall be maintained unless:
 - 1. The seller or landlord to whom the information pertains grants written consent to disclose the information;
 - 2. The information is made public from a source other than the licensee;
 - 3. Disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a judicial proceeding before a court of competent jurisdiction, the commission, or before a professional committee; or
 - 4. If otherwise required by law.

- c. Preserve confidential information received from the buyer or tenant that is acquired during a brokerage agreement. This obligation continues beyond the termination, expiration, completion, or performance of the fiduciary relationship. Confidentiality shall be maintained unless:
 - 1. The buyer or tenant to whom the information pertains grants written consent to disclose the information;
 - 2. The information is made public from a source other than the licensee;
 - 3. Disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a judicial proceeding before a court of competent jurisdiction, the commission, or before a professional committee; or
 - 4. If otherwise required by law.
 - d. Be able to introduce the same real estate to other prospective buyers or tenants without breaching any fiduciary duty to the buyer or tenant.
 - e. Disclose to a prospective buyer or tenant any material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the licensee has actual knowledge. Such disclosure shall occur at any time prior to the time the buyer or tenant makes a written offer to purchase or lease the subject property. This subparagraph shall not create an affirmative obligation on the part of the licensee to investigate material defects.
- II. The duties of a licensee acting on behalf of a buyer or tenant to a seller or landlord include:
- a. Treating all prospective sellers or landlords honestly.
 - b. The ability to provide assistance to the seller or landlord by performing ministerial acts such as showing property, preparing offers or agreements, and conveying those offers or agreements to the buyer or tenant and providing information and assistance concerning professional services not related to the real estate brokerage services. Performing ministerial acts for the seller or landlord shall not be construed as violating the brokerage agreement with the buyer or tenant, provided that agency disclosure has been given in writing to the seller or landlord. Performing ministerial acts for the seller or landlord shall not be construed as forming an agency relationship with the seller or landlord.

Section 331-A:25-d Disclosed Dual Agent; Duties

- I. A licensee may act as a disclosed dual agent only with the written consent of all parties to the anticipated transaction at the time in which a dual agency relationship occurs, but no later than the preparation of a written offer for sale or lease.
- II. The duties of a licensee acting as a disclosed dual agent include:
 - a. Performing the terms of the written disclosed dual agency agreement made with the parties.
 - b. Presenting in a timely manner all offers or agreements to and from the parties on real estate of interest.

- c. Accounting in a timely manner, during and upon termination, expiration, completion, or performance of the brokerage agreement for all money and property received in which the parties have or may have an interest.
- d. Informing the parties of the laws and rules regarding real estate condition disclosures.
- e. Preserving confidential information received from the parties that is acquired during the written disclosed dual agency relationship, or from any prior brokerage agreement. This obligation continues beyond the termination, expiration, completion, or performance of the fiduciary relationship. Confidentiality shall be maintained unless:
 - 1. The party to whom the information pertains grants written consent to disclose the information;
 - 2. The information is made public from a source other than the licensee;
 - 3. Disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a judicial proceeding before a court of competent jurisdiction, the commission, or before a professional committee; or
 - 4. If otherwise required by law.

Section 331-A:25-e Duty of a Designated Agent

- I. A licensee appointed by an appointing agent to be a designated agent shall:
 - a. If representing a seller or landlord, comply with all duties as required in RSA 331-A:25-b.
 - b. If representing a buyer or tenant, comply with all duties as required in RSA 331-A:25-c.
- II. Appointment of a designated agent shall not be made without the written consent of the party at the commencement of the party's agency relationship with the real estate brokerage firm. There shall be a conclusive presumption that a seller or landlord or a buyer or tenant has consented to a designated agency relationship, if the party signed a brokerage agreement containing an explanation of designated agency.
- III. Upon appointment of a designated agent, the responsibility to satisfy agency duties owed to a buyer or tenant or a seller or landlord shall be the responsibility of the designated agent, and not other licensees affiliated with the same firm.
- IV. Substitutions of designated agents shall not be made without informed written consent of the party being represented.
- V. When a designated agent is appointed, information known or acquired by the designated agent shall not be imputed to the appointing agent or to other licensees within the same firm.
- VI. When an appointing agent has appointed designated agents for both the buyer or tenant and the seller or landlord in the same transaction, the appointing agent is a dual agent, and does not exclusively represent either the seller or landlord or the buyer or tenant. The appointing agent is neutral as to any conflicting interests of the seller or landlord and buyer

or tenant but shall continue to owe the seller or landlord and the buyer or tenant the duties of confidentiality, disclosure of material information, and accounting for funds.

- VII.** (a) When consent to designated agency has been given by the seller or landlord and the buyer or tenant, written notice shall also be provided to the seller or landlord and the buyer or tenant that designated agency has occurred with both the seller or landlord and buyer or tenant in the transaction. This notice shall be provided prior to the execution of the purchase and sale or lease agreement.
- (b) If the designated seller's agent and the designated buyer's agent in a transaction are affiliated with the same broker and the seller or landlord and the buyer or tenant each have consented to designated agency, a separate consent to dual agency of the appointing agent shall not be required.
- (c) If the designated seller or landlord agent is also the designated buyer or tenant agent in the same transaction, the designated agent is a dual agent and a separate informed consent to dual agency shall be required in accordance with RSA 331-A:25-d.
- VIII.** Appointment of a designated agent shall not limit the liability or responsibility of the appointing agent and principal broker for breach of duty by the designated agent.
- IX.** Designated agents who are affiliated with the same managing broker in the same transaction shall not be considered dual agents, unless the same designated agent has agreed to represent both buyer and seller.
- X.** Dual agency does not occur between appointing agents who have separately appointed the designated seller agent and the designated buyer agent within the same firm. Appointing agents receipt of confidential information shall not be imputed to any other appointing or affiliated agents from the same firm.
- XI.** Dual agency does not occur in firms that represent buyers only and that have appointed designated buyer agents within the firm, or firms that represent sellers only and that have appointed designated seller agents within the firm.

Section 331-A:25-f Facilitator; Duties

- I.** A licensee acts as a facilitator when that licensee assists but does not represent either party in a transaction.
- II.** A facilitator shall disclose to a prospective buyer or tenant any material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the facilitator has actual knowledge. Such disclosure shall occur any time prior to the time the buyer or tenant makes a written offer to purchase or lease the subject property. This paragraph shall not create an affirmative obligation on the part of the facilitator to investigate material defects.
- III.** Unless otherwise agreed, the licensee acting as a facilitator shall have no duty to keep information received from the seller or landlord or the buyer or tenant confidential.
- IV.** The parties may or may not enter into a contractual relationship.
- V.** The duties of the facilitator apply only to the seller or landlord and the buyer or tenant in the particular property transaction involving the seller or landlord and the buyer or tenant.

- VI.** A facilitator shall treat all prospective sellers or landlords and buyers or tenants honestly.
- VII.** The performance of ministerial acts for the seller or landlord or the buyer or tenant shall not be construed as forming an agency relationship with the seller or landlord or the buyer or tenant.
- VIII.** A facilitator shall present in a timely manner all offers and agreements to and from the parties during a real estate transaction.

Section 331-A:26 Prohibited Conduct

The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

- I.** Obtaining or attempting to obtain a license by means of fraud, misrepresentation, or concealment.
- II.** Violating any of the provisions of this chapter, or any rules adopted or order issued pursuant to this chapter.
- III.** Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, sexual crimes, drug distribution, arson, physical violence, or any similar offense or offenses; provided that, for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended.
- IV.** Making, printing, publishing, distributing, or causing, authorizing or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or licensee's principal, and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known of the falsity of the statements, descriptions or promises.
- V.** Knowingly committing, or being a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device, whereby any other person relies upon the word, representation or conduct of the licensee.
- VI.** Accepting the services of, or continuing in a representative capacity, any salesperson who has not been granted a license, or after the license has been revoked or suspended.
- VII.** Conversion of any money, contract, deed, note, mortgage, abstract or other evidence of title, to the licensee's own use, to the use of the licensee's principal, or of any other person, when delivered to the licensee in trust or on condition, in violation of the trust or before the happening of the condition. Failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within 30 days after the owner is entitled to and makes demand for such evidence, shall be prima facie evidence of such conversion.
- VIII.** Failing to promptly place trust funds in a proper trust account, or failing to reconcile records monthly.

- IX.** Failing, upon demand, to disclose any information within the licensee's knowledge, or to produce any document, book or record in the licensee's possession for inspection of and copying by the commission or its authorized representatives acting under authority of law.
- X.** In the case of a salesperson or broker, advertising in any manner without stating the name of the individual principal broker when licensed under an individual principal broker license or business name as licensed for whom or under whom the salesperson or broker operates, except as provided in RSA 331-A:16, IV(c).
- XI.** Accepting other than cash or its equivalent as earnest money, unless that fact is communicated in writing to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the earnest money receipt and acknowledged in writing by the owner.
- XII.** Acting for more than one party in a transaction without making full disclosure and obtaining written consent of all parties to the anticipated transaction at the time in which a dual agency relationship occurs, but no later than the preparation of a written offer for sale or lease.
- XIII.** Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal.
- XIV.** Accepting employment or compensation for comparative market analysis of real property contingent upon reporting a predetermined value.
- XV.** Issuing a comparative market analysis on any real property in which the broker or salesperson has an interest, unless such interest is clearly stated in the competitive market analysis report.
- XVI.** Misrepresentation of membership in any state or national real estate association.
- XVII.** Discrimination against any person in hiring or in sales activity, on the basis of race, color, creed or national origin, or violating any of the provisions of any state or federal antidiscrimination law. A certified copy of the final holding of any court of competent jurisdiction in such matter, or a certified copy of the order issued by any state or federal administrative agency having jurisdiction in such matter, shall be conclusive evidence in any hearing conducted under this chapter.
- XVIII.** Failing to keep for a period of 3 years, records of escrow and trust accounts pertaining to funds entrusted with the principal broker relating to a real estate transaction showing date deposited, date of withdrawal, to whom paid, and such other pertinent information as the commission may require. Such records shall be available to the commission, or its representatives, on demand.
- XIX.** In the case of a principal broker, failing to preserve for 3 years following its consummation, records relating to any real estate transaction.
- XX.** Acceptance by a salesperson or broker of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate principal broker with whom the salesperson or broker is licensed.
- XXI.** Directing any transaction to a lending institution, escrow company, or title company in a manner prohibited under the Real Estate Settlement Procedures Act of 1974 (RESPA), as amended, 12 U.S.C. section 2601, et seq. A licensee may be engaged by a principal to serve as its agent to solicit extensions of credit or to provide other services related to the purchase or sale of real estate in a manner not prohibited under RESPA, provided that if the

services involve an extension of credit or are related to a loan, the agency fee is not paid by the lender.

XXII. a. Failing to disclose:

- 1.** In writing to an owner, the licensee's intention or true position if the licensee directly, or indirectly through a third party, purchases or leases for such licensee, or acquires or intends to acquire any interest in or any option to purchase or lease the property.
- 2.** In writing to a potential buyer or lessee, a licensee's ownership interest, direct or indirect, in property offered for sale or lease by the licensee.

b. Such disclosures shall be made prior to an offer to purchase, sell, or lease, and acknowledged in writing by all parties to the transaction.

XXIII. Acting as a salesperson with a licensed broker while not licensed, representing or attempting to represent a broker other than the broker with whom the licensee is affiliated, representing oneself as a salesperson or having a contractual relationship similar to that of salesperson with other than a licensed broker.

XXIV. Paying or offering to pay valuable consideration, as defined by the commission, to any person not licensed under this chapter, except that valuable consideration may be shared with a licensed broker of another jurisdiction who is doing business regularly and legally within that broker's own jurisdiction, or shared in accordance with RSA 331-A:16-b. No licensee shall knowingly pay a commission or other valuable consideration to a licensed person knowing that the licensee will in turn pay a portion or all of that which is received to a person who does not hold a valid real estate license. A licensee who has allowed his or her license to expire or who has changed to inactive status or who has transferred to another responsible broker may receive compensation from the previous responsible broker for transactions in which the person participated during the time that the licensee was under the supervision of that responsible broker.

XXV. Failing to voluntarily furnish copies of all documents to all parties executing the documents.

XXVI. Advertising the availability of real estate or the services of a licensee in a false, misleading or deceptive manner.

XXVII. In the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of licensees and any unlicensed staff.

XXVIII. Breaching a fiduciary duty owed by a licensee to the principal in a real estate transaction.

XXIX. Unprofessional conduct defined in RSA 331-A:2, XV.

XXX. Guaranteeing or authorizing any person to guarantee future profits or income which may result from the purchase or resale of the real property.

XXXI. Offering real estate for sale or lease without the knowledge and written consent of the owner or owner's authorized agent, or on terms other than those authorized by the owner or owner's authorized agent.

XXXII. Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting a new contract with another principal.

XXXIII. Representing to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

- XXXIV.** Lending a broker's license to any person including a salesperson, or permitting a salesperson to operate as a broker.
- XXXV.** Failure to produce any document, book or record, in the licensee's possession or under the licensee's control, concerning any real estate transaction under investigation by the commission for inspection and copying.
- XXXVI.** Demonstrating untrustworthiness or incompetency to act as a broker or salesperson.
- XXXVII.** Failing to inform the commission in writing within 30 days of being convicted in a court of competent jurisdiction of this or any other state or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses, or an offense or offenses involving sexual crimes, drug distribution, arson, or physical violence; provided that, for the purposes of this paragraph, being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended. This paragraph applies only when the conviction has not first been annulled by a court pursuant to RSA 651:5.
- XXXVIII.** Submitting a property owner's name to any electronic database or multiple listing service that may be accessed by any other person other than the property owner's broker without the express written permission of the property owner.

Section 331-A:27 Mistake

Any license obtained through the mistake or inadvertence of the executive director shall be subject to revocation.

Section 331-A:28 Disciplinary Actions; Appeals; Cease and Desist Orders

- I.** The commission may investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker or real estate salesperson, regardless of whether the transaction was for the person's own account or in the capacity as broker or salesperson. If found guilty, after a hearing, of violating this chapter, the commission may impose any one or more of the following sanctions:
 - 1.** Suspend, revoke or deny a license or the renewal of such license.
 - 2.** Levy a fine not to exceed \$2,000 for each offense.
 - 3.** Require the person to complete a course or courses in selected areas of real estate practice relevant to the section of this chapter violated.
- a.** The commission may investigate the actions or qualifications of any person engaged in offering to present or presenting an accredited preparatory or continuing education program of study to licensees or potential licensees, when the commission receives a complaint or other information that indicates that the program of study is not meeting the requirements of the accreditation granted to an individual, institution, or organization, or is otherwise violating this chapter, or a

lawful rule or order of the commission. If, after a hearing, the commission finds a violation of this chapter, the commission may impose one or more of the following sanctions:

1. Suspend, revoke, or deny an accreditation or the renewal of an accreditation.
 2. Levy a fine not to exceed \$2,000 for each offense.
 3. Require the person to complete a course or courses in selected areas of real estate practice or education relevant to the violation.
- II. The commission may, in accordance with RSA 541-A, issue a cease and desist order to a person, after notice and hearing and upon a determination that the person has violated a provision of this chapter or a lawful order or rule of the commission.
- III. The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision. An appeal shall suspend the commission's decision, except in the case of revocation of license or accreditation. The record of the hearing of the action of the commission shall be presented to the superior court for review and the superior court shall give the review under this chapter priority on the court calendar. The superior court may confirm, reverse, or modify the commission's decision, or order a trial de novo without a jury as justice may require.

Section 331-A:29 Investigation Procedures

In addition to the requirements of RSA 541-A and other specific statutes, the commission shall comply with the following procedures when investigating complaints:

- I. Upon receipt of a complaint, the executive director or his or her designee shall be responsible for investigation of the complaint. Upon completion of the investigation the investigator shall present the complaint file to a commission member who shall evaluate the complaint. Such commission member may direct the executive director to meet with the complainant and the licensee, accredited individual, institution or organization, or person charged with practicing unlawful brokerage activity to attempt to reconcile their differences.
- II. The results of the evaluation shall be presented to the commission by the evaluating member.
- III. Based on the results of this evaluation, the evaluating commission member shall make a written recommendation to the commission regarding whether a hearing should be held to consider disciplinary action against a licensee, accredited individual, institution or organization, or person charged with practicing unlawful brokerage activity.
- IV. If the evaluating commission member recommends that a hearing be held, the commission shall schedule such a hearing as required by RSA 331-A:30. The commission

may, regardless of the recommendation of the evaluating commission member, elect to hold a hearing on any complaint.

- V. Disciplinary hearings shall be heard by a hearing panel consisting of at least 3 commission members. The hearing panel shall not include the member responsible for evaluating the complaint in question.

Section 331-A:30 Hearing Procedures

In addition to the requirements of RSA 541-A and other specific statutes, the following shall apply to hearings conducted pursuant to the provisions of this chapter:

- I. The commission shall give the licensee, accredited individual, institution or organization, or person charged with practicing unlawful brokerage activity at least 14 days' written notice prior to the date of hearing, of the charges to be heard by it, and shall afford such licensee, accredited individual, institution or organization, or person charged with practicing unlawful brokerage activity an opportunity to be heard in person or by counsel. The hearings shall be held at a time and place established by the commission.
- II. The commission shall have the power to subpoena and bring before it any person or any relevant records or documents in this state or to take testimony by deposition, in the same manner as is prescribed by law in judicial proceedings. The commission shall keep a complete record of the proceedings in such cases. For this purpose, the commission is authorized to utilize electronic recording or to employ a temporary reporter and fix the reporter's compensation, and the governor is authorized to draw the warrant for said sums out of any money in the treasury not otherwise appropriated. The commission is authorized to charge the licensee, accredited individual, institution or organization, or person charged with practicing unlawful brokerage activity a reasonable fee for any copies of transcript furnished to such person. Sheriffs and witnesses shall receive the same fees for the service of process and attendance before the commission as are paid to sheriffs and witnesses in matters pending before the superior court.
- III. The decisions of the commission shall be reached in a timely manner and shall be in writing and officially signed by the hearing panel as set forth under RSA 331-A:29, V. The original of such decisions, when signed, shall be filed in the office of the commission. Copies of the decision shall be mailed to the licensee, accredited individual, institution or organization, or person charged with practicing unlawful brokerage activity addressed to the place of business, to the complainant, if any, and to each party in a transaction in which the commission determined the individual was practicing unlawful brokerage activity, within 2 days after the filing.

Section 331-A:31 Payment by State

The cost and expenses of hearings conducted under RSA 331-A:30 shall be paid by the state. The governor is authorized to draw the warrant for the said sums out of any money in the treasury not otherwise appropriated.

Section 331-A:32 Civil Actions

- I. No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered as a broker or salesperson under this chapter, unless such person was duly licensed under this chapter as a broker or salesperson at the time of offering to perform any such act or service, or procuring any promise to contract for the payment of compensation for any such contemplated act or service.
- II. No salesperson may sue in such person's own capacity for the recovery of a fee, commission or compensation for services as a salesperson unless the action is against the broker with whom the person is licensed or was licensed with at the time the act or service was performed.

Section 331-A:33 Immunity

The executive director, members of the commission, or individuals acting on their behalf shall be immune from suit in any action, civil or criminal, based on any acts performed in good faith in the course of their duties.

Section 331-A:34 Unlawful Practice; Penalty

- I. Whoever, not being licensed or otherwise authorized according to the law of this state, shall advertise oneself as engaging in real estate brokerage activity, or shall engage in real estate brokerage activity, according to this chapter, or in any way hold oneself out as qualified to do so, or call oneself a "real estate salesperson", "real estate broker", or "real estate licensee", or whoever does such acts after receiving notice that such person's license has been suspended or revoked, is engaged in unlawful practice.
- II. Any person who engages in unlawful practice shall be guilty of a class A misdemeanor if a natural person, or guilty of a felony if any other person.
- III. The commission, after hearing and upon making an affirmative finding under paragraph I, that the person is engaged in unlawful practice, may take action in any one or more of the following ways:
 - a. A cease and desist order in accordance with paragraph IV.

- b.** The imposition of a fine not to exceed the amount of any gain or economic benefit that the person derived from the violation or \$10,000 for each offense, whichever amount is greater.
- IV.** The commission is authorized to issue a cease and desist order against any person or entity engaged in unlawful practice. The cease and desist order shall be enforceable in superior court.
- V.** The attorney general, the commission, or the prosecuting attorney of any county or municipality where the act of unlawful practice takes place may maintain an action to enjoin any person or entity from continuing to do acts of unlawful practice. The action to enjoin shall not replace any other civil, criminal, or regulatory remedy. An injunction without bond is available to the commission.

Section 331-A:35 Prosecution

- I.** The commission may file or cause to be filed a complaint for violation of any provision of the preceding section, before any court of competent jurisdiction.
- II.** The prosecuting attorney of each county shall prosecute any violation of the preceding section which occurs in the prosecutor's county, and if the prosecuting attorney fails to act, the commission may request the attorney general to take action in lieu of the prosecuting attorney.
- III.** Process issued by the commission shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record, or may be mailed by certified mail with return receipt requested to the person's last known address, or in the case of a licensee, to the licensee's last business address of record in the office of the commission.
- IV.** Whenever the commission believes from evidence satisfactory to it that any person has violated any of the provisions of this chapter, or any order, license, decision, demand or requirement, or any part or provisions thereof, it may bring an action in the superior court in the county wherein such person resides, to enjoin any such person from continuing the violation or engaging in any act or acts in furtherance of such violation. In this action, an order or judgment may be entered awarding a preliminary or final injunction as deemed appropriate.
- V.** The commission may petition the superior court in any county in this state for the immediate appointment of a receiver to take over, operate, or close any real estate office in this state which is found, upon inspection of its books and records, to be operating in violation of the provisions of this chapter, pending a hearing under this chapter.

Commission Administrative Rules

CHAPTER Rea 100: Organizational Rules

PART Rea 101 Definitions

I. Rea 101.01 Terms Used in Rules.

- a. All terms used in these rules shall have the same meaning as set forth in RSA 331-A:2 or as used elsewhere in RSA 331-A.
- b. “Client” means a person represented by a real estate licensee, engaged in an agency relationship.
- c. “Commission” means “commission” as defined in RSA 331-A:2, IV and the term includes alternates appointed, pursuant to RSA 331-A.
- d. “Commission administrator” means the staff member assigned to oversee administrative tasks of the commission, including but not limited to informal disposition pursuant to Rea 204.06.
- e. “Complaint” means to allege sufficient facts which, if true, would violate the real estate practice act or code of administrative rules adopted by the board.
- f. “Customer” means a person without representation by a licensee.
- g. “Firm” means any sole proprietorship, partnership, association, corporation, limited liability company, or other business association engaged in the sale or lease of real estate or which employs licensees under this chapter.
- h. “Kickback” means any commission, fee or other consideration, pursuant to RSA 331-A:26, XXI.
- i. “Rebate” means any commission, fee or other consideration, pursuant to RSA 331-A:26, XXI.
- j. “Trade name” means a name used by a person or firm to identify a business.
- k. “Valuable consideration” means anything of value exceeding \$100.

II. Rea 101.02 Unprofessional Conduct. “Unprofessional conduct” as used in RSA 331-A, means any conduct in violation of RSA 331-A:26.

PART Rea 102 Descriptions

I. Rea 102.01 Description of Agency.

- a. The commission consists of 5 members appointed by the governor with the advice and consent of the council pursuant to RSA 331-A:5.
- b. Its functions include the examination and licensing of persons applying for salesperson or broker status, and the regulation of salespersons and brokers. The commission shall appoint an executive director who shall assist the commission in administering this chapter.

PART Rea 103 Information

- I.** Rea 103.01 Request for Information. Information may be obtained from the commission by writing or calling the commission office at:

NH Real Estate Commission
Division of Technical Professions
Office of Professional Licensure and Certification
121 South Fruit Street
Concord, NH 03301
(603) 271-2219

CHAPTER Rea 200: Practice and Procedural Rules

PART Rea 201 Adoption of Rules and Declaratory Rulings

- I.** Rea 201.01 Petition and Adoption of Rules.
 - a.** Any person may submit a petition to adopt, amend or repeal a rule to the executive director of the commission. The petition shall be limited to a single subject.
 - b.** The executive director shall present the petition to the commission at the next scheduled meeting and the commission shall act on the petition, or if necessary, request further information.
 - c.** The person submitting the petition shall be notified of the commission's decision within 30 days after submission of the petition.
 - d.** The petition shall be granted if the petitioner can demonstrate the following:
 - i.** The proposed rule, amendment or repeal protects the public interest; and
 - ii.** The proposed rule, amendment or repeal does not conflict with RSA 331-A.
- II.** Rea 201.02 Public Hearings. A non-adjudicative public hearing shall be held:
 - a.** When the commission proposes to adopt rules; or
 - b.** At any other time when a hearing is not required by law where the commission determines that a public hearing will benefit the public, the commission, or both.
- III.** Rea 201.03 Notice. Notice of the date, time and place for hearings shall be given as follows:
 - a.** For rulemaking hearings held pursuant to RSA 541-A, by publication in the rulemaking register and by mail, commission newsletter or newspaper advertisement as required by RSA 541-A; and
 - b.** For all other public hearings, by a method consistent with the requirements of RSA 91-A.
- IV.** Rea 201.04 Record. A record of the hearing shall be made by tape recording or some other method that will provide a verbatim record.
- V.** Rea 201.05 Opening the Hearing. The presiding officer shall open the hearing by describing the purpose of the hearing and the procedures for providing testimony.

- VI.** Rea 201.06 Testimony.
- a.** Any person who desires to submit written testimony at a non-adjudicative hearing shall do so to the presiding officer provided such testimony is signed and dated.
 - b.** Any person who desires to testify orally at a non-adjudicative hearing shall submit her or his name, address, and person or entity that she or he is representing, if any, to the presiding officer.
 - c.** The presiding officer shall terminate any comments, questions, or discussion from the public that are not relevant to the subject matter of the hearing.
- VII.** Rea 201.07 Concluding the Hearing. When the presiding officer determines that no other persons wish to speak, she or he shall close the hearing.
- VIII.** Rea 201.08 Petition for Declaratory Rulings.
- a.** Any person may petition the commission for a declaratory ruling as to the applicability of any provision of RSA 331-A or of any rule or order of the commission by filing a written petition with the executive director of the commission.
 - b.** The petition shall be considered at the next scheduled meeting of the commission, and the commission shall in every case issue its ruling in writing, with a copy to the petitioner.

PART Rea 202 Filing, Format and Delivery of Documents.

- I.** Rea 202.01 Date of Issuance or Filing. All written documents governed by these rules shall be rebuttably presumed to have been issued on the date noted on the document and to have been filed with the commission on the actual date of receipt by the commission, as evidenced by a date stamp placed on the document by the commission in the normal course of business.
- II.** Rea 202.02 Format of Documents.
- a.** All correspondence, pleadings, motions or other documents filed under these rules shall:
 - 1.** Include the title and docket number of the proceeding, if known;
 - 2.** Be typewritten or clearly printed on durable paper 8 ½ by 11 inches in size;
 - 3.** Be signed by the party or proponent of the document, or, if the party appears by a representative, by the representative; and
 - 4.** Include a statement certifying that a copy of the document has been delivered to all parties to the proceeding in compliance with Rea 202.03.
 - b.** A party or representative's signature on a document filed with the commission shall constitute certification that:
 - 1.** The signer has read the document;
 - 2.** The signer is authorized to file it;
 - 3.** To the best of the signer's knowledge, information and belief there are good and sufficient grounds to support it; and
 - 4.** The document has not been filed for purposes of delay.
- III.** Rea 202.03 Delivery of Documents.

- a. Copies of all petitions, motions, exhibits, memoranda, or other documents filed by any party to a proceeding governed by these rules shall be delivered by that party to all other parties to the proceeding.
- b. All notices, orders, decisions or other documents issued by the presiding officer or commission shall be delivered to all parties to the proceeding.
- c. Delivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by certified mail, postage prepaid, in the United States mail, addressed to the last address given to the commission by the party.
- d. When a party appears by a representative, delivery of a document to the party's representative at the address stated on the appearance filed by the representative shall constitute delivery to the party.

PART Rea 203 Time Periods

- I. Rea 203.01 Computation of Time.
 - a. Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.
 - b. Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.
 - c. If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

PART Rea 204 Complaint Procedure

- I. Rea 204.01 Complaint Form. All complaints shall be made by completing a commission-provided "Complaint Form", effective June 2017, which shall be signed and sworn to in the presence of a notary public or justice of the peace.
- II. Rea 204.02 Filing of Complaint. The complete complaint form described in Rea 204.01 shall be mailed or delivered to the commission office.
- III. Rea 204.03 Notice of Complaint. The commission shall send a copy of the formal complaint filed pursuant to Rea 204.01 and Rea 204.02 to the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity against whom the complaint is made together with a blank original "Complaint Form Response", effective March 2017.
- IV. Rea 204.04 Response.
 - a. Each licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity against whom a complaint is made shall respond to the complaint by completing an original "Complaint Form Response" form, effective June 2017. Said form shall be signed and sworn to in the presence of a notary public or justice of the peace.
 - b. The response shall be filed with the commission within 30 days of receipt of the Complaint Form Response.

- V.** Rea 204.05 Investigation. All formal complaints shall be investigated pursuant to RSA 331-A:29.
- VI.** Rea 204.06 Adjustment by Conciliation.
 - a.** For purposes of this section “informal disposition” means resolution of the complaint without a hearing on the merits and with the consent of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, and approval of the commission, pursuant to RSA 331-A:29 and RSA 541-A:31, V (a) and (b).
 - b.** The evaluating commission member and the commission administrator shall attempt to resolve the complaint informally pursuant to RSA 331-A:29, I and RSA 541-A:31, V.
 - c.** When resolving a complaint informally, the commission shall:
 - 1.** Inform the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, that any proposed settlement agreement is voluntary; and
 - 2.** Inform the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity that the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, may be represented by counsel at an informal disposition at the expense of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity.
 - d.** A proposed informal disposition of a complaint shall be presented to the commission for its consideration. The proposed settlement agreement shall be in writing, signed at a minimum by the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, and the commission administrator, and be notarized.
 - e.** A proposed settlement agreement shall at a minimum set forth the allegations made in the complaint, the conditions agreed upon, and the consequences of noncompliance.
 - f.** The commission shall accept the proposed settlement agreement in whole or in part, reject the proposed settlement agreement or indicate that it would accept the proposed settlement agreement with specified conditions or amendments.

PART Rea 205 Conduct of Adjudicative Hearing

- I.** Rea 205.01 Notice.
 - a.** Whenever the commission determines that a hearing is warranted, based on a preliminary showing of evidence giving rise to sufficient concern that a violation(s) may have occurred as presented by the evaluating commission member, a disciplinary hearing shall be conducted. A hearing shall then be scheduled and notice of the hearing shall be given to both parties at least 14 days prior to the scheduled hearing by certified mail, return receipt requested.
 - b.** Such notice shall include the following:

1. A factual summary of the complaint or charges as well as a statement of the legal authority under which the hearing shall be held;
2. Those provisions of RSA 331-A and/or administrative rules on which the complaint is based;
3. The time, date, place and nature of hearing;
4. The fact that either party may be represented by counsel at the hearing before the commission;
5. The fact that either party may have witnesses present;
6. The fact that either party may provide evidence pursuant to RSA 541-A;
7. A statement that each party has the right to have the commission provide a certified shorthand court reporter at the party's expense and that any such request shall be submitted in writing at least 10 days prior to the hearing; and
8. A statement indicating the extent to which the Jus 800 will apply to that proceeding.

II. Rea 205.02 Request for Continuance.

- a. Requests for granting continuances based on good cause shall be submitted, in writing, to the executive director at least 10 days prior to the hearing date. Good cause shall include the unavailability of parties, witnesses or representatives necessary to conduct the hearing, or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly, unless such unavailability is due to action or inaction on the part of the party.
- b. Any such requests submitted less than 10 days in advance of a hearing shall be accompanied by an affidavit demonstrating good cause for the late filing.
- c. Good cause for late filing shall include but not be limited to:
 1. Serious illness;
 2. Death of a family member; and
 3. Conflicting court schedules.

III. Rea 205.03 – RESERVED

IV. Rea 205.04 Presiding Officer; Appointment; Authority.

- a. All hearings shall be conducted for the commission by a natural person appointed or authorized to serve as a presiding officer.
- b. A presiding officer shall as necessary:
 1. Regulate and control the course of a hearing;
 2. Facilitate an informal resolution of an appeal;
 3. Administer oaths and affirmations;
 4. Receive relevant evidence at hearings and exclude irrelevant, immaterial or unduly repetitious evidence;
 5. Rule on procedural requests, including adjournments or postponements, at the request of a party or on the presiding officer's own motion;
 6. Question any person who testifies;
 7. Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, VI;

8. Take any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner; and
 - c. Upon his or her own initiative or upon the motion of any party, suspend or waive any requirement or limitation imposed by this chapter upon notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the commission than would adherence to a particular rule or procedure.
- V. Rea 205.05 Withdrawal of Commissioner.
 - a. Upon his or her own initiative or upon the motion of any party, a commissioner shall, for good cause withdraw from any hearing.
 - b. Good cause shall exist if a commissioner:
 1. Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship, within the third degree of relationship, with any party; or
 2. Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of a case; or
 3. Personally believes that he or she cannot fairly judge the facts of a case.
 - c. Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.
- VI. Rea 205.06 Appearances and Representation.
 - a. A party or the party's representative shall file an appearance that includes the following information:
 1. A brief identification of the matter;
 2. A statement as to whether or not the representative is an attorney and if so, whether the attorney is licensed to practice in New Hampshire; and
 3. The party or representative's daytime address and telephone number.
- VII. Rea 205.07 Prehearing Conference. Upon request by any party, or upon the initiative of the presiding officer or commission officials a prehearing conference shall be scheduled in accordance with RSA 541-A:31, V, to consider:
 - a. Offers of settlement;
 - b. Simplification of the issues;
 - c. Stipulations or admissions as to issues of fact or proof by consent of the parties;
 - d. Limitations on the number of witnesses;
 - e. Changes to standard procedures desired during the hearing by consent of the parties;
 - f. Consolidation of examination of witnesses; or
 - g. Any other matters which aid in the disposition of the proceeding.
- VIII. Rea 205.08 Role of Agency Staff in Enforcement or Disciplinary Hearings. Unless called as witnesses, agency staff shall have no role in any enforcement or disciplinary hearing.
- IX. Rea 205.09 Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as a witness or granted party or intervenor status, a person who initiates an adjudicative

proceeding by complaining to the commission about the conduct of a person who becomes a party shall have no role in any enforcement or disciplinary hearing.

- X.** Rea 205.10 Postponements.

 - a.** Any party to a hearing may make an oral or written motion that a hearing be postponed to a later date or time.
 - b.** If a postponement is requested by a party to the hearing, it shall be granted if the presiding officer determines that good cause has been demonstrated. Good cause shall include the unavailability of parties, witnesses or attorneys necessary to conduct the hearing, the likelihood that a hearing will not be necessary because the parties have reached a settlement or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly.
 - c.** If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record. If the later date, time and place are not known at the time of the hearing that is being postponed, the presiding officer shall issue a written scheduling order stating the date, time and place of the postponed hearing as soon as practicable.
- XI.** Rea 205.11 Failure to Attend Hearing. If any party to whom notice has been given in accordance with Rea 205.01 fails to attend a hearing, the presiding officer shall:

 - a.** Declare that party to be in default; and
 - b.** Either:

 - 1.** Dismiss the case, if the party with the burden of proof fails to appear; or
 - 2.** Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof in the case.
- XII.** Rea 205.12 Witnesses. All witnesses appearing before the commission shall testify under oath or affirmation. Oaths shall be administered by the presiding officer.
- XIII.** Rea 205.13 Evidence. The introduction of evidence and testimony in adjudicative proceedings held before the commission shall comply with RSA 541-A:33.
- XIV.** Rea 205.14 Standard and Burden of Proof. The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.
- XV.** Rea 205.15 Reopening the Record. At any time prior to the issuance of the decision on the merits, the presiding officer, on the presiding officer's own initiative or on the motion of any party, shall reopen the record to receive relevant material and non-duplicative testimony, evidence or arguments not previously received, if the presiding officer determines that such testimony, evidence or arguments are necessary to a full and fair consideration of the issues to be decided.
- XVI.** Rea 205.16 Hearing Procedures.

 - a.** Disciplinary hearings shall be heard by a hearing panel consisting of at least 3 commission members. The hearing panel shall not include the commission member responsible for evaluating the complaint. The commission chairperson or acting chairperson shall act as the presiding officer.
 - b.** The complainant, whether a member of the public or the commission's investigator or complainant's representative, shall open the proceedings through production of witnesses and exhibits, to be followed by those produced by the

licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity complained against, or counsel of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity. Opportunity shall be afforded to either party to cross-examine each witness of the other party at the conclusion of the witness's direct testimony. Commission members shall, if necessary, ask questions of the witness during examination or subsequent to cross-examination, and shall request additional evidence as the hearing panel deems necessary to an understanding and determination of the issues.

- c. After all evidence is submitted, the complainant, or complainant's representative, shall summarize first, followed by the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity complained against. The hearing panel shall then retire with the facts to deliberate on the case and make its decision. Written memoranda and statements may also be filed with the hearing panel before the close of evidence.

XVII. Rea 205.17 Record of the Hearing.

- a. A verbatim record of all disciplinary hearings held by the commission shall be kept and made a part of the case file pursuant to RSA 541-A:31, VII.
- b. If any person requests a transcript of the taped record, the commission shall cause a transcript to be prepared and, upon receipt of payment for the cost of the transcription, shall provide copies of the transcript to the requesting party.
- c. At the request of a party to any proceeding involving disciplinary action before the commission, the record of the proceeding shall be made by a certified shorthand court reporter provided by the commission at the requesting party's expense. A request for a certified shorthand court reporter shall be filed at least 10 days prior to the hearing.

PART Rea 206 Adjudicative Hearing Decisions

I. Rea 206.01 Orders.

- a. Any decision by the hearing panel on matters considered at a disciplinary hearing shall be by majority vote. The decision shall be issued by the commission, in writing, in the form of an order.
- b. Members of the commission shall not participate in a decision unless they have been present at the hearing.
- c. An order shall include findings of fact and conclusions of law, and shall be based upon the preponderance of evidence presented at the disciplinary hearing or contained in the record.
- d. After the close of the record, the commission shall dismiss the case if the allegations have not been proved by a preponderance of evidence.
- e. After the close of the record, if the allegations have been proven by a preponderance of the evidence, the commission shall take disciplinary action pursuant to RSA 331-A:28, I-a and II. In imposing a sanction, the commission shall take into account the presence of aggravating or mitigating circumstances.

- f. The following shall be considered aggravating circumstances:
 - 1. Any prior disciplinary record of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, including number, type, and timing of prior instances of misconduct;
 - 2. The state of mind of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity at the time of the offense;
 - 3. The unwillingness of the licensee accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity to cooperate with the commission;
 - 4. The purpose of the rule or statute violated;
 - 5. The potential harm to the public; and
 - 6. Multiple offenses in the same incident.
 - g. The following shall be considered mitigating circumstances:
 - 1. The absence of a prior disciplinary record;
 - 2. The state of mind of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity at the time of the offense;
 - 3. The willingness of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity to cooperate with the commission;
 - 4. Acknowledgement of wrongdoing by the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity;
 - 5. The purpose of the rule or statute violated;
 - 6. The lack of potential harm to the public; and
 - 7. The lack of multiple offenses in the same incident.
 - h. A copy of the commission's order shall be mailed within 2 days after issuance to:
 - 1. The place of business of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity.; and
 - 2. The complainant, if any, and to each party in a transaction in which the commission determined the person was practicing unlawful brokerage activity.
- II. Rea 206.02 Appeals. The action of the commission stated in an order may be appealed to the superior court by the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity within 30 days after its issuance pursuant to RSA 331-A:28, III.

PART Rea 207 Explanation of Rules

- I. Rea 207.01 Explanation of Rules.
 - a. The commission shall provide, if requested by any person up to 30 days of the final adoption of any rule, an explanation of the rule to include:

1. A concise statement of the principal reasons for and against the adoption of the rule in its final form; and
 2. An explanation of why the commission overruled the arguments and consideration against the rule.
- b. The request shall be considered at the next scheduled commission meeting and the commission shall issue a response within 45 days after consideration.

CHAPTER Rea 300 Licensing Requirements

PART Rea 301 Application Procedure

I. Rea 301.01 Application Form.

- a. All applicants for licenses under RSA 331-A as brokers shall complete and submit the following:
 1. A “Real Estate Broker Application Form”, revised 9/4/2019, which includes the following:
 - a) A statement that the applicant has completed a “Criminal History Record Information Release Authorization Form,” also known as DSSP256, and submitted the form to the department of safety, division of state police, with the board identified as the recipient of the record or records, as required by RSA 331-A:10-a;
 - b) Signed affidavits from three character references, as required by RSA 331-A:12, II, which states the following: “I, the undersigned, on oath depose and say that I am in no way related to the applicant by either blood or marriage, and that said applicant for a real estate license is a person of good repute, trustworthy and entitled to public confidence and that I know of no circumstance or dealing by the applicant which would disqualify him/her for the license applied for.”
 - c) The applicant’s signature after the following certification: “I have read and understand the state statutes 331-A and the administrative rules. I attest that the information contained in this form is true and correct to the best of my knowledge and belief and I further acknowledge that the provision of materially false information in the application knowingly provided is a basis for denial and if it is discovered after the license is issued, is a basis for disciplinary action by the board:”;
 - d) If the applicant is a non-resident, a signed irrevocable consent and power of attorney statement, as required by RSA 331-A:22, II
 - e) A signed statement from the employing broker, listing the principal broker’s license number, certifying that the applicant was employed by him or her as a real estate salesperson, listing

the dates and the number of hours per week of that employ and whether the applicant was employed full time or part time.

2. If the applicant answered “yes” to questions 1-6 and 9 on the “Real Estate Broker Application Form”, a sheet of paper attached to the application giving full details and an explanation;
 3. If the applicant answers “yes” to question 5 of the “Real Estate Broker Application Form”, an “Arrest and Conviction Form”, effective June 2017 and available on the commission’s website, including an attachment that explains the circumstances surrounding any arrest or conviction; and
 4. If using a trade name, a “Trade Name Registration and Re-Registration” form, revised 9/2019.
- b. Applicants for licenses under (a) above and (c) below shall have their prospective principal broker complete the applicable sections, which shall include an attestation by the principal broker that the applicant is of good moral character and is trustworthy, indicated by the principle broker’s signature under the following certification: “Upon receipt of the license herein applied for, the above named applicant will be employed by me or will otherwise be under contract with me to perform services as a real estate licensee, and will work under my supervision. I will display his/her license prominently at my place of business, and when he/she leaves my employ I will immediately notify the New Hampshire Real Estate Commission within 5 days, as required by RSA 331-A:17, IV. To the best of my knowledge the applicant is of good moral character and is trustworthy.”
- c. All applicants for licenses under RSA 331-A as salespersons shall complete and submit a “Real Estate Salesperson Application Form” , revised 9/4/2019, which includes the following:
1. A statement that the applicant has completed a “Criminal History Record Information Release Authorization Form,” also known as DSSP256, and submitted the form to the department of safety, division of state police, with the board identified as the recipient of the record or records, as required by RSA 331-A:10-a;
 2. Signed affidavits from three character references, as required by RSA 331-A:12, II, which states the following: “I, the undersigned, on oath depose and say that I am in no way related to the applicant by either blood or marriage, and that said applicant for a real estate license is a person of good repute, trustworthy and entitled to public confidence and that I know of no circumstance or dealing by the applicant which would disqualify him/her for the license applied for.”
 3. The applicant’s signature after the following certification: “I have read and understand the state statutes 331-A and the administrative rules. I attest that the information contained in this form is true and correct to the best of my knowledge and belief and I further acknowledge that the provision of materially false information in the application knowingly provided is a basis

for denial and if it is discovered after the license is issued, is a basis for disciplinary action by the board:”; and

4. If the applicant is a non-resident, a signed irrevocable consent and power of attorney statement, as required by RSA 331-A:22, II.
 5. If the applicant answered “yes” to question 1 through 6 on the “Real Estate Salesperson Application Form”, a sheet of paper attached to the application giving full details and an explanation;
- d. All applicants for a broker license as a firm under RSA 331-A shall submit the following:
1. A completed “Real Estate Commission Firm Application” form, revised 9/2019;
 2. A current certificate for the firm name from the New Hampshire secretary of state’s office; and
 3. If the applicant is a non-resident, a signed irrevocable consent and power of attorney statement, as required by RSA 331-A:22, II.
- e. All applicants for a broker license as a firm branch shall complete and submit a “Firm Branch Application” form, revised 9/2019. If the applicant is a non-resident, the applicant must sign an irrevocable consent and power of attorney statement, as required by RSA 331-A:22, II.
- f. Principal broker and managing broker applicants shall submit to the commission a surety bond in the sum of \$25,000 to run concurrently with the dates of licensure, executed by the applicant and by a surety company authorized to do business in the state of New Hampshire.

II. Rea 301.02 Fees.

- a. The applicant for each original individual, firm, or firm branch broker license and renewal thereof shall pay a fee of \$110.
- b. The applicant for each original salesperson license and renewal thereof shall pay a fee of \$90.
- c. The broker, salesperson, firm, or firm branch shall pay a fee of \$5 for each duplicate license.
- d. The broker, salesperson, firm, or firm branch shall pay a fee of \$20 for each license amendment form for Change of Managing Broker of Firm or Branch Office, Change of Principal Broker of Firm or Trade Name, or Activation of an Inactive License
- e. The broker, salesperson, firm, or firm branch shall pay a fee of \$5 for each certificate of license and good standing.
- f. The applicant for each qualifying examination shall pay a fee of \$155 for a salesperson examination and \$170 for a broker examination.
- g. Any individual or firm shall pay a fee of \$25 or 5% of the face amount of the check, whichever is greater, plus all protest and bank fees for each check, draft or money order dishonored and returned to the commission pursuant to RSA 6:11-a.

- h.** The broker, salesperson, firm, or firm branch shall pay a late fee of \$60, in addition to the regular renewal fee, for renewal of a license up to 6 months after license expiration.
- i.** Any broker or salesperson whose license has lapsed who has appeared before the commission pursuant to a request under RSA 331-A:18, II, and who has been granted reinstatement shall pay a lapsed fee of \$200 for each four week period or part thereof after the date of lapse. Such fee shall be in addition to the regular renewal fee and late fee, for reinstatement of a lapsed license after the license is deemed expired. The foregoing lapsed fee may be waived upon good cause shown. Good cause shall include serious accident, illness, or other circumstances beyond the control of the candidate.
- j.** Real estate course providers shall pay an evaluation fee of \$100 each time a course is submitted to the commission for accreditation or reaccreditation.
- k.** Real estate applicants and licensees shall pay a fee of \$10 for each course submitted to the commission to be evaluated for pre-licensing education credit or continuing education credit.
- l.** The fee for photocopies shall be \$0.25 per page copied.
- m.** The fee per disc of recorded audio shall be \$30.00.
- n.** The fee for roster lists shall be \$25.00.

III. Rea 301.03 Filing Requirements.

- a.** All candidates for the real estate licensing examination shall file a completed “New Hampshire Real Estate Examination Registration Form”, together with the examination fee and the completed pre-licensing course affidavit if applicable, in the office of the commission prior to scheduling a real estate exam.
- b.** The candidate shall supply on such registration form the following:
 - 1.** Legal name and address of candidate registering to take the real estate licensing examination;
 - 2.** Phone number;
 - 3.** Social security number, as required by RSA 161-B:11, VI-a;
 - 4.** Email address;
 - 5.** Date of birth;
 - 6.** Gender;
 - 7.** School code;
 - 8.** Broker designation;
 - 9.** Date of previous real estate licensing examination taken in this state, if any;
 - 10.** The test type being requested, whether salesperson or broker;
 - 11.** The test portion being requested, whether state, national, or both; and
 - 12.** Signature of candidate, dated with the date the applicant signed the form.
- c.** Candidates who apply for the broker examination based on being licensed in another state for at least one calendar year shall submit the name of each state in which the candidate is licensed, the license number from each state, and a certificate of good standing from the licensing authority of the state in which the person was licensed along with the examination registration.

- d. No notice to schedule an examination shall be mailed to any candidate unless and until a completed registration form, completed pre-licensing course affidavit if applicable, certificate of good standing if applicable, and examination fee have been received and accepted in the office of the commission.
- e. All candidates shall take the examination within 3 months from the date of receipt of the exam registration at the office of the commission.
- f. Any candidate who fails to take the examination within the 3-month period as required by Rea 301.03(e) shall be required to submit a new registration and fee.
- g. Any candidate who fails to take the examination within the 3-month period as required by Rea 301.03(e) due to good cause under (2) below may request up to an additional 30 calendar days by:
 - 1. Filing with the commission a written request for a waiver no later than the last business day prior to the expiration of the 3-month period as required by Rea 301.03(e);
 - 2. Late filing shall be justified by a showing of good cause. Good cause shall include serious accident, illness, or other circumstances beyond the control of the candidate which actually prevent the candidate from taking the examination; and
 - 3. Relevant supporting documentation from the candidate's physician or medical professional shall be furnished to the commission when necessary for a fair and informed determination by the commission or designee.
- h. Candidates for the broker or salesperson exam shall attain a minimum score of 70.
- i. Candidates who apply for the broker examination based on employment as a salesperson pursuant to RSA 331-A:10, II shall submit the following in the application for licensure:
 - 1. Verification of dates of employment as a salesperson by employing broker;
 - 2. Amount of time worked as a salesperson as defined in RSA 331-A:2, X; and
 - 3. Notarized signature of employing broker attesting that the information supplied on the "Broker Application" referenced in Rea 301.01(a)(1) is true.
- j. Candidates who seek approval to take the broker examination based on equivalent experience pursuant to RSA 331-A:10, II(c) shall complete and submit an "Equivalent Experience Form to One Year's Service as a Licensed Salesperson", revised June 2021.
- k. Candidates for the broker examination shall show proof of completion of 60 hours of approved study, pursuant to RSA 331-A:10, II, consisting of the following:
 - 1. A juris doctor degree from an accredited law school obtained by a licensed attorney who actively practices or practiced in real estate law within the last 5 years;
 - 2. One of the following degrees within 5 years prior to the date of examination:
 - a) A bachelor's degree with a major in real estate from an accredited college, university, or institute of higher learning;

- b)** A bachelor's degree from an accredited college, university, or institute of higher learning, having completed coursework equivalent to a major in real estate; or
 - c)** An associate's degree in real estate from an accredited institution; or
 - 3.** Successful completion of the education requirements and receipt of the designation for at least one of the following within 5 years prior to the date of examination:
 - a)** Certified Commercial Investment Member (CCIM); or
 - b)** Graduate, Realtor Institute (GRI).
- I.** The following items may be applied towards the 60 hours of approved study:
 - 1.** Real estate continuing education courses previously approved by the commission for credit that have been successfully completed within 24 months prior to the date of examination may be submitted consisting of one or more of the following:
 - a)** One 3 hour accredited core course; and
 - b)** Accredited elective courses;
 - 2.** Evidence of successfully completing 40 hours of accredited pre-licensing education may be submitted consisting of the following:
 - a)** New Hampshire accredited pre-licensing education with a minimum of 32 hours of classroom attendance or real-time internet live-class distance education pursuant to 2. below, or a combination thereof, and no more than 8 hours of distance education which began within 6 months prior to the date of examination in compliance with the following:
 - 1.** Pre-licensing distance education that is not real-time internet live-class shall only be allowed for acceptable absences, including:
 - i.** Family emergencies;
 - ii.** Illnesses;
 - iii.** Technical issues during real-time internet live-class; and
 - iv.** Other unforeseen circumstances;
 - 2.** Real-time internet live-class shall:
 - i.** Have live video and audio feeds of all participants that will allow real time visualization, instructor, monitoring, and communication among all participants;
 - ii.** Be equal to one credit hour for each hour of real-time internet live-class for an attendee who was present by video and audio throughout the hour(s); and
 - iii.** Allow the students to view a live video stream of the instructor unless the instructor is presenting

instructional material through a shared screen presentation.

3. All distance education, that is not a real-time internet live-class, shall be provided through audio or visual recordings or correspondence delivery with a final examination consisting of a minimum of 25 questions; and
 4. Pre-licensing distance education shall not exceed 2 classes;
or
 - b) A minimum of 32 hours of classroom attendance and no more than 8 hours of distance education which began within 6 months prior to the date of examination consisting of 34 hours of accredited national material completed in another state and a minimum of 6 hours of New Hampshire accredited state material;
or
3. Real estate related credit courses successfully completed within the past 5 years at an accredited college, university, or institute of higher learning, and evidenced by a transcript, may be submitted to the commission for approval, including courses with topics such as, but not limited to:
 - a) Accounting;
 - b) Management;
 - c) Real estate law;
 - d) Finance;
 - e) Real estate investment;
 - f) Appraisal courses; and
 - g) Paralegal courses.
- m. Each hour of the courses outlined in (l)(1) and (2), above, shall count towards one hour of credit toward the required 60 hours. All 3- credit or more courses submitted and approved under (l)(3) as real estate related education shall receive 12 credit hours.
- n. Schools or individuals may seek accreditation of education not included in (k)(3) and (l)(1) through (3) above or (p) below by submitting the course content outline, course materials, course hours, course accreditation fee, and certificate of completion to the commission.
- o. For purposes of (l)(2) above, proof of a pre-licensing course previously used to fulfill the salesperson's education requirement shall not be used to fulfill the broker education requirement.
- p. Candidates for the salesperson examination shall complete 40 hours of approved study prior to the date of examination, pursuant to RSA 331-A:10, I.
- q. Evidence of successfully completing 40 hours of accredited pre-licensing education shall be submitted consisting of the following:
 1. New Hampshire accredited pre-licensing course with a minimum of 32 hours of classroom attendance or real-time internet live-class distance education pursuant to a.1. below, or a combination thereof, and no more

than 8 hours of distance education which began within 6 months prior to the date of examination in compliance with the following:

- a) Real-time internet live-class shall:
 - 1. Have live video and audio feeds of all participants that will allow real time visualization, instructor monitoring, and communication among all participants;
 - 2. Be equal to one credit hour for each hour of real-time internet live-class for an attendee who was present by video and audio throughout the hour(s); and
 - 3. Allow the students to view a live video stream of the instructor unless the instructor is presenting instructional material through a shared screen presentation.
 - b) Pre-licensing distance education, that is not real-time internet live-class, shall only be allowed for acceptable absences, including:
 - 1. Family emergencies;
 - 2. Illnesses;
 - 3. Technical issues during real-time internet live-class; and
 - 4. Other unforeseen circumstances;
 - c) All distance education, that is not a real-time internet live-class, shall be provided through audio or visual recordings or correspondence delivery with a final examination consisting of a minimum of 25 questions; and
 - d) Pre-licensing distance education, that is not a real-time internet live-class, shall not exceed 2 classes; or
- 2. A minimum of 32 hours of classroom attendance and no more than 8 hours of distance education which began within 6 months prior to the date of examination consisting of 34 hours of accredited national material completed in another state and a minimum of 6 hours of New Hampshire accredited state material.
- r. Candidates who fail to satisfy the education requirement pursuant to RSA 331-A:10 prior to the date of the examination shall re-take the exam in its entirety. This shall apply even if the candidate passes a portion or all of the examination.
 - s. Examination candidates shall not send the application for license and license fee to the commission until after they have received notification that they passed both the uniform and state portions of the written examination, or passed the state portion for reciprocal non-resident licensees.
 - t. Real estate applicants shall not complete the broker or salesperson application for a license, including all notarized signatures, more than 30 days prior to submission to the commission office.

IV. Rea 301.04 Dishonored Checks, Drafts or Money Orders.

- a. No candidate for the real estate licensing examination shall be permitted to take the test for which he or she is registered if the commission is notified that the

check, draft, or money order used to pay the examination fee has been dishonored. Such candidate shall be required to wait until the prescribed fee for his or her dishonored check, draft, or money order accompanies the new registration form and examination fee.

- b.** Any applicant or licensee who has paid a fee or fine to the commission with a check, draft or money order that has subsequently been dishonored, shall within 14 days after receiving notice from the commission that said check, draft or money order has been dishonored, remit to the commission the required original or renewal fee plus the fee prescribed by Rea 301.02(g) for a dishonored check, draft or money order.
- V.** Rea 301.05 Computerized Lists Distribution. A computerized list of licensees who have agreed to share their name, business or personal email, and business or personal mailing address shall be furnished upon request. The fee shall be pursuant to Rea 301.02.

PART Rea 302 Qualifications

- I.** Rea 302.01 Programs of Study Accreditation and Re-accreditation.
 - a.** Any individual applying for accreditation or any firm applying for accreditation to instruct a real estate pre-licensing or continuing education course shall submit to the commission documents substantiating the applicant's qualifications to instruct such course, including, but not limited to (b), (c), and (d) below. If the commission or its designee has any questions or needs further information prior to approving or denying the accreditation, it shall schedule the applicant to appear before the commission or its designee to address such questions or provide such information.
 - b.** All individuals applying for accreditation as a pre-licensing education instructor shall demonstrate the following:
 - 1.** Brokerage experience qualifications or other qualifications found by the commission to be equivalent to an active license with a minimum of 3 years of on-going experience in real estate brokerage in New Hampshire; and
 - 2.** Teaching experience qualifications or other qualifications found by the commission to be equivalent to the following:
 - a)** Documentation of at least 72 hours of teaching, speaking or presentation experience; or
 - b)** Demonstration of teaching, speaking or presentation skills, such as, but not limited to a one hour unedited video or DVD recording which depicts the applicant teaching pre-licensing material that includes New Hampshire state-specific material; and
 - 3.** Demonstration of subject matter knowledge before the commission as necessary to substantiate the qualifications or information submitted, pursuant to Rea 302.01(a).
 - c.** All individuals applying for accreditation as a core continuing education instructor shall demonstrate the following:

1. Brokerage experience qualifications or other qualifications found by the commission to be equivalent to an active license with a minimum of 3 years of on-going experience in real estate brokerage in New Hampshire within 3 years of the date of application; and
 2. Teaching experience qualifications or other qualifications found by the commission to be equivalent to the following:
 - a) Documentation of at least 72 hours of teaching, speaking, or presentation experience; or
 - b) Demonstration of teaching, speaking or presentation skills, such as, but not limited to a one hour unedited video or DVD recording which depicts the applicant teaching New Hampshire core course material; and
 3. Demonstration of subject matter knowledge before the commission as necessary to substantiate the qualifications or information submitted, pursuant to Rea 302.01(a).
- d. All individuals applying for accreditation as an elective continuing education instructor shall demonstrate the following:
1. Experience qualifications or other qualifications found by the commission to be equivalent to one of the following:
 - a) A degree from an accredited institution with a major related to the subject matter of the course within 3 years prior to the date of application;
 - b) A certification from an accredited institution related to the subject matter of the course within 3 years prior to the date of application; or
 - c) Two years of on-going work experience or teaching experience or a combination of both within the previous 3 years of the date of application that is related to the subject matter of the course; and
 2. Either of the following:
 - a) Documentation of at least 15 hours of teaching, speaking or presentation experience or other qualifications found by the commission to be equivalent; or
 - b) Demonstration of teaching, speaking or presentation skills, such as, but not limited to a one hour unedited video or DVD recording which depicts the applicant teaching material on the subject matter of the course.
- e. All individuals or firms shall apply for re-accreditation of pre-licensing, core, and elective continuing education courses within 2 years from the date of original accreditation or re-accreditation.
- f. All accredited individuals, institutions or organizations shall submit notice of any substantive changes to accredited courses to the commission during the 2- year accreditation or reaccreditation period.
- II. Rea 302.02 Course Outline.

- a. Applicants for accreditation and re-accreditation of a pre-licensing course shall submit an outline showing 40 course hours to be taught, on subject areas approved by the commission, including but not limited to:
 1. New Hampshire RSA 331-A;
 2. New Hampshire Administrative Rules Chapters Rea 100-700;
 3. New Hampshire real estate practices relating to:
 - a) Human rights;
 - b) Environmental issues;
 - c) Condominium Act, RSA 356-B;
 - d) Planning and zoning;
 - e) Wetlands;
 - f) Taxation;
 - g) Manufactured housing;
 - h) Property management, tenant and landlord practices;
 - i) Recordation; and
 - j) Descent and distribution;
 4. Listing property, including:
 - a) Listing;
 - b) Assessment of property value; and
 - c) Services to the seller;
 5. Selling property, including:
 - a) Services to the buyer; and
 - b) Advising buyers of outside services;
 6. Property management, including:
 - a) Leasing, and;
 - b) Management;
 7. Settlement or transfer of ownership, including:
 - a) Tax issues;
 - b) Titles;
 - c) Settlement procedures; and
 - d) Completion of the transaction;
 8. Financing, including:
 - a) Sources of financing;
 - b) Types of loans;
 - c) Terms and conditions; and
 - d) Common clauses and terms in mortgage instruments; and
 9. Professional responsibilities, fair practices, and administration.
- III. Rea 302.03 Required Post-Licensing Continuing Education Course Learning Objectives.
 - a. A post-licensing course shall meet or exceed the commission's learning objectives in one of the following 4 required course topics:
 1. Purchase and Sales (P&S) agreements;
 2. Ethical behavior;
 3. Disclosure forms; or
 4. Agency.

- b. Courses for each of the 4 required topics shall:**
 - 1.** Be accredited for a minimum of 2 hours and no more than 3 hours each;
 - 2.** Meet or exceed the commission's learning objectives for that course; and
 - 3.** Be taught either in-class or by internet live-class, pursuant to the following:
 - a)** Real-time internet live-class shall:
 - 1.** Have live video and audio feeds of all participants that will allow real time visualization, instructor monitoring, and communication among all participants;
 - 2.** Be equal to one credit hour for each hour of real-time internet live-class for an attendee who was present by video and audio throughout the hour(s); and
 - 3.** Allow the students to view a live video stream of the instructor unless the instructor is presenting instructional material through a shared screen presentation.
- c. Applicants for accreditation and re-accreditation of a required post-licensing course in one of the 4 following topics shall submit a course outline and required supporting course documentation:**
 - 1.** For P&S agreements including but not limited to:
 - a)** A comprehensive review of a sample of an acceptable P&S agreement;
 - b)** Establishing a minimal knowledge and competence in the preparation of a P&S agreement;
 - c)** Achieving a basic understanding of the process of filling out a P&S agreement;
 - d)** Achieving an understanding of the various paragraphs and clauses of a P&S agreement;
 - e)** Achieving an understanding of the roles and relationships of the licensee(s) involved in the preparation of a P&S agreement; and
 - f)** Understanding the dangers of the unauthorized practice of law;
 - 2.** For disclosures including but not limited to:
 - a)** Achieving a basic knowledge and understanding of the many mandatory disclosure requirements under New Hampshire and federal statutes;
 - b)** Achieving a basic understanding of the voluntary disclosures that deal with other issues related to New Hampshire laws and rules;
 - c)** Achieving a basic understanding of New Hampshire laws and federal statutes related specifically to material condition of real property; and
 - d)** Achieving a basic understanding of the various forms required and or used to document written disclosures;
 - 3.** For agency including but not limited to:
 - a)** Achieving a broad understanding of the various roles and relationships available for New Hampshire real estate firms to select as business models;

- b) Helping licensees establish a working knowledge of the duties and obligations inherent in representing or working with clients and customers;
 - c) Familiarizing licensees with the various forms used, and disclosure requirements involved, in the practice of agency in New Hampshire; and
 - d) Helping licensees understand the specific role of facilitator in New Hampshire and the limitations that apply; and
4. For ethical behavior including but not limited to:
- a) Introducing and developing the concept of ethical behavior generally in society and especially in professional business practice;
 - b) Exploring the value of ethical behavior in business practice to achieve an understanding of how that level of professionalism benefits both the consumer and the professional;
 - c) Reviewing the most basic requirements of New Hampshire law as the legal foundation for brokerage practice in New Hampshire;
 - d) Using the current National Association of Realtors® (NAR) Code of Ethics as an example of a long established Code of Ethics to provide the students with a better understanding of:
 - 1. Similarities between New Hampshire license law and the NAR Code of Ethics;
 - 2. Differences between New Hampshire license law and the NAR Code of Ethics to establish the value of practicing at a higher level than the minimal standards of license law; and
 - 3. Conflicts between the NAR Code of Ethics and New Hampshire law or rules.
 - e) Using the NAR Code of Ethics as an example to demonstrate how ethics and law evolve and intersect over time to reflect societal and market changes;
 - f) Reviewing and comparing the enforcement process for both license law and ethics;
 - g) Using the NAR Code of Ethics as an example to point out recent changes designed to adapt to professional, societal, and market changes; and
 - h) Establish that the commission frequently requires licensees found in violation of its regulations to take an ethics class to improve those licensees' understanding of professional conduct.

PART Rea 303 Examinations

- I. Rea 303.01 Examination Schedule. Examinations for broker and salesperson candidates shall be scheduled a minimum of 4 times a year.

- II. Rea 303.02 Examination Response Records. All records of candidate examination responses shall remain the property of the commission and shall be maintained for at least one year from the date of examination.
- III. Rea 303.03 Examination Failure. Candidates for the broker or salesperson examination who took the examination and are notified that they did not receive a passing grade for part or all of the examination shall submit a new examination fee and the original failing score report(s) if they desire to be rescheduled.
- IV. Rea 303.04 Failure to Attend Examination. Any candidate who fails to attend an examination for which they are scheduled shall be required to submit a new examination fee and registration form if they desire to be rescheduled.
- V. Rea 303.05 Partial Examinations.
 - a. Candidates for the broker and salesperson examination who took the examination and are notified by the testing service that they received a passing grade for only one portion, either the uniform portion or the state portion, of the examination, shall not be required to re-take the portion of the examination which they passed. Such candidates shall submit a new examination fee and the original passing and failing score report(s) if they desire to be rescheduled to take only the portion of the examination which they failed.
 - b. A minimum passing grade of 70 for both the uniform and state portions of the examination shall be obtained within a 6- month period from the date of the original examination in order to qualify for licensing as a real estate salesperson or broker. Candidates who fail to attain a passing grade on both portions of the examination within a 6 -month period from the date of the original examination or after 8 examinations shall be required to complete an accredited pre-licensing course in addition to any pre-licensing course previously submitted to take the original examination and re-take the examination in its entirety.

PART Rea 304 Reciprocity

- I. Rea 304.01 Reciprocity for Licensure. Reciprocity requirements regarding licensing shall be as specified in Rea 301.03(c).
- II. Rea 304.02 – REPEALED

PART Rea 305 Licenses

- I. Rea 305.01 Foreign Corporation.
 - a. A corporation organized under the laws of another state shall be registered with the New Hampshire secretary of state pursuant to RSA 293-A in order to do business in New Hampshire.
 - b. A completed “Firm Application” form, effective June 2017, shall be filed with the commission by the principal broker in order to have its New Hampshire real estate license issued in its corporate name.
 - c. “Firm Application” forms shall contain the notarized signature of the principal broker and power of attorney.

- d. The principal broker shall supply a current certificate from the NH secretary of state for the registered corporation, along with the completed “Firm Application” form described in (b) above.
- II. Rea 305.02 Firms. An individual or firm requesting a license or license amendment showing a trade name or firm name, shall submit with each original and renewal application, a certificate of filing, as required by the New Hampshire secretary of state, of required documents before the commission shall issue such license.
- III. Rea 305.03 Form of License Certificates and Cards.
 - a. Upon receiving the completed license application, the required fee, and evidence that the license applicant has met all other requirements and qualifications for licensure, the commission shall issue an appropriate license and card.
 - b. Licenses and cards issued shall contain in part or whole the following information:
 - 1. Whether the license is a broker, salesperson, firm, or firm branch license;
 - 2. The name, trade name, or both, city, and state of the broker, salesperson, firm, or firm branch;
 - 3. The principal broker of the salesperson, associate broker, or firm license;
 - 4. The managing broker of the firm branch license;
 - 5. The beginning date and expiration date of the license;
 - 6. The effective date of the license; and
 - 7. The license number as issued by the commission.
- IV. Rea 305.04 Placement of License Certificates.
 - a. In situations where wall display of license certificates is not desired, the certificate of each licensed firm, principal broker and those of all licensed brokers and salespersons working through that principal broker may instead be prominently displayed in a public area in a manner offering easy visibility and accessibility to any client, customer, or a member of the public wishing to examine them.
 - b. In the case of a firm branch office, the firm branch, managing broker, and those of all licensed brokers and salespersons working through that managing broker shall display license certificates in accordance with (a) above.
- V. Rea 305.05 Letter of Good Standing.
 - a. A completed “Letter of Good Standing” form, revised 9/2019, shall be submitted with the appropriate fee to the real estate commission.
 - b. Upon receiving the completed form and the required fee, the commission shall issue an appropriate letter.
 - c. Letters issued shall contain in part or whole the following information regarding the licensee:
 - 1. Name;
 - 2. Home address;
 - 3. Real estate license number;

4. Whether the licensee is a broker or salesperson;
5. Date the broker or salesperson license was issued;
6. Date the license is due to expire;
7. Whether the license was obtained by examination;
8. The license expiration date; and
9. Whether or not there is any disciplinary action filed against the licensee.

CHAPTER Rea 400 Continued Status

PART Rea 401 License Renewals

I. Rea 401.01 Renewals of License.

- a. Applicants for renewal of a broker's license shall complete and submit a "Broker Renewal" form, revised 9/2019, if submitting a paper renewal, and an "Online Broker Renewal" form, effective ***[insert effective date]***, if submitting an online renewal, and include the following:
 1. If the applicant answered "yes" to questions 1-5 on the "Broker Renewal" form or the "Online Broker Renewal" form, a sheet of paper attached to the application giving full details and an explanation;
 2. If the applicant is a principal broker, the applicant's signature after the following certification: "As a principal broker, pursuant to RSA 331-A:13, V, I hereby give permission to the Real Estate Commission to audit the escrow account or accounts. I attest that I have read the forgoing statement and affixed my signature below:"
 3. For all applicants, the applicant's signature after the following certification: "I have read and understand the state statutes 331-A and the administrative rules. I attest that the information contained in this form is true and correct to the best of my knowledge and belief and I further acknowledge that the provision of materially false information in the application knowingly provided is a basis for denial and if it is discovered after the license is issued, is a basis for disciplinary action by the board:"
 4. If the applicant is a principal broker or managing broker, a copy of a surety bond in the sum of \$25,000 to run concurrently with the dates of licensure, executed by the applicant and by a surety company authorized to do business in the state of New Hampshire.
- b. Applicants seeking renewal as an associate broker under (a) above or as a salesperson under (c) below shall have their principal broker complete and submit the appropriate sections of the relevant form, which shall include an attestation by the principal broker that the renewal applicant is, to the best of the principal broker's knowledge, of good moral character and is trustworthy, indicated by principle broker's signature under the following certification: "Upon

receipt of the license herein applied for, the above named applicant will be employed by me or will otherwise be under contract with me to perform services as a real estate licensee, and will work under my supervision. I will display his/her license prominently at my place of business, and when he/she leaves my employ I will immediately notify the New Hampshire Real Estate Commission within 5 days, as required by RSA 331-A:17, IV. To the best of my knowledge the applicant is of good moral character and is trustworthy.”

- c. Applicants for renewal of a salesperson’s license shall complete and submit a “Real Estate Salesperson Renewal” form, revised 9/2019, if submitting a paper renewal, and an “Online Salesperson Renewal” form, effective ***[insert effective date]***, if submitting an online renewal, and include the following:
 - 1. If the applicant answered “yes” to questions 1-5 on the “Real Estate Salesperson Renewal” form or the “Online Salesperson Renewal” form, a sheet of paper attached to the application giving full details and an explanation; and
 - 2. The applicant’s signature after the following certification: “I have read and understand the state statutes 331-A and the administrative rules. I attest that the information contained in this form is true and correct to the best of my knowledge and belief and I further acknowledge that the provision of materially false information in the application knowingly provided is a basis for denial and if it is discovered after the license is issued, is a basis for disciplinary action by the board:”
- d. The online forms described in (a) and (b) above may be accessed at <http://www.app-support.nh.gov/licensing>.
- e. All broker and salesperson renewal applicants shall complete continuing education requirements pursuant to Rea 403.01.
- f. Each licensee who is applying to have her or his license placed on active status shall submit a continuing education certificate pursuant to RSA 331-A:19, containing the following:
 - 1. Name, address, license number, and signature of renewal applicant;
 - 2. Name and location of continuing education program;
 - 3. Date and number of credit hours obtained; and
 - 4. Name of program instructor.
- g. Principal broker and managing broker applicants shall submit to the commission a surety bond in the sum of at least \$25,000 to run concurrently with the dates of licensure, executed by the applicant and by a surety company authorized to do business in the state of New Hampshire.
- h. All applicants for renewal of a broker license as a firm shall complete and submit a “Real Estate Commission Firm Renewal” form, revised 9/2019 and attach the firm’s certificate of good standing from the secretary of state. If the applicant is a non-resident, the applicant shall include on the application a signed irrevocable consent and power of attorney statement, as required by RSA 331-A:22, II.
- i. All applicants for renewal of a broker license as a firm branch shall complete and submit a “Firm Branch Renewal” form, revised 9/2019 and attach the firm’s

certificate of good standing from the secretary of state. If the applicant is a non-resident, the applicant must include on the application a signed irrevocable consent and power of attorney statement, as required by RSA 331-A:22, II.

II. Rea 401.02 Renewals of Late or Lapsed License.

- a. All broker and salesperson renewal applicants who submit a renewal form up to six months after expiration shall be considered late and:
 1. Pay the regular renewal fee; and
 2. Pay the late fee established in Rea 301.02.
- b. All broker and salesperson renewal applicants who submit a renewal form after six months from expiration, but before twelve months from expiration, shall be considered lapsed and:
 1. Pay the lapsed fee established in Rea 301.02;
 2. Submit a written document explaining why the applicant believes the period of time for lapse and the good cause meets the requirements of RSA 331-A:18, II. For purposes of this section, good cause shall include serious accident, illness or other circumstances beyond the control of the applicant;
 3. The commission or designee shall grant the request to renew a lapsed license if the licensee meets the requirements of RSA 331-A:18, II.
- c. All broker and salesperson renewal applicants who submit a renewal form twelve months or later from expiration shall be considered an original applicant and are required to complete all education, examination, and application requirements pursuant to Rea 301.01 and Rea 301.03.

PART Rea 402 Reserved

PART Rea 403 Continuing Education

I. Rea 403.01 Continuing Education Requirements.

- a. All active and inactive renewal applicants shall complete a minimum 3- hour continuing education core course that has been accredited by the commission pursuant to Rea 302.01.
- b. All renewal applicants whose licenses are on active status, and inactive licensees who are applying to have their licenses placed on active status, shall complete an additional 12 hours of continuing education elective courses accredited by the commission pursuant to Rea 302.01.
- c. A salesperson renewal applicant as defined in Rea 403.01(b), who is applying for his or her first renewal, shall complete post-licensing continuing education courses as designated by the commission to meet the applicant's 12 hours of continuing education elective courses in addition to the core course.
- d. The 12 hours of post-licensing continuing education in Rea 403.01(b) shall consist of accredited courses from one each of four approved post-licensing course topics, and may include one or more additional accredited courses from approved optional post-licensing course topics.

- e. An additional 3- hour core course may be submitted as elective course hours to fulfill the requirement of (b) above by renewal applicants whose licenses are on active status and not applying for their first renewal, and inactive licensees who are applying to have their licenses placed on active status.
 - f. All applicants, when submitting an application for renewal of a broker or salesperson license prior to the expiration date of the license, shall have completed the continuing education required in (a) and (b) above within the current 2 year license period.
 - g. All courses submitted to fulfill the requirements of (a)-(e) above shall have different course numbers.
 - h. All applicants, when submitting an application for renewal of a broker or salesperson license after the expiration date of the license, shall have completed the continuing education required in (a) and (b) above within the prior 2 year license period, but no later than the late renewal period allowed under RSA 331-A:18.
- II. Rea 403.02 Continuing Education Documentation and Audits.
- a. All active and inactive renewal applicants shall retain verification records for a period of at least 4 years.
 - b. Continuing education documentation shall be made available to the commission for random audit and verification purposes.
 - c. Documentation shall support continuing education hours claimed.
 - d. Failure to provide documentation for audit verification shall result in disciplinary action pursuant to Rea 200.
 - e. Not less than 10% of the licensees shall be randomly selected each year by the commission for compliance with the continuing education requirements outlined in Rea 403.01 and (a) – (d) above.

PART Rea 404 Ongoing Requirements

- I. Rea 404.01 Sign on Office. A broker's business sign to identify her or his business office shall be displayed outside her or his real estate office, providing that such a sign is permitted by local zoning ordinances.
- II. Rea 404.02 Amendments.
 - a. Each licensee and firm shall at all times keep the commission informed of the licensee's or firm's current resident address, mailing address, email address, contact phone number(s), work location address, legal name, firm officers or partners, or trade names.
 - b. Any such changes in the information listed in (a) above shall be reported, in writing, to the commission no later than 10 days after the change by completing and submitting one or more of the following Amendment Forms:
 - 1. "Change of Address/Phone/E-Mail," revised 9/2019;
 - 2. "Activation of an Inactive License," revised 9/2019, which includes an attestation from the licensee's principal broker that the applicant is of good moral character and is trustworthy, indicated by the principle broker's signature under the following certification: "Upon receipt of

the license herein applied for, the above named applicant will be employed by me or will otherwise be under contract with me to perform services as a real estate licensee, and will work under my supervision. I will display his/her license prominently at my place of business, and when he/she leaves my employ I will immediately notify the New Hampshire Real Estate Commission within 5 days, as required by RSA 331-A:17, IV. To the best of my knowledge the applicant is of good moral character and is trustworthy;"

3. "Change of Managing Broker of Firm or Branch Office," revised 9/2019. Individuals submitting this form shall submit the following with the form:
 - a) The original firm wall license; and
 - b) The original wall license and pocket card of both the old and new managing broker. If the wall license or pocket card is not available, the individual shall submit an explanation as to its unavailability;
 4. "Change of Officers/Partners," revised 9/2019;
 5. "Change of Principal Broker of Firm or Trade Name," revised 9/2019. Individuals submitting this form shall submit the following with the form:
 - a) The original firm wall license; and
 - b) The original wall license and pocket card of both the old and new managing broker. If the wall license or pocket card is not available, the individual shall submit an explanation as to its unavailability;
 6. "Deactivation of an Active License," revised 9/2019. Individuals submitting this form shall also submit the individual's original wall license and pocket card. If the wall license or pocket card is not available, the individual shall submit an explanation as to its unavailability;
 7. "Change of Broker Status," revised 9/2019. Individuals submitting this form shall submit the following along with the form:
 - a) If there is a change from a broker license type to another, the individual's wall license and pocket card; and
 - b) For principal and managing brokers, proof of a surety bond in the sum of \$25,000 to run concurrently with the dates of licensure, executed by the individual and by a surety company authorized to do business in the state of New Hampshire;
 8. "Name Change," revised 9/2019. Individuals submitting this form shall include legal proof of their name change.
- c. Whenever a licensee changes his or her affiliation from one principal broker to another, or ceases to represent a principal broker, the principal broker shall notify the commission, in writing, no later than 5 days after the change along with the appropriate form described in (b) above.

- d. In addition to completing the appropriate form described in (b) above, the new principal broker shall attest that the applicant is of good moral character and is trustworthy.
- e. An amendment fee shall be submitted for any changes listed in (a) through (c) above that require the salesperson, broker, firm, or firm branch license to be amended.
- f. Should a broker or salesperson change her or his status to nonresident broker or salesperson, she or he shall file an irrevocable consent and power authorizing the commission to act as specified in RSA 331-A:22.

III. Rea 404.03 Copies of Written Instruments.

- a. Licensees shall, after execution by all parties, deliver the original or photocopy or electronic transmission of any instruments to any party or parties executing the same without delay when:
 - 1. Such instrument has been prepared by such licensee under the supervision of the principal broker;
 - 2. Such instrument relates to the employment of the licensee;
 - 3. Such instrument pertains to the consummation of a lease, purchase, sale, or exchange of real property; or
 - 4. Such instrument pertains to any other type of real estate transaction in which a licensee participates.

IV. Rea 404.04 Brokerage Contracts.

- a. No broker or salesperson shall act on behalf of a seller or lessor with regard to negotiating the sale, purchase, exchange or lease of any real estate or of the improvements thereon, collect rents, or attempt to collect rents without a written contract signed by all parties.
- b. The listing contract in (a) above shall contain the following provisions:
 - 1. The date of execution;
 - 2. The address, location, description, and asking price of the real estate to sell, exchange, purchase or lease;
 - 3. The names and addresses of all parties to the contract;
 - 4. The professional fee stated as a dollar amount, percentage or other specific consideration; and
 - 5. The date the contract expires.
- c. Consent to designated agency shall be obtained within the listing agreement, pursuant to RSA 331-A:25-e, II.
- d. Consent to dual agency showings may be obtained within the listing agreement by a separate dated signature of the seller or landlord.
- e. Any provisions to extend the contract in (a) above for a specific period of time shall be agreed upon in writing by all parties to the contract.
- f. Net listings shall be prohibited. "Net listing" means a listing wherein the commission to be received is the difference between the selling price and a minimum selling price acceptable to the seller.

- g. No broker or salesperson shall act on behalf of a buyer or lessee with regard to the purchase, exchange or lease of any real estate or of the improvements thereon without a written contract signed by all parties.
 - h. The buyer agency/tenant representation contract in (g) above shall contain the following provisions:
 - 1. The date of execution;
 - 2. General description, location, and price range of real estate sought;
 - 3. The names and addresses of all parties to the contract;
 - 4. The professional fee stated as a dollar amount, percentage, or other specific consideration; and
 - 5. The date the contract expires.
 - i. Consent to designated agency shall be obtained within the buyer agency/tenant representation contract, pursuant to RSA 331-A:25-e, II.
 - j. Consent to dual agency showings may be obtained within the buyer agency/tenant representation contract by a separate dated signature of the buyer/tenant.
 - k. Any provisions to extend the contract in (g) above for a specific period of time shall be agreed upon in writing by all parties to the contract.
 - l. A licensee may act as a disclosed dual agent only with the written informed consent of all parties.
 - m. The disclosed dual agency informed consent agreement signed by all parties shall contain the following provisions:
 - 1. The date of execution;
 - 2. The date of the listing contract and date of the buyer agency/tenant representation contract;
 - 3. The names and addresses of all parties to the agreement and the real estate agency;
 - 4. A clear statement of the disclosed dual agent's duties pursuant to RSA 331-A:25-d;
 - 5. A statement that the disclosed dual agency informed consent agreement shall not be extended beyond the dated listing contract and the dated buyer agency/tenant representation contract without the necessary extensions, pursuant to Rea 404.04(e) and (k); and
 - 6. The date the disclosed dual agency informed consent agreement expires.
 - n. If consent to dual agency showings is not obtained on the listing contract or buyer agency/tenant representation contract, then consent to dual agency may be obtained at a later date but only in accordance with Rea 404.04(l).
- V. Rea 404.05 Advertisements.
- a. A salesperson or broker shall not advertise the sale, purchase, exchange, or lease of real property, other than the sale, exchange or lease of her or his own real property, in a manner indicating the offer to sell, purchase, exchange or lease is being made by a principal. Every such advertisement shall clearly indicate that it is an advertisement of a principal broker, pursuant to RSA 331-A:16, IV.

- b.** A salesperson or broker shall not advertise the sale, purchase, exchange or lease of real property for another or others without prominently including in the advertisement the name of the real estate brokerage firm with which he or she is associated, or the name of that licensee's principal broker, pursuant to RSA 331-A:16, IV.

CHAPTER Rea 500 Ethical Standards

PART Rea 501 Code of Ethics

I. Rea 501.01 Agency Code of Ethics.

- a.** Pursuant to RSA 331-A:9, I, no commission member shall participate in any action related to the issuance of a license or disciplinary matter involving the member or a person with whom the member is personally or professionally associated, or in any such action in which the member has a direct financial interest;
- b.** Pursuant to RSA 331-A:9, II, no commission member or commission employee shall, for compensation of any type, other than compensation that is normally authorized for commission related business, teach or participate in any preparatory or continuing education effort approved by the commission;
- c.** Pursuant to RSA 331-A:9, III, no more than one commission member shall serve as an officer of a professional association which represents real estate brokers and salespeople;
- d.** Commissioners shall uphold and apply the constitution of the State of New Hampshire and RSA 331-A and the administrative rules adopted thereunder, impartially and objectively;
- e.** Commissioners shall administer RSA 331-A and the administrative rules adopted thereunder free of partiality or the appearance of partiality, and without discrimination against any person because of race, color, religion, sex, national origin, or any other class protected under the constitution and statutes of New Hampshire;
- f.** Commissioners and commission employees shall refuse gifts as defined by RSA 15-B:2, V from groups or persons whose interests have been, are, or are likely to be before the agency.
- g.** Commission employees shall maintain the confidentiality of pending cases, but shall also provide access to public records or proceedings as required by law;
- h.** Commissioners and commission employees shall immediately notify the New Hampshire commission investigator when information which would normally lead to an investigation is received from licensees or the public;
- i.** Commissioners and commission employees shall always adhere to the provisions of due process during a hearing; and

- j. Commissioners shall contribute to the public interest by advising, suggesting, and supporting rules and legislation which will improve the real estate profession.

CHAPTER Rea 600 Complaints – Reserved

CHAPTER Rea 700 Conduct of Licensees

PART Rea 701 Disclosure

- I. Rea 701.01 Brokerage Relationship Disclosure.
 - a. A licensee shall provide a written brokerage relationship disclosure to the consumer at the time of first business meeting.
 - b. A licensee showing a property listed with another agency shall disclose their brokerage relationship verbally or in writing to the other party's agent prior to showing the property and in writing on the offer.
 - c. Licensees shall use the "Brokerage Relationship Disclosure Form", effective June 2017, adopted by the commission.
 - d. The above referenced disclosure form shall not be required to be given to buyer or tenant and seller or landlord or other licensees who attend an open house if the broker or salesperson, by sign, poster, pamphlet, or other conspicuous means, discloses the licensee's brokerage relationship with the seller.
 - e. The above referenced disclosure form in (c) above shall include notice that a licensee acting in the capacity of a facilitator may only perform ministerial acts as defined in RSA 331-A:2, VI-a and is not obligated as an agent to the buyer or tenant and seller or landlord, and the fact that this relationship at some future time, but prior to the preparation of an offer, could change to an agency relationship.
 - f. If a buyer or seller chooses not to enter into a relationship with the licensee and the consumer will not sign a brokerage relationship disclosure form, the licensee shall note that fact on a copy of the disclosure form and shall retain such copy for 3 years.
 - g. A licensee intending to act in the capacity of a dual agent shall:
 - 1. At the time of first business meeting with a consumer to discuss a specific property, provide a written brokerage relationship disclosure pursuant to Rea 701.01(a);
 - 2. On the listing contract and buyer agency/tenant representation contract, give the client the option to accept or deny a dual agency statement of consent to showings, pursuant to Rea 404.04;
 - 3. Have the informed consent to dual agency agreement signed and reviewed by the buyer/tenant and seller or landlord at the time in which the dual agency occurs, but no later than the preparation of a written offer for sale or lease, pursuant to Rea 404.04; and

4. Indicate in writing on the offer that the broker is acting in the capacity of a dual agent.
- h. A licensee intending to act in the capacity of a designated agent shall:
 1. At the time of the first business meeting with a consumer provide a written brokerage relationship disclosure, pursuant to Rea 701.01(a);
 2. On the listing contract and buyer agency/tenant representation contract, disclose to the client the firm's designated agency policy;
 3. On the above contracts there shall be disclosure and consent to all designated agents appointed to the client. Substitutions of designated agents shall not be made without the informed written consent of the client;
 4. When consent to designated agency has been given by the seller or landlord and the buyer or tenant, written notice shall also be provided to the seller or landlord and the buyer or tenant that designated agency has occurred with both the seller or landlord and buyer or tenant in the transaction. This notice shall be provided prior to the execution of the purchase and sale or lease agreement;
 5. If the designated seller's agent and the designated buyer's agent in a transaction are affiliated with the same broker and the seller or landlord and the buyer or tenant each have consented to designated agency, a separate consent to dual agency of the appointing agent shall not be required; and
 6. If the designated seller or landlord agent is also the designated buyer or tenant agent in the same transaction, the designated agent shall be a dual agent and a separate informed consent to dual agency shall be required in accordance with RSA 331-A:25-d.
- II. Rea 701.02 Licensee's Duty to a Prospective Buyer. A licensee shall disclose to a prospective buyer or tenant any material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the licensee has actual knowledge. Such disclosure shall occur any time prior to the time the buyer or tenant makes a written offer to purchase or lease the subject property. This shall not create an affirmative obligation on the part of the licensee to investigate material defects.
- III. Rea 701.03 Private Water Supply Disclosure.
 - a. A licensee, when listing property for sale, purchase or exchange which is served by a private water supply and is used or proposed to be used for a one to 4 family dwelling, shall ask the seller for at least the following information:
 1. Type of system;
 2. Location;
 3. Malfunctions;
 4. Date of installation;
 5. Date of most recent water test; and
 6. Whether the seller has experienced a problem such as an unsatisfactory water test or a water test with notations.

her or his managing or principal broker, shall be immediately delivered to her or his managing or principal broker.

III. Rea 702.03 - REPEALED

PART Rea 703 Conducting Business in New Hampshire With Brokers Licensed in Another Jurisdiction

I. Rea 703.01 Cooperative Brokerage Agreements.

- a.** A licensed New Hampshire broker may cooperate with an out-of-state broker with respect to a specific commercial real estate transaction provided the out-of-state broker complies with the laws of this state and both brokers agree in writing to all of the terms expressed in a cooperative brokerage agreement prior to the commencement of any brokerage activity.
- b.** The licensed New Hampshire broker shall request a copy of the out-of-state broker's license or the license of the out-of-state salesperson working under the direct supervision of the out-of-state broker or other proof of licensure from the jurisdictions where the out-of-state broker or out-of-state salesperson maintains a license as a real estate broker or salesperson.
- c.** To comply with (a), above, New Hampshire brokers shall obtain from the commission, a "Cooperative Brokerage Agreement Form", effective June 2017.
- d.** The New Hampshire broker shall complete a "Cooperative Brokerage Agreement Form", by supplying the following:
 - 1.** Date the agreement was entered into by the parties;
 - 2.** Date the agreement will expire, provided however, a cooperating broker agreement shall not have a term that exceeds one year;
 - 3.** Provision for any extension or early termination of the agreement;
 - 4.** Name, telephone numbers and address of the owner(s) of the commercial properties or, when the agreement involves buyer or tenant representation, the name, telephone number, and address of the buyer(s) or tenant client(s);
 - 5.** Location or legal description of the commercial properties, or both, when applicable;
 - 6.** A statement which requires the parties to agree to the type of relationship the agreement will covers with the consumer;
 - 7.** A statement that both the New Hampshire broker and the out-of-state broker agree that all negotiations, including the showing, advertising, and listing of the property, shall be handled under the direct supervision of the New Hampshire broker, with the New Hampshire broker recognizing her or his responsibility under RSA 331-A;
 - 8.** A statement that the out-of-state broker agrees not to advertise the listing in any manner unless the New Hampshire broker is included in the advertising and that such advertising shall be with full knowledge of and under the direct supervision of the New Hampshire broker, giving the name and telephone number of the New Hampshire broker equal prominence with the out-of-state broker;

9. A statement that by signing the cooperative brokerage agreement, the out-of-state broker and any out-of-state salespersons working under the direct supervision of the out-of-state broker is:
 - a) Agreeing to abide by New Hampshire law and the rules of the commission; and
 - b) Is formally granting an irrevocable consent and power providing that legal actions can be commenced against said broker in the proper court of any county of this state in which a cause of action does arise or in which the plaintiff resides by service of process or pleading authorized by the laws of this state on a member of the commission or its executive director, the consent or power stipulating that such service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident in this state;
 10. A statement requiring the New Hampshire broker to accept the responsibility for determining that the out-of-state broker and any out-of-state salespersons working under the direct supervision of the out-of-state broker is licensed as a broker or salesperson in another state and agreeing to notify the commission immediately if the out-of-state broker or out-of-state salesperson violates any part of the cooperative brokerage agreement;
 11. A statement that if the out-of-state broker or out-of-state salesperson fails to comply with any provision of RSA 331-A:22-a he or she shall be considered in violation of RSA 331-A:34;
 12. The commissions or other compensation, stated as a dollar amount, percentage, or other specific consideration;
 13. A statement that if any earnest monies or deposits are received, accepted, or held in accordance with RSA 331-A:13 and Rea 702.01, the same shall be placed in the escrow account of the New Hampshire broker;
 14. The name, address, and witnessed signature of the New Hampshire broker; and
 15. The name, address, and witnessed signature of the out-of-state broker.
- e. The commissions or other compensations resulting from the purchase, sale, rent, or lease, or management of the commercial property, and which are earned during the period the agreement is in force, shall be divided between the New Hampshire broker and the out-of-state broker on a negotiable basis;
- f. The parties shall execute 2 completed original cooperating agreements. The New Hampshire broker and the out-of-state broker shall each receive one of these originals.

Declaratory Rulings issued by the NH Real Estate Commission

Declaratory Ruling on the Applicability of RSA 331-A Regarding the Use of Electronic Signatures

NEW HAMPSHIRE
REAL ESTATE COMMISSION

DECLARATORY RULING ON THE APPLICABILITY OF RSA 331-A REGARDING THE USE OF ELECTRONIC SIGNATURES

A request for Declaratory Ruling was submitted by Paul Griffin, the Executive Vice President of the New Hampshire Association of REALTORS ("NHAR") on behalf of the NHAR to issue a ruling on the use of electronic signatures on documents included in real estate transactions whether by consumers or licensees and to provide specific guidelines for consumers and licensees to follow.

The Commission rules that the use of electronic signatures by licensees does not violate RSA 331-A provided that the licensee's use of electronic signatures complies with RSA 294-E and the Federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001, et seq.



Daniel S. Jones, Commissioner

1/15/13

Date



David C. Dunn, Commissioner

1/15/2013

Date

William E. Barry

William E. Barry, Commissioner

1-15-2013

Date



Paul A. Lipnick, Commissioner

01-15-2013

Date



James R. Therrien, Commissioner

01/15/2013

Date

Declaratory Ruling on the Applicability of the Use of Electronic Recordkeeping of Real Estate Records

NEW HAMPSHIRE REAL ESTATE COMMISSION

DECLARATORY RULING ON THE APPLICABILITY OF THE USE OF ELECTRONIC RECORDKEEPING OF REAL ESTATE RECORDS

A request for Declaratory Ruling was submitted by Stephen Patriquin as to whether documents and files for active/currently listed properties, as well as properties with an accepted contract/agreement, that are kept in an electronic media format rather than in a paper format in the real estate office complies with RSA 331-A:26.

The Commission rules that the use of electronic recordkeeping for real estate records is permissible and issues the following Commission Policy on electronic records:


POLICY ON ELECTRONIC RECORDS

Real estate licensees may utilize electronic recordkeeping methods to comply with the recordkeeping requirements of RSA 331-A:26 provided that the following conditions are met:

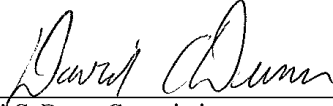
1. All documents required to be retained must be readily accessible and reproducible in an organized format providing ease in document identification.
2. In order to ensure proper document retention, the principal broker of all real estate firms which use electronic recordkeeping methods must develop and utilize a retention process which safeguards the security, authenticity, and accuracy of the records for the entire required retention period and which also provides for the use of technology and hardware which ensures the accessibility of records in a readable format.



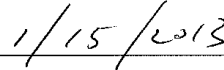
Daniel S. Jones, Commissioner



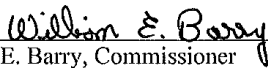
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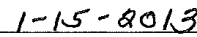
David C. Dunn, Commissioner



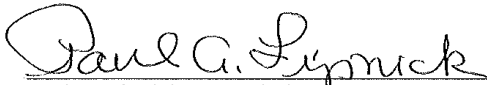
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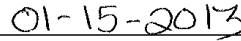
William E. Barry, Commissioner



Date



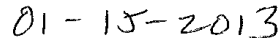
Paul A. Lipnick, Commissioner



Date



James R. Therrien, Commissioner



Date

Declaratory Ruling on Concessions

NEW HAMPSHIRE REAL ESTATE COMMISSION

DECLARATORY RULING On The Applicability of RSA 331-A:25-b,I(c), RSA 331-A:25-c,I(c) and RSA 331-A:25-d,II(e) to the Confidentiality of Concessions

Andrew Werry, CEO of Northern New England Real Estate Network submitted a Petition for Declaratory Ruling as to the applicability of RSA 331-A:25-b,I(c), RSA 331-A:25-c,I(c), and RSA 331-A:25-d,II(e) to the confidentiality of concessions.

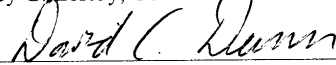
Mr. Werry through the Petition requested a ruling on what constitutes a "concession" and whether "concessions" in connection with the sale or lease of real estate, as negotiated by the seller/landlord or buyer/tenant are confidential under RSA 331-A:25-b,I(c), RSA 331-A:25-c,I(c), and RSA 331-A:25-d,II(e).

The Commission ruled that there is no definition of concession under RSA 331-A or Administrative Rules Rea 100-700. However; RSA 331-A:25-b,I(c), RSA 331-A:25-c,I(c), and RSA 331-A:25-d,II(e) specifies when confidential information received from the seller/landlord or buyer/tenant shall be preserved as confidential by the licensee.

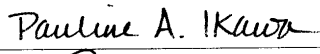
The following Commissioners took part in the discussions and decisions of the declaratory ruling:


Nancy G. LeRoy, Commissioner

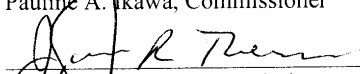
12/15/09
Date


David C. Dunn, Commissioner

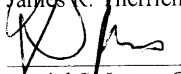
12/15/09
Date


Pauline A. Ikawa, Commissioner

12/15/09
Date


James R. Therrien, Commissioner

12/15/2009
Date


Daniel S. Jones, Commissioner

12/15/09
Date

Declaratory Ruling on the Applicability of RSA 331-A to www.zerobrokerfees.com

NEW HAMPSHIRE REAL ESTATE COMMISSION

DECLARATORY RULING ON THE APPLICABILITY OF RSA 331-A TO WWW.ZEROBROKERFEES.COM

Assistant Attorney General David M. Hilts of the New Hampshire Department of Justice presented his Petition for Declaratory Ruling as to the applicability of RSA 331-A to www.ZeroBrokerFees.com to the NH Real Estate Commission ("Commission") at its meeting held on April 19, 2007. Attorney Hilts explained that Skynet Corporation, the corporation which controls the ZeroBrokerFees website, states in its suit against the New Hampshire Real Estate Commissioners and the Attorney General, that Skynet, as controller of ZeroBrokerFees.com ("ZBF") is subject to the Real Estate Practice Act and that their First Amendment Rights are being violated. Attorney Hilts explained that there are three elements to the petition. The first, is whether ZeroBrokerFees.com "is acting for another" under the definition of broker under RSA 331-A:2, III, which states that "a broker is any person acting for another." The second element under the definition of broker is whether ZBF is acting for another "on commission or for other compensation", and the third element deals with the specific actions that RSA 331-A:2, III specifies, which Skynet Corporation admits in its suit that they engage in three of the listed activities through ZBF. They admit that they list, offer, attempt or agree to list real estate for sale, lease or exchange as defined under RSA 331-A:2, III (d); assist or direct in the procuring of prospects, calculated to result in the sale, exchange, lease, or rental of real estate as defined under RSA 331-A:2, III (h); and engage in the business of charging an

advance fee in connection with any contract for listing in a publication or database as defined under RSA 331-A:2, III (j).

The Petition for Declaratory Ruling submitted by Attorney Hilts requested rulings on the following questions regarding the activities of Skynet Corporation through its website, www.ZeroBrokerFees.com.

1. Based upon ZeroBrokerFees.com's description of itself and its business practices in the Complaint, and upon review of its website at www.ZeroBrokerFees.com, is it or any other business with the same or substantially similar characteristics subject to licensing and/or other regulatory requirements set forth in the New Hampshire Real Estate Practice Act, codified in RSA Chapter 331-A?

Based upon the facts that were presented by Skynet Corporation of the activities conducted through ZBF in the complaint of ZeroBrokerFees.com v. Arthur Slattery, et al, the Commission rules that ZBF would not require a real estate broker license in New Hampshire based on the facts presented in the Petition to the Commission that ZBF receives an upfront fixed fee for advertisement only, and does not receive any commission or any other form of compensation. This decision is based on the fact that Skynet Corporation states that they do not hold themselves out as brokers or agents for sellers or buyers with respect to the real estate the company advertises; that neither ZBF nor its employees charge or receive a commission when properties are successfully sold; that ZBF is an online classified advertising and information service; and that the company charges a flat fee to property owners who wish to advertise their property on ZBF.

2. Is ZeroBrokerFees.com or any other business with the same or substantially similar characteristics a “newspaper or other publication of general circulation” as those terms are used in the definition of “Advance Fees” in RSA 331-A:2, I?

The Commission rules that the Internet falls under the definition of “other publication of general circulation” and would exempt ZBF from licensure under RSA 331-A consistent with the answer above, and on a past ruling made on a request for a Commission interpretation at the August 22, 2006 Commission meeting.

3. Does ZeroBrokerFees.com or any other business with the same or substantially similar characteristics “act for another” for the purposes of RSA 331-A:2, III?

The Commission rules that ZBF would not fall under the element of the definition of broker, “acting for another”, based on the facts stated in the Petition that are referenced in the Commission’s ruling on question #1 and the following additional facts stated in the Petition: “Neither ZBF nor any of its officers or employees purport to exercise judgment on behalf of any particular individual whose circumstances the company is directly acquainted”; “Sellers and buyers retain their own legal counsel, work and negotiate their own sale themselves”; and the Commission found no evidence in the Petition that ZBF provides advice, direction or counsel to the sellers or buyers on this advertising and information service.

4. Do any of the practices described above or that are apparent in a review of the Complaint or ZBF’s website indicate that ZBF acts on the promise of receiving, and then receives, a commission or other compensation, other than their advertising fee?

Based on the facts stipulated in the decision in the ruling to question #1 and that ZBF states that they only receive an up-front fixed advertisement fee and do not receive any commissions or other compensation, the Commission rules that the activities of ZBF do not fall under the definition of brokerage activity under RSA 331-A.

The following Commissioners took part in the discussions and decisions of the declaratory ruling:


Robert S. Stephen, Commissioner

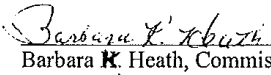
6/15/07
Date


Arthur H. Slattery, Former Commissioner

6/14/07
Date


Nancy G. LeRoy, Commissioner

6/14/07
Date


Barbara K. Heath, Commissioner

6/15/07
Date

Declaratory Ruling on the Definition of "First Business Meeting" as Used in Rea 701.01(a) and the Definitions of "Substantive Communication" and "Initial Acts"

NEW HAMPSHIRE REAL ESTATE COMMISSION

DECLARATORY RULING On The Definition of "First Business Meeting" as Used In Rea 701.01(a) and the Definitions of "Substantive Communication" and "Initial Acts"

A request for a Declaratory Ruling was submitted by Paul Griffin, the Executive Vice President of the New Hampshire Association of REALTORS ("NHAR") on behalf of the NHAR to issue a ruling defining the phrase "first business meeting" as found in Rea 701.01(a) and as found in the header of the New Hampshire Real Estate Commission Brokerage Relationship Disclosure Form.

The Commission defines "First Business Meeting", "Substantive Communication", and "Initial Acts" as follows:


"First Business Meeting" is defined as the first substantive communication regarding a real estate transaction by a face-to-face meeting, a written communication, telephonic communication, or an electronic communication with the consumer ("the prospective seller, buyer, landlord and/or tenant").

"Substantive Communication" is defined as any action or conduct that exceeds initial acts and includes, but is not limited to, discussion of:

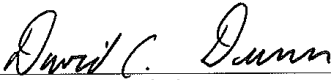
- a. Any specific financial qualifications of the consumer; or
- b. The selling, buying, leasing, or renting motives or objectives of the consumer, in which the consumer may divulge any confidential personal or financial information, which if disclosed to the other party, could affect that party's bargaining position.

"Initial Acts" is defined as actions or conduct that a licensee may perform for a consumer that are informative in nature and do not rise to the level of representation on behalf of a consumer. Initial Acts include, but are not limited to, the following:


- a. Responding to inquiries by consumers as to the availability and pricing of real estate services;
- b. Responding to inquiries from a consumer concerning the price or location of real property;
- c. Attending an open house and responding to questions about the property from a consumer;
- d. Setting an appointment to view property;
- e. Describing a property or the property's condition in response to a consumer's inquiry;
- f. Referring a person to another broker or service provider.


 Daniel S. Jones, Commissioner

10/15/13
 Date


 David C. Dunn, Commissioner

10/15/2013
 Date


 William E. Barry, Commissioner

10/15/2013
 Date


 Paul A. Lipnick, Commissioner

Oct. 15, 2013
 Date

Commissioner James R. Therrien was recused from the discussion and decision.

Declaratory Ruling on the Definition of "Reasonable Supervision" as Used in RSA 331-A:16,I-II and RSA 331-A:26,XXVII

NEW HAMPSHIRE REAL ESTATE COMMISSION DECLARATORY RULING ON THE DEFINITION OF "REASONABLE SUPERVISION" AS USED IN RSA 331-A:16, I-II AND RSA 331-A:26, XXVII

The Commission defines "reasonable supervision" as follows:

A. In accordance with RSA 331-A:16, I-II, each real estate office shall be supervised by a principal and/or managing broker. Such broker shall exercise reasonable supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to such office. The principal or managing broker may designate another licensee to assist in carrying out his/her supervisory duties, but such designation shall not relieve the principal or managing broker of responsibility for the supervision of the acts of all licensees and employees assigned to the office(s) that such broker is assigned to manage.

B. "Reasonable Supervision" by the principal or managing broker is hereby defined by the Commission to include but not necessarily be limited to:

1. Being available to all licensees and unlicensed staff under his/her supervision at reasonable times to review documents, including leases, contracts, brokerage agreements, and advertising as may affect the firm's clients/customers and business;
2. Ensuring the availability of appropriate training opportunities for all licensees;
3. Ensuring that the office has written procedures and policies that provide clear guidance in the following areas:
 - a. Handling of escrow deposits in compliance with state law and commission regulations;
 - b. Complying with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;
 - c. Complying with advertising and marketing law and commission regulations;
 - d. Negotiating and drafting of contracts, leases, and brokerage agreements;
 - e. Exercising appropriate oversight and limitations on the use of unlicensed assistants, whether as part of a team arrangement or otherwise;
 - f. Creating, maintaining and terminating agency relationships and elements thereof;
 - g. Creating, maintaining and terminating independent contractor relationships and elements thereof;
 - h. Distributing information on new or amended laws or regulations; and
 - i. Disclosing required information relating to the physical condition of real property;
4. Providing resources so that brokerage services can be carried out competently and in accordance with the provisions of RSA Chapter 331-A and Commission regulations;
5. Maintaining the records required by this ruling for three years;
6. Maintaining adequate, reasonable, and regular contact with associated licensees engaged in real estate transactions so as to attempt to prevent or curtail practices by a licensee that would violate any provision of RSA Chapter 331-A, the commission regulations, or other state or federal laws applicable to real estate transactions; and

7. Being available to the public during normal business hours in order to discuss or resolve complaints and disputes which arise during the course of real estate transactions in which the managing broker or an associated licensee is involved.

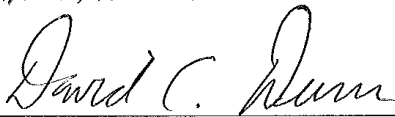
C. The fact that a licensee engages in conduct that violates RSA Chapter 331-A, commission regulations, or other state or federal laws applicable to real estate transactions, is not sufficient, without additional evidence that a principal or managing broker failed to comply with Part B of this Declaratory Ruling, to prove that a principal or managing broker has failed to reasonably supervise the licensee.



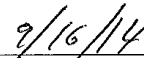
Daniel S. Jones, Commissioner



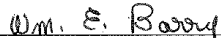
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David C. Dunn, Commissioner



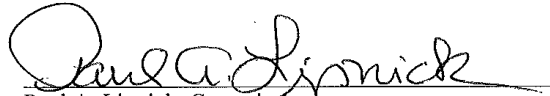
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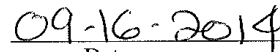
William E. Barry, Commissioner



Date



Paul A. Lipnick, Commissioner



Date

Commissioner James R. Therrien was recused from the discussion and decision of this Declaratory Ruling.

Declaratory Ruling on Applicability of RSA 331-A-13, IV to the sale of HUD-owned properties

STATE OF NEW HAMPSHIRE
REAL ESTATE COMMISSION

DECLARATORY RULING ON THE APPLICABILITY OF RSA 331-A:13, IV TO THE SALE OF HUD-OWNED PROPERTIES

Pursuant to Rea 201.08(a), Nathan Dickey, petitioned the New Hampshire Real Estate Commission (the "Commission") for a declaratory ruling that the requirements related to the withdraw of escrow deposits set forth in RSA 331-A:13, IV do not apply to the sale of HUD-owned properties in the Single Family Property Disposition Program because that provision is preempted by federal law. The Commission agrees.

Facts

Real Estate Brokers that participate in the sale of HUD-owned properties are required to follow the federal regulations for the Single Family Property Disposition Program, 24 C.F.R. pt. 291, and the HUD Handbook 4310.5, which identifies the procedures for disposing of such property. Specifically, federal regulations provide that "[e]arnest money deposits are subject to total or partial forfeiture for failure to close a sale." 24 C.F.R. §291.205(h)(2).

HUD implements this provision of the regulation by providing the following provisions in its Property Disposition Program Sales Contract:

Should Purchaser refuse or otherwise fail to perform in accordance with this contract, including the time limitation, Seller may, at Seller's sole option, retain all or a portion of the deposit as liquidated damages. The Seller reserves the right to apply the earnest money, or any portion thereof, to any sums which may be owed by the Purchaser to the Seller for rent.¹

In addition, the following provision is included in the Notice to Purchaser, "Should the Selling broker, Agent and/or Purchaser refuse or fail to fulfill the contractual obligations, HUD reserves the right to retain all or a portion of the Purchaser's deposit as liquidated damages."² Further, the second page of the notice details out the circumstances when all or a portion of the deposit is returned and/or forfeited.³

¹ Ex B, page 1, para 12.

² Ex B, page 3

³ Ex B, page 4. Para: Earnest Money Forfeiture and/or Return

Similar provisions are found in the Buyer Select Closing Agent program forms:

As the closing agency/company identified above, we agree that no release, whether written or oral, will be required from the buyer or any other entity prior to forwarding the earnest money to [HUD] should the earnest money be determined as forfeited in par or whole, and such determination is provided in writing by HUD...in accordance with HUD's Earnest Money Policy which the purchaser has signed.⁴

State law limits when deposits may be withdrawn from escrow accounts. Specifically, RSA 331-A:13, IV provides that "none of the contract deposits shall be withdrawn until the contract has been terminated by performance, by contemporaneous agreement in writing between all parties, or by order of a court of competent jurisdiction, except as provided by paragraph VI of this section."

Discussion

The Commission finds that it is not possible to comply with both the requirements of RSA 331-A:13, IV and the federal regulations and procedures for the Single Family Property Disposition Program contained within 24 C.F.R. pt. 291 and the HUD Handbook 4310.5. Specifically, the standard program contract language clearly requires the forfeiture of escrow deposits in certain circumstances. In addition, the program requires that the buyer agree that "no further release" is required to provide the deposit to HUD in event of forfeiture. These requirements conflict with the state law requirement in RSA 331-A:13, IV for a court order or contemporaneous agreement in order to release a deposit from an escrow account.

As a result, the Commission rules that state law conflicts with federal law related to the sale of HUD-owned properties under the Single Family Property Disposition Program. See Crosby v. National Foreign Trade Council, 530 U.S. 363, 371-72, (2000) (holding that Congress implicitly preempts state law when Congress intends federal law to "occupy the field," or if Congress has not occupied the field, state law is preempted to the extent of any conflict with a federal statute.)

⁴ Ex B, page 10

Conclusion

RSA 331-A:13, IV does not apply to the sale of HUD-owned properties in the Single Family Property Disposition Program because that provision is preempted by federal law.

BY ORDER OF THE BOARD

Dated: May 17, 2017



Linda Capuchino,
Division Director

Declaratory Ruling on Payments to LLC

STATE OF NEW HAMPSHIRE
REAL ESTATE COMMISSION

DECLARATORY RULING ON THE APPLICABILITY OF RSA 331-A:26, XXIV AND UNLICENSED BUSINESS ENTITIES

Pursuant to Rea 201.08(a), Berkshire Hathaway HomeServices – Verani Realty, petitioned the New Hampshire Real Estate Commission (the “Commission”) for a declaratory ruling that clarifies whether RSA 331-A:26, XXIV prohibits a licensed broker from paying a commission to a real estate broker that has formed a limited liability company (LLC), but has not obtained a license for the LLC. The Commission agrees that such a payment is prohibited.

Real Estate brokers are required to be licensed pursuant to RSA 331-A:3. Either an individual or entity, such as a corporation or LLC, may seek a broker license. RSA 331-A:2, III and VII. In addition, an individual broker or “firm broker” may register a trade name with the Commission. RSA 331-A:17, II. When a firm is licensed, “all members and officers of a corporation, partnership or association, who actively participate in the business of real estate brokerage, shall possess an active broker’s or salesperson’s license.” RSA 331-A:16, III.

Real Estate brokers are limited to paying commissions to licensees. Specifically, RSA 331-A:26, XXIV prohibits, in relevant part:

Paying or offering to pay valuable consideration, as defined by the commission, to any person not licensed under this chapter, except that valuable consideration may be shared with a licensed broker of another jurisdiction who is doing business regularly and legally within that broker’s own jurisdiction. No licensee shall knowingly pay a commission or other valuable consideration to a licensed person knowing that the licensee will in turn pay a portion or all of that which is received to a person who does not hold a valid real estate license.

Thus, an individual may choose to be licensed as an individual broker and receive commissions in his or her individual name. The individual may be licensed as an individual broker, properly register a trade name, and can receive commissions as the registered trade name. Last, an individual can form an entity, such as a LLC. In that situation, the individual must be licensed, and if the LLC will be receiving commission payments, the LLC must also be licensed. There is no ability for a salesperson to register a trade name or be licensed as an entity.

Conclusion

RSA 331-A:26, XXIV prohibits paying commission to unlicensed entities.

BY ORDER OF THE COMMISSION

Dated: June 19, 2018



Rick A. Wisler, Administrator III
Division of Technical Professions
NH Office of Professional Licensure and Certification
Authorized Representative of the NH Real Estate
Commission

Declaratory Ruling on Sharing Commissions With Another Principal

STATE OF NEW HAMPSHIRE
REAL ESTATE COMMISSION

DECLARATORY RULING ON WHETHER NON-LICENSED PRINCIPALS CAN SHARE TRANSACTION COMMISSIONS

Pursuant to Rea 201.08(a), James Hochman, petitioned the New Hampshire Real Estate Commission ("Commission") for a declaratory ruling that clarifies whether transaction commissions can be shared with a principal to the transaction. The Commission finds that such a sharing is not allowed.

Unless otherwise exempt, Real Estate brokers are required to be licensed pursuant to RSA 331-A:3. Further, it is unlawful for any person to act as a broker without a license. RSA 331-A:3. The definition of "broker" includes "any person acting for another on commission" while performing specific functions. RSA 331-A:2, III. The activities include assisting with or directing in "the procuring of prospects" or "the negotiation of any transaction." RSA 331-A:2, III (h)-(i). A principal is "the party or parties to a real estate transaction who contract the services of a real estate brokerage firm." RSA 331-A:2, VII-a.

Real Estate brokers are limited to paying commissions to licensees. RSA 331-A:26, XXIV (outlining the duty to not share commissions, "[n]o licensee shall knowingly pay a commission or other valuable consideration to a licensed person knowing that the licensee will in turn pay a portion or all of that which is received to a person who does not hold a valid real estate license"). Additionally, brokers have a certain set of obligations under the statute. These obligations bind licensees to the duties of "loyalty, obedience, confidentiality, reasonable care, diligence, and accounting." RSA 331-A:25-a, I. The statutory framework allows for certain exemptions from these licensing requirements. These exemptions include, for example, an "owner who is not a licensee." RSA 331-A:4, I. An exempted person does not diminish or effect the duties and obligations of other licensees. The New Hampshire Supreme Court, in *Robinson v. N.H. Real Estate Comm'n*, indicated that the plain language of the exemption statute is not ambiguous. 157 N.H. 729, 732 (2008). When construing the statute as a whole, however, removing duties of those not exempted is outside the scope of the exemptions clause. Therefore, while exempted individuals are not barred from earning a commission, licensees are still barred from "paying or offering to pay valuable consideration" to non-licensees. See RSA 331-A:26, XXIV.

Further, the New Hampshire Supreme Court has found, partially under the theory of unjust enrichment, that non-brokers should not be able to accept a commission. In *Kowalski v. Cedars of Portsmouth Condominium*, the Court noted that one who is not licensed as a broker "is ordinarily not entitled to collect a commission" as such, agreements to pay commissions to non-licensed individuals is not enforceable—thus "void at its inception." 146 N.H. 130, 132 (2001)

(quoting 12 AM. JUR. 20 *Brokers* § 217 (1997)). This general principle is codified at RSA 331-A:32, stating that actions for compensation are restricted to those “duly licensed under this chapter as a broker or salesperson at the time of offering.”

Conclusion:

A licensee cannot share commissions with an unlicensed individual—even if that individual is exempt from licensure. RSA 331-A:4 exemptions do extend to property owners, however the exemption does not impact the obligations of those who are licensed. Further, the Supreme Court of New Hampshire has held that commissions paid to non-brokers are unenforceable, and therefore void.

There is nothing, however, that prohibits a broker from lowering the commission to be charged to a principal to the transaction.

BY ORDER OF THE COMMISSION

Dated: June 19, 2018



Rick A. Wisler, Administrator III
Division of Technical Professions
NH Office of Professional Licensure and Certification
Authorized Representative of the NH Real Estate
Commission

Declaratory Ruling on 3rd Party Solicitations for a Licensee

STATE OF NEW HAMPSHIRE REAL ESTATE COMMISSION

DECLARATORY RULING ON WHETHER NON-RESIDENT, THIRD-PARTY COMPANIES CAN SOLICIT AND BOOK LISTINGS FOR A LICENSEE

Pursuant to Rea 201.08(a), Terry Lajoie, petitioned the New Hampshire Real Estate Commission ("Commission") for a declaratory ruling that clarifies whether an unlicensed, third-party company from outside of New Hampshire can solicit and book real estate listings on behalf of an agent. The Commission finds that such a solicitation for compensation is not allowed if the company is performing activities that are outside the scope of those that can be performed by an unlicensed assistant.

Unless otherwise exempt, any person acting as a broker must have a license. *See* RSA 331-A:3. The definition of "broker" extends to "any person acting for another on commission" when conducting certain activities. RSA 331-A:2, III. The activities include assisting with or directing "the procuring of prospects" or engaging in "the business of charging an advance fee in connection with any contract whereby the person undertakes to promote the sale or lease of real estate." RSA 331-A:2, III (h) & (j). Further, a broker is one who is "acting for another" and is doing so "for compensation." *See Skynet v. Slattery*, 2008 DNH 072, at 8 (D.N.H. Mar. 31, 2008) (noting the meaning of "broker" requires activities listed in RSA 331-A:2, III be done while "acting for another" and "for compensation").

In her petition, Ms. Lajoie provides an example of a service offered by a third-party company. The service offered to "contact the leads, engage them and verify they are ready to work with a Realtor" in addition to "set[ting] all the appointments." It is unclear whether this specific conduct requires licensure or whether this is permissible unlicensed assistant work. The ambiguity comes from the use of the word "lead" in their advertisements. Additional information is needed regarding the source of the leads to be contacted and the nature of the contact to assess whether the service constitutes assisting in the "procuring of prospects" or another aspect of brokering, thereby requiring a license. Should their services be limited to those below for unlicensed assistants, the Commission would deem the service permissible without a license.

Real estate brokers may have unlicensed assistants, but these assistants have limited roles. Previously the Commission has issued a guideline document outlining roles for unlicensed assistants and continue to find such activities permissible for unlicensed assistants. These roles can include: giving general information about listed properties, ushering changes to MLS databases, delivering paperwork, and scheduling appointments for licensee to show a listed property. As far as a general rules for whether an unlicensed assistants can handle a task for the agent, the Commission offers "that an unlicensed assistant should have very little contact with

the buyer or seller beyond providing secretarial assistance or factual information on listings.” Solicitation is explicitly mentioned as not a task for unlicensed assistants.

With regard to the fact that the company is out of state, RSA 331-A:22 notes that nonresident requirements apply only to license applicants, therefore not unlicensed assistants to licensees. RSA 331-A:22, III. Further, since the statutory scheme allows for a nonresident to become a broker, the ability for a nonresident to be an unlicensed assistant is also permissible.

Conclusion:

RSA 331-A requires solicitation and other broker tasks to be handled only by licensed individuals. Unlicensed assistants can perform clerical duties, but these cannot include solicitation. Both licensed individuals and unlicensed assistants can be non-residents of New Hampshire.

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Declaratory Ruling on Dual Licensure

STATE OF NEW HAMPSHIRE

REAL ESTATE COMMISSION

Order on Petition for Declaratory Ruling

Petition of Ryan Kaplan

Ryan Kaplan ("Petitioner") requests a declaratory ruling by the Real Estate Commission (the "Commission") on whether he may hold an associate and a principal broker's license simultaneously. The Petitioner makes this request so that he may be licensed as an associate broker at Tate and Foss Sotheby's International Realty ("Sotheby's") where he would focus exclusively on sales, and simultaneously be licensed as a principal broker with Envision Property Management, LLC ("Envision") where he would focus exclusively on property management. As explained in greater detail below, the Commission has determined that holding an associate and a principal broker's license at the same time violates the statutes and rules that govern the Commission.

PROCEDURAL BACKGROUND

On June 1, 2021, pursuant to NH Admin. Rules Rea 201.08, the Petitioner submitted a petition for declaratory ruling asking whether it is permissible under the Commission's applicable statutes and rules to have a principal broker's license with one company and at the same time an associate broker's license with another.¹ Specifically, the Petitioner asked the Commission, "Can I be the Principal Broker of my own Property Management Company while hanging my license as an Associate Broker with a sales agency?"

FACTS PRESENTED BY THE PETITIONER

¹ The Petitioner also sought temporary approval of the request from the Commission granting him dual licenses subject to the outcome of this Declaratory Ruling. The Commission denied the petitioner's request for temporary approval.

The Petitioner worked for two years as a licensee with Arthur Thomas Properties in Dover, New Hampshire. He then transferred his license on December 14, 2020 to Sotheby's. Following the transfer, the Petitioner went from having a "primary portfolio of Property Management to one of Sales exclusively." After his transfer to Sotheby's, the Petitioner earned his NH Broker license. The Petitioner, now able to work in both sales and "property management," has received several requests from property owners asking him to manage their properties. The Petitioner's firm, Sotheby's, does not undertake property management work. Envision was founded by the Petitioner with the purpose of exclusively managing properties. The Petitioner's principal broker at Sotheby's is in support of him operating as an associate broker at Sotheby's and a principal broker at Envision. Presently, the Petitioner is a licensed associate broker as defined under RSA 331-A:2, I-c. The principal broker in charge of supervising the Petitioner is Tony Jalbert with Sotheby's.

DEFINITIONS

The Real Estate Practice Act defines "Broker" to be

any person acting for another on commission or for other compensation, for the promise of commission or other compensation, or any person any person licensed under this chapter acting on the licensee's own behalf who:

- (a) Sells, exchanges, purchases, rents, or leases real estate.
- (b) Offers to sell, exchange, purchase, rent or lease real estate.
- (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate.
- (d) Lists, offers, attempts or agrees to list real estate for sale, lease or exchange.
- (e) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.
- (f) Collects, offers, attempts or agrees to collect rent for the use of real estate.
- (g) Advertises or holds oneself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate.
- (h) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, lease, or rental of real estate.
- (i) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate.

(j) Engages in the business of charging an advance fee in connection with any contract whereby the person undertakes to promote the sale or lease of real estate, through its listing in a publication or data base issued for such purpose, through referral of information concerning such real estate to brokers, or both.

RSA 331-A:2, III. A principal broker is “the individual broker ... whom the [Commission] hold[s] responsible for the actions of licensees who are assigned to such individual broker.”

RSA-331 A:2, VIII (emphasis added). An associate broker is “any person who is licensed as a real estate broker, but who is employed by a principal broker . . . and in addition operates under the supervision of a principal broker to participate in any activity described in [RSA 331-A:2, III].” RSA 331-A:2, I(c) (emphasis added).

The Real Estate Practice Act does not define “property management”² and the Petitioner has not explained specifically what services he plans to provide at his proposed property management firm. In responding to the Petitioner’s request, the Commission assumes that the Petitioner intends to engage in one or more of the activities listed in RSA 331-A:2, III.

DISCUSSION

The Real Estate Practice Act is the bedrock upon which the entire profession of real estate brokers is built. *See* RSA 331-A:1. No statute or rule specifically states that licensees of the Commission may hold no more than one license at a time. However, as explained in greater detail below, a review of these statutes and rules leads to the clear conclusion that dual licensure would be inconsistent with both the text and the intent of these provisions of law. Moreover, even if the Petitioner could hold both an associate and a principal broker’s license, any brokerage services he provided as a principal broker would be in conflict with his duties as an associate broker. *See Dupont v. N.H. Real Estate Comm’n*, 157 N.H. 658, 661 (2008) (Standard of conduct

² The only use of the term “property management” in the statutes and rules governing the Commission is in reference to elective courses offered to licensees. *See* RSA 331-A:20, II(b); NH Admin. R. Rea 302.02, (a)(3)(h), (a)(6).

exists “regardless of whether or not it directly affects a particular real estate transaction.”) (quoting the trial court)). The Commission, therefore, concludes that its statutes and rules do not permit the dual licensing that Mr. Kaplan has proposed.

If licensed as a principal broker, Petitioner would be empowered to engage in the activities listed in RSA 331-A:2. However, RSA 331-A:2, I-c requires that an associate broker must operate under the supervision of a principal broker whenever they engage in an activity falling under RSA 331-A:2, III. Unlike in other professional licensing statutes, there is no carveout to this requirement. *See, e.g.*, RSA 329:1 (exempting those persons “to whom authority is given by any other statute” from the definition of the practice of medicine). Here, if the Petitioner sought to, for example, advertise, list, offer, or negotiate the renting and leasing of real estate for Envision he would be doing so without the supervision of his Sotheby’s principal broker. Thus, any broker activities he engaged in as a principal broker of Envision would be inconsistent with the requirement of his associate broker license. *See* RSA 331-A:2, I-c. Because the dual licensure arrangement proposed by the Petitioner would render the Petitioner unable to adhere to the requirements of his associate license while performing any principal broker duties, it is clear that the Real Estate Practice Act does not permit such a licensing arrangement. *See* RSA 21:1 (statutory construction may not be “repugnant to the context” of the statute).³

³ This is one instance where dual licensure would create a situation in which the Petitioner could not simultaneously honor the requirements of both his principal broker license and his associate broker license, it is far from the only one. As just one illustrative example, “[a]ll advertisements by a broker or salesperson shall include . . . the principal broker’s name when licensed under an individual principal broker license.” RSA 331-A:16, IV(a); *see also* NH Admin Rules Rea 404.05(b) (requiring prominent display of “that licensee’s principal broker” on all advertisements); RSA 331-A:2, III(g). In order for the Petitioner to advertise for Envision, or on behalf of Envision’s clients, while in compliance with his associate broker’s license he must also prominently list Sotheby’s on the advertisement, despite the fact that Sotheby’s would have no relationship with the Petitioner’s actions as principal broker of Envision.

Additionally, it would violate the Commission's procedural requirements to grant the Petitioner two licenses simultaneously. When an associate broker "changes his affiliation⁴ from one licensed principal broker to another or ceases to represent the principal broker," the principal broker must provide the Commission with notice of the change, along with the associate broker's license. RSA 331-A:17. IV. The Commission's Change of Broker Status form similarly requires that when a licensee seeks a new or different form of licensure, he is required to return to the Commission his existing license. The Petitioner's proposed arrangement involves him being affiliated with Sotheby's for some activities but unaffiliated with Sotheby's for all of his Envision activities. He might conceivably wear both hats multiple times in a single day. In order to comply with the procedural requirements, the Petitioner would need to surrender his license to the Commission repeatedly. Sotheby's would, similarly, be required to return the Petitioner's license to the Commission whenever he engaged in broker activities for Envision, only to reclaim it whenever the Petitioner again engaged in broker services for Sotheby's. This thoroughly unworkable result is additional strong evidence that the Petitioner's proposed form of dual licensure is not permitted under the Commission's statutes and rules.

It is of significant concern to the Commission that the Petitioner's proposed dual licensure would also directly conflict with the legislature's stated purpose for the Real Estate Practice Act. The purpose of the Real Estate Practice Act is to "promote public understanding and confidence in the business of real estate brokerage." RSA 331-A:1. Transparency is core to

⁴ The Commission's Salesperson, Associate and Managing Broker Affiliation form makes clear that an associate broker is affiliated with their principal broker by virtue of the principal broker's supervision of that associate. See Real Estate Commission, Salesperson, Associate and Managing Broker Affiliation Form, <https://www.oplc.nh.gov/sites/g/files/ehbemt441/files/inline-documents/sonh/affiliation-form.pdf> (last modified Jan. 23, 2020); see also RSA 541-A:1, XV (declaring forms are binding administrative rules under NH law).

this understanding and confidence. *See, e.g.*, RSA 331-A:25-d (requiring disclosure of dual agency); RSA 331-A:15, III (requiring prominent display of licenses). Although the Commission has no reason to doubt the Petitioner's intent to only perform property management services at Envision, there is no licensing or enforcement mechanism to ensure that he (and any hypothetical future dual licensee) limit his activities in such a way. Once granted there would be no restriction placed on a principal broker requiring them to solely engage in property management work. The Petitioner's proposed dual licensing arrangement would create a situation in which it would easily become unclear to the public whose interests the Petitioner was representing at any given time. This outcome would contravene the express purpose of the Real Estate Practice Act and should, therefore, not be allowed.

Finally, the Commission finds it appropriate to note that nothing in this decision prevents the Petitioner from engaging in property management services. His associate broker license permits him to engage in any of the activities listed in RSA 331-A:2, III. The Petitioner made his request for this Declaratory Ruling because his current employer is unwilling to permit him to perform property management services as their associate broker. To the extent anyone is restricting the Petitioner's ability to provide the services he wishes to provide, it is his employer and not this Commission.

CONCLUSION

The Real Estate Practice Act and the administrative rules governing the practice of real estate within the State clearly do not permit one individual to be licensed and to act as both an associate broker and a principal broker. Therefore, in response to the Petitioner's question as to whether he may be licensed as a principal broker at one firm and an associate broker at another firm, the Commission concludes that he may not.

Standing Orders

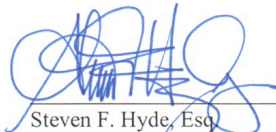
Standing Order on the Approval of Applications

NEW HAMPSHIRE REAL ESTATE COMMISSION STANDING ORDER October 19, 2021

The New Hampshire Real Estate Commission ("Commission") hereby votes to issue a standing Order that gives OPLC staff the authority to approve applications for initial licensure, renewal of licensure, and reinstatement of licensure outside a Commission meeting and without the Commission's express approval, subject to the below requirements.

OPLC Staff may approve an initial licensure application, a renewal license application, or a reinstatement of license application when the applicant meets all the requirements in: (a) the practice act and rules of the Real Estate Commission, RSA chapter 331-A and Rea chapters 100-700. However, if any of the following appears in an application, OPLC staff shall not approve the license and shall provide the full application to the Commission at or before the next Commission meeting for consideration:

- Any conviction for misdemeanor or felony;
- Any disciplinary action taken by another State or Jurisdiction;
- Any deviation in documents or information that deviates from what is mandated in the Commission's Administrative Rules;
- The Commission Administrator's determination that: there is a subjective decision to be made on any part of the application or the applications supporting documents.



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Commissioner and Chair
New Hampshire Real Estate Commission