

**Hudson Burnham  
Real Estate**

**Office Policy Manual**  
*-March 2022-*



**Welcome to Hudson Burnham!**

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## MISSION STATEMENT

It is the mission of **Mysolsa Real Estate Brokerage PLLC, dba "Hudson Burnham Real Estate"** (hereinafter at times also referred to as "**Hudson Burnham**") to profitably and ethically provide high quality professional real estate services to the home buying, home selling, leasing and real estate investing public.

## STATEMENT OF BUSINESS PRINCIPLES

The following principles form the basis for executing the mission statement of **Hudson Burnham**. Licensees, management and staff of the company work as a team to accomplish the mission statement and will abide by these principles.

1. **PROFESSIONALISM:** Professionalism at **Hudson Burnham** means approaching the business with ethical conduct toward our customers and clients. Abiding by the **REALTOR® CODE OF ETHICS** forms the basis of that standard. Secondly, continuing training and education keep us informed and at the peak of awareness for customer and client. Each licensee and employee of **Hudson Burnham**, REALTORS® is pledged to these ideals.
2. **INTEGRITY:** Simply put, honesty in all business dealings is the best way to get and keep business over the long term. Simple honesty also forms the basis for the best business protection we can get. It is a simple, effective, efficient and cost-effective risk reduction method.
3. **PROFITABILITY:** **Hudson Burnham** is in business to make profits in the course of its ordinary activity. Each licensee and staff member has a responsibility to the company to contribute to its profitability, whether it be in terms of direct production of revenue or careful expenditure of company funds.

This Office Policy Manual for **Hudson Burnham** is designed to guide each licensee and staff member in the most important areas of company activity. If a matter is not covered, bring it to the attention of the President/Owner for possible inclusion in future revisions. If a matter is covered, the agent or staff member is expected to act according to this Manual. Failure to act in accord with company policy will be taken into account in future evaluations and/or retention of the licensee or staff member.

**Hudson Burnham** welcomes each new licensee and employee to the business of professional, ethical and profitable real estate sales and leasing.

## EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is **Hudson Burnham** policy to provide equal employment opportunities without regard to race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, gender identity, unfavorable discharge from military service, or familial status, to all qualified employees and applicants for employment. This policy applies to all areas of employment, job assignment, training, promotion, transfer, compensation, discipline and discharge. The company abides by all federal, state and local laws regarding employment practices, including, but not limited to the Americans with Disabilities Act.

## ANTI-HARASSMENT POLICY AND COMPLAINT PROCEDURE

**Hudson Burnham** is committed to a work environment in which all individuals are treated with dignity and respect. The staff of **Hudson Burnham** must work together effectively as a team to accomplish the company's goals. Therefore, **Hudson Burnham** expects that all relationships among employees, independent contractors and business associates both inside and outside the office will be business-like and free of bias, prejudice and harassment.

**Hudson Burnham** fully supports the rights and opportunities of all its employees to work in an environment free from discrimination, harassment, and abusive conduct. **Hudson Burnham** will make every reasonable effort to ensure that all concerned are familiar with these policies and are aware that any complaint regarding violation of such policies will be investigated and resolved appropriately.

**Hudson Burnham**, in accordance with state law, requires every sponsored licensee, independent contractor, and employee associated with **Hudson Burnham** to complete at least one (1) hour of Sexual Harassment Prevention training on an annual basis. **Hudson Burnham** will use the training program developed by the Illinois Department of Human Rights (IDHR).

In addition, Illinois law requires all persons who hold licenses issued by the Illinois Department of Financial and Professional Regulation (IDFPR) to complete at least one (1) hour of approved continuing education on Sexual Harassment Prevention training for each renewal period.

## Encouragement of Reporting and Prohibition on Retaliation

**Hudson Burnham** encourages reporting of all perceived incidents of sexual harassment, harassment, or abusive conduct, which together are referred to herein as “prohibited conduct.” It is the policy of **Hudson Burnham** to promptly and thoroughly investigate such reports. **Hudson Burnham** prohibits retaliation against any individual who reports sexual harassment, harassment, or abusive conduct or who participates in an investigation of such reports.

Retaliation against an individual for reporting prohibited conduct or participating in an investigation of a claim of prohibited conduct is a serious violation of this policy and, like the barred conduct itself, will be subject to severe disciplinary action. Acts of retaliation should be reported immediately in the same manner as any other prohibited conduct addressed in this policy and will be promptly investigated and addressed in a like manner.

## Sexual Harassment

Sexual harassment constitutes discrimination and is illegal under federal, state and local laws. For the purposes of this policy, “sexual harassment” is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. Sexual harassment may include a range of subtle and not-so-subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess or sexual deficiencies; leering, whistling or touching; insulting or obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; and other physical, verbal or visual conduct of a sexual nature. Sexual harassment does not include voluntary relationships between members.

## Harassment

Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal, written or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, gender identity, unfavorable discharge from military service, or familial status, or that of his or her relatives, friends or associates. Harassing conduct includes epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group.

## Abusive Conduct

Abusive conduct includes any verbal or physical conduct including threatening or obscene language, unwelcome actions like strikes, shoves, kicks, or other similar physical contact, or threats to do the same or any other conduct with the purpose or effect of unreasonably interfering with an individual's work performance by creating a hostile, intimidating, or offensive work environment.

## Individuals and Conduct Covered

These policies on prohibited conduct apply to all employees, independent contractors or other staff of **Hudson Burnham**. Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings and business-related social events. To the extent **Hudson Burnham** employees experience any of the prohibited conduct described herein, they should refer specifically to this Anti-Harassment Policy and Complaint Procedure.

## Reporting an Incident of Harassment or Retaliation

**Hudson Burnham** encourages reporting of all perceived incidents of prohibited conduct or retaliation, regardless of the offender's identity or position. Anyone who believes that they have been the victim of such conduct should discuss their concerns with the managing broker of **Hudson Burnham** or the person in charge of Human Resources for **Hudson Burnham**. If the perceived incident of prohibited conduct or retaliation involves the Managing Broker, then the conduct should be reported directly to the Human Resources director. Any **Hudson Burnham** employee that receives a report of suspected misconduct shall immediately notify **Hudson Burnham** managing broker or Human Resources director.

**Hudson Burnham** will handle expeditiously and fairly any allegations of prohibited conduct or retaliation whether or not a written or formal complaint has been filed. They will: (1) take all complaints or concerns of alleged or possible prohibited conduct seriously no matter how minor or who is involved; (2) ensure that prohibited conduct or inappropriate sexually oriented conduct is immediately reported so that a prompt investigation can occur; and (3) take any appropriate action to prevent retaliation or prohibited conduct from recurring during and after any investigations or complaints.

To knowingly allow or tolerate sexual harassment, harassment, or prohibited conduct (which shall include failing to immediately report such misconduct) or retaliation for reporting of the same, is a violation of this policy. When possible, **Hudson Burnham** encourages individuals who believe they are being subjected to such conduct to promptly advise the offender that his or her behavior is unwelcome and demand that it be discontinued. **Hudson Burnham** recognizes, however, that an individual may prefer to pursue the matter through complaint procedures.

The complaint does not have to be in writing. It is helpful if details of dates, times, places and witnesses, if any, to the prohibited conduct can be provided. **Hudson Burnham** encourages



the prompt reporting of complaints or concerns so that rapid and constructive action can be taken. Therefore, while no fixed reporting period has been established, early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of prohibited conduct.

### Complaint Investigation, Confidentiality & Discipline

All complaints will be investigated promptly by **Hudson Burnham**. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge. During the investigation, both the complainant and the accused will be provided a full opportunity to tell his or her side of the story.

The identity of the employee or independent contractor making the complaint as well as the identity of the individual accused of the prohibited conduct will be kept strictly confidential to the extent circumstances will allow. Information regarding the accusations and the investigation that follows will be made known only to persons who are directly involved either as party or witness to the individuals investigating the claim. Witnesses interviewed will be provided only such information as is necessary to elicit from them their observations and other relevant information.

The prohibited conduct described above represent serious offenses and any employee or independent contractor found to have engaged in such conduct is subject to as severe of discipline as **Hudson Burnham** believes is appropriate under the circumstances, up to and including discharge from their position with **Hudson Burnham**.

## **INDEPENDENT CONTRACTOR/EMPLOYEE AGREEMENT**

**Hudson Burnham**, has a policy of associating with its licensees as independent contractors or statutory non-employees (independent contractors). Each licensee will be required to sign the **Hudson Burnham**- Salesperson (Sponsoring Broker- Sponsored-Licensee Contract) agreement setting out the relationship as an independent contractor. While the exact terms of the relationship are covered in the contract, a few reminders about being an independent contractor follow.

1. Income Taxes: All income taxes, federal and state, are the responsibility of the licensee. The company does not withhold or pay Social Security taxes on commission earnings. Self employment tax must be paid by the licensee.
- \*2. Unemployment Taxes: As an independent contractor, the licensee is not covered under state or federal unemployment laws. Independent contractor real estate licensees acting under an agreement such as the **Hudson Burnham** form and compensated by

commission, are exempt from the unemployment laws by Illinois statute. Accordingly, **Hudson Burnham** does not pay unemployment taxes on the earnings of its licensees.

- \*3. Worker's Compensation: As with unemployment taxes, an independent contractor real estate licensee signing an independent contractor agreement like the **Hudson Burnham** form and compensated by commission are exempt from the worker's compensation laws by Illinois statute. Given this statute, **Hudson Burnham** does not cover licensees under its worker's compensation insurance policy. A licensee should check that her/his insurance, particularly health and accident insurance, is adequate.
4. Automobile Insurance: Each licensee should carry adequate automobile insurance to protect not only the licensee but also the customer or client. In today's legal climate, liability coverage of \$100,000 per single person liability, \$300,000 for total bodily injury, and \$100,000 in property damage liability (100/300/100). Any lesser amounts could cause unnecessary exposure of personal assets. Consult carefully with your insurance agent. The licensee must name **Mysolsa Real Estate Brokerage PLLC, dba Hudson Burnham Real Estate** as an additional insured and provide the company with a certificate reflecting that status.

Each licensee is reminded that state law requires that every person in an automobile is required to wear a seat belt. Children and small adults should not sit in the front passenger seat. Airbags are known to release with such force that injury or death is possible for children and small adults. Please see the following links for current requirements regarding infants and children and the use of car seats and the use of seat belts: [www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1819&ChapterID=49](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1819&ChapterID=49).

- \* In Illinois, a licensee must receive all his/her compensation from commissions to be exempt from unemployment tax and worker's compensation laws. With regard to unemployment tax laws, in Illinois, if the licensee does not receive all his/her compensation in commissions, he/she must meet a three-part test to be considered an independent contractor.

5. Expenses: As an independent contractor, each licensee is expected to be in business for herself/himself. Generally, the expenses of that business will be the responsibility of the licensee. **Hudson Burnham** will provide the following items and/or pay for the following expenses:

- Company advertising
- Business cards, first set
- Email address upon request

The licensee will be expected to pay for all other expenses, including these particular items:

- Additional business cards

- Personal car
- Auto Insurance
- Yard signs
- Personal advertising
- MLS fees
- Chicago Association of Realtor membership fees
- Continuing Education (CE) courses
- Mandatory sexual harassment training(s)

## USE OF PERSONAL ASSISTANTS

It is common in the real estate business for high producing licensees to use specific persons, both licensed and unlicensed, as their assistants. **Hudson Burnham** encourages the appropriate use of personal assistants as a tool for high earning licensees to be even more productive. Several caveats are in order from the perspective of the company. Many of the distinctions are based on whether a licensed or unlicensed assistant is used. **Hudson Burnham** policies on the use of personal assistants are as follows:

1. **EMPLOYEE v. INDEPENDENT CONTRACTOR:** Whether licensed or unlicensed, the licensee must decide whether to associate with the personal assistant (hereafter "PA") as an employee or independent contractor. Remember, that if the PA is licensed the employment or independent contractor agreement will be between **Hudson Burnham** and the PA.

Serious issues of the right of control, method of payment and direction of the work exist if the licensee chooses to have an independent contractor PA. **Hudson Burnham** strongly urges the licensee to consult with her/his tax consultant and/or attorney to determine the proper procedures in making this choice. If independent contractor status is chosen, all of the issues mentioned above regarding withholding, unemployment taxes, worker's compensation and automobile insurance will be dealt with in the independent contractor agreement between **Hudson Burnham** and the PA. The form of independent contractor agreement used by **Hudson Burnham** will be signed by the PA unless the licensee with whom the PA works indicates otherwise.

If employee status is chosen for a licensed PA the employment agreement will be between **Hudson Burnham** and the licensed PA with related costs and expenses being charged back to the licensee with whom the PA works. The licensee should be aware that for an unlicensed PA all employment taxes, withholding reports, unemployment tax reports, worker's compensation insurance, reports and W-2 forms are the responsibility of the agent. **Hudson Burnham** will not be a party to the arrangement between the licensee and the unlicensed PA and will not be responsible for any employment activities of the licensee.

2. **UNLICENSED PERSONAL ASSISTANTS:** The policy of **Hudson Burnham** is that unlicensed personal assistants **WILL NOT UNDER ANY CIRCUMSTANCES** perform

licensed real estate activities as defined in the Real Estate License Act (“License Act”) (Section 1-10). The licensee associating with the PA is strictly responsible for maintaining this policy. If an unlicensed PA does any licensed activities, the licensee puts herself/himself in jeopardy of disassociation. The Illinois Department of Financial and Professional Regulation (“IDFPR”) has taken a position as to the types of things unlicensed office personnel may and may not do. Please review Section 1450.740 of the License Act rules to familiarize yourself with these items. The policy of **Hudson Burnham** is that unlicensed personal assistants fall into the same category as unlicensed office personnel.

The licensee is further advised that unlicensed persons may not be paid any fees or commissions for any licensed activities done. The company will not split commissions with an unlicensed person.

3. **LICENSED PERSONAL ASSISTANTS:** By definition, a licensed PA can perform licensed activities. The license of the PA must be held by **Hudson Burnham** and any payments for the real estate business must come from **Hudson Burnham**. The licensed PA will be in violation of the License Act if any compensation for doing licensed activities is accepted from anyone except the sponsoring broker with whom the PA is associated. Please review the section of “Functions of Unlicensed Office Personnel” to determine the difference between “clerical” functions and “licensed activities.”

The easiest and cleanest way to accomplish this is for the licensee to split commissions as they are earned with the licensed PA in whatever proportion the two parties negotiate. The amount of the split between the PA and the agent should be specific and regular and should not vary per transaction. The company requires written agreements between the company and each licensee to delineate the relationship and also requires the PA and licensee to enter into an additional written agreement defining the relationship and specifying the compensation arrangement.

## **OFFICE HOURS**

**Hudson Burnham** regular office hours are 9:00 a.m. to 6:00 p.m. Monday through Friday. Office hours on Saturday are 10:00 a.m. to 6:00 p.m. Sunday will be 10:00 a.m. to 6:00 p.m. Changes may occur periodically and notices will be posted in the office.

## **HOLIDAYS AND HOLIDAY HOURS**

**Hudson Burnham** will post the holidays on which the office will be either closed or open but with an abbreviated schedule at the beginning of each year. Any such schedule will be posted subject to change.

## **OFFICE OPENING AND CLOSING PROCEDURES**

At closing: clean desk, turn off computers and printers, set thermostat, close shades, lock doors.

## **SMOKING POLICY**

Smoking of any kind, including cannabis products, is prohibited in any office of **Hudson Burnham** including private offices, conference rooms, rest rooms and areas not normally accessible to the public. Cigarette smoking is only permitted outdoors in an area that is located at least 15 feet away from the door to the building. This is in accordance with Illinois law. Cannabis smoking for recreational purposes or the use of cannabis of any kind or in any form for recreational purposes is prohibited during working hours or when an employee or independent contractor associated with **Hudson Burnham** is performing work functions or duties.

## **TRAINING PROGRAM AND SCHEDULE**

Weekly training will be offered. Schedules will be posted.

## **SALES MEETINGS/PROPERTY INSPECTIONS**

Attendance of weekly sales meeting is required.

## **INQUIRIES/VISITS BY GOVERNMENT OFFICIALS**

Any inquiry by a government official, whether by telephone, letter, official email or in person, should immediately be forwarded to the managing broker. In the absence of the managing broker, the name of the official and agency or department he/she represents should be obtained. Then, the president or other officer or designated representative of the company should be contacted. If none of these persons is available, the person receiving the inquiry should immediately contact the company's attorney by phone and request that she/he come to the office. Unless presented with a valid search warrant signed by a federal judge or a judge of the county in which the office is located, the person receiving the inquiry should not allow any representative from a local, state or federal office to see any files or any information maintained in the office without first contacting a representative of the company, nor should the person ever answer any questions of such a representative official unless the company's attorney is present.

## **SUBPOENAS AND SUMMONSES**

If a process server appears in the office with a subpoena or summons for the company, any employee or licensee should accept it. Once accepted, it should immediately be turned over to the managing broker. The managing broker should immediately contact the president or other officer of the company. In the absence of any of these persons, the managing broker should contact the company's attorney. If the process server asks for a specific person, only that specific

person may accept the subpoena or summons. If that person is not in the office, the person receiving the inquiry should not volunteer any information about the person requested and should not give out home phone numbers or home addresses, even if asked. Refer the inquiry to the managing broker immediately.

## **LICENSEE SAFETY**

It is critically important that a licensee be aware of safety risks inherent in any business. The residential real estate business presents certain safety risks because of the time of day and week when much of the business is conducted. **Hudson Burnham** has the following safety policies, guidelines and suggestions:

1. If the licensee does not know a customer, try to arrange a meeting at the office or other public place. Another alternative would be to do a basic internet search of the name of the individual(s).
2. NEVER meet a prospect at a vacant house ALONE. ALWAYS take another person with you. DO NOT meet the prospect after dark.
3. ALWAYS let the office or someone at your home know where you will be when showing property, especially, to prospects you are meeting for the first time.
4. When on the showing, DO NOT go to dark areas, basements, garages, or areas without multiple exits. Allow the prospect to view those areas on his/her own and stay in an area which allows for quick exit.
5. ALWAYS drive your own car. DO NOT let a prospect you do not know drive your car or ride in your car. Preferably, meet the prospect at the office, tell the office your destination and expected time of return and drive separate cars to the showing.
6. USE COMMON SENSE. If something doesn't feel right or look right, trust your instincts and remove yourself from the situation.
7. Whether to use self-defense techniques and how to handle a crisis if it occurs are personal decisions. Think about your choices in advance.
8. View safety videos and talk to your local police. The company has a video available on licensee safety and urges each licensee to view it regularly. In addition, the video is regularly shown at a sales meeting and the local police are asked to make safety presentations at a sales meeting periodically. Take advantage of these opportunities to be smart and be safe. Remember, no commission is big enough to justify personal risk!! **(Note: Delete all but the last sentence of #8 if these opportunities are not available in your office.)**
9. Concealed Firearms. The Company (does/does not) allow concealed firearms to be carried on its premises by persons licensed to carry concealed firearms in Illinois. This

policy applies to all persons on the premises, including employees and licensees of the Company.

The prohibition set forth above extends to all places where employee or licensee conducts business for or on behalf of the Company, including the Company's offices, clients' offices or residences, showings, broker tours, open houses, listing presentations, sales meetings, trade meetings and conventions or other Company-sponsored events.

10. Any employee or licensee assigned to show an owner's property shall observe any prohibition of the carrying of concealed firearms posted on the property (in the case of commercial property) or of which the employee or licensee otherwise becomes aware (in the case of residential property).

### **FUNCTIONS OF UNLICENSED OFFICE PERSONNEL**

The policy of **Hudson Burnham** regarding the functions and use of unlicensed office personnel follow the License Act rules promulgated by IDFPR. The general policy is that unlicensed office personnel (secretaries, assistants, personal assistants, receptionists, accounting personnel, etc.) are to be used in a support role to the main real estate business function of the company. UNDER NO CIRCUMSTANCES will unlicensed office personnel be allowed to engage in licensed activities.

"Engaging in licensed activities" means doing any of the acts for which a license is required as defined in the License Act (Section 1-10).

Further defining this area is Section 1450.740 of the License Law rules. This section explicitly allows for the use of unlicensed clerical personnel to support licensed activities but strictly limits their ability to perform licensed activities.

The Rule governing unlicensed PAs states that the unlicensed PA may:

1. answer the telephone, take messages, and forward calls to a licensee;
2. submit listings and changes to a multiple listing service;
3. follow up on a transaction after a contract has been signed;
4. assemble documents for a closing;
5. secure public information from a courthouse, sewer district, water district, or other repository of public information;
6. have keys made for a company listing;
7. draft advertising copy and promotional materials for approval by a licensee;
8. place advertising;
9. record and deposit earnest money, security deposits, and rents;
10. complete contract forms with business and factual information at the direction of and with approval by a licensee;
11. monitor licenses and personnel files;
12. compute commission checks and perform bookkeeping activities;



13. place signs on property;
14. order items of routine repair as directed by a licensee;
15. prepare and distribute flyers and promotional information under the direction of and with approval by a licensee;
16. act as a courier to deliver documents, pick up keys, etc.;
17. place routine telephone calls on late rent payments;
18. schedule appointments for the licensee (this does not include making phone calls, telemarketing, or performing other activities to solicit business on behalf of the licensee); *emphasis added*
19. respond to questions by quoting directly from published information;
20. sit at a property for a broker tour which is not open to the public;
21. gather feedback on showings;
22. perform maintenance, engineering, operations or other building trades work and answer questions about such work;
23. provide security;
24. provide concierge services and other similar amenities to existing tenants;
25. manage or supervise maintenance, engineering, operations, building trades and security; and
26. perform other administrative, clerical, and personal activities for which a license under the Act is not required.

An unlicensed PA may not:

1. host open houses, kiosks, or home show booths or fairs;
2. show property;
3. interpret information on listings, titles, financing, contracts, closings, or other information relating to a transaction;
4. explain or interpret a contract, listing, lease agreement, or other real estate document with anyone outside the licensee's company;
5. negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of a licensee; or
6. perform any other activity for which a license under the Act is required.

## **PAYMENTS TO UNLICENSED PERSONS**

**Hudson Burnham** maintains a strong policy that no unlicensed person will be paid for any real estate activity requiring a license. The License Act makes clear that an unlicensed person may not be paid for engaging in licensed activities.



## **POLICY CONSIDERATIONS AND TEAMS**

Before setting up a "shop within a shop," in other words a "team," you might consider a few legal principles and some important issues to address when considering the practice of real estate brokerage using teams.

### **What Is a Team?**

While not defined within the License Act, for discussion purposes, a "team" is a functional unit operating within a real estate brokerage office comprised of one or more real estate licensees and one or more administrative personnel. It is not to be organized as a separate legal entity.

### **The License Act Applies**

One simple rule to remember is that the License Act applies to all licensees licensed to a sponsoring broker, whether they are part of a team or not.

- The sponsoring broker will remain ultimately responsible for the oversight of the team and all of its licensed members.
- A licensee must work for only one sponsoring broker. Thus, if a licensee is a team member, he/she will be sponsored by the same sponsoring broker as that of the "team captain" and not by the "team captain."
- The sponsoring broker and not the "team captain" must pay every licensee on a team.
- Each licensee on a team must have a written independent contractor or employment contract with the sponsoring broker.
- The team must not be a separate corporation or entity within the sponsoring broker's corporation. This would require another sponsoring broker, and licensees may only work for one.

NOTE: This is not to be confused with a licensee's ability to set up a single shareholder, unlicensed corporation for the purpose of receiving that licensee's compensation. See Section 10-20(e) of the License Act and Section 1450.745 of the Rules under the License Act. Remember, only one licensee can receive compensation through that corporation.

### **Agency Issues**

Designated agency, covered in Article 15 of the License Act, applies to teams. As a result, if one team member represents the seller and one team member represents a buyer, they are not automatically dual agents, but can be designated agents for each party.

- If this is the case, confidential information of opposing parties must be protected from team members on the opposite side of the transaction.
- Office policies and procedures should address agency issues that arise within the team.
- If the team practices disclosed dual agency, written disclosure and consent must be obtained before team members act as dual agents.
- If the head of the team or team captain is named as the designated agent on all brokerage agreements then there will be dual agency.

- The sponsoring broker should analyze how the team is holding itself out to the public.
- If your company or the team is saying to the public that the team represents everyone (both sides) then even if your office policy is designated agency, this may create dual agency requiring disclosure and consent of the parties. The bottom line questions to ask are whether you are protecting opposing parties' confidential information and what are you representing to the public? (Here decide what the office policy will be).

### **Advertising and the Use of Team Names**

If the team has a "team name" which is used in advertising without using the name of the brokerage company, it would be within the discretion and the responsibility of the sponsoring broker to register that name with the appropriate governmental authority and the IDFPR as an assumed name or d/b/a of the sponsoring brokerage company. Neither the team as a unit nor any of the team members has any authority to register a "team name" that is different than the sponsoring broker's business name.

- If the brokerage company is a franchise, then the company name and the franchise affiliation must appear in all ads. So, if a team name is included in the ad along with the company name and the franchise affiliation, no special registration of the team name is necessary.
- If the team name appears in an ad and the company name is also included, no additional registration of the team name is needed.
- If the team name is being used in lieu of the brokerage company name, then registration of the team name by the sponsoring broker is required.

If the brokerage is a sole proprietorship, the assumed business name would be registered by the sponsoring broker in the counties in which the company does business.

If the brokerage is a corporation, the assumed name would be registered by the sponsoring broker with the Illinois Secretary of State's Office.

Once the assumed name is properly registered, it must also be placed on file with IDFPR, and belongs to the sponsoring broker.

### **Independent Contractor v. Employee**

The sponsoring broker must consider whether licensed team members should be treated as independent contractors or employees under the Internal Revenue Code, the Fair Labor Standards Act and other applicable laws.

- If the team member is a licensee, that member could be treated as an independent contractor under statutory provisions of the Internal Revenue Code or under the "traditional test" for independent contractor.
- If a licensed team member is a statutory non-employee, this might be true for tax purposes only; and for other purposes the licensee might be a common law

employee. For example, the Illinois workers' compensation laws might apply, for which the sponsoring broker would be responsible.

- In either case, a licensed team member must have a written contract with the sponsoring broker.
- Unlicensed team members will be employees. Either the sponsoring broker or the team could compensate an unlicensed team member. The sponsoring broker will want to ensure who is responsible for paying the employee and for complying with all applicable employment requirements, such as withholding and workers compensation.

### **Hudson Burnham** **RELATIONSHIP POLICIES**

#### **1. SINGLE AGENCY - Seller Representation Only**

**Hudson Burnham** adopts this written policy identifying and describing the relationships in which licensees may engage with sellers, landlords, buyers or tenants. As used in this policy, the word "Company" means **Hudson Burnham**.

The Company acts only as seller's agents (and/or landlord's agents) through written exclusive representation agreements (listing agreements) or other written agreements for brokerage services with sellers (and/or landlords) and represents only sellers or landlords. Licensees affiliated with Company shall be named as designated agents of the sellers or landlords with whom the company contracts.

The Company's written exclusive representation agreement includes the licensee's duties and responsibilities as agent of the seller. The Company does not act as buyers' agents (or tenants' agents) and will not represent buyers (and/or tenants) nor enter into written agreements for brokerage services with buyers (and/or tenants). However, licensees may perform clerical acts for prospective buyers. The Company will work with buyers (and/or tenants) to sell its listings but only as a non-agent treating the buyer (or tenant) as a customer. Notice of no agency should be given to any prospective buyer or seller with whom you are working who is not already represented by another licensee. The appointment of a designated agent will be made in the exclusive representation agreement, other written agreement for brokerage services or other written notice to the client. The managing broker(s)\* is/are authorized by this policy to make the appointment of designated agents on behalf of the Company.

The Company will not act as a dual agent.

The Company **does not authorize** its affiliated licensees to enter into written agency agreements on behalf of the Company

## **2. SINGLE AGENCY - Buyer Representation Only**

**Hudson Burnham** adopts this written policy identifying and describing the relationships in which the licensees of **Hudson Burnham** may engage with sellers, landlords, buyers or tenants. As used in this policy, the word “Company” means **Hudson Burnham**.

The Company acts only as buyers’ agents (and/or tenants’ agents) through written buyer (and/or tenant) agency agreements or other written agreements for brokerage services with buyers (and/or tenants) and represents only buyers/tenants. Licensees affiliated with Company shall be named as designated agents of the buyers/tenants with whom the Company contracts. The Company’s written agency agreement includes the licensee’s duties and responsibilities as agent of the buyer (and/or tenant).

The appointment of one or more designated agents will be made in a buyer’s agency agreement, written notice of terms and conditions of the brokerage services to be provided or other written notice to the client. The managing broker(s)\* is/are authorized by this policy to make the appointment of designated agents on behalf of the Company.

The Company does not act as sellers’ agents (and/or landlords’ agents) and will not represent sellers (and/or landlords) nor enter into written agreements for brokerage services with sellers (and/or landlords). The Company does not accept listings of property.

The Company will work with a seller (and/or a landlord) as a customer in circumstances where a seller’s (and/or landlord’s) property is not listed and the Company’s buyer client desires to purchase seller’s/landlord’s property. In such circumstances, the Company will obtain the appropriate written authorizations to show the residential property of seller (and/or landlord) and provide a notice of no agency to the seller and/or landlord.

The Company will not act as a dual agent.

The Company will accept compensation from listing brokers and/or sellers with appropriate disclosures to its clients.

The Company **authorizes** its affiliated licensees to enter into written agency agreements on behalf of the Company.

**\*Managing broker(s) is used in this Policy Manual only to refer to the individual(s) designated with IDFP as a named managing broker for the company.**

## **3. SELLER/BUYER AGENCY - Designated Agency (Disclosed Dual Agency Authorized)**

**Hudson Burnham** adopts this written policy identifying and describing the relationships in which the licensees of **Hudson Burnham** may engage with sellers, landlords, buyers or tenants. As used in this policy, the word “Company” means **Hudson Burnham**.

The Company represents sellers, buyers, landlords and tenants through written exclusive representation agreements (listing agreements or property management agreements) or written buyer (and/or tenant) agency agreements or other written agreements for brokerage services with sellers (and/or landlords) or buyers (and/or tenants).

The Company adopts the additional policy of appointing one or more designated agents as agents for clients pursuant to provisions in the License Act (known as “designated agency”). A designated agent shall be an affiliated licensee of the Company who is appointed in writing to be the agent of a client to the exclusion of all other affiliated licensees of the Company. The appointment of a designated agent will be made in a listing agreement, buyer agency agreement, other written agreement for brokerage services or other written notice to the client. The managing broker(s)\* is/are authorized by this policy to make the appointment of designated agents on behalf of the Company.

In the event that a licensee personally represents both the seller and buyer or both the landlord and tenant in a particular transaction, that licensee shall be a disclosed dual agent and is required to comply with the provisions of the License Act governing disclosed dual agents and the Company’s policy regarding disclosed dual agents herein.

In the event that the designated broker of the Company or any of its managing brokers learn confidential information about either party to a transaction or if such broker is consulted by any licensee involved in the transaction, such broker will be a disclosed dual agent. Such broker will also be a disclosed dual agent if the broker supervises the licensee for one side of the transaction and personally represents the other side of the transaction.

If acting as a disclosed dual agent under this policy, the dual agent in the transaction must have the consent of all parties to the transaction. The designated agent must secure the signatures of sellers and buyers or landlord and tenant on a Consent to Dual Agency form before acting as a dual agent. In addition, the parties must initial the section confirming their consent to dual agency in the Real Estate Sales Contract or a lease.

If acting as a disclosed dual agent, the dual agent will be an agent for both the seller and buyer or the landlord and tenant as defined by Illinois law. The dual agent will have the duties and obligations of both a seller’s agent and a buyer’s agent or landlord and tenant’s agent as specified by law. The designated agent should be guided by the duties set forth in the Consent to Dual Agency form. The disclosed dual agent’s role is limited in some respects.

The Company will also work with unrepresented buyers (and/or tenants) to sell or lease its listings. Licensees may perform clerical activities for unrepresented buyers. In any such situation written notice should be given to the buyer by the seller’s/landlord’s designated

agent indicating that the designated agent does not represent the buyer. This should be done at a point in time prior to the buyer/tenant disclosing any confidential information to the designated agent but in any event no later than the preparation of an offer to purchase or lease.

The Company will not act as a subagent and does not authorize its licensees to act in any subagency capacity.

The Company **does not authorize** its affiliated licensees to enter into written agency agreements on behalf of the Company.

## COOPERATION AND COMPENSATION POLICY

Subagency cannot be offered through a multiple listing service under Illinois law. **Hudson Burnham** cooperates and compensates the companies of cooperating licensees. Typically, these are buyers' agents as a result of the designated agency laws in Illinois. However, this does not preclude compensation to a cooperating agent's company where there is some other agreement with a buyer as to the role of the cooperating licensee.

In all cases, before entering into an agreement, the listing agent must disclose to the seller:

1. The Company's policy regarding dealing with cooperating and compensating licensees with cooperating companies as set forth above. The listing agent will disclose to the client the amount that will be paid to cooperating licensees' offices (per the REALTOR® Code of Ethics); and
2. Any potential for **Hudson Burnham** to be a disclosed dual agent, if company policy allows disclosed dual agency.

These disclosures must be made under provisions of the License Act and REALTOR® Code of Ethics.

## AGENCY DISCLOSURE POLICY

**Hudson Burnham**, maintains a policy promoting discussion of agency relationships at the first reasonable opportunity with a customer or a client.

Illinois law requires a licensee to disclose to a customer the fact that you are not acting as their agent. Written disclosure must be given to a customer, any person who has not entered into an agreement to be represented, that you are not acting as their agent. This includes prospective sellers, buyers, landlords and tenants. The disclosure must be given to the person at a time intended to prevent the disclosure of confidential information but, in any event, no later than the preparation of an offer to purchase or lease.

The Company recommends that disclosure be made as follows:

1. If you are acting as a seller's agent then oral disclosure must be made at the time the prospective buyer begins to disclose personal or financial information to the licensee. Written disclosure must be made no later than the beginning of the preparation of an offer to purchase. Use the form entitled Notice of No Agency Relationship.
2. If you are acting as a buyer's agent then oral disclosure should be given to the seller no later than the time of the first showing. Written disclosure must be given to the seller no later than the presentation of an offer to purchase. Use the form entitled Notice of No Agency Relationship.

These disclosures are required only if you are representing a buyer or seller and working with a prospective buyer or seller who is unrepresented.

In light of the increasing emphasis in the industry on agency relationships, **Hudson Burnham**, prefers and urges that each agent discuss agency relationships with customers and clients at the earliest possible time in the relationship to avoid later misunderstandings. All licensees must disclose not later than the time periods required by the License Act and the rules promulgated thereunder.

In cases of potential dual agency, remember that in order to act as a dual agent, you must obtain the signatures of the sellers and prospective buyers on the Consent to Dual Agency form before beginning to act as a dual agent and the parties initial on the Confirmation of Consent to Dual Agency Section in the purchase contract no later than at the contract signing. This requirement applies to dual agency in leasing as well, unless the licensee represents the landlord only.

**(Retain agency disclosure forms with Managing Broker)**

### **MANDATORY BUYER AGENCY EVENTS**

It is the policy of **Hudson Burnham** that any licensee working in the following circumstances **MUST** only act as a buyer's agent and may not act as a dual agent.

1. The licensee is buying property for her or himself, or any entity in which he or she will have an ownership interest.
2. The licensee is working with the licensee's immediate family, that is, spouse, mother, father, brother, sister, children, any of their spouses or any entity owned fully or partially by any of these persons.

### **STRONGLY RECOMMENDED BUYER AGENCY EVENTS**

It is the policy of **Hudson Burnham** that any licensee working in any of the following circumstances is strongly urged to work only as a buyer's agent and not as a dual agent.

1. The licensee is working with any relative by blood or marriage not in the licensee's immediate family as defined above.
2. The licensee is working with a close friend, business associate or long term past customer or client.
3. The agent is working with an entity in which any of those listed in #1 or #2 have an ownership interest.



## AGENCY AND CONFIDENTIALITY

One of the most important statutory duties of a licensee is to maintain the confidentiality of the client, whether buyer or seller. The License Act defines confidential information. It includes information made confidential by written instruction from the client and information made confidential by the statute. The License Act notes that a licensee should treat confidential information provided by the client that may reasonably be expected to have a negative impact on the client's real estate activity. Licensees should pay particular attention not to make unauthorized or offhand comments about a client's situation or a client's property in a way which could be considered a violation of the duty of confidentiality. In particular, four areas are considered of particular importance. They are:

1. The lowest price or terms a seller is willing to accept.
2. The highest price or terms a buyer is willing to pay.
3. The motivation of either party to enter into the transaction, i.e. job change.
4. Previous offers and counteroffers of either party.

In some markets, sellers are in distressed or “underwater” situations with their home loans. If there is no lawsuit yet on file to foreclose, this information might still be confidential to the seller. However, if the seller must have lender approval to consummate a short sale, the listing agent will need to disclose this information to the buyer's side so the listing agent will need to get consent from the seller to disclose seller's distressed position.

If disclosed dual agency is offered, it is particularly important for the dual agent to realize that she/he must hold confidential the information of both buyer and seller, regardless of which party the particular agent is working with at that time.

**(NOTE: If disclosed dual agency is offered, confidentiality provisions for office procedures must be instituted. The following is one example of some areas of procedures to adopt.)**

In offering disclosed dual agency, the Company and all of its associates must be sensitive to confidential information within the office and among the associates of the Company. The following procedures and policies are intended to protect the confidentiality of the Company's clients.

1. Associates should not discuss confidential information of the client between or among themselves.
2. Comments at sales meetings should not reveal confidential information of the client without the client's permission.
3. Office files of listings and pending sales are confidential and may not be accessed except by authorized staff and the particular licensee involved in the listing or transaction.
4. Fax transmissions are confidential. Office staff will place faxes in envelopes or fold them so as not to reveal contents to persons other than to whom the fax is addressed.

5. Telephone messages with confidential information will be distributed in an envelope or be folded to protect the confidential information.
6. Caution should be used not to disclose confidential information in using social media.
7. Direct clients to send all e-mail communications directly to the e-mail address of their designated agent.
8. Contracts, offers, counteroffers or other transactional documents will be delivered to the person addressed in envelopes. Persons other than the addressee are not authorized to open any such envelope.

Please refer to the attachments to the policy manual which refer to "Buyer Agency Do's and Don'ts", and "Disclosed Dual Agency Do's and Don'ts."

## **FAIR HOUSING POLICY**

**Hudson Burnham** believes that fair housing policies are not just the law of the land but simply the right thing to do. **Hudson Burnham** maintains a strong policy upholding all federal, state and any local fair housing laws and Article 10 of the REALTOR Code of Ethics, including review and adherence to NAR's Fair Housing Declaration (<https://www.nar.realtor/sites/default/files/handouts-and-brochures/2016/Fair-Housing-Declaration.pdf>.) In addition, **Hudson Burnham** requires each licensee and staff member to participate in periodic fair housing education.

Accordingly, **Hudson Burnham**, prohibits any licensee or staff member from discriminating against any person in the provision of any of the Company's services because of the person's race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, familial status, military status, sexual orientation, pregnancy, gender identity, unfavorable discharge from military service, or any other class protected by Article 3 of the Illinois Human Rights Act or by local fair housing ordinances in areas in which the company does business. The parties agree to comply with all applicable federal, state and local fair housing laws.

Among the prohibited practices which are against this policy and the law are:

1. Refusing to show, sell or rent based on a person being a member of a protected class.
2. Different treatment/disparate treatment to persons of a protected class.
3. Steering: A person shall not encourage or discourage another from moving into any area because of the race, color, religion, sex, handicap, marital status, familial status, ancestry, age, military status, sexual orientation, or order of protection status.

4. Discriminatory advertising that “expresses” a preference for buyers or tenants of a particular race, color, religion, sex, handicap, marital status, familial status, national origin, ancestry, age, military status, sexual orientation, pregnancy, gender identity, or order of protection status.
5. Harassment (i.e., coercion, intimidation, threats or interference with a person’s fair housing rights or because a party is abiding by fair housing law).
6. Applying more burdensome criteria to applicants of protected classes.
7. Blockbusting/Panic Peddling: A person is prohibited from inducing or attempting to induce another to sell or rent a property by making any express or implied representations regarding the entry or prospective entry into a neighborhood of a person or persons of any particular race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, gender identity, or unfavorable discharge from military service, or any other class protected by Article 3 of the Illinois Human Rights Act. The parties agree to comply with all applicable federal, state and local fair housing laws

Licensees and staff should be aware that persons with AIDS are considered handicapped and "familial status" means families with children under the age of 18 years, an individual who is pregnant or an individual in the process of obtaining legal custody of a person under the age of 18 years.

## **ANTITRUST AVOIDANCE POLICY**

**Hudson Burnham** maintains a strong policy against any antitrust involvement by the Company, its licensees or employees. Few obligations can be taken more seriously than those in this area. **Hudson Burnham** requires each person associated with the Company to participate in antitrust education and acknowledge his/her understanding of these principles. Two areas are the primary antitrust focus.

1. **PRICE FIXING:** Price fixing means any agreement, setting, consent to, suggestion or implication with a competitor regarding a fee to charge. This includes fees charged to the public, fees split among brokers and fees paid to agents. "Agreement" can be overt, covert, express or implied. It is very broad and can even be suggested or implied by casual conversation with any competitor.

Accordingly, **Hudson Burnham**, its licensees and staff are prohibited from discussing with any competitor, including an individual licensee, any aspect of the fees the Company charges or how total fees are split. **Hudson Burnham** determines its charges based on the Company's own independent internal analysis of its expenses, its revenue, its desired profit level and its choice of the type and level of service it desires to provide.

In any discussion with a member of the public about our charges (such as a listing appointment), the only acceptable answer about why the Company charges what it does is

the foregoing explanation. Do not be drawn into a discussion about Company fees as "the standard rate," "the Association rate," "the typical rate" or the like. If questions arise about other Company's fees, suggest that the potential client call several competitors and ask about their rates.

2. **BOYCOTTING COMPETITION:** It is also a violation of federal law to make any agreement, express or implied, with a competitor to boycott or otherwise not deal with a third-party competitor. For example, assume Discount Realty opens up an office. Then assume Bob Broker, an agent with Big Bucks Broker, and Alice Agent, a licensee with Just As Big Broker are having lunch one day and discuss the competitive impact of Discount Realty. Bob and Alice agree that Discount is a danger to their large listing portfolios and further agree that individually they will not show Discount's listings because "Something has got to be done about that price-cutting monger." This simple agreement with two agents is an illegal boycott. Even if it were implicit and not overt, it could be construed as an illegal boycott.

**Hudson Burnham** prohibits any licensee or staff member from making any agreement or suggestion with a competitor, including an individual licensee, that he/she or the Company will not deal with a third broker or licensee, whether it be a listing company, buyer's brokerage, discount broker or any other broker or licensee whatsoever.

Each licensee and staff member of **Hudson Burnham** is required to view the NAR video on antitrust, read the NAR information at [www.realtor.org/law-and-ethics/complying-with-federal-regulations/antitrust](http://www.realtor.org/law-and-ethics/complying-with-federal-regulations/antitrust) and participate in training on antitrust, including reading the manual from the Illinois REALTORS®.

## **LISTING PROCEDURES**

**Hudson Burnham** accepts listings and seeks to build an inventory of available merchandise for sale to buyers of homes and investment real estate. It offers the merchandise directly to the public and by cooperating with other licensees.

Listings not only represent "the merchandise on the shelf" but also present a significant area of risk. Traditionally many of the claims filed against real estate licensees involve claims of misrepresentation or fraud. It is at the listing level that many of these claims originate. As a listing company, it is imperative that **Hudson Burnham** develop clear policies to reduce the risk of later claims from oversights and exposures at the time of listing. The following policies apply to all listings taken by **Hudson Burnham**.

## 1. TYPES OF LISTINGS

In accord with the REALTOR® Code of Ethics, **Hudson Burnham** urges the exclusive listing of property, unless it is contrary to the best interests of the owner. Open listings may be accepted (Option 1:) at the agent's discretion **OR** (Option 2:) only with consent of a manager or broker of the company. Net listings are not accepted as such would be a violation of ethical standards. A net listing is one in which the owner agrees to let the agent keep any sale proceeds over a "net" price the owner wants for the property.

## 2. COMMISSION POLICIES

**(NOTE: Whatever commission policies a company has should be specified here or in an attachment or addenda to the Policy. A company should consider covering the following areas:**

- a. Rates and prices charged for services to the public. Examples of areas to consider, depending on the company's selection of agency policy and business practice, are:**
  - (1) Charges to sellers for listings.**
  - (2) Charges to buyers for representation.**
  - (3) Charges to owners for leasing.**
  - (4) Charges to clients for consulting.**
  - (5) Charges for any other services it renders.**
- b. Compensation offered to buyer's agents.**
- c. Compensation offered to the company's licensees.)**

## 3. OTHER LISTING TERMS:

**-Length of listing**

#### 4. DISCLOSURE OF ADVERSE MATERIAL FACTS

Illinois statutes require the disclosure to any customer all latent material adverse facts pertaining to the physical condition of the property that are actually known or which should have been known by the licensee. Latent adverse material facts are defined as facts actually known by the licensee related to the physical condition of the property not reasonably ascertainable by a diligent inspection of the property by the customer.

#### 5. RESIDENTIAL REAL PROPERTY DISCLOSURE FORMS

The Residential Real Property Disclosure Form is a detailed statement by the seller of his/her knowledge of the condition and features of the property. **Hudson Burnham** has a policy of urging sellers to complete the form and to provide them to buyers in compliance with the state statute. A licensee should provide a blank disclosure form to the seller and request the disclosure form be completed on every listing unless the property is exempt from disclosure under state law. It is in the best interest of the seller to complete a disclosure form because it can avoid future misunderstandings with a buyer as to what the seller's knowledge of the condition of the property was at time of listing and because it is required by State law. If the seller questions the property or the transaction is exempt from disclosure refer the seller to his/her own attorney.

In addition, it is a valuable risk reduction tool for **Hudson Burnham** and assists the Company in complying with its obligations to disclose adverse material facts. By the seller making accurate, factual statements as to his/her knowledge of the property, later controversies as to "who said what" can be minimized.

A listing agent should be careful to make sure that the seller and not the listing agent complete the Disclosure form and keep it current. If the information becomes inaccurate because the property's condition has changed, a seller could have liability for allowing known inaccurate information to be given to buyers. Once the form is complete the agent needs to make sure that it is delivered to prospective buyers before they prepare an offer to purchase.

Some sellers may refuse to sign a Disclosure form. In Illinois, there is a state law which requires a seller to execute such a statement unless the property or the transaction is exempt. If a seller declines to complete a disclosure form, he/she should be referred to his/her own attorney to determine if the transaction or the property is exempt from disclosure. **Hudson Burnham will not** accept a listing for which a seller refuses to complete a disclosure form unless the property or transaction is exempt.

In completing the disclosure form, the seller her/himself **MUST** fill in the form. A **Hudson Burnham** agent **MAY NOT** complete the form on behalf of a seller. The responsibility to complete the form under Illinois law is on the seller and not on the listing agent. If an agent completes the form, much of the benefit of this risk reduction technique is lost.

In general, the listing agent may rely on the statements of the seller. The License Act provides that the licensee owes no duty to conduct an independent inspection of the property for the benefit of the customer and owes no duty to independently verify the accuracy of any statement made by the client.

However, a listing agent may not ignore any suspicious items on the disclosure form just because the seller completed it. If a listing agent, in his/her reasonable judgment and expertise, suspects that a statement is not accurate, the agent should seek further information from the seller. An example might be a seller who states that there has been no water in a basement in which there are obvious water stains and cracks. An agent's best course is to seek further information from the seller as to the exact nature of their statements and if the seller persists in inaccurate statements then either refuse to take the listing or withdraw as the listing agent. If an agent needs assistance with this type of problem, they should contact their managing broker.

## 6. LEAD BASED PAINT

Particular note should be paid to lead-based paint disclosures. Current regulations require that a special lead-based paint disclosure form be signed by all parties to a contract BEFORE entering into the contract if the transaction involves a property built prior to 1978. Also, federal law requires certain disclosures on properties built prior to 1978 about the hazards of leadbased paint and requires that the buyer be given the opportunity for inspections for leadbased paint in the sale contract. Under lead-based paint regulations, licensees do have a duty to make sure the seller completes a disclosure form and provides a pamphlet.

## 7. RADON AWARENESS ACT

Agents of **Hudson Burnham** should have a general knowledge about the existence of the Illinois Radon Awareness Act and that the provisions impose duties on sellers of real property. In short, before a buyer becomes bound on a contract to purchase real estate the seller is required to provide a pamphlet entitled "Radon Testing Guidelines for Real Estate Transactions" and the Illinois Disclosure of Information on Radon Hazards. The language of the latter is set forth by statute. The pamphlet is provided by the Illinois Emergency Management Agency Division of Nuclear Safety and can be found on that agency's Web site, <https://www2.illinois.gov/iema/NRS/Radon/documents/radontestguidelineforrealestatePamphlet.pdf>.

Nothing in the Act requires a seller to test for radon or to engage in "mitigation activities." The Act excludes certain types of transactions, which are summarized as follows: transfers made pursuant to court order, transfers resulting from foreclosure, transfers by fiduciaries of estates, transfers among co-owners, transfers pursuant to estate or interstate succession, transfers made by relocation companies (if the relocation company has the required documents from the original seller) and transfers to or from a governmental entity. Licensees need to be aware of this required disclosure so they can inform their seller clients.

Radon disclosures are now sometimes required for rentals in residential lease transactions. The form does not have to be provided in every residential lease transaction; only those where a radon test has been done, a radon hazard is indicated and the owner has not remediated using an IEMA licensed contractor. It is important to note that the radon disclosure requirement only covers the second floor and below of residential dwelling units.

## 8. ACCURACY OF LISTING INFORMATION

Several "traps" that might create liability exist in taking a listing. These are covered below. Each **Hudson Burnham** licensee should take careful note of these hazard areas and be particularly diligent in handling these issues.

- a. **ROOM COUNTS:** **Hudson Burnham** licensees must be careful to accurately represent the number of rooms, bedrooms and bathrooms in a property. Generally, questions of whether an area constitutes a room, bedroom or bathroom are resolved by determining whether an appraiser would count the area as such. For example, basement rooms which are below grade are not generally considered rooms, bedrooms or bathrooms for appraisal purposes. Another example is that a room normally must have a closet to be considered a bedroom. Also, "walk-through" rooms are not usually considered separate bedrooms. These ambiguous areas can be denoted by a symbol such as a "+" sign after the room count (e.g. 8+ rooms, 4+ bedrooms) or highlighted in remarks for the property or other descriptive information.
- b. **ROOM SIZES:** The licensee should personally measure each room. **DO NOT** take room sizes from a former listing company's form. Be cautious about taking room sizes from plans. There may have been construction changes not reflected on the plans. Measure room sizes to feet and inches. **(NOTE: Many MLS systems do not allow input of room sizes to feet and inches. In such case, round inches to the nearest foot, e.g., 7 feet 7 inches rounds to 8 feet but 7 feet 5 inches rounds to 7 feet.)** If you have not measured yourself or will not measure, be sure to cite the source of your information so it is clear that it did not come from you.
- c. **EXCLUSIONS/INCLUSIONS:** A licensee should pay particular attention to inclusions and exclusions in the sale of the property and verify the seller's intention. For example, if an owner checks off that the master bedroom draperies will not be sold with the house, the licensee should verify that this is the seller's intent and then make clear in any promotional material mentioning draperies that the master bedroom draperies are excluded. Also, it is very important to make sure the exclusion is expressly specified in the contract. The listing information sheet is not usually incorporated into the terms of the contract. Thus, a licensee should not rely on the listing information sheet to control the contract but must make sure that the exact understandings of the parties are reflected in the sale



contract. Also, it is a good idea to suggest that seller actually remove excluded items before marketing the property for sale if possible.

- d. **LOT SIZE:** Lot size and acreage should only be determined from an accurate survey, the owner's real estate tax bill or the county tax records. The licensee should NOT attempt to measure lot size on her/his own.
- e. **TAXES:** Taxes should be determined from county tax records or the owner's tax bill. The licensee should not rely on the statements of the owner as to tax amounts. If there is a question regarding reassessment between time of contract and time of closing, refer the client to their attorney to negotiate contract language when necessary.
- f. **MODERNIZATION INFORMATION:** Often, good selling features about a property are the updates or upgrades made by the owner. In order to accurately advertise these items, **Hudson Burnham** requires that the owner verify any information given to us before it can be used in any promotional material on the listing.

Items such as "new" roof, "new" air conditioner, "new" furnace, "new" bathroom, "new" kitchen, etc. are misnomers because of the difficulty in defining what "new" means. Substantiation of the information means the owner must supply **Hudson Burnham** with receipts, canceled checks or other proof of payment of upgraded or rehabbed items. Once provided, then **Hudson Burnham** will accurately advertise and promote these good selling features with language like "New roof, 2012", "New furnace, 2010", "Kitchen remodeled, 2006".

If it is not possible to substantiate modernized features, they can be advertised or promoted as "Newer" or "Recent", as in "Newer furnace" or "Recently remodeled bathroom".

- 9. **SIGNATURES:** Illinois requires written listing agreements to be signed by "the parties." In addition, **Hudson Burnham** desires that listing agreements be enforceable in every possible situation to ensure that the company and agent will be paid under the terms of the listing agreement. Because of these factors, licensees must secure listing agreements with the signatures of all sellers or the duly authorized representative of all sellers before the listing will be promoted or advertised in any way. Licensees should be particularly aware in the several situations below.

- a. **SPOUSAL SIGNATURES:** A spouse\* must ALWAYS sign a listing agreement unless certain conditions exist, as follows:
  - (1) A waiver of marital rights given by the nonsigning spouse exists and a copy is provided to **Hudson Burnham**.

- (2) A quitclaim deed made to the signing spouse has been executed and recorded by the spouse not signing and a copy is provided to **Hudson Burnham**.
- (3) A prenuptial agreement waiving the nonsigning spouse's rights exists, a copy of the prenuptial agreement has been given to **Hudson Burnham**, and legal counsel for **Hudson Burnham** has consulted with a title company to determine the validity of the prenuptial agreement.
- (4) A court order provides otherwise.

**\* A "spouse" as used in this Section includes a partner in a civil union.**

Most often, these questions come up when the property is titled only in the "selling" spouse's name and the "nonselling" spouse claims that he/she has no interest in the property. Typical situations are a widowed person who has remarried or a divorced person who has remarried. The spouse not on the title ALWAYS has a potential homestead interest under Illinois law and MUST sign the listing agreement unless one of the four exceptions noted above exists.

- b. **PROPERTY IN ESTATE:** When property is in an estate, ALL heirs AND spouses must sign. If a Personal Representative (Executor or Administrator) has been named, it is possible that the Personal Representative has authority to sell the property. The licensee must secure a copy of the part of the will or court order which empowers the Personal Representative to sell property. The power of sale granted the Personal Representative by a will may not be acceptable to a title company until the time to file a will contest has expired, which is six months after the first publication of notice of Letters Testamentary being issued. Management or legal counsel for **Hudson Burnham** will consult with a title company to determine if the power to sell in the will is acceptable.
- c. **TRUSTEES:** If a property is held by a trust, the trustee will normally be empowered to sell. However, the licensee must secure a copy of the part of the trust which empowers the trustee to sell because some trusts require the signatures of more than one trustee to sell as in the case of an individual and corporate trustee (bank). The trustee's spouse does not sign the listing agreement because the trustee is acting in a representative capacity.
- d. **SELLER INCAPACITATED:** If a seller is not mentally competent to sell, and no acceptable Power-of- Attorney exists, a guardian must be appointed by the court and the guardian must obtain a court order to sell the property. Until such time, the property cannot be sold even if a child, sister, niece, nephew, etc. is also on the title. Also, if a property is jointly owned in this fashion, the spouse of the "second signer" (child, sister, niece, nephew, etc.) must also sign the listing contract. It is possible that a properly drawn Durable Power of Attorney may provide a means to sell this type of property. However, before relying on the Durable Power of Attorney, a title company should be consulted to determine whether the company

will insure the title based on the existing Durable Power of Attorney. Also, refer to the paragraph on Powers of Attorney, below.

- e. **DIVORCES:** A person, including a partner in a civil union, is NOT legally divorced until a court so orders. A person "in the process of divorce" cannot sign the listing agreement alone. The spouse must also sign, regardless of whether the spouse is living on the premises or the couple has a "legal separation." Once divorced, the person may sign alone. However, if the county records continue to show the property in both names, the licensee must secure a copy of that part of the divorce decree which awards the property to the signing spouse for **Hudson Burnham** files.
  - f. **POWERSOFATTORNEY:** A PowerofAttorney is acceptable for signature on a listing contract. However, not all powers-of-attorney authorize the sale of real estate. A copy of a recordable Power-of-Attorney authorizing the sale of real estate must be secured for the files of **Hudson Burnham**. Illinois law requires a Power-of-Attorney for the sale of real estate to be recorded.
10. **SELLER NET PROCEEDS CALCULATIONS:** It is the policy of **Hudson Burnham** to calculate estimated net proceeds for sellers as often as appropriate. The first estimate should be given on the listing call or as soon as possible after listing the property. Even though some information may not be available, such as exact loan balances or prepayment penalties, the licensee should use all existing information to prepare as accurate an estimate as possible and note any missing information.

When information becomes available, estimated net proceeds should be recalculated. This is particularly appropriate when an offer is presented and when each new offer or counteroffer is received.

Many reasons exist for using seller net calculations. First, it is an important service to a client. Secondly, it is important for **Hudson Burnham** to know whether it is likely that there are sufficient proceeds to pay off the indebtedness on the property and the real estate commission. Finally, the company must know whether the seller of the property can deliver marketable title. If the indebtedness exceeds the listed price, immediate discussions must occur with the seller and the lenders to determine whether the property can be sold with clear title given the level of indebtedness.

Please see your managing broker for a format to use in determining estimated seller net proceeds and if you believe you have a short sale listing.

11. LOCK BOX PROCEDURES: **Hudson Burnham**, as part of the local Association of REALTORS® common lock box system, encourages the use of lock boxes on all listings as a safe, secure, efficient tool in marketing property. Specific permission from the owner must be obtained on each listing before installing a lock box. Forms for this purpose are in each office.
12. OPEN HOUSE PROCEDURES: The "how-to" of holding open houses, etc., is covered elsewhere in **Hudson Burnham**, training programs and manuals. However, **Hudson Burnham** maintains a policy that owners be informed of their responsibilities in consenting to open houses. Licensees must strongly recommend to owners that they take common sense precautions with any valuables in the house during the time of the open house. This includes removal of all jewelry boxes, collectibles of value, (sentimental or dollar value), small audio or video equipment or other items which may be of value. Owners should also be informed that their homeowner's insurance company is the responsible party for any losses from an open house.

As in all other areas, a licensee may not act carelessly or recklessly. If for no other reason, a licensee must be diligent in conducting an open house to maintain good business relations and rapport with the owner.

13. INTERNAL VERIFICATION PROCEDURES: **Hudson Burnham** maintains a system of checking and verifying both listing agreements and documents and sale contracts and documents for accuracy, enforceability and compliance with the License Act and the rules issued pursuant to the Act. Please verify with managing broker.) Each licensee is expected to cooperate fully and promptly with any requests for verification, further information or correction of any oversights in the documents.
14. SURVEILLANCE EQUIPMENT: **Hudson Burnham** agents should check with seller as to the present of any audio or video recording devices in the property. If such equipment exists and seller will be using, seller should visit with their attorney about any requirement for consent from those viewing the listed property. At the very least they should consider posting a notice of audio and/or video recording on the premises.

For other related policies, see the section on Risk Reduction Policies.

## **BUYER QUALIFICATION POLICY**

When acting as an agent of the buyer, qualifying the buyer is a critical step in completing a property transaction. **Hudson Burnham** strongly recommends that each licensee become knowledgeable through company training and offered continuing education programs about properly qualifying a buyer as to her/his financial ability to purchase a property. Financial qualification has two major parts, as follows.

## 1. LOAN QUALIFICATION

If working as a licensee of the buyer, the licensee has duty to act diligently for her/his client. In this case, the client is the buyer. The buyer client has a right to expect that the licensee will diligently determine whether a buyer can qualify to purchase a certain type of property. These, steps may include:

- a. Completion of a financial qualification form. This form should be in sufficient detail and sufficiently accurate that the buyer is reasonably sure of qualification. If a licensee is not sure of her/his level of skill to complete such a form, the licensee should get further education and training and immediately call a sales manager or lender to assist.
- b. Consultation with the buyer and a lender to determine financial ability to qualify for a loan and the amount of the loan.

Remember, that if you are working as a disclosed dual agent of the seller and the buyer your qualification of the buyer will benefit both clients but that you must keep confidential information of each client to yourself.

## 2. ESTIMATED CLOSING COSTS

The second type of financial qualification which accompanies loan qualification (and in many cases is a part of loan qualification) is estimating closing costs. Duties exist to diligently and accurately estimate closing costs. **Hudson Burnham** has a policy of strongly encouraging its licensees to become educated through company and/or board/association training and education about estimating closing costs.

Do not use rule of thumb such as 2-5% of the purchase price. The spread of costs is too great in such estimates to be sufficiently accurate. For a first-time buyer with little cash, a one-half percent difference in closing costs can mean the difference between purchasing and not purchasing.

Do not use computerized closing cost estimating programs unless previously approved and authorized by **Hudson Burnham**. The programs may or may not take local costs and variations into account. In addition, the programs which allow for local costs may require that the licensee input the costs. If the licensee desires to use such a program, management of **Hudson Burnham** will approve its use and review the local costs being input.

Lender closing costs are generally reviewed in loan qualification procedures. One note of caution is in order. Some lenders unbundle services and charge for each service. These so-called "extra" costs are in addition to origination fees and points. They may include charges for "processing fee", "underwriting fee", "lender's closing fee" (apart from title company closing fee), "notary fees", "document preparation fee", "courier fee", etc., totaling \$500.00 or more on a single closing.

Whether representing a buyer or a seller, a lender should be asked what her/his "extra" fees are at the time closing costs are estimated and not at time of commitment or closing.

Although **Hudson Burnham** emphasizes accurately and diligently estimating closing costs, it is the policy of **Hudson Burnham** that we do not prepare final closing statements. The preparation of final closing statements may require contract interpretation and thus result in allegations of the unauthorized practice of law.

### 3. SURVEILLANCE

Warn buyers that sellers may be audio and/or video recording in their properties, so buyers are cautioned to withhold comments or even expressive body language until they are off the premises.

### 4. TYPES OF BUYER BROKERAGE AGREEMENTS

Some types of buyer brokerage agreements are listed below:

- Exclusive Buyer Brokerage Agreement
- IAR Sample Form #338
- <https://www.illinoisrealtors.org/wp-content/uploads/2017/10/338.pdf>
  
- Non-Exclusive Buyer Brokerage Agreement
- Buyer reserves the right to try and find property on his own
- IAR Sample Form #339
- <https://www.illinoisrealtors.org/wp-content/uploads/2017/10/339.pdf>
  
- Terms of Non-Exclusive Buyer Representation
- Not a contract at all but describes duties and expectations of buyer broker, sponsoring broker and buyer
- IAR Sample Form #341
- <https://www.illinoisrealtors.org/wp-content/uploads/2017/10/341.pdf>

## SALE CONTRACT POLICY

### 1. SALE CONTRACT COMPLETION

As a member of the Safety First Board of REALTORS®, **Hudson Burnham** uses the standard contract form and riders available through the Association. The Illinois Supreme Court decision in *Chicago Bar Association vs. Quinlan & Tyson* and Article 13 of the REALTOR Code of Ethics govern an agent's conduct with respect to use of the form and the unauthorized practice of law. Based upon the *Quinlan & Tyson* decision the agent may only complete the contract form that is commonly used in the community with business or factual information. Beyond that, if the client wants to change the language of the contract provisions or add other than the standard form riders, the client must do so themselves or through their attorney. If the client has a

question concerning the legal effect or impact of contract language they should be referred to their attorney. The licensee may answer questions about the contract and riders based on their experience and what the customs and practices in the community may be. It is the policy of **Hudson Burnham** that no licensee shall prepare or complete a legal document for a client or customer other than the standard sales contract form or standard riders to the contract used in our community. This does (or does not) include leases. (The company should consider whether there is a form lease used in the area.)

## 2. SALE CONTRACT TERMS

Several areas of contract terms are traps creating risk for the unsuspecting agent. **Hudson Burnham** maintains policies regarding these areas to reduce risk and heighten awareness. These are covered below.

- a. **EARNEST MONEY:** Several concerns regarding earnest money are involved. First is the "how much" issue. The Company cannot maintain a policy which requires any specific amount of earnest money as the company and licensee are not parties to the contract. However, if you represent the seller, the advice to the seller will be that sufficient earnest money is very important in that it shows how "earnest" a buyer is. The company has seen many cases where low earnest money (1-2% of offer price or less) has resulted in a buyer simply defaulting on the contract and forfeiting the low amount of earnest money, banking on the fact that it is unlikely that a seller would sue. There have also been many cases where sufficient earnest money (4-7% of the offer price or more) has kept an anxious buyer in a contract to closing because of the prospect of losing a substantial amount of earnest money.

If you represent the buyer, the classic approach to buyer representation might suggest to provide the lowest possible earnest money in every case. However, the licensee is cautioned that this may not serve the best interests of the buyer in all cases. For example, because earnest money indicates how "earnest" a buyer is, or how "strong" an offer is, a buyer may be at a competitive disadvantage if low earnest money is offered in a situation where the buyer's offer is competing with one or more other offers. As in all other situations, if you represent the buyer, your job is to give the buyer the best of the licensee's and company's expertise, advice and talent which may include advice which on first impression does not follow the "typical" rules.

A second earnest money issue deals with what can be accepted as earnest money. Illinois rules define "escrow moneys" which includes earnest money, as "all moneys, promissory notes or any other type or manner of legal tender or financial consideration..."

The policy of **Hudson Burnham** is that only cash, checks or money orders are accepted as earnest money without further permission from the parties. The company's policy regarding the rule is that items such as postdated checks are not acceptable. The company will not hold checks even if postdated. Any money given to **Hudson Burnham** will be deposited to the Company escrow account immediately upon an accepted contract



and not later than the next business day after acceptance as provided for in the License Act rules. Agents must promptly transmit funds to the broker for deposit.

A corollary issue occasionally arises regarding acceptance of a credit card or line of credit check (Visa, MasterCard, American Express, home equity loan). While it is arguable that these "checks" are negotiable, **Hudson Burnham** takes a conservative position regarding these instruments and strongly discourages their use. The primary reason for this policy regards the difficulty in determining whether this instrument has "cleared". There is no easy way to determine whether the line of credit has been exhausted or overdrawn and upon presentation, will be rejected. In addition, a lender may require that such balances be paid off before loan approval or closing.

- b. **INCLUSIONS AND EXCLUSIONS:** As covered in the section on Accuracy of Listing Information, the contract is the primary method to determine what is being sold with the property. Do not rely on the listing agreement or listing information sheet as to the inclusions and exclusions in a transaction. These documents are not normally made a part of the contract.

This area is of great importance for risk reduction purposes. Personal property inclusions and exclusions cause a great number of the disputes in a sales contract and can be expensive for an unwary licensee.

Some common problem areas the company is familiar with are as follows:

- (1) Loose laid carpet that resembles tacked down carpeting.
- (2) Draperies, curtains, window treatments, etc., especially as to which may be excluded (e.g. master bedroom draperies which match the bedspreads).
- (3) Stoves/ranges (check contract for inclusion in printed matter).
- (4) Portable dishwasher.
- (5) Refrigerator (Even if builtin.).
- (6) Security systems (Be sure to determine whether leased or owned and whether any continuing service fees apply.).
- (7) Outside mailbox and post (Typically "fancy" or ornate mailboxes and posts which a seller may want to remove.).
- (8) Swimming pool equipment and pool equipment.
- (9) Porch swing.
- (10) Bathroom mirrors.
- (11) Farm equipment.
- (12) Riding lawn mower.
- (13) Fireplace equipment and/or screen.
- (14) Gas lights or BBQ's (Be sure to check whether these are paid off.).
- (15) Above ground pool.
- (16) Hot tub or spa.
- (17) Swag lights.
- (18) Bookshelves (Watch shelves where brackets are attached and wood shelves are not.).
- (19) Special shower heads.



- (20) Playhouse/treehouse.
- (21) Special or ornate door knockers.
- (22) Water softener (Check whether leased or owned.).
- (23) Central vacuum equipment (hoses, nozzles, etc.).
- (24) Stained glass (Even though usually attached, can sometimes have sentimental value to seller who intends to remove.).
- (25) LP gas tanks (Check whether leased or owned.).
- (26) Fireplace logs.
- (27) Ben Franklin stove.
- (28) Solar or alternative energy systems.
- (29) Fireplace inserts (May or may not be attached.).
- (30) Satellite dish and converter boxes/units.
- (31) Under counter appliances (Microwave, coffee maker, can opener, radio).
- (32) Basketball hoop.
- (33) Garage door opener controls.
- (34) Flag poles.

This list certainly does not address all of the possible problems. For example, the company is also aware of a seller who removed a flagstone walk which was obviously attached to the property. Be aware of the potential hazards in this area and act with caution, making sure inclusions and exclusions are clear in the contract. Licensees are cautioned not to use simple statements in the address section of the contracts stating “per MLS sheet” or “per MLS #XXXX.” These can create confusion as to what MLS sheet and when the MLS sheet was run. Buyer’s attorney should be consulted for acceptable language to incorporate MLS information by reference.

- c. "ASIS" CONTRACTS: Often, listings may be offered in "asis" condition. This term is unclear, at best. The policy of **Hudson Burnham** is to refer the parties to legal counsel for acceptable language to memorialize the “as-is” agreement.

In addition, the Illinois Residential Real Property Disclosure Act is clear that an "asis" sale does not relieve the seller of the obligation to accurately disclose all material facts of which he/she has knowledge relating to the physical condition of the property. Also, the fact that the parties agree to an “as-is” sale does not change the agent’s disclosure obligations to answer the questions on the form completely to the best of their actual knowledge, it simply means seller does not agree to repair.

### 3. SALE CONTRACT NEGOTIATION

The techniques and principles of sale contract negotiation (the "howto") are covered in the Company's and Board's training programs. Each licensee is encouraged to take full advantage of these resources to improve her/his skill in this area vital to success in this business.

Aside from sale contract negotiation techniques, **Hudson Burnham** maintains policies which are directed to the legal and ethical aspects of contract negotiation. These are listed below.

a. **PRESENTATION OF OFFERS**

In accord with the Code of Ethics and License Act, **Hudson Burnham** requires the agent to present all offers to the seller until closing and all counter offers to the buyer, regardless of how many offers received and regardless of the order in which the offers were received. The only exception to this would be when the client has provided direction to the contrary. If this is the case, make sure the client's direction is clearly set forth in writing and placed in their file or archived online. **Hudson Burnham** urges any licensee involved in a multiple offer situation to contact management to review the proper procedures.

The Company will always be guided by lawful instructions of the client in any multiple offer situation. While the Company believes that these procedures protect the client, the client may choose to give the Company other lawful instructions. The licensee should discuss with the client, whether seller or buyer, the customary procedures for handling multiple offers so that the client may determine whether the client wishes to give the licensee or Company different instructions.

**OPTION 1**

In the event of multiple offers on one property, **Hudson Burnham** follows a policy, subject to client direction, of notifying all offers that his/her offer is in competition with other offers as well as giving that person the opportunity to change the offer. The notification shall take place only after multiple offers actually exist and not when the listing agent may have knowledge of other offers being written or possibly being written.

An exception to this policy exists if the seller has a currently effective counteroffer in possession of a buyer. In that event, the agent will not disclose the competition to the second or later offeror until the seller has had the opportunity to examine the second offer. This gives the seller the ability to determine whether he/she desires to revoke her/his counteroffer to the first offeror to negotiate with the second offeror.

The licensee should not reveal any terms of the offer to any other party including expiration time of the offer, price, closing dates, earnest money amounts, financing types, amounts or dates or other terms.

**OPTION 2**

In the event of multiple offers on one property, **Hudson Burnham** follows a policy, subject to client direction, of silence to all offerors as to whether other offers are in existence. **Hudson Burnham** believes that each offeror has the opportunity to put his/her "best foot forward" in making the offer.

If another licensee, whether from **Hudson Burnham** or another company, asks the listing agent to "let me know if another offer comes in", **Hudson Burnham** has a general policy of not acknowledging such requests. If other offers come in, the licensee should advise the client that inquiries of this nature have been made and ask the client whether those requests should be followed up.

If multiple offers exist and the listing agent has written one of those offers, the policy of **Hudson Burnham** in such circumstance is that the listing agent may not present any of the offers. In this case, a managing broker (or other **Hudson Burnham** licensee if management is not available) must be asked to present the multiple offers.

If a listing agent has already presented an offer from another agent and a customer or client of the listing agent asks to write a competitive offer, the policy of **Hudson Burnham** is that the listing agent must ask the managing broker or other **Hudson Burnham** licensee to write the offer for the listing agent's prospective buyer. The listing agent's prior knowledge of the first offer could be seen as influential or biased if the listing agent's prospective buyer should be successful in negotiations.

In general, whenever the listing agent has knowledge of an offer presented, or could use information he/she has to the detriment of one of the competing parties, **Hudson Burnham** strongly recommends that a third party licensee, such as a managing broker or other licensee, be appointed to assist in the negotiations.

A final issue regarding presentation of offers regards whether an oral offer must be presented. The REALTOR Code of Ethics and the License Act require that, unless otherwise directed by the Seller, all offers be presented to the seller.

In accord with agency obligations of disclosure and loyalty and in the spirit of the Code, **Hudson Burnham** has a policy of giving the seller client all material and relevant information of which the licensee has knowledge. In accord with this policy, if a buyer insists on an oral offer, the company believes that the seller is entitled to that information.

The Company recognizes that such an oral contract is unenforceable under the laws of Illinois. However, it is prudent to tell the seller what the licensee knows, that is, an oral offer was made by this party and it is unknown whether the party will ultimately be willing to commit the offer to writing. At this point, a seller may choose to make a written offer to sell and thereby initiate the contract process him/herself.

- b. TIMING OF PRESENTATION: **Hudson Burnham** also strongly supports and maintains a policy to present all offers and counter offers as quickly as possible. The REALTOR Code of Ethics and License Act provide the standards in this area. License Act uses the

term "timely" as to tendering offers and counteroffers and the Code states offers must be submitted "as quickly as possible."

The policy of **Hudson Burnham** is that these terms are to be interpreted to mean "immediately" or "as soon as reasonably possible". As an example, a listing agent's receipt of an offer should immediately generate a telephone call to the owner to determine when the seller is available for presentation of the offer. Once contacted, the seller can then instruct the listing agent as to when to present the offer. The critical point is that **Hudson Burnham** believes that the listing agent **MUST** make a diligent effort to contact the seller immediately upon receipt of the offer - not an hour later, not when the licensee finishes lunch, not after the licensee shows property.

In the case of a buyer agency, the same principles apply with equal weight. The buyer is the client and must be treated with the same high levels of professionalism as a seller who is a client. The License Act provides that if you are making contemporaneous offers on behalf of two prospective buyers in the same property that written disclosure needs to be given to the buyers who then have an option to proceed with their designated agent or be referred to another designated agent. These same principles should be adhered to even in the case of a buyer who is a customer and not a client. License Act and the Code of Ethics do not premise delivery of any counteroffer to the buyer upon whether there is an agent-client relationship.

This is an extremely simple yet very important risk reduction technique. Every **Hudson Burnham** licensee should consider this of prime importance. The obvious danger in not taking this issue seriously is that the offeree can revoke/withdraw her/his offer at any time prior to delivery of a valid acceptance. **Hudson Burnham** does not want to be in a position of defending an action where an offer was withdrawn before a seller was contacted or diligent efforts to contact the seller were not made.

These issues are common, daily events which the licensee should learn to handle with skill and ease. The licensee's ability to understand and deal with these issues will act as a significant risk reduction method and contribute to a licensee's successful practice of the real estate business.

### 3. UNAUTHORIZED PRACTICE OF LAW (UPL) ISSUES

**Hudson Burnham** has a policy that allows its sponsored licensees to assist its clients when they are negotiating contracts using their professional expertise in market conditions and negotiating skills in order to advise their clients. If there is a form purchase contract that is commonly used in the community, then licensees can complete business and factual information for their clients, or for customers on behalf of **Hudson Burnham** clients. Licensees shall not (i) advise as to the legal status of any contractual agreement except to indicate whether it has been accepted and signed; (ii) explain the meaning of any contractual provision; and (iii) draft contract language for the parties to a purchase or lease transaction. Licensees will recommend the advice of legal counsel to their clients and customers just as they would recommend other experts in matters that require particular expertise and/or licensure.

## ADVERTISING POLICY

The specific procedures for advertising properties with **Hudson Burnham** are found in other training materials. These procedures, such as where and when properties are advertised are subject to change. The policies stated here primarily regard the legal and risk reduction aspects of advertising.

The following policies apply to all property listed with **Hudson Burnham**.

1. **Hudson Burnham** adheres strictly to the License Act and rules regarding advertising.
2. No property will be advertised in any way, including placing a sign on the property without a signed written listing agreement on file with the broker (managing broker). The listing agreement in the hands of the licensee is not sufficient. If a listing agent has a listing he/she wants to advertise, the original, or electronic version of the original must be in the hands of the managing broker.
3. One-party listing agreements (also called "one-time listings") will not be discussed, orally or in writing, with any person outside of **Hudson Burnham** licensees unless a signed one party listing agreement is obtained.
4. A listing which is due to expire by the publication date of an advertising medium will not be inserted into the ad unless a written extension of the listing is received by the managing broker before the deadline for placing the ad.
5. No price changes or other substantive changes to the listing will be advertised unless a written change of the price or other appropriate information is received by the managing broker before the deadline for placing the ad.
6. Information on features of the property will not be advertised as "new" unless substantiated by written receipts or other evidence of payment from the owner showing the date the work was done. If the verification is received, it will be advertised with the appropriate date. If the verification is not received, the listing agent must use other words such as "newer" or "recent" to describe the feature.

Licensees should take special care to follow these same rules in the use of "special feature" sheets. If a licensee does not follow this policy regarding any information sheets or other documentation/advertising the agent prepares, the licensee will be solely liable for any errors or omissions which later cause any losses.

7. "For Sale" signs and lock boxes will be removed immediately upon request of the owner or expiration or withdrawal of a listing.

8. According to the REALTOR Code of Ethics, prior to closing, only the sold sign of the listing broker is allowed on the listing, unless the listing agent consents otherwise. It is the policy of **Hudson Burnham** that the seller's permission must also be obtained. It is also the policy of **Hudson Burnham** that if the company is the cooperating broker a sold sign may be placed at the property after the closing with the written permission of the buyer. Per the Code of Ethics, either the listing broker or the cooperating broker may claim to have sold the property in advertising and representations to the public.
9. Personal advertising by individual agents is encouraged. Any personal advertising must be approved by the managing broker. The License Act and rules require that the sponsored licensee include the company name in all ads. This policy covers all types of licensee advertising, including personal sign riders, business cards, car signs, homes magazine ads, classified ads, direct mail solicitations, specialty items (key chains, pens, pads, etc.), newsletters, farming materials, neighborhood newsletters, billboards, Internet advertising, etc. This list does not include all possible types of licensee advertising. One possible problem may exist in the use of a licensee's first name only in advertising. While the rules do not specifically address this issue, **Hudson Burnham** believes that the rule's and Code's use of the term the licensee's "name" means the full name of the person and not just a first name, initials, or a first name with last initial. Without the full name, the public cannot identify the person doing the advertising. Use of first names, initials, or first name with last initial only in licensee advertising is not allowed in this company.
10. The managing broker designated as such by the sponsoring broker with IDFPR may use that term in advertising of any kind. A managing broker designated as such with IDFPR must use the term "managing broker" in all advertising except broker yard signs.
11. Any advertising containing financial terms of the offering must comply with federal TruthinLending laws, found at 12 C.F.R. Part 1026 and also known as Regulation Z. Regulation Z requires that all of the terms of the financing be stated if any of the "triggering terms" are used. "Triggering terms" are terms such as the amount of down payment ("10% down"), the amount of any payment ("Only \$550 per month"), the period of repayment ("30-year loan available") or the number of payments ("Only 48 monthly payments").

If any of these terms are used, the following disclosures are required:

- a. Amount or percentage of down payment.
- b. Terms of repayment.
- c. Annual Percentage Rate, stated and calculated as such.

Use of any interest rate in advertising is not allowed. Only the Annual Percentage Rate, stated and calculated as such is allowed. Therefore, a property cannot be advertised as having a "7% assumable VA loan."

Not all terms trigger Regulation Z disclosure. Some examples of terms which can be used without triggering Regulation Z disclosure are "No down payment", "Financing Available" or "Special Financing", "Assumable Loan".

12. The Internet or some other form of electronic advertising may be used for advertising purposes. Keep in mind that all advertising rules and regulations apply to any material that a consumer might reach that is not behind any "firewall" or in a password protected area. In other words, anything not protected by password entry is advertising. As a result, the company name must be included and information must be accurate and timely. On the other side of the "firewall" or after a consumer enters a password protected area, the licensee should follow brokerage relationship procedures outlined in this Manual starting on page 14.
13. Commercial e-mail messages are also governed by the Federal CAN-SPAM Act. For CAN-SPAM requirements see Attachment A to this Manual.
14. See the Social Media section in this Manual regarding Advertising and the use of social media in accordance with this Company's policies.

## **RISK REDUCTION**

**Hudson Burnham** advocates and encourages the concept of risk reduction. A significant majority of the claims filed against real estate agents and brokers allege some type of misrepresentation or fraud. The trend of the law in the real estate industry is for more and more disclosure. Accordingly, **Hudson Burnham** has the following policies regarding risk reduction and disclosure.

1. **COMPLIANCE WITH ALL LAWS, RULES AND REGULATIONS:** As an agent of **Hudson Burnham**, each person assumes the obligation of strict compliance with all laws, rules and regulations which govern real estate licensees in the State of Illinois.
2. **COMPLIANCE WITH THIS POLICY MANUAL:** As an agent of **Hudson Burnham** each person agrees to comply with all policies as stated in this manual and its additions, changes and amendments as from time to time published by management of the company. Failure to comply with the policies herein subject the licensee or staff member to disciplinary action which may include termination of association with the company.
3. **PHYSICAL CONDITION OF THE PROPERTY:** In accord with the REALTOR Code of Ethics, the Illinois Real Estate License Act, the License Act rules and Illinois common law, the policy of **Hudson Burnham** is to disclose to all appropriate parties any known material physical conditions or defects of a property which are latent or not readily observable. This applies whether **Hudson Burnham** is the listing agent, or buyer's agent.

Physical conditions on the property may include water in the basement, foundation cracks, drainage problems, defects in any of the major systems of the property (electrical,



plumbing, heating, cooling), environmental conditions on or near the property, roof problems, etc.

4. PSYCHOLOGICAL "STIGMAS" ON THE PROPERTY: These include whether a homicide or other felony, or a suicide occurred on the premises or if an occupant or former occupant of the real property has or had AIDS or any HIV positive condition. The "psychological impact" statute in Illinois provides that no cause of action may be brought against a real estate licensee for failure to disclose to a buyer or other transferee of real property that the real property was a psychologically impacted real property. Although this statute protects a licensee for failure to make a disclosure, it does not prohibit disclosure. Likewise, the Code of Ethics does not require disclosure in situations where state law defines these factors as not material. (As mentioned above, Illinois statutes do provide that these facts are not material.)

Because of the practical problems of the inevitable "disclosure" of these psychological factors (often by the neighbors), the policy of **Hudson Burnham** is to discuss with the seller-client the inevitability of this disclosure and to recommend disclosure of psychological factors other than AIDS, HIV, or related illnesses that may have an impact on a purchaser's decision to buy. Recent violent crimes or suicides are specific examples of such events. If, after this discussion, the seller-client instructs the company not to disclose these factors, the company will comply with such request and rely on the protection of the Illinois statute or after consultation between the managing broker and the licensee to terminate the listing agreement.

If a licensee of the company represents the buyer and has knowledge about a stigma that does not relate to an HIV/AIDS situation, the buyer's agent should disclose the information to the buyer client in serving the buyer client's best interest. The licensee should have actual knowledge. Also, buyers can be directed to the Illinois State Police website for a list of registered sex offenders.

5. DOCUMENTATION OF DISCLOSURE: As is apparent, **Hudson Burnham** advocates full disclosure in appropriate circumstances. However, all the disclosure in the world does no good if it cannot be proven. While it would be ideal to have every single disclosure as to every material item disclosed to the parties in writing with their acknowledgment of the disclosure, such is not usually possible.

It is the policy of **Hudson Burnham** that a copy of the Residential Real Property Disclosure Report be put in each file. In addition, the licensee should document in his/her own personal notes and files each item which is disclosed in a transaction.

This simple policy can reduce risk and potentially save many thousands of dollars. It assumes that the licensee has a regular, systematized method of organizing and keeping files. This is vitally important to a good documentation procedure.

While the Company does not require a licensee to use any one method, it does provide standardized files/folders/envelopes/computerized files for licensees to use in each



transaction. Licensees are strongly encouraged to use this organization system as it has been developed to keep track of details, act as a transaction checklist and risk reduction method.

Disclosure is great, but documentation of the disclosure is the glue that seals the cracks.

6. **USE OF EXPERTS & "RECOMMENDATIONS":** **Hudson Burnham** maintains a strong policy that an agent not go beyond her/his area of expertise regarding a transaction. The company strongly recommends that a licensee advise the use of an expert in situations where appropriate, including the use of an attorney by a client. For example, if questions arise with a buyer about the adequacy of the electrical system, the licensee should advise that a building inspector, engineer or licensed electrician be consulted.

However, an equally strong policy exists in **NOT** recommending any particular inspector, engineer, electrician or other expert. While advising that AN expert be used is a good risk reduction technique, the benefits of this technique may be lost if a specific expert is recommended. Recommendation of a specific expert could lead to liability if the expert fails to do his/her job and the agent was negligent in recommending that person.

The policy of **Hudson Burnham** is to give the names of three experts in each field whenever asked for a recommendation. Do not fall into the trap of responding to a customer/client saying "Yeah, but which one do you really recommend?" The licensee should be firm in having the customer/client make the choice.

Some licensees have found a helpful tool in keeping several sample reports from various building/mechanical inspectors, engineers, roofers, etc. When the customer/client asks for a recommendation, the licensee gives the customer/client the samples and suggests that they choose the style and cost of the expert which fits their style and needs the best.

A related issue is ordering the report. The policy of **Hudson Burnham** is that the licensee should not order the report if at all possible. The Company recognizes that certain situations require the licensee to place the order, but, in general, the licensee should have the customer/client place the order. This removes the Company and licensee from any involvement in the selection process and reduces the liability of possible negligence in "recommendation" of an expert.

7. **REPRESENTATIONS:** Statements made by you about a property whether in person, in writing or electronically will be considered as representations by you. Make sure that you know whether those representations are accurate. If the information comes from a third party, then so indicate when making that statement. For example, "According to XYZ school district this resident is located in their school district."
8. **TRAINING:** As stated in other parts of this manual, training and education are integral parts of any risk reduction and professionalism program. All licensees are expected to

complete the company's initial training program and are strongly encouraged to take advantage of company, board and association education programs.

9. **USE OF LEGAL COUNSEL:** Whenever a licensee believes she/he requires legal assistance, the managing broker should be contacted. The company has legal counsel for appropriate legal questions and problems. In addition, the Illinois REALTORS® provides a free Legal Hotline for legal educational information for those registered by the company or the designated broker. The earlier a legal question or problem is brought to the attention of management, the earlier the problem can be solved. The Company's position is that wisely spent legal fees early in a problem can save many thousands of dollars if a formal complaint or lawsuit arises.
10. **UNAUTHORIZED PRACTICE OF LAW (UPL) ISSUES:** **Hudson Burnham** has a policy of referring experts when a particular license and/or expertise is needed. Licensees will avoid UPL in the following areas:
  - Interpretation of lease or purchase contract provisions between buyers and sellers or landlords and tenants;
  - Drafting any substantive language in lease or purchase contracts between buyers and sellers or landlords and tenants;
  - Advocating, appearing on behalf of, drafting and signing appeal documents for a taxpayer in a property tax appeal matter. Licensees may act as expert witnesses to help the taxpayer support his valuations in a property tax appeal matter and may consult with the taxpayer as to valuations and comparable information prior to the appeal.

Keep in mind that **Hudson Burnham** is allowed to revise documents to which the company is a party. Licensees should check with their managing broker before making any changes to these types of documents. An exclusive right to sell agreement is an example of one such document.

11. **ERRORS AND OMISSIONS INSURANCE:**

**Hudson Burnham** does not carry errors and omissions insurance.

While the Company does not carry errors and omissions coverage, each agent should consider doing so. Such individual coverage is available through a program sponsored by the Illinois REALTORS® and underwritten by CNA (as well as from other carriers). The licensee should contact the broker (sales manager) for details on securing such coverage.

Errors and omissions insurance generally covers the negligent acts of the insured. It does not cover all possible damages for which the agent could be liable. For example, no errors and omissions insurance covers punitive damages or managing or selling properties you own.

Errors and omissions insurance generally covers defense costs, that is, the legal fees involved in defending a claim against the company or agent, subject to any pertinent deductible. This is very valuable coverage.

The policy of **Hudson Burnham** is that each licensee must notify the broker (managing broker) as soon as the licensee is aware of a possible claim against the agent/broker. "Possible claim" means the potential of a disagreement which could lead to a lawsuit against the Company or agent. It is only in this way that the Company can properly defend itself against the possible claim.

12. COMPLAINT HANDLING PROCEDURES: One of the simplest and most cost-effective risk reduction methods is a good complaint handling process. Accordingly, **Hudson Burnham** establishes the following procedures for handling complaints.
  - a. If the complaint comes to a licensee involved in a transaction, the licensee will initially be the primary contact person to handle the complaint with management assistance. At a minimum, the licensee should immediately notify the managing broker of the complaint. The managing broker will then make a determination as to whether the licensee should continue to handle the complaint or whether the complaint should be handled by a designated management representative.
  - b. If the complaint comes in without specifying a licensee, the managing broker will handle the complaint. If a specific management person is requested (such as "I want to speak to the President!"), the person answering the call should courteously direct the call to the requested person, if available, or the managing broker in the requested person's absence. The caller should **ALWAYS** be assisted in some way. The person taking the call should not say "Oh, she isn't here right now." or "You'll have to call him later." or "Please call her office." It is very important to handle an aggravated or upset caller with the utmost courtesy and care.
  - c. Whoever takes the complaint, the key factor in handling the call is to **LISTEN** to the caller's complaint. The most appropriate and helpful thing the call handler can do is give the person filing the complaint a full and fair airing of his/her grievance. Many times, simple listening to the complaint does much to alleviate the caller's frustration. Sometimes, being listened to is all the person really wants. **ACTIVE LISTENING** is critical.
  - d. Usually, the most successful way to handle the initial complaint call is to validate the caller's concerns. In general, it is best not to challenge the caller or become defensive. **GET THE FACTS!!** Simply try to get all necessary information from the caller's perspective, even if the complaint handler knows it may not be 100% accurate. Remember to document the conversation in writing. Make notes or write a memo about the conversation as soon as possible.

- e. Usually the call can be ended by assuring the caller that the matter will be investigated. The complaint handler should tell the caller what he/she can expect. For example, "Mr. Smith, I would hope you understand that I need to do some research. I will look into the matter, discuss it with my manager and get back to you by Tuesday." The caller should always be told what the complaint handler will do and by when.

## SOCIAL MEDIA

### (Governing the use of e-mail, Internet and Social Media Tools)

**Hudson Burnham** (Company) policy is that Company owned computers and Company provided access to e-mail and the Internet are to be used principally for business purposes. **(Personal use of agents'/employees' own equipment and access secured on your own are covered by this policy when used for business purposes. When using your personal equipment and access secured on your own remember that you are always licensed and thus subject to regulation whenever you are discussing your business, even when using personal e-mail, the Internet or social media tools.)** The Company recognizes that limited personal use of e-mail, the Internet, and social media tools (such as Facebook®, Twitter®, Linked In®, Instagram®, YouTube, Pinterest or "blogging") can be a benefit to licensees, employees and other authorized users.

The use of technology in our business is changing at a very rapid pace. Therefore, this policy will not only provide guidance with regard to the use of the Internet, e-mail and social networking tools in the businesses of licensees/employees of the Company but also general principles to be followed in using future technologies and communication. Note that this policy applies when licensees/employees are using e-mail, the Internet, and social media in an effort to advance their real estate brokerage business while using Company, personal or a third party's equipment. The Company directs its licensees/employees to follow the basic limits listed below; along with more specific requirements outlined in this chapter of the Policy Manual.

#### General Requirements

1. Licensees/employees must take care to protect their client's confidential information at all times. This includes in the licensee/employee's use of the Internet, certain e-mail messages and social media tools.
2. Licensees/employees must be courteous and professional at all times, especially when representing the Company. This includes the licensees/employees' use of the Internet, e-mail and social media tools. Licensees/employees shall not make defamatory or derogatory remarks about clients in their electronic communications. They will not engage in "cyber-bullying" or any similar behavior which may disturb our clients or those with whom our agency interacts.
3. Licensees/employees must take care to be truthful when advertising or making other representations. This includes those statements made or advertising placed through use of e-mail, the Internet, your personal Website or social media tools.

4. Licensees/employees are encouraged to seek the advice of their managing broker or the Office Internet Consultant (identified on p. \_\_) if they have questions or concerns regarding the use of the Internet, e-mail or social media tools before publishing any information that could be questionable.

Use of the Internet, e-mail or social media tools while at the office of the Company or on Company equipment.

Use of e-mail, the Internet and social media tools by agents and employees is subject to the following guidelines:

1. Licensees/employees may use e-mail, the Internet and social media tools in connection with conducting their business on behalf of the Company.
2. Licensees/employees may not use e-mail, the Internet or social media tools for personal use except during break times, lunch time, and before and after normal working hours so as not to interfere with licensees'/employees' duties for the Company.
3. Licensees/employees may not use e-mail, the Internet or social media tools for non-work related private business.
4. Licensees/employees may not use e-mail, the Internet or social media tools to participate in football, basketball or other sports pools or leagues, or to gamble.
5. Licensees/employees may not use e-mail, the Internet or social media tools to conduct political activities (unless expressly authorized to do so as part of agent's/employee's duties to the Company).
6. Licensees/employees may not use e-mail, the Internet or social media tools to visit any pornographic sites.
7. Licensees/employees should not use e-mail, the Internet or social media tools to discuss the business policies or practices of the Company with any person outside the Company without first clearing that with your managing broker. Licensees/employees may discuss policies/practices of the Company with a client or prospective client, but only through "private" e-mail and not through the use of social media tools.
8. Licensees/employees may not use e-mail, the Internet or social media tools to transmit any defamatory, offensive, harassing, disruptive, or derogatory statements or images that offend on the basis of race, religion, ethnicity or national origin, sexual orientation, political beliefs or disabilities.

9. Licensees/employees may not use e-mail, the Internet or social media tools to distribute chain letters, search for alternative employment, transmit jokes, or participate in Internet discussion groups (unless such discussion groups relate directly to licensee's/employee's job).
10. Licensees/employees may not use e-mail, the Internet or social media tools in any manner that is prohibited by law or otherwise illegal.
11. Licensees/employees may not use e-mail, the Internet or social media tools to upload, download or transmit, without the Company's managing broker's permission, copyrighted, trademarked or patented materials, trade secrets, or confidential, proprietary or private information or materials, except to the extent that they are used by a licensee/employee in connection with a transaction.
12. Licensees/employees should not use e-mail or social media tools in any manner that would advocate that the Company adopt or that would indicate that the Company has a position or policy in place that is anticompetitive or which would otherwise violate state or federal antitrust laws.

The Company reserves the right to monitor, access, retrieve, read and (for legitimate business purposes) disclose all communications by or to licensee/employee with or without notice to licensee or employee. Accordingly, licensees/employees have no right to or expectation of privacy in the use of e-mail, the Internet or social networking tools on equipment owned by the Company. The Company has no obligation to ensure against authorized access to your e-mail or Internet use.

## Advertising

1. When licensees/employees are advertising properties using e-mail, the Internet or social media tools they shall abide by all provisions contained in the License Act, its rules, and the REALTOR® Code of Ethics. Examples are including the Company name and information that makes the message truthful and complete in all advertising and not a blind ad.
2. Licensees/employees will comply with Federal CAN-SPAM requirements when using e-mail, the Internet or social media tools to transmit electronic commercial messages. (See Attachment A of this manual for CAN-SPAM compliance requirements).
3. Licensees/employees will not use deceptive key words, meta tags or other devices to deceptively drive traffic to an Internet site.
4. Licensees/employees will make sure that all advertising information given via email, the Internet or social media tools is current and accurate. Information should be checked periodically for accuracy and freshness.
5. Licensees/employees will comply with all Fair Housing laws or regulations (federal, state, local and ethical) when using e-mail, the Internet or social media tools in their businesses. (See p. 20 of this manual for fair housing policy).
6. Licensees/employees will discuss with client(s) the advertising/marketing to be done on their behalf including the use of e-mails, the Internet and social media tools to market properties. Licensees/employees must note if there is any objection to marketing via use of these methods and if so, avoid such marketing methods.

## Collection of Information

1. Licensees/employees may not collect consumer information through the use of email, the Internet or social media tools unless the agent/employee:
  - Tells the consumer they are doing so;
  - Tells the consumer what they will be doing with the information gathered; and,
  - Tells the consumer how they are protecting the information.

## E-mailing

1. Licensees/employees are required to follow the provisions set forth in Section 1450.720 in the Administrative Rules under the License Act as from time to time amended.
2. Licensees/employees are also required to follow the provisions set forth in the federal CAN-SPAM Act as from time to time amended.
3. Licensees/employees should make sure they double-check any text they are sending or posting via e-mail and to whom it is being sent before they hit the “send” button.
4. Licensees/employees are required to print those e-mails that deal with specifics of a transaction or authorization to perform a service or task and to place those printed copies in the appropriate transaction files.

## Blogging

1. Licensees/employees may participate in “blogging” in relation to their business as a real estate licensee so long as they follow all the policies and procedures set forth in this manual with regard to the use of e-mail, the Internet and social media tools.
2. If licensees/employees wish to establish a blog, they should contact their managing broker or the Office Internet Consultant identified on p. \_\_\_\_ of this manual. When establishing a blog, licensees/employees should work with the Office Internet Consultant on posting “terms and conditions” that will apply to the blog.

## Copyright and Protected Information

1. Licensees/employees shall not copy, frame or otherwise use information received or viewed through e-mail, the Internet, or social media tools without the express written consent or other appropriate authority from the owner of the information. If permission is given with certain conditions then follow those conditions. Document the conditions when possible for your files.
2. Licensees/employees must recognize that the Company owns the copyright to Company information contained on its web site or in other printed materials. Republishing or copying of this information for other than use in a transaction requires consent of the licensee/employee’s managing broker (or the designated “Office Internet Consultant” identified on page \_\_\_\_ of this manual) so long as the information includes the following: copyrighted or © by **Hudson Burnham**. If licensees/employees have any questions about intended use or how to show the copyright, contact the managing broker or the Office Internet Consultant.



## Linking

1. Licensees/employees shall review the content of any Internet site to which they might link. Licensees/employees shall obtain the consent of the site owner before linking.
2. For any questions, the agent/employee should consult with the Company's "Office Internet Consultant," as identified on page \_\_\_\_\_ of this manual.

## Designated Office Internet Consultant

1. The Company designates \_\_\_\_\_ its Office Internet Consultant to whom all questions regarding the business use of e-mail, the Internet or social media tools should be directed.
2. Licensees/employees should contact the Office Internet Consultant to report suspected illegal, unethical or inappropriate use of e-mail, the Internet or social media tools by other licensees/employees.

## **RECORD RETENTION AND DESTRUCTION**

### **SCOPE**

This Record Retention and Destruction Policy applies to all records generated in the course of **Hudson Burnham** (the Company)'s operation, including original documents, reproductions, and electronic documents.

### **PURPOSE**

The purpose of this section is to ensure that that necessary records and documents of the Company as well as any Non-Public Information ("NPI"), as further defined herein, of customers or clients are adequately protected and maintained and to ensure that records that are no longer needed by the Company or are of no value are discarded or destroyed at the proper time and in the proper fashion. This policy is also intended for the purpose of aiding licensees/employees of the Company in understanding their obligations in retaining electronic documents—including e-mail, Web files, text files, sound, movie, and picture files, PDF documents and Microsoft Office or other word processing documents or other formatted files.

1. The information that is covered in this section includes, but is not limited to, physical records or electronic documents of the Company or that meets the definition of NPI, including but not limited to information that is either stored or, formatted as, or shared via electronic mail, Instant Messaging, Web files, social media (including social media sites that are considered "private" or "password protected"), text files, sound and movie files, PDF documents, Microsoft Office (or any other word processing program), or any other formatted files.

2. All the Company agents and employees should familiarize themselves with the retention topic areas that follow this introduction.
3. This section is intended to supersede all existing document retention policies and ensure that retention and destruction practices are consistent throughout the Company.
4. This Policy is further intended to avoid or limit unnecessary accumulation of Email Messages, including attached documents and materials, that are not needed (or no longer needed) for business, regulatory or other reasons.
5. Federal and state laws require the Company to maintain certain types of records for particular periods. Failure to maintain such records could subject you and the Company to penalties and fines, obstruct justice, spoil legal evidence, and/or seriously harm the Company's position in litigation.
6. Unless you have been notified by the Company, if you believe that (1) such records are or could be relevant to any future litigation, (2) there is a dispute that could lead to litigation, or (3) you or the Company is a party to a lawsuit, you **MUST PRESERVE** such records until the Company's legal counsel determines that the records are no longer needed.

## **DEFINITIONS**

1. Retained Electronic Data (hereafter, Electronic Data): Any and all information, in whatever format, collected and/or stored by the Company. This includes, but is not limited to, demographic, financial, transactional, marketing and related information. This could include database records, web pages, email messages or messages delivered by other social media platform (including any corresponding attachments), reports, images, videos, and voicemail to name a few. It does not include information not stored, for example live phone calls.
2. Metadata: Information about the Content, not the Content itself. For example, records relating to who placed a call to whom or who sent an email to whom. That is, not the content of the call, but only the information about the call, like when it occurred and the parties' numbers involved. Another example is records relating to web site visits. That is, not the content of those web sites, but data related to the access, when it took place, what Internet addresses were involved, etc.
3. Contracts: Whether a hard copy or electronic, will include all purchase contracts, leases, listing or representation agreements with a seller or landlord and representation agreements with a buyer or tenant.

4. Non-Public Information (“NPI”): Any information provided by a customer or client on a form or application, information about a customer’s or client’s transactions, or any other information about a customer which is otherwise unavailable to the general public. NPI includes first name or first initial when used with the last name coupled with any of the following: social security number, driver’s license or state issued ID number, credit or debit card number, or other financial account number.

## **ADMINISTRATION**

Included in this section is a Record Retention Schedule, Record Destruction Policy and Clean Desk Policy that is approved as the initial maintenance, retention and destruction policies for records of the Company. The managing broker is the designated individual for **Hudson Burnham** in charge of the administration of these policies and the implementation of processes and procedures to ensure that they are followed. The managing broker is also authorized to: make modifications to the policies from time to time to ensure that they are in compliance with local, state and federal laws and includes the appropriate document and record categories for the Company; monitor local, state and federal laws affecting record retention and destruction; annually review the record retention and destruction program; and monitor compliance with these policies.

## **RETENTION POLICY**

1. All Records and Electronic Documents must be maintained in accordance with applicable laws and regulations (and contractual provisions) governing record retention. Any Record or Electronic Document containing NPI must be stored on encrypted devices and never on personal devices. All devices, data, and files containing NPI must have password-protection or encryption.

2. The Record Retention Periods (see the Record Retention Schedule) apply regardless of the record’s medium or method of transmission; the content of the record determines how long the record will be maintained.

3. Licensees/employees are responsible for classifying records, including Email Messages they send or receive according to the content. The sender of the Email message is responsible for retaining the message or information, unless the Sender is outside the Company, in which case the recipient is responsible. The sender should use the subject lines on the Email Message to help both the sender and the recipient identify and file messages, however, in no case shall an email message’s subject line contain NPI.

4. Licensees/Employees should refer to the Record Retention Schedule for information concerning the minimum retention periods for specific types of documents.

5. Email containing NPI may only be handled over the Company’s true business domain email account and address. Private licensee/Employee email is prohibited for handling business issues. Email messages should not be destroyed before the prescribed Email Retention

Period has expired. Email messages shall not be retained for longer than the prescribed period without first contacting the managing broker. Licensees/Employees should not selectively delete or discard Email Messages or other electronically transmitted or stored documents that would normally be retained for a longer period of time because they believe that the documents might be harmful to any licensee/employee or to the Company.

6. The Administrator will review the appropriateness of the retention periods periodically and recommend modifications, as necessary, to ensure regulatory compliance.

7. Any exceptions to this Policy may be made only after consultation with legal counsel. Any licensee/employee who believes that circumstances warrant such a deviation should promptly contact his or her managing broker.

8. Any destruction or disposal of any record provided for in this Retention Policy shall only be in accordance with the Destruction Policy contained herein.

### **CLEAN DESK POLICY**

All Licensees/Employees shall:

- Maintain a neat work environment during business hours:
  - Store non-essential items when not in use
  - Do not leave handwritten notes containing NPI outside of related files
  - Securely store all files, documents and electronic media containing NPI when away from workstation for extended absence (i.e. lunchtime, break, meeting, vacation, outside office hours)
  - Take all items to be destroyed to locked shredding bin when away from workstation for more extended absence (i.e. lunchtime, break, meeting, vacation, outside office hours)
  - Whiteboards, planners, notepads or other items containing NPI must not be viewable from window or doorways, must be secured when employee is away for extended absence (i.e. lunchtime, break, meeting, vacation, outside office hours)
  - Close paper and electronic files containing NPI and lock workstations when employees are away from their desks
- At the end of the work day, all files, documents, portable devices, and electronic media containing NPI should be locked in a desk, file cabinet, or secure room overnight

### **RECORD DESTRUCTION POLICY**

With regard to the permanent retention or destruction of Records, including any Electronic Data or Electronic Documents, which contain NPI, the following shall apply. If any Record shall contain NPI and said Record is to be permanently retained, then it shall be stored on encrypted, password-protected servers or other electronic media or in locked, physical files, access to which is restricted to the managing broker. If any Record shall contain NPI and said Record is to be destroyed then as to any physical Record, it shall be shredded (cross-cut or “confetti”) as to any electronic Record it shall be permanently deleted from any and all files, folders, programs, or

other electronic platforms where it may be stored and if any storage device itself is to be destroyed then it shall be wiped such that any information contained on said device is rendered permanently inaccessible.

## **RECORD RETENTION SCHEDULE**

### **TRANSACTIONAL RECORDS**

<b>Record Type</b>	<b>Retention Period</b>
Sales or Transaction Records except Contracts	5 years for sales or transaction records
Contracts and Related Correspondence (including any proposal or direction that resulted in the contract and all other supportive documentation)	10 years after expiration or termination for all contracts and related correspondence
Incident Reports and Claims (settlement cases)	7 years
All Required Disclosures (Property & Agency)	5 years

### **CORRESPONDENCE AND INTERNAL MEMORANDA**

**General Principle:** Most correspondence and internal memoranda should be retained for the same period as the document they pertain to or support. For instance, a letter pertaining to a particular contract would be retained as long as the contract (10 years after expiration).

Correspondence or memoranda that do not pertain to documents having a prescribed retention period should generally be discarded sooner. These may be divided into two general categories:

1. Those pertaining to routine matters and having no significant, lasting consequences should be discarded **within two years**. Some examples include:
  - Routine letters and notes that require no acknowledgement or follow-up, such as notes of appreciation, congratulations, letters of transmittal, and plans for meetings.
  - Form letters that require no follow-up.
  - Letters of general inquiry and replies that complete a cycle of correspondence.
  - Letters or complaints requesting specific action that have no further value after changes are made or action taken (such as name or address change).

- Other letters of inconsequential subject matter or that definitely close correspondence to which no further reference will be necessary.
- Chronological correspondence files.

Please note that copies of interoffice correspondence and documents where a copy will be in the originating department file should be read and destroyed, unless that information provides reference to or direction to other documents that must be kept for traceability.

2. All correspondence in transaction files should be retained for 5 years.
3. Those pertaining to non-routine matters or having significant lasting consequences should generally be retained permanently.

## **ELECTRONIC DOCUMENTS**

1. **Electronic Mail.** Subject to the other terms and policies contained herein, not all Email needs to be retained, depending on the subject matter. All of the Company's Email Message information is categorized, each with distinct retention guidelines:

- a. **Transactional Email Correspondence (inbox, sent mail) (5 years)**

Transactional Email Correspondence covers information (sent or received) that relates to client/customer interaction in a transaction. When direction is given or received in an email regarding a transaction it needs to be placed in a transaction folder, electronic or hard copy, and should be retained for 5 years. The Licensee/Employee is responsible for Email retention of General Correspondence.

- b. **Ephemeral & Personal Email Correspondence (retain until read, destroy promptly)**

Ephemeral Email Correspondence is by far the largest category and includes personal Email messages, requests for recommendations or review, Email messages related to updates and status reports.

- c. **Instant Messages (5 years)**

When used as a form of business communication, Instant Messages (sent or received) create business records that are subject to all legal retention regulations of other formats, like Email messages or snail-mail correspondence.

- d. Email or Instant Messages can be printed to include a hard copy in the file in which case the electronic version can be deleted or can be retained electronically for the period indicated.

## **General Guidelines for Electronic Mail:**

- Staff and Licensees/Employees of the Company will strive to keep all but an insignificant minority of their Email related to business issues.
- Staff and Licensees/Employees of the Company will not store or transfer Company-related Email on non-work-related computers except as necessary or appropriate for Company purposes.
- Staff and Licensees/Employees of the Company will take care not to send confidential/proprietary Company information to outside sources.

## **2. Electronic Documents.** Including Microsoft Office Suite, PDF files, or other word processing files. Retention also depends on the subject matter.

- **PDF Documents.** The length of time that a PDF file should be retained should be based upon the content of the file and the category under the various sections of this Policy. PDF files the Licensee/Employee deems vital to the performance of his or her job should be printed and stored in the agent/employee's workstation or in an electronic file.
- **Text/formatted files.** The Company will conduct annual reviews of all text/formatted files (e.g. Microsoft Word documents) and will delete all those it considers unnecessary or outdated. After five years, all text files will be deleted from the network and the staff/agent/employee's desktop/laptop. Text/formatted files the licensee/employee deems vital to the performance of their job should be printed and stored in that person's workspace.

## **POLICY REVIEW**

This Policy shall be reviewed every three years, or earlier as necessary to ensure conformity with the applicable laws and regulations.

## **REPORTING**

Concerns regarding adherence to this Policy in any given instance should be reported to the managing broker.

## **CONCLUSION**

**Hudson Burnham** is committed to strict compliance with all laws and ethical standards by all of its licensees/employees. Any questions regarding issues raised by this section should be directed to the managing broker.



## **DO NOT CALL**

### **General Statement**

1. The Federal Trade Commission (“FTC”) adopted regulations under the Federal Telephone Consumer Protection Act (“Act”) adopting a national Do Not Call Registry (“DNC Registry”). The FTC and the Federal Communications Commission (“FCC”) are charged with adopting rules to implement the Act and handling complaints concerning violations of the Act. This policy is adopted by **Hudson Burnham** to provide guidance for members of the Company in connection with compliance with the Act and the DNC Registry.
2. The policy of the Company is that the Company, all of its sponsored licensees, and any of its employees and representatives, will comply with the Act and DNC Registry.
3. The Company reserves the right to amend or modify this policy at any time as may be determined necessary by the Company.

### **General Rule**

1. Sponsored licensees of the Company, employees of the Company, and any other representatives of the Company shall not make any telephone calls to any telephone number listed on the DNC Registry or the Company Do Not Call List (“Company DNC”) (as explained below) unless one of the following exceptions applies:
  - (a) You are currently working with the consumer;
  - (b) Within the last 18 months you have represented the consumer in a real estate transaction;
  - (c) The consumer has made an inquiry concerning real estate brokerage services or inventory within the last three months;
  - (d) The consumer is a personal friend or acquaintance of the caller; or
  - (e) Written consent has been obtained from the consumer to call a specific number(s).
2. PLEASE BE AWARE THAT EVEN IF AN EXEMPTION APPLIES, INCLUDING CURRENTLY WORKING WITH A CONSUMER, THE CONSUMER CAN REQUEST EITHER ORALLY OR IN WRITING THAT THEY NOT BE CALLED AND THAT REQUEST MUST BE HONORED. FURTHER, THAT NUMBER MUST BE PLACED ON THE COMPANY DNC.
3. Do not make any calls to numbers listed on the Company DNC without written permission from the consumer to call that specific number.

## **Access to DNC Registry and Company DNC**

1. All licensees and employees are required to comply with the Act and the DNC Registry.
2. Any person making a call to a consumer whose telephone number is not on the DNC Registry and which consumer requests that they not be called again shall immediately report that request to the database for inclusion on the Company DNC.
3. If a consumer's name appears on the DNC Registry but they fall under one of the exemptions referred to above, and that person requests, either orally or in writing, that their number not be called again, that request must immediately be reported to the database.
4. Before making a call to a consumer, you should check with the DNC Registry and the Company DNC as provided for in this policy.
5. The DNC Registry will be updated every 31 days.
6. Phone numbers placed on the Company DNC will remain there for a period of five (5) years. The Company DNC will be updated at least every thirty (30) days.
7. The information on the DNC Registry and Company DNC shall not be sold, transferred, or used for any purpose other than determining whether a cold call or telemarketing call can be made to a specific telephone number.

## **Making Sales Calls**

1. No sales calls shall be made except in accordance with this policy.
2. If you will be making calls to consumers, you must:
  - (a) Disclose on every sales call your name, name of the Company, and the telephone number or address where you or the Company may be contacted.
  - (b) Describe the services you are offering.
  - (c) Make calls only after 8:00 a.m. and before 9:00 p.m. (local time at consumer's location).
  - (d) You may not misrepresent, harass, intimidate, annoy, or use obscene language in any such call.
3. The Company prohibits you from contracting with or using third party or outside calling services. (Use of unlicensed callers to solicit new real estate business is a violation of the Illinois Real Estate License Act.)

4. It is impermissible for any licensee/employee of the Company to make calls using automated dialers and a pre-recorded message without the express written consent of the person being called.

### **Record-Keeping and Record Retention**

1. Documents containing the express written consent of the consumer to call specific numbers shall be retained in the Company's files. If you do not have a file with regards to a specific consumer, a copy of that consent shall be forwarded.
2. Provide copies of any scripts that you may be using in telemarketing and cold calling to your supervisor or managing broker.
3. If you are requested not to call a number, then follow up with written or electronic confirmation and receipt to your supervisor or managing broker of the request so the phone number can be placed on the Company DNC.
4. If a telephone number is inadvertently made to a consumer whose number appears on the DNC Registry and you are so advised of that during the telephone call, then prepare a written report to the administrator of the Company DNC advising them of that fact.

### **Questions**

1. Frequently asked questions and answers are available on the website of Illinois REALTORS®. Acquaint yourself with those questions and answers with regards to the making of calls under specific circumstances.
2. If you have other questions concerning the policy or compliance with this policy, consult with or direct your questions to your supervisor or managing broker.
3. If you have questions concerning access to the DNC Registry or the Company DNC, contact or direct your inquiries to supervisor or managing broker.
4. Some common scenarios that you may be faced with and the Company policy on those scenarios are as follows:
  - (a) If a For Sale by Owner (FSBO) has their telephone number on the DNC Registry, then you should not be calling that consumer unless you have a bona fide buyer prospect for the subject property. In the course of the conversation, do not try to steer the conversation to issues regarding your listing of the property unless the owner makes inquiry concerning that possibility. If the FSBO requests not to be called in the future, then notice should be given to supervisor or managing broker so that number can be placed on the Company DNC.
  - (b) Do not contact individuals who simply visit your open house. If you wish to contact guests who come to an open house that you are conducting, you must

include in the guest register a space allowing the guest to specifically indicate that they can be called and to indicate the phone number at which they can be called.

- (c) If you have a contact on your web site from a consumer, please ask them to specifically indicate whether they can be called and, if so, at what number. This can be accomplished by e-mail or by a click on your website.
- (d) If your cell phone indicates a call from an unknown number, do not call that number without checking the DNC Registry and the Company DNC except to indicate that your cell phone indicated a call from that number and that you were responding to determine what was needed. If there is an indication that no assistance is required, then the call should be broken off at that point, without discussing your brokerage services or inventory.

### **Responsibility**

1. The Act and the DNC Registry are entity based provisions. This means that the Company will generally be the party against which a complaint will be filed or a suit brought for violation of the Act, the DNC Registry or the Company DNC.
2. Fines under the Act can be up to five figures per incident or private litigation can be brought by an individual resulting in fines plus attorney's fees, costs, and any actual damages.
3. (Insert any policy the Company may have concerning the responsibility of a sponsored licensee, employee or representative).

**Please feel free to ask your supervisor or managing broker any questions.**

## ACKNOWLEDGMENT AND AGREEMENT

The undersigned licensee or employee of **Mysolsa Real Estate Brokerage PLLC, dba Hudson Burnham Real Estate** acknowledges receipt of a copy of **Hudson Burnham** Office Policy Manual.

This Office Policy Manual is not a contract of employment. The Company reserves the right to modify, amend, or change this policy manual in any manner at any time.

As a condition of his/her association or employment with **Hudson Burnham**, the licensee or employee agrees to abide by the policies of **Hudson Burnham** as presently adopted and as amended in the future by publication from management of any changes.

Failure to abide by **Hudson Burnham** policies as adopted and amended may be grounds for disciplinary action of the licensee or employee, including termination of association or employment.

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Licensee or Employee / Print

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Licensee or Employee / Signed

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03/01/2022

Date

## **DO'S AND DON'TS FOR BUYER'S AGENTS**

### **Buyer's Agent "DO's"**

**DO** Explain designated agency to the buyer.

**DO** Have a specific buyer interview session. Explain how buyers' agents are paid. Explain the buyer agency contract.

**DO** Tell the buyer of any potential for dual agency. Explain to the buyer the Consent to Dual Agency form and ask if the buyer is willing to sign it.

**DO** Disclose your agency status orally to the seller, if not represented by another agent, preferably when first showing the property and confirm it in writing not later than the presentation of the offer.

**DO** Ask the buyer whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you should not interfere with the agency of another agent. You may enter into another agreement with them upon release from the other agreement. If non-exclusive, you may enter into another non-exclusive agreement, but do not enter into an exclusive agreement.

**DO** Represent the buyer, acting according to your agreement with the buyer and the duties of the Illinois statutes.

**DO** Exercise reasonable skill and care for the buyer.

**DO** Seek a price and terms acceptable to the buyer.

**DO** Present all written offers to and from the buyer in a timely manner, regardless of whether the buyer is presently under contract to buy a property, unless the buyer instructs you otherwise in writing.

**DO** Disclose all adverse material facts to the buyer which you know about. Adverse material facts include (1) environmental hazards affecting the property; (2) physical condition of the property; (3) material defects in the property; (4) material defects in the title to the property.

**DO** Advise the buyer to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise.

**DO** Account in a timely manner for all money and property received on behalf of the buyer.

**DO** Comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

**DO** Advise the buyer that homes or properties they view may contain surveillance equipment. As a result, take care to refrain from discussing the property or even showing excitement by body language.

**DO** Search for and present the buyer with the selection of properties specified in your buyer agency agreement. This could include MLS properties, FSBO's, REO property and unlisted property.

**DO** Recommend an appraisal and appropriate inspections such as building, termite, environmental, lead paint, radon, etc.

**DO** Work for the lowest amount of earnest money that is appropriate given the market, type of property and type of offer the buyer wants to present.

**DO** Point out good and bad features of a property, especially features affecting value such as poor floor plans or over improvement for the neighborhood.

**DO** Direct the buyer to objective sources for relevant information you know about the area, such as proposed roads, power lines, school changes, commercial developments, local tax increases, etc.

**DO** Complete a Comparative Market Analysis before an offer is made on a property. Make sure it is a thorough comparison of all properties, active, sold and pending. Analyze the data with the buyer and assist the buyer in formulating an offer price.

**DO** Prepare the offer with favorable and protective terms for the buyer, particularly in inspections, and recommend legal counsel when necessary.

**DO** Counsel with the buyer as to negotiating strategies on terms and price. Share your experience in negotiating with the buyer and give your recommendations, if appropriate.

**DO** Keep confidential information of the buyer confidential unless you have permission to disclose it. Go over with the buyer on the buyer interview this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the seller and other agents in a transaction.

**DO** Treat the customer, the seller, honestly.

**DO** Disclose all information you receive from the listing agent. This is especially helpful regarding the seller's negotiating position and intention.

**DO** Disclose buyer paid retainer fees to the seller if you are also getting commission from the seller and get the informed consent of your buyer to accept commission from the seller (this should be in the buyer agency contract).



**DO** disclose in writing of making contemporaneous offers on the same property for multiple buyers.

## **DO'S AND DON'TS FOR BUYER'S AGENTS**

### **Buyer's Agent "DON'Ts"**

**DON'T** Disclose confidential information of your client, the buyer. This is information defined in Article 1 and discussed in Article 15 of the License Act. The Article 1 definition of confidential information refers to information being confidential if requested in writing by the client, if the information deals with the negotiating position of the client, or if disclosure of the information could materially harm the position of your client. This likely includes information such as the buyer's motivation to buy, the price or terms the buyer is willing to offer or that you and the buyer believe the property is underpriced.

**DON'T** Try to balance "fairness" between the seller and buyer. You represent the BUYER - your only obligation to the seller is to be honest and not to give the seller false information. If you learn important information about the seller's negotiating position, tell your buyer - don't make decisions about what to disclose in the interest of being "fair" to the seller.

**DON'T** Accept a bonus, prize, trip or incentive from a seller or listing broker without disclosure to and informed consent of your client, the buyer.

## **DO'S AND DON'TS FOR SELLER'S AGENTS**

### **Seller's Agent "DO's"**

**DO** Explain designated agency to the seller.

**DO** Tell the seller of the potential for dual agency. Explain to the seller the Consent to Dual Agency form and ask if the seller is willing to sign it.

**DO** Explain to the seller how the listing agent is paid, the company's rate of compensation and the company's policy on splitting fees and the amount that it will pay to cooperating agents.

**DO** Ask the seller whether they are subject to any existing agency agreements. If they are subject to an exclusive agreement, you must not interfere with the agency of another agent. You may enter into another agreement with them upon release from the other agreement. If non-exclusive, you may enter into another non-exclusive agreement, but do not enter into an exclusive agreement.

**DO** Represent the seller, acting according to your agreement with the seller and the duties of the Illinois statutes.

**DO** Exercise reasonable skill and care for the seller.

**DO** Seek a price and terms acceptable to the seller.

**DO** Present all written offers to and from the seller in a timely manner, regardless of whether the seller's property is presently under contract, unless the seller otherwise instructs you in writing.

**DO** Respond honestly and accurately to request for information concerning the property or the seller. If the information requested is confidential, indicate that to the buyer or buyer's agent instead of stating you don't know.

**DO** Advise the seller to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise. This includes recommending legal advice when needed.

**DO** Account in a timely manner for all money and property received on behalf of the seller.

**DO** Comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

**DO** Disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property that are known to you and which could not be discovered by a reasonably diligent inspection of the property by the customer. All of this information should already be on the disclosure forms prepared by the Seller.

**DO** Work for the highest amount of earnest money that is appropriate given the market, type of property and type of offer the buyer presents and consistent with reaching an agreement between the parties.

**DO** Complete a Competitive Market Analysis before listing the property.

**DO** Negotiate the offer with favorable and protective terms for the seller, especially in inspections and title examination. Recommend legal advice when needed.

**DO** Counsel with the seller as to negotiating strategies on terms and price. Share your experience in negotiating with the seller and give your recommendations, if appropriate.

**DO** Keep confidential information, as defined in the License Law, confidential unless you have permission to disclose it. Go over with the seller on the listing call this aspect of agency, making sure you and your client have a good idea of what is usually discussed with the buyer and other agents in a transaction.

**DO** Treat the customer, the buyer, honestly.

**DO** Disclose all information you receive from the buyer's agent. This is especially helpful regarding the buyer's negotiating position and intention or the buyer's ability to perform.

**DO** Ask your seller if seller employs the use of surveillance equipment. Check to see if there is a sign posted to this effect. Refer seller to seller's attorney for advise on the proper disclosure and consent, if needed (especially for audio recording if there is an expectation of privacy).

## **DO'S AND DON'TS FOR SELLER'S AGENTS**

### **Seller's Agent "DON'T"**

**DON'T** Disclose confidential information of your client, the seller. This is information defined in Article 1 and discussed in Article 15 of the License Act. Article 1 refers to information being confidential if requested in writing by the client, if the information deals with the negotiating position of the client or if disclosure of the information could materially harm the position of your client. This likely includes information such as the seller's motivation to buy, the price or terms the seller is willing to offer or prior offers and counter offers.

## **DISCLOSED DUAL AGENCY DO's AND DON'Ts**

### **Disclosed Dual Agent "DO's"**

**DO** Discuss the possibility of Disclosed Dual Agency with **BOTH** buyer and seller at the earliest possible time in your relationship.

**DO** Obtain the signature of both buyer and seller on a Consent to Dual Agency form as soon as possible but no later than your beginning to act as a dual agent.

**DO** Represent the seller and the buyer, acting according to your agreements with the seller and the buyer and the duties imposed by Article 15 of the License Law.

**DO** Exercise reasonable skill and care for the seller and the buyer.

**DO** Seek a price and terms acceptable to both the seller and the buyer.

**DO** Present all written offers to and from both the seller and the buyer in a timely manner.

**DO** Disclose all adverse material facts to both the buyer and the seller which you know or should know. Adverse material facts include (1) Environmental hazards affecting the property; (2) Physical condition of the property; (3) Material defects in the property; (4) Material defects in the title to the property; (5) Material limitation on the seller's ability to perform under the terms of the contract; and (6) the buyer's financial ability to perform the terms of the transaction.

**DO** Advise both the seller and the buyer to obtain expert advice as to material matters about which you know but the specifics of which are beyond your expertise. This includes legal advice when needed.

**DO** Treat all clients honestly.

**DO** Provide information about the property to the buyer or tenant.

**DO** Disclose all latent material defects in the property that are known to the agent.

**DO** Disclose the financial qualification of the buyer or tenant to the seller or landlord.

**DO** Explain real estate terms.

**DO** Help the buyer or tenant to arrange for property inspections.

**DO** Explain closing costs and procedures.

**DO** Help the buyer compare financing alternatives.

**DO** Provide information about comparable properties that have sold so both clients may make educated decisions on what price to accept or offer.

**DO** Account in a timely manner for all money and property received on behalf of the seller and the buyer.

**DO** Comply with all license laws, regulations, civil rights laws, fair housing laws and any other applicable laws.

**DO** Keep confidential information of both the seller and the buyer confidential unless you have permission to disclose it.

**DO** Give written disclosure of your agency status no later than the presentation of the offer. In the written disclosure, disclose your agency status and the sources of the compensation, usually the seller.

**DO** Conduct yourself with the knowledge that the brokerage (and therefore you) represent **BOTH** buyer and seller.

**DO** If **YOU** are both a buyer's agent and the listing agent, act only to "facilitate" the negotiations and transaction.

**DO** If **YOU** are both a buyer's agent and the listing agent, stay completely neutral.

**DO** Make sure that there is a confirmation of Consent to Dual Agency in the Purchase Contract which confirmation is initialed by the parties.

**DISCLOSED DUAL AGENCY DO's AND DON'Ts**  
**Disclosed Dual Agent "DON'Ts"**

**DON'T** Disclose confidential information that you may know about the clients to the other side, without that client's permission.

**DON'T** Disclose the price or terms the seller or landlord will take other than the listing price without permission of the seller or landlord.

**DON'T** Disclose the price or terms the buyer or tenant is willing to pay without permission of the buyer or tenant.

**DON'T** Recommend a suggested price or terms the buyer or tenant should offer.

**DON'T** Recommend a suggested price or terms the seller or landlord should counter with or accept.

**DON'T** Accept compensation from both parties unless disclosed to both parties and you get the informed consent of both parties. This includes nonrefundable retainer fees accepted from buyers.

**DON'T** Accept a bonus, prize, trip or incentive from a seller without disclosure to and informed consent of both clients, buyer and seller.

**DON'T** Act like you are the agent of only one of the parties, even after having made disclosure and obtained consent to act as a dual agent.

**DON'T** Take the position of one or the other parties. Remain neutral as to advising either party about aspects of the transaction whether it be pricing or other terms.

## LEASING

**Hudson Burnham Real Estate** is engaged in the leasing business.

- When an agent acquires a new leasing lead:
  - Use information collected from applicants in a uniform manner.
  - Check credit and rental history.
  - Obtain pay stubs verified to be those of applicant(s) (destroy according to document destruction policy).
  - Obtain job and income information
    - Be aware of “source of income” as a possible protected class depending upon property location.
    - Be aware of other protected classes contained in local ordinances that are stricter than state or federal law, i.e., certain criminal history.
  - Obtain copy of identification.
  - Get signed permission to perform checks.
  - Obtain any allowable fees to pay for required checks.
  - Protect confidential information.
- Collecting rent:
  - Make sure there are provisions in a written property management agreement with the company and the owner. There must be a written property management agreement in order for rents collected to pass outside of the company’s escrow account.
  - Make sure the property management agreement gives authority for activities and services that the company is performing on behalf of the property owner; i.e. (non-exhaustive list)
    - Entering into leases;
    - Entering into maintenance agreements;
    - Securing insurance for the property;
    - Holding security deposits and payment of interest, if required;
    - Signing contracts on behalf of the owner.
- Be aware of requirements under the Fair Credit Reporting Act (FCRA):
  - An Adverse Action Notice will be required if applicants are denied or treated differently due to their application.
  - If the company or the owner of the property does not allow licensees to assist in the evaluation process of applicants, DO NOT order the credit reports. The landlord will be the party to get permission and request credit reports when the landlord is doing all of the analysis of the applicant’s ability to rent.
- Licensees need a separate license to engage in community association management.
  - This is a separate license.
  - It is third party management for a community association of more than ten units where the manager is being paid to perform management services for the association.

## **E-mail and Web Site Requirements**

### **Illinois Real Estate License Act of 2000**

Each page (HTML document) of the Web site must include:

- Company name or assumed name as registered with the Department of Financial and Professional Regulation (DFPR)
- City and state of company's principal office
- Licensee's name, if it is the licensee's site
- If marketing property at the site it should also include the city and state where the property is located

If the broker (or broker's site) is not licensed in the state of the marketed property then where the broker is licensed If this information is on a frame that appears with each page on the Web site then it need not be on each page (HTML document) of the Web site.

Must keep updated so the information is accurate

Must include name of listing broker with each property shown unless behind a password protected firewall

The first or last page of any electronic communication from a sponsoring broker must include:

- Company name or the assumed name registered with DFPR
- City and state of the company's main office or the office from which the message originated

The first or last page of any electronic communication from a real estate licensee must include

- Licensee's name
- Name of the company with which the licensee is affiliated
- City and state in which the licensee's office is located

(The above information regarding electronic communications for both sponsoring broker and licensee does not apply if the communication is a message in response to a member of the public and the required information has previously been provided)



## **REALTOR® Code of Ethics**

ARTICLE 12. Applies to all forms of communication including communication by electronic means. This would include Web site advertising, e-mail messages, blog entries, social media, text messaging or any other electronic means of communication that relate to the practice of real estate brokerage

REALTORS® must:

- Disclose status as real estate professional in a “readily apparent” manner
- Make sure all communications are honest and truthful
- Truthful representations include the use of URLs and domain names that are not
  - Deceptive or framed in an unauthorized manner
  - Manipulated to produce a deceptive or misleading result
  - Deceptive in the way they direct Internet traffic (i.e. using metatags, keywords or other devices to divert traffic in a deceptive manner)
- Be sure the recipient knows the communication is from a real estate professional
- Include the company name in any advertising
- Ensure that information included on Web site is kept current and if not promptly take corrective action
- Disclose the state of licensure in a “readily apparent manner”
- Disclose if the REALTOR® will share or sell information gathered via the Internet
- Not use URLs or domain names that do not present a “true picture”

## ARTICLE 15

- REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses or business practices
- These principles apply to electronic communications such as blogs, social media, e-mail messages etc.

## **Federal CAN-SPAM Requirements for Commercial E-mails**

Applies to “commercial electronic mail message(s)” defined as “any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (emphasis added) (including content on an Internet website (sic) operated for a commercial purpose)” and a commercial message does not include a transactional or relationship message

- All commercial e-mail messages must contain:
  - A legitimate return e-mail and physical address (which can include a post office box or a private mailbox that the sender has accurately registered with the U.S. Post Office or a commercial mail agency that follows U.S. Postal Service regulations)
  - A conspicuous way to opt-out of receiving the commercial e-mail messages
  - The opt-out is available for at least 30 days after transmission

- A clear and conspicuous notice that the e-mail is an advertisement or solicitation
- The sender may not
  - Charge a fee to opt out
  - Require personal information to opt out
- The recipient must be able to opt out
  - By sending an e-mail message
  - By requesting to opt out through a Web site

Note: Senders of electronic commercial messages to wireless devices must check for wireless domain names that require express consent to receive these messages.

If you participate in a Multiple Listing Service (MLS) that has an Internet Data Exchange (IDX) Policy, you will also need to comply with your particular IDX policy requirements by virtue of your participation in your MLS. You should check your local/regional policy for those requirements.

Also Note: This information does not take the place of specific legal advice and only constitutes general rules without the rules being applied to specific factual situations. So, before establishing policies and procedures consult with your own attorney for specific legal advice.