

**Report of The**

**GEORGIA REAL ESTATE COMMISSION**

**1999 TASK FORCE**

**December 1999**

**Members of the  
Georgia Real Estate Commission**

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## 1999 GREC Task Force Participants

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RE/MAX Greater Atlanta, Dunwoody

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RE/MAX Savannah, Savannah

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# Executive Summary

## Background and Charge to the Task Force

At its August, 1999 meeting the Commission established the 1999 Task Force and charged it with 1) evaluating the Commission's current fee structure and making any recommendations for appropriate changes in fees and 2) reviewing how the Brokerage Relationships in Real Estate Transactions Act (BRRETA) is working in today's real estate market and identifying any appropriate changes that the industry might recommend to the General Assembly.

### Revenues and Fees

Since 1977, the state has expended over 95 cents of every regulatory fee dollar collected from licensees to regulate the industry. Over the last four years, the state has averaged expending 98.1 cents of every regulatory fee dollar to regulate the industry.

Because the state has annual budgets and does not allow agencies to build reserves, the Commission should generate approximately the same amount of revenues each year. Ninety-eight percent of all Commission revenues come from two sources, renewal fees and initial application fees. Thus, in order to assure that annual revenues are substantially the same, the Commission needs to have less variance in the number of persons renewing each year and to prepare for a likely decline in the number of new licensees in the future.

Likewise of concern to the Commission are inequities in the current fee structure:

- costs of establishing, maintaining, and updating individual records of salespersons, associate brokers and broker are the same; nevertheless the difference in individual license renewal fees charged to salespersons and to broker and associate brokers is substantial;
- Establishing, maintaining, and updating license records for firms is more complicated and costly than records for individual licensees; nevertheless, only half of the firms licensed by the Commission pay fees for that service;
- a number of salespersons and associate brokers have incorporated and affiliated with brokers; and while these "affiliate corporations" cost the Commission substantially less to establish, maintain, and update than a firm, the "affiliate corporation" pays the same initial licensing fees and \$160.00 renewal fee as a firm. While processing "affiliate corporation" applications is more costly than an individual license application, its cost to the Commission to establish, maintain, and update is less than a corporate firm.

### BRRETA

In 1993 Georgia enacted the Brokerage Relationships in Real Estate Transactions Act (BRRETA) to define by statute real estate brokerage agency relationships. The real estate brokerage industry has had five years of experience under the provisions of the Act. During that period BRRETA has produced a number of benefits for consumers and the industry and some problems as well.

The Commission has begun to receive some consumer complaints in the problem areas, brokers struggle to adopt reasonable office policies on them, and attorneys have reported new civil suits related to dual agency issues.

# Report of the 1999 GREC Task Force

## *Recommendations on Fees:*

1. **The amount of the activation fee charged to an individual for an initial license application should reasonably approximate the actual costs of processing the application.**
2. **Renewals fees should be at the same level for all individual license renewals.** Since the cost to maintain and update the license record of a salesperson or a community association manager is no different than that of an associate broker or broker, the current disparity in renewal fees is not justified.
3. **Every firm acting as a broker should pay licensing fees. Those fees should be at the same level for all regardless of the type of business organization a firm chooses.** Establishing, maintaining, and updating license records for any firm is more complicated and costly than establishing and maintaining records for individual licensees. In addition, those costs occur whether a firm chooses to be a corporation, limited liability company, partnership, or a sole proprietorship.
4. **Activation fees for salesperson and associate broker affiliate firms should be similar to those for brokerage firms, but the affiliate firm should not be charged a separate renewal fee.** Initially a separate application must be processed to open an affiliate firm, and it is more costly to process that application than to process an individual license application. However, the renewal of the affiliate firm takes place at the same time as the renewal of the individual license; thus the processing of the renewal for the individual and his or her firm is no more costly than the processing of any other individual license.
5. **The Commission should make any adjustments to its fee structure on a schedule consistent with the state's budget process.**

## *Recommendations on BRRETA:*

- **Single agent dual agency (e.g., the individual licensee who lists a property for sale also is the buyer's agent) results in less than adequate service to both clients and an unnecessary increase in the licensee's liability. Because of the significant conflict between the best interests of each of the parties, an agent can not act to the benefit of one party without acting to the detriment of the other. However, a listing agent can work effectively with a buyer as a customer and provide valuable professional services without advocating on behalf of the buyer to the detriment of the seller. Similarly, a different licensee assigned to each client can create an effective representation for each client. Therefore, single agent dual agency should be abandoned in favor of designated agency.**
- **BRRETA should be amended to provide for designated agency. Many brokerage transactions unintentionally result in a licensee obligated to represent two clients. For example, a licensee contracts to represent a buyer and finds that the buyer is a good**

prospect for a property the licensee has listed for sale. Similarly, a licensee has contracted to represent two buyers who both want to purchase the same property. Under designated agency, if a broker has an agency relationship with each of two parties to a transaction, the broker can avoid the negative aspects of single agent dual agency by designating one licensed affiliate to work exclusively with one of the parties and a different licensed affiliate to work exclusively with the other party. Neither of the designated affiliates would receive any information that the client of the other designated affiliate wanted kept confidential. Such information could be disclosed only to the broker, and the broker would not then disclose it unless it involved information that BRRETA requires to be disclosed in any transaction.

- **At present BRRETA allows agents and buyers to enter into oral buyer agency agreements. In such situations neither party usually fully knows or understands what they are agreeing to in terms of services, disclosure, or fees. BRRETA should be amended to require that all brokerage engagements be in writing.**
- **BRRETA in its current form is indefinite as to what disclosures are required regarding facts or conditions that are outside the boundaries of the property. The Task Force supports amending BRRETA to require disclosure of material facts pertaining to adverse conditions in the immediate neighborhood of the property if the broker actually knows them or the buyer could not discover them through a diligent inspection of the neighborhood or a reasonably thorough search of available public sources of information and public records.**

**The Task Force recommends that real estate brokerage industry trade associations join in seeking to have the General Assembly amend BRRETA to address the issues raised above with provisions consistent with those identified by legislative style in Exhibit A.**

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# **1999 TASK FORCE REPORT**

## **Should the Commission Modify the Current Regulatory Fee Structure?**

### **BACKGROUND**

Over the last four years, the state has averaged expending 98.1 cents of every regulatory fee dollar collected by the Commission to regulate the industry. Regulatory fees include fees paid for license transactions such as original applications and renewals. Direct costs of regulation include expenses the Commission must pay from its legislative appropriation including, for example, employees' salaries, rent, telephone, and computer charges. Indirect costs of regulation include services provided to the Commission by the Attorney General's office and the Secretary of State's office. These legal and bookkeeping services provided by those agencies are paid for from their budgets. These indirect costs of Commission regulation equal from 13% to 17% of the Commission's direct legislative appropriation.

Calculated over four year periods (the current renewal cycle), the Commission's revenues and expenditures meet law's requirement that revenues approximate the total of the direct and indirect costs to the state of the operations of the Commission. (In 1992, the Commission changed its renewal periods from two years to four years. That change included phasing the initial renewal dates in an attempt to have one quarter of all licensees renewing in each year of a four year period. The attempt proved imperfect. Actual renewals received over the last four fiscal years have been: FY 96 - 14,400, FY 97 - 15,900, FY 98 - 12,500, and FY 99 - 13,300.)

### **SOURCES OF REVENUES**

Because the state has annual budgets and does not allow agencies to build reserves, the Commission believes that it should make reasonable efforts to generate approximately the same amount of revenues each year. Ninety-eight percent of all Commission revenues come from two sources, renewal fees and initial application fees. Thus, in order to assure that annual revenues are substantially the same, the Commission needs to have less variance in the number of persons renewing each year and assure approximately the same number of new licensees.

While the Commission can act to assure roughly the same number of people renewing each year, it has no control over the number of new licensees. Over the last four years that number has been relatively constant between 5,000 and 5,500 persons each year. However, Georgia is unique among states in having had an increase in the number of new licensees. All other states have experienced a decline in the number of new applicants during the 90s. The Commission needs to prepare for such a decline to occur here. In addition, viewed over the last 25 years, Georgia has seen variations in the number of new licensees from a low of 2,000 to a high of 14,000.

### **INEQUITIES**

In addition to its concern of assuring that revenues each year equal costs, the Commission has concerns about inequities in its fee structure. The Commission has identified three areas of inequities.

- < **Cost of processing applications** - The cost to establish, maintain, and update the license record of a salesperson is no different than that of an associate broker or broker. However, brokers and associate brokers pay four year renewal fees of \$160.00 and salespersons pay four year renewal fees of \$90.00. (The significantly different fees charged for salespersons and brokers is a carry over from the fee structures in the 1960s and 1970s when the Commission did incur significant differences in cost to maintain records on brokers and salespersons.)
- < **Some firms are not charged fees** - Establishing, maintaining, and updating license records for firms is more complicated and costly than records for individual licensees. Yet, only half of the firms licensed by the Commission pay fees for that service. Firms operating as corporations, limited liabilities, and partnerships pay a \$160.00 renewal fee. Firms operating as sole proprietors pay no fee at all.
- < **“Affiliate firms”** - Largely for tax reasons, a number of salespersons and associate brokers have elected to incorporate. However, they want to continue to have their licenses affiliated with a firm. The law permits them to do so as long as only one individual holds a license with the corporation. Both the individual license and the corporate license must be affiliated with the same firm. These “affiliate corporations” cost the Commission substantially less to establish, maintain, and update than a firm. However, the “affiliate corporation” pays the same initial licensing fees and \$160.00 renewal fee as a firm. While processing “affiliate corporation” applications is more costly than an individual license application, its cost to the Commission to establish, maintain, and update is less than a corporate firm.

## Findings of the Task Force

- 1. The amount of the activation fee charged to an individual for an initial license application should reasonably approximate the actual costs of processing the application.**
- 2. Renewals fees should be at the same level for all individual license renewals.** Since the cost to maintain and update the license record of a salesperson or a community association manager is no different than that of an associate broker or broker, the current disparity in renewal fees is not justified.
- 3. Every firm acting as a broker should pay licensing fees. Those fees should be at the same level for all regardless of the type of business organization a firm chooses.** Establishing, maintaining, and updating license records for any firm is more complicated and costly than establishing and maintaining records for individual licensees. In addition, those costs occur whether a firm chooses to be a corporation, limited liability company, partnership, or a sole proprietorship.
- 4. Activation fees for salesperson and associate broker affiliate firms should be similar to those for brokerage firms, but the affiliate firm should not be charged a separate renewal fee.** Initially a separate application must be processed to open an affiliate firm, and it is more costly to process that application than to process an individual license application. However, the renewal of the affiliate firm takes place at the same time as the renewal of the individual license; thus the processing of the renewal for the individual and his or her firm is no more costly than the processing of any other individual license.
- 5. The Commission should make any adjustments to its fee structure on a schedule consistent with the state's budget process.**

# **Should The Real Estate Brokerage Industry in Georgia Seek Modifications in The Brokerage Relationships in Real Estate Transactions Act ( Brreta)?**

## **BACKGROUND**

In 1993 Georgia enacted the Brokerage Relationships in Real Estate Transactions Act (BRRETA) to define by statute real estate brokerage agency relationships. In doing so, Georgia became one of the first states to limit the common law of agency as it relates to real estate brokerage. Since then almost all states have passed similar legislation. BRRETA became effective January 1, 1994. The real estate brokerage industry has had five years of experience under the provisions of the Act. During that period BRRETA has produced a number of benefits for consumers and the industry including (1) clarification of the real estate brokers duties to the various parties in real estate brokerage transactions, (2) a shift from all brokers and their licensees representing the seller in residential sales transactions prior to BRRETA to only the listing broker and agent representing the seller in most transactions today, and (3) a significant number of agents now specialize in buyer only agency. (Some observers have estimated that before BRRETA, transactions involving a buyer broker were less than 25%. Today's estimates have 75% of buyers represented by their own agent.)

In addition to these positive benefits, some problems exist including: (1) listing agents who formerly worked with buyers only as customers now often seek to be the buyer's agent, creating a dual agency authorized by BRRETA; and (2) BRRETA provides no guidance to licensees on how to resolve conflicts between their duty to disclose information and their duty to maintain confidentiality.

The Commission has begun to receive some consumer complaints in these problem areas, brokers struggle to adopt reasonable office policies on them, and attorneys have reported new civil suits related to dual agency issues. With these concerns in mind and the Commission's awareness that many real estate practitioners wanted to take a close look at BRRETA, the Commission asked its 1999 Task Force (which had been evaluating some license law issues for the Commission) to provide a forum to evaluate how BRRETA is working and make any recommendations it felt were appropriate.

## Findings of the Task Force

11. **Single agent dual agency (e.g., the individual licensee who lists a property for sale also is the buyer's agent) results in less than adequate serves to both clients and an unnecessary increase in the licensee's liability. Because of the significant conflict between the best interests of each of the parties, an agent can not act to the benefit of one party without acting to the detriment of the other. However, a listing agent can work effectively with a buyer as a customer and provide valuable professional services without advocating on behalf of the buyer to the detriment of the seller. Similarly, a different licensee assigned to each client can create an effective representation for each client. Therefore, single agent dual agency should be abandoned in favor of designated agency.**
  
12. **BRRETA should be amended to provide for designated agency. Many brokerage transactions unintentionally result in a licensee obligated to represent two clients. For example, a licensee contracts to represent a buyer and finds that the buyer is a good prospect for a property the licensee has listed for sale. Similarly, a licensee has contracted to represent two buyers who both want to purchase the same property. Under designated agency, if a broker has an agency relationship with each of two parties to a transaction, the broker can avoid the negative aspects of single agent dual agency by designating one licensed affiliate to work exclusively with one of the parties and a different licensed affiliate to work exclusively with the other party. Neither of the designated affiliates would receive any information that the client of the other designated affiliate wanted kept confidential. Such information could be disclosed only to the broker, and the broker would not then disclose it unless it involved information that BRRETA requires to be disclosed in any transaction.**
  
13. **At present BRRETA allows agents and buyers to enter into oral buyer agency agreements. In such situations neither party usually fully knows or understands what they are agreeing to in terms of services, disclosure, or fees. BRRETA should be amended to require that all brokerage engagements be in writing.**
  
14. **BRRETA in its current form is indefinite as to what disclosures are required regarding facts or conditions that are outside the boundaries of the property. The Task Force supports amending BRRETA to require disclosure of material facts pertaining to adverse conditions in the immediate neighborhood of the property if the broker actually knows them or the buyer could not discover them through a diligent inspection of the neighborhood or a reasonably thorough search of available public sources of information and public records.**

The Task Force recommends that real estate brokerage industry trade associations join in seeking to have the General Assembly amend BRRETA to address the issues raised above with provisions consistent with those identified by legislative style in Exhibit A.

## **Exhibit A**

# **GEORGIA REAL ESTATE COMMISSION FEES**

## **BACKGROUND INFORMATION FOR 1999 TASK FORCE**

**August, 1999**

### **COURT RULING**

In the 1960s the Georgia Association of Realtors (GAR) became convinced that the state needed to do more to enforce the real estate license law in order to remove unscrupulous practitioners from the business. One of the major reasons cited for that lack of enforcement was inadequate revenue to fund investigations. Thus, GAR's leadership supported legislation in the early 1970s that would significantly increase license fees.

Despite substantially increased income for the state from those fees, spending for enforcement remained low. When state records reflected that the Commission was receiving only forty-three cents of every dollar collected from licensees, GAR brought suit against the state in an effort to ensure that the state used the increase in license fees to increase enforcement activities.

In 1977 a court ruling held that “. . . the fees required by the Real Estate License Law are regulatory fees and not taxes” and that any fees assessed must have “. . . a reasonable relationship to the cost of regulating real estate brokers and salesmen.” That court held that the state must base regulatory fees for any profession on the assumption that they will not exceed the direct and indirect costs of regulating the industry or profession from which they were collected.

The court also ruled that Georgia's Constitution does not allow the Commission to maintain the regulatory fees it collects in a dedicated fund to be used as the Commission desires. Instead, the Commission may use those funds only if the legislature appropriates them to the agency. The Commission must make reasonable efforts to assure that it sets regulatory fees at a level that balances with its appropriated costs of operation.

Thus, if the Commission's income significantly exceeds legislative appropriations for direct and indirect costs, it must reduce fees charged to licensees. Once since 1980 the Commission made such a reduction because appropriations in earlier years had fallen below fee income. Conversely, if income falls significantly below legislative appropriations for direct and indirect costs, the Commission must increase fees charged to licensees. It has had to increase fees only once since 1980.

## **THE LAW**

In order to assure it met the court's mandate, the legislature made the Commission a separate budget unit and required it to set fees at a level reasonably calculated to cover the budget set by the legislature for the agency.

*O.C.G.A. §43-40-3 Determination of fees by commission.*

The commission is authorized to establish the amount of any fee which it is authorized by this chapter to charge and collect. Each fee so established shall be reasonable and shall be determined in such a manner that the total amount of fees charged and collected by the commission shall approximate the total of the direct and indirect costs to the state of the operations of the commission.

In order to implement that provision of the license law, the Commission has adopted *Substantive Regulation 520-1-.29 Fees and Renewal of Licenses. Amended.*

- (1) Whenever an individual applicant activates an original license, that applicant shall pay an activation fee and a renewal fee which shall cover all fees due the Commission until the applicant's month of birth in the fourth calendar year following the calendar year in which the license was activated. Whenever a corporate, limited liability company, or partnership applicant activates an original license, the corporation, limited liability company, or partnership shall pay an activation fee and a renewal fee which shall cover all fees due the Commission until the month of the fourth anniversary of the activation of a license by the corporation, limited liability company, or partnership.

- (2) Unless renewal fees are paid, all licenses issued under the provisions of paragraph (1) of this Rule will lapse:
- (a) in the case of an individual license, on the last day of the month of the birthday of the individual licensee;
  - (b) in the case of a corporation or partnership licensed as a salesperson or associate broker, on the last day of the month of the birthday of its qualifying salesperson or qualifying associate broker;
  - (c) in the case of a corporation, limited liability company, or partnership licensed as a broker on the last day of the month of the fourth anniversary of its original licensure.
- (3) Fees for all licenses and services performed by the Georgia Real Estate Commission shall be as follows:
- (a) The activation fee for original licensure as a broker, associate broker, salesperson, community association manager, or for original approval as a school or instructor shall be \$75.00 which includes \$20.00 for the Real Estate Education, Research, and Recovery Fund;
  - (b) Renewal fees for the four year renewal period shall be \$160.00 for brokers, associate brokers, approved schools, and approved instructors and \$90.00 for community association managers and salespersons;
  - (c) The fee for reinstatement of any license or approval which lapsed solely for nonpayment of fees shall be \$60.00 for each year or portion thereof since the lapsing of the license; and
  - (d) \$25.00 (1) for failure to notify the Commission in writing within one month of a change of address, of the opening or closing of a designated trust account, of transferring to a new company, or of leaving a firm to go on inactive status; (2)

for failure to affiliate with a new company or to apply to go on inactive status within one month of the Commission's receipt of notice that the broker holding the licensee's license no longer wishes to do so and has mailed a letter to the licensee's last known address indicating that the broker is returning the license to the Commission; (3) whenever it is necessary for the Commission to return an application to an applicant because of the applicant's failure to file a complete application; and (4) for submitting to the Commission a check that is returned unpaid.

- (4) Whenever an instructor or school applicant applies for an original approval, that applicant shall pay an activation fee and a renewal fee which shall cover all fees due the Commission until December 31st in the fourth calendar year following the calendar year in which the applicant's approval is granted.

## **BUDGETS AND REVENUES**

Since 1977, the state has expended over 95 cents of every regulatory fee dollar collected from licensees to regulate the industry. Over the last four years, the state has averaged expending 98.1 cents of every regulatory fee dollar to regulate the industry.

Regulatory fees include fees paid for license transactions such as original applications and renewals. Direct costs of regulation include expenses the Commission must pay from its legislative appropriation; for example, employees' salaries, rent, telephone, and computer charges. The court identified indirect costs of regulation to include services to the Commission provided by the Attorney General's office and the Secretary of State's office. These legal and bookkeeping services provided by those agencies are paid for from their budgets. These indirect costs of Commission regulation equal from 13% to 17% of the Commission's direct legislative appropriation. Over the last four fiscal years, the Commission's fees and appropriation have been:

<b>Fiscal Year</b>	<b>Fee Income</b>	<b>Legislative Appropriation</b>	<b>Appropriation as % of Income</b>
96	2,333,032	2,086,448	89.4
97	2,382,498	2,105,576	88.3
98	2,029,621	2,200,762	108.4
99 <sup>a</sup>	2,098,264	2,287,588	109.0
4 Year Totals	8,843,415	8,680,374	98.1

Calculated over four year periods (the current renewal cycle), the Commission's revenues and expenditures meet the law's requirement that revenues approximate the total of the direct and indirect costs the state of the operations of the Commission. (In 1992, the Commission changed its renewal periods from two year renewals to four year renewals. The attempt to have one quarter of all licensees renewing in each of a four year period proved imperfect. Actual renewals received over the last four fiscal years have been: FY 96 - 14,400, FY 97 - 15,900, FY 98 - 12,500, and FY 99 - 13,300.)

### **SOURCES OF REVENUES**

Because the state has annual budgets and does not allow agencies to build reserves, the Commission believes that it should make reasonable efforts to generate approximately the same amount of revenues each year. Ninety-eight percent of all Commission revenues come from two sources, renewal fees and initial application fees. Thus, in order to assure that annual revenues are substantially the same, the Commission needs to have less variance in the number of persons renewing each year and assure approximately the same number of new licensees.

While the Commission can act to assure roughly the same number of people renewing each year, it has no control over the number of new licensees. Over the last four years that number has been relatively constant between 5,000 and 5,500 persons each year. However, Georgia

is unique among states in having had an increase in the number of new licensees. All other states have experienced a decline in the number of new applicants during the 90s. The Commission needs to prepare for such a decline to occur here. In addition, viewed over the last 25 years, Georgia has seen variations in the number of new licensees from a low of 2,000 to a high of 14,000.

## **INEQUITIES**

In addition to its concern of assuring that revenues each year equal costs, the Commission has concerns about inequities in its fee structure. The Commission has identified three areas of inequities.

- <     **Cost of processing applications** - The cost to establish, maintain, and update the license record of a salesperson is no different than that of an associate broker or broker. However, brokers and associate brokers pay four year renewal fees of \$160.00 and salespersons pay four year renewal fees of \$90.00. (The significantly different fees charged for salespersons and brokers is a carry over from the fee structures in the 1960s and 1970s when the Commission did incur significant differences in cost to maintain records on brokers and salespersons.)
  
- <     **Some firms are not charged fees** - Establishing, maintaining, and updating license records for firms is more complicated and costly than records for individual licensees. Yet, only half of the firms licensed by the Commission pay fees for that service. Firms operating as corporations, limited liabilities, and partnerships pay a \$160.00 renewal fee. Firms operating as sole proprietors pay no fee at all.
  
- <     **“Affiliate corporations”** - Largely for tax reasons, a number of salespersons and associate brokers have elected to incorporate. However, they want to continue to have their licenses affiliated with a firm. The law permits them to do so as long as only one individual holds a license with the corporation. Both the individual license and the corporate license must be affiliated with the same firm. These “affiliate corporations” cost the Commission substantially less to establish, maintain, and update than a firm. However, the “affiliate corporation” pays the same initial licensing fees and \$160.00

renewal fee as a firm. While processing “affiliate corporation” applications is more costly than an individual license application, its cost to the Commission to establish, maintain, and update is less than a corporate firm.

## COMPARISON TO OTHER STATES

How do Georgia’s funding and fees compare with other states? A review of information from the Association of Real Estate License Law Officials 1999 Digest reveals that only eight states have a larger licensee population than Georgia’s 50,800. Fourteen states have a larger annual budget than Georgia’s 1.9 million. One way to equate the expenditures of larger and smaller states is to compare expenditures per licensee (divide the number of licensees in a state into its total budget). Georgia expends \$37.61 per licensee. Twenty-eight states spend more per licensee to regulate the industry than does Georgia. The national average expenditure per licensee is \$53.70.

Staff size is another indicator of regulatory funding levels. Georgia’s staff of 31 full time employees ranks it as the fourteenth largest. One way to equate small and large states in this area is to compare the number of licensees per full time staff member. The best staffed state has one staff member for every 412 licensees. The national average is one staff member for every 1,428 licensees. Georgia has one staff member for every 1,639 licensees.

Renewal fees comprise the largest part of income for real estate commissions. States have renewal periods varying from one to four years. Annualizing renewal fees (renewal fee ÷ number of years in renewal period) reveals:

<b>State</b>	<b>Broker</b>	<b>Salesperson</b>
Highest	\$300.00	\$225.00
Average	\$68.50	\$ 48.92
Georgia	\$40.00	\$ 22.50
Lowest	\$18.00	\$ 12.50

Only eight states charge brokers a lower fee than Georgia, and only five states charge salespersons a lower fee.

The industry and the public want and expect the Commission to deliver reasonable levels of enforcement and prompt service at a reasonable cost. Since 1972 the Commission has had to increase regulatory fees charged to licensees only once (1990). The Commission and its staff constantly seek to improve and update procedures to help reach the goal of reasonable enforcement and service at minimum costs. The Commission appreciates the advice and assistance GAR has provided it over the years to help achieve that goal.

## **Exhibit B**

**REPORT**  
**NAR Presidential Advisory Group on**  
**Buyer Representation Liability Issues ("BRLI PAG")**

**I. CHARGE AND PAG MEMBERS**

1. The Charge to the PAG was:

To review judicial opinions and regulatory obligations addressing the duties of buyers' representatives for the purpose of identifying ways in which the REALTOR® Association could foster reasonable standards of care for buyers' representatives within state and local markets.

2. PAG Members:

Maryann Bassett (NM), Chair

Bruce Aydt (MO)

Earl Black (ME)

Steve Casper (OH)

Carolyn D'Agosta (CA)

Lee Finch (GA)

John Foltz (AZ)

Robert Foster (CA)

Curtis Hall (AZ)

Cynthia Joachim (MS)

Robert Most (CO)

James Merrion (IL)

Lou Tulga (NM)

Steve Hoover (VA), 1999 Committee Liaison, Law & Policy Group

Laurie Janik, NAR General Counsel

Diane Djordjevic, NAR Associate Counsel, Staff Executive to the PAG

David Martin, Director of REBAC

**II. BACKGROUND AND HISTORY**

In 1983, the Federal Trade Commission ("FTC") released its report, The Residential Real Estate Brokerage Industry, which indicated that in cooperative transactions, 72% of potential home buyers thought that the real estate practitioner who was working with them was working for them. This misperception was counter to the reality of the residential real estate transaction at the time, where the common business practice was that the licensee worked for the seller, either as an agent or as a subagent.

Since 1985, the NATIONAL ASSOCIATION OF REALTORS® ("NAR") has appointed five member groups to study agency issues and the brokerage relationships between licensees and consumers in real estate transactions.

1. In 1985, NAR formed its first Agency Task Force to study agency issues in-depth, in particular, the relationship between real estate practitioners and consumers. NAR's Board of Directors adopted the Agency Task Force's recommendations, and it became NAR policy to encourage state REALTOR® associations to work with their state legislatures to enact legislation providing for mandatory agency disclosure.

2. In 1991, NAR's President appointed a Presidential Advisory Group on Agency to make recommendations to assist the state REALTOR® associations during that time of transition in the industry. The Agency PAG's recommendations were adopted as NAR policy in 1992. Its recommendations included:

- a. Making subagency optional in REALTOR® MLSs;
- b. Creating corresponding standards of conduct in the REALTOR® Code of Ethics to include NAR members working with buyers;
- c. Having NAR provide education and information on a variety of agency issues to its members; and
- d. Encouraging state REALTOR® associations to work toward the promulgation of laws providing for mandatory, written, timely and meaningful agency disclosure.

3. In 1992, NAR's President appointed a Presidential Advisory Group on the Facilitator/Non-Agency Concept. This PAG was charged with assessing the advantages and disadvantages to both licensees and consumers, of a pure non-agency relationship (no fiduciary duties). The PAG recommended that NAR not further develop or promote the pure non-agency facilitator concept. Instead, it recommended nine elements for a legislative framework to clarify the law of agency as applied to real estate brokerage. These recommendations were adopted by NAR's Board of Directors and became NAR policy in 1993. The Executive Summary of the Facilitator/Non-Agency PAG Report is attached to this Report as Appendix A.

4. In 1996, NAR's Professional Standards Committee created a Non-Agency Working Group, which recommended changes to NAR's Code of Ethics to ensure that it included NAR members practicing in various non-agency relationships.

5. In December 1998, NAR's President appointed this Presidential Advisory Group on Buyer Representation Liability Issues ("BRLI PAG") in response to:

- a. Concerns over the lack of clear, specific duties and responsibilities owed to a buyer-client by his representative, and
- b. The growing number of judicial decisions imposing divergent and sometimes expansive "standards of care" on buyer's representatives.

### **III. METHODOLOGY**

To assist in its analysis of the liability issues facing buyer representatives, the PAG reviewed and discussed the following information:

- < Judicial decisions involving buyer representative liability, including the decisions in: Field v. Century 21 Klowden - Forness Realty (CA); Padgett v. Phariss (CA); Parahoo v. Mancini (OH); McFarland v. Associated Brokers (TX); Pagano v. Krohn (CA); and Gouveia v. Citicorp Person-To-Person Financial Center, Inc. (NM).
- < Each state's legislation and/or regulations that set forth duties owed to purchasers by licensees and/or that limit licensee liability. The following aspects of each state's statute or regulation also were reviewed:
  - a. Which description best characterized the statute or regulation:
    - (i) common-law type; that echoes the common law of agency;
    - (ii) non-agency default position, with duties owed a consumer;
    - (iii) presumption licensee is representing the consumer with whom he is working;
    - (iv) agency disclosure only;
    - (v) no agency legislation.
  - b. Whether agency agreements must be in writing.
  - c. How fiduciary duties flow in dual agency relationships and in designated agency relationships (whether the broker is a dual agent).
  - d. Whether there is a limitation on liability for a licensee who passes along to a party information given to the licensee by another licensee or his client/customer, which unknown to the licensee, is false.
  - e. Whether a duty of confidentiality exists in agency and non-agency relationships, and if so, how long it lasts.
- < Buyer representation contracts and/or agency disclosure forms used in a number of states including California and Colorado.
- < Market research, including What You Need to Know About Today's Home Buyers & Sellers - The NAR Home Buyers & Sellers Report produced by NAR's Economics & Research Group and the 1993 Gallup study conducted for NAR on consumer perceptions about different forms of representation.
- < A sampling of industry publications and training materials, including selected portions of REBAC course materials, addressing buyer representation and the duties and responsibilities owed when representing a buyer.
- < NAR Code of Ethics and Standards of Practice, as they create standards of care for real estate practitioners.
- < NAR legal research of judicial decisions in which the NAR Code of Ethics was used as the standard of care for real estate practitioners.

#### **IV. DEFINITIONS**

1. Buyer's representative - For the purposes of this Report, "buyer's representative" means any licensee working with a buyer, either in an agency relationship, or in a non-agency relationship with specific, statutory duties to the buyer.
2. Common law - Common law is law articulated in judicial decisions, as opposed to law created by legislatures in a statute. Since the common law comes from judicial decisions, it is difficult to ascertain in any given state, because it involves in-depth legal research. In addition, common law may change with new judicial decisions.
3. Designated agency - Once legislatively established in a given state, a brokerage practice (office policy) chosen by the managing broker to appoint, or designate, licensees associated with the managing broker as exclusive agents of consumers. This means that no other licensee in the brokerage represents that client.
4. In-house transaction - A transaction that takes place under the supervision of the same managing broker.
5. Judicial decision - A judicial decision is a court decision.
6. "Pure" non-agency - A relationship in which the licensee owes the consumer none of the traditional common law fiduciary duties. This is distinguishable from several states' versions of non-agency relationships with consumers (often called "transaction broker" or "facilitator"), in which the licensee still owes the consumer a variety of duties.

## **V. FINDINGS AND CONCLUSIONS**

1. The majority of residential real estate transactions today involve some form of buyer representation.
2. Subagency, the historical relationship between licensees and buyers, is disappearing as buyers continue to become aware that licensees acting as subagents only represent the seller.
3. The term "buyer representation" was originally used to describe an agency relationship between a licensee and a buyer. However, it is being redefined by current legislation in certain states to include a representative relationship with specific statutory duties owed a consumer, which may not include all traditional common law fiduciary duties.
4. The following factors influence and establish the standard of care for buyer representatives:
  - a. State laws and regulations
  - b. Judicial opinions/decisions
  - c. The NATIONAL ASSOCIATION OF REALTORS®:
    - < Code of Ethics and Standards of Practice;
    - < GRI, REBAC and other education programs;
    - < Policy positions taken by the Board of Directors; and
    - < Image campaign representations to the public.

#### d. Local and regional practices

5. A standard checklist of specific duties for buyer representatives cannot be created on the national level by NAR because state laws differ, as do the standards of care set by judicial opinion. Creation of a checklist can be accomplished best at the state level.
6. Because buyer representation has only been widely practiced since about 1994, few widely accepted specific standards of care or duties to a buyer have been established.
7. Judicial decisions regarding the standard of care expected of a buyer's representative are inconsistent from state to state.
8. Judicial decisions in several states have relied on NAR's Code of Ethics and Standards of Practice to define standards of care expected of a buyer's representative.
9. Since the recommendations of NAR's Agency Task Force and PAG in the mid 1980s, 49 states and the District of Columbia have enacted mandatory agency disclosure requirements through legislation or regulation.
10. Prior to 1994, when subagency was made optional, the "default" relationship of a real estate practitioner working with a buyer was as a subagent of the seller. This subagency "default" position provided clarity about the standard of care expected of a licensee when working with a buyer in that capacity.
11. Prior to entering into an agency relationship with a buyer, there may be a period of time when a licensee works with the buyer without the benefit of any defined brokerage relationship. During that time, the lack of defined licensee duties and responsibilities to the buyer can lead to problems.
12. Approximately 12 states have adopted legislation providing for a non-agency default relationship with specific duties owed a buyer by a licensee. This non-agency relationship with consumers is intended to lessen the potential legal liabilities for licensees by establishing specific, clear and measurable statutory duties owed to a consumer in a real estate transaction.
13. Since 1992, and the recommendations of the Facilitator/Non-Agency PAG, many states have incorporated in agency legislation or regulation some, or all, of NAR's recommended nine elements to clarify the law of agency as applied to real estate brokerage.
14. Since agency relationships may impose a higher standard of care on a licensee and may create vicarious liability for the consumer, they should be created with specific written agreement between the consumer and the licensee.
15. Although NAR's Code of Ethics and Standards of Practice have undergone several amendments related to agency and non-agency issues, they still reflect the influence of the common law of agency.

## **VI. RECOMMENDATIONS AND RATIONALES**

As a result of the findings and conclusions listed above, the following recommendations are ways in which the REALTOR® Association could foster reasonable standards of care for buyers' representatives within state and local markets:

## 1. Judicial Decisions

### **Recommendation - NAR should create an "early warning" system to identify lawsuits of importance to the industry involving the standard of care of buyer representatives.**

Rationale: A system needs to be created to enable NAR to identify and react proactively to lawsuits of importance to the real estate industry involving the standard of care of buyer representatives. This system should ensure that NAR learns of important cases in the early stages of litigation so that NAR can help shape the decisions, through financial support from NAR's Legal Action Committee and by filing amicus briefs.

Communication with state and local REALTOR® associations and individual members is needed to inform them that a system exists through which NAR can become involved. Additionally, the results in cases where NAR has been involved need to be communicated, as well as the standards of care buyer representatives are being held to in judicial decisions.

NAR should continue the work begun two years ago by Legal Affairs, conducting regular scans of the legal environment, including judicial decisions, statutes and regulations, and surveys of key contacts, to enable NAR to identify trends in litigation affecting the industry. NAR should continue to make the scan results available to REALTOR® associations and members, and should inform them of their availability through a variety of media.

## 2. State Statutes and/or Regulations

### **Recommendation - NAR should identify and/or develop suggested elements of legislation to:**

**a. Specify well-defined licensee duties for each type of brokerage relationship with a consumer.**(See Appendix B to this Report for a list of the brokerage relationships with consumers for which licensee duties should be specified.)**Once licensee duties are legislatively defined, the legislation should state that it abrogates (makes void/annuls and replaces) that state's common law (case law) as applied to real estate brokerage relationships to the extent the common law duties are inconsistent with the statutorily defined duties.**

Rationale: Once licensee duties are legislatively defined, it is extremely important that the legislation then abrogate (meaning annul/make void) the state common law duties, which are articulated in judicial decisions. Common law duties are difficult to ascertain even with in-depth legal research, and are difficult to determine with certainty as they are subject to change with a new judicial decision. For certainty as far as licensee duties, which will benefit both real estate practitioners and consumers, the state's common law needs to be abrogated to the extent it is inconsistent with the statutorily defined duties.

**b. Define the specific duties of a licensee.**

Rationale: Specific duties to be considered for inclusion or limitation for each of the relationships include, but are not limited to:

**Duties to be included by statute:**

1. Disclose known adverse material facts	6. Account
2. Advise consumer to obtain third party expert advice	7. Act in best interest of client
3. Act with honesty and in good faith	8. Follow lawful instructions of client
4. Use reasonable skill and care	9. Timely present all offers
5. Maintain confidentiality	10. Seek best price and terms

**And the ability to:**

- < Discharge duties by using third party experts
- < Rely upon statements of others
- < Limit duty to inspect, if any

**Duties to be limited and clarified:**

1. Investigate conditions affecting the property
2. Standard of care is that of a reasonably prudent licensee and is measured by the degree of knowledge required to obtain the relevant real estate license.

**c. Specify the licensee's disclosure duties with respect to conditions affecting the property and address licensee liability issues, including the ability of a licensee to rely on information from third parties.**

Rationale: Both consumers and licensees benefit from laws that specifically state a licensee's disclosure duties, because this clarifies for all what these duties are. An example of such statutory language is:

"Unless otherwise agreed in writing, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable."

**d. Create a presumption that the licensee/consumer relationship is one defined in the statute unless they enter into a written agreement specifically providing for a different type of relationship.**

Rationale: A non-agency default relationship should be legislatively created, with fully described duties owed to the consumer by a licensee operating in that capacity, including appropriate disclosure of the relationship to the consumer.

Specific duties to buyer to be considered for inclusion in a default non-agency relationship include, but are not limited to:

1. Disclose known adverse material facts.
2. Advise consumer to obtain third party expert advice.
3. Act with honesty and in good faith.
4. Use reasonable skill and care.
5. Account.
6. Timely present all offers.
7. Perform terms of any oral or written agreement.

A common law agency relationship imposes certain specific fiduciary responsibilities and liabilities for a licensee and vicarious liability for a consumer. Consequently, laws should be encouraged mandating that agency relationships only be established through written agency agreements outlining all of the licensee's duties and responsibilities and any vicarious liability to the consumer. A written agency agreement which clearly spells out the relationship is valuable to both the consumer and the licensee; it clarifies for both what the licensee will be able to provide.

**e. Enable a managing broker to use "designated agency" within the brokerage to: designate individual licensees within the brokerage to act as exclusive agents for buyers and sellers; designate exclusive agents without creating an agency relationship between the consumers and the broker; clarify the status of the other (non-designated) licensees affiliated with the brokerage; and limit instances of dual agency (where one individual licensee is the agent of both the buyer and the seller in the same transaction).**

Rationale: "Designated agency" is a practice through which a managing broker may meet several important objectives, and once it is legislatively established in a given state, managing brokers should be encouraged to use it.

At the time a written agency agreement is entered into, a managing broker may designate a licensee to act as the exclusive agent of the client, to the exclusion of all other licensees affiliated with that brokerage. This clarifies for the consumer that the licensee with whom he is working is the only practitioner affiliated with the brokerage who has any agency relationship with him, and that no other licensee of the brokerage represents him as his agent, nor does the managing broker. The brokerage practice of designated agency is consistent with the consumer's understanding and expectations, as opposed to the common law of agency, under which all of the licensees affiliated with the brokerage, including the managing broker, represent all of the broker's clients in an agency relationship.

Designated agency also may be utilized by a managing broker in an in-house transaction to limit dual agency to only those situations where the same individual licensee is an agent of both the seller and the buyer in the same transaction. To avoid dual agency in that situation, a broker could designate another licensee in his office to represent one of the parties.

Designated agency is not intended to limit the managing broker's obligations and duties with respect to supervision of licensees affiliated with his brokerage, nor is it intended to affect the broker's contractual rights, including the broker's right to compensation.

**f. Eliminate or modify the consumer's vicarious liability for the acts of the licensee.**

Rationale: The common law theory of vicarious liability, under which a principal may be liable for the acts of his agent, is not appropriate in a real estate brokerage relationship. Consumers do not expect that they could have vicarious liability for a licensee's actions, and it is likely that they would not select an agency relationship at all if this type of liability is present. It would benefit the consumer if it specifically is eliminated, and this would be consistent with consumer expectations.

**g. Adopt mandatory disclosure forms and rules requiring meaningful, timely written disclosure of brokerage relationships. "Timely" means before consumers offer any information that could be detrimental to their interest.**

Rationale: Disclosure forms benefit licensees as well as consumers, by ensuring that everyone understands the brokerage relationship. When the disclosure form is mandated by state law or regulation, there can be no question as to the adequacy of the language. The timeliness of the disclosure is an essential aspect.

**h. Specify how brokerage relationships end, and describe the licensee's duties upon the termination of the relationship.**

Rationale: For example, a licensee's duty with respect to treatment of confidential information following the termination of a brokerage relationship specifically should be described, as well as the types of events which would cause the information to cease to be confidential.

3. NAR Code of Ethics

**Recommendation - NAR's Professional Standards Committee should review NAR's Code of Ethics to determine whether any adjustments are needed to better reflect current real estate practices and reasonable standards of care articulated in judicial decisions.**

Rationale: A number of judicial decisions directly cite and rely on NAR's Code of Ethics to establish the standard of care for the real estate practitioner. The Professional Standards Committee needs to examine judicial decisions where NAR's Code of Ethics is cited to determine whether any adjustments to the Code are needed in light of those decisions. Additionally, the Professional Standards Committee should review/evaluate the common law of agency influences, reflected in the Code and Standards of Practice, for example, use of the phrase "absolute fidelity" in Article 1 of the Code of Ethics. (Article 1 of the Code of Ethics provides: "When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation of absolute fidelity to the client's interests is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly...") This is not intended to lower the standards of care of REALTORS®, but rather, to more clearly articulate the duties where they are intended, without using broad terms that may not be as specific as necessary to provide guidance to REALTORS®.

#### 4. Alternate Dispute Resolution

**Recommendation - NAR should encourage the use of mediation to resolve disputes between consumers and licensees and advocate the inclusion of mandatory mediation in all broker relationship agreements with consumers. NAR should also encourage the inclusion of mandatory mediation between the consumers in all purchase and sale agreements.**

Rationale: Alternate dispute resolution creates a collaborative atmosphere in which disputes can be resolved without litigation. Settling differences with consumers out of court is advantageous for several reasons - lessened delays and costs and fewer judicial decisions. Mandatory mediation is the preferred method because of its high success rate.

NAR already has developed a Dispute Resolution System ("DRS") program for use by its state and local associations to help resolve disputes between buyers and sellers of real estate, and between consumers and licensees. NAR's program (which is not used for disputes between REALTORS®), includes mediation and arbitration components. The program does not contemplate the association or its staff serving as mediators or arbitrators. To date, over 165 state and local REALTOR® associations have endorsed NAR's DRS program

REALTOR® associations which endorse NAR's DRS program develop their own DRS rules and procedures based on NAR guidelines. Those associations have professional liability insurance coverage for administering the DRS program under NAR's insurance program for state and local associations of REALTORS®.

#### 5. Consumer Information Education Vehicles

**Recommendation - NAR should encourage state REALTOR® associations to create consumer information vehicles concerning brokerage relationships and standards of care, and NAR should serve as a clearinghouse for these materials.**

Rationale: Providing this type of information to the consumer is important for at least two reasons. One, it directs the buyer to sources for actual inspectors. Second, and equally important, it helps establish reasonable expectations of the consumer's relationship with the real estate licensee and what services the licensee will be able to provide.

The California Association of REALTORS® has created, and is in the process of revising, a Property Transaction Booklet, a copy of which is attached to this Report as Appendix C. This booklet contains brokerage relationship disclosure forms, portions of applicable statutes, and additional important information, such as what aspects of the property the buyer might want to consider inspecting, a list of possible inspection items, and the appropriate type of professional to conduct such inspections. For example, under "Condition of Systems and Components," it lists as appropriate professionals "Home Inspector, Contractor, Energy Inspector." It also provides names, addresses and telephone numbers for a number of professional associations and governmental agencies.

## **PRESIDENTIAL ADVISORY GROUP REPORT ON THE FACILITATOR/NON-AGENCY CONCEPT**

### **EXECUTIVE SUMMARY**

In response to growing interest among some of its members in exploring the possibility of a non-agency real estate brokerage relationship (frequently referred to as a "facilitator"), the NATIONAL ASSOCIATION OF REALTORS® ("NAR") Presidential Advisory Group on the Facilitator Concept (the "PAG") was formed. Essentially, the PAG's charge was to study the concept and its potential implications to consumers and to licensees, and to recommend whether it should be developed and promoted by NAR.

After careful consideration of all aspects of a non-agency brokerage relationship, which assessment included interviewing subject matter experts, analyzing new and proposed state legislation addressing brokerage relationships, evaluating market research conducted expressly for the PAG concerning the views of consumers and REALTORS® and a variety of other information, the PAG issued this Report to share its findings and recommendations.

The PAG's recommendations are as follows:

#### **Recommendation Number 1:**

NAR should not further develop or promote the pure non-agency facilitator concept. It is not the intent of NAR to characterize the facilitator concept as unprofessional.

#### **Recommendation Number 2:**

NAR shall suggest elements for a legislative framework which would clarify the law of agency as applied to real estate brokerage.

1. The legislation should include well-defined duties for each type of brokerage relationship.
2. The legislation should clarify the common law of agency as applied to real estate brokerage relationships by creating a statutory agency relationship and by creating a presumption that the relationship is one of statutory agency unless the licensee and the client enter into an agreement specifically providing for a different type of representation.
3. The legislation should contain clear guidance on disclosed dual agency.
4. The legislation should provide for the ability on the part of a broker in an in-company transaction to designate an individual licensee within the broker's company to represent the seller, and to designate another individual licensee within the company to represent the buyer, without creating a dual agency relationship.

5. The legislation should eliminate or modify the consumer's vicarious liability for the acts of the licensee.
6. The legislature (or the state's real estate commission) should promulgate mandatory agency disclosure forms and rules providing for meaningful, timely and mandatory written disclosure.
7. The legislation should specify how brokerage relationships end and describe the licensee's duties upon the termination of a client relationship.
8. The legislation should address the licensee's disclosure duties with respect to property condition and address broker liability issues.
9. The legislation specifically should state that it abrogates the common law as applied to real estate brokerage relationships.

**Recommendation Number 3:**

That the Multiple Listing Policy Committee review current policies regarding the communication of offers of compensation from the listing broker to cooperating brokers to assure that the policies accommodate the new statutory agency concept.

**Recommendation Number 4:**

That NAR provide staff resources to assist state associations which desire to modify their state laws addressing brokerage relationships.

The PAG's underlying rationale for each of these recommendations is set forth in section VI of this Report. A variety of resource materials, including copies of the new and proposed state statutes addressing brokerage relationships, are contained in the appendices to this Report.

Document Title: Buyer Representation Liability Issues PAG Report - Appendix B

Document Date: 04/26/99 Source:

**Well-defined licensee duties should be specified for each type of brokerage relationship with a consumer:**

1. Seller's agent
2. Seller's subagent
3. Buyer's agent
4. Dual agent (one individual licensee representing two clients)
5. Designated agent (See Section IV, Definitions, of the Report for explanation of this type of relationship.)

6. Transaction broker (non-agency)

## **Exhibit C**

**Buyer Brokers: Do They Make A Difference?  
Their Impact on Selling Price and Search Duration**

by

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***Buyer Brokers: Do They Make a Difference?  
Their Impact on Selling Price and Search Duration***

Residential real estate markets, and the role that brokers play in these markets, have seen significant changes in recent years. Before the rush of these events, the residential real estate broker's role in the real estate market was clear: a broker was an agent representing the seller's interests in the marketing of property. Changes in this market, however, have clouded this role. The origins of these changes vary; some arise from new public policies, others from new demands made by homebuyers. In many cases, the agency relationship has been redefined. Passage of mandatory agency disclosure statutes at the state level and the concomitant increase in consumer awareness of brokerage services and responsibilities have encouraged the creation of new brokerage contracts that attempt to abrogate the common law of agency as well as limit broker liability. Examples of these types of contracts include designated agency, disclosed dual agency and non-agency, facilitator arrangements. The most striking development, however, has been the rise in the use of buyer representatives.

Seller/sub-agent and non-exclusive brokerage contracts have come under fire from consumer advocates such as the Consumer Federation of America and Ralph Nader.<sup>1</sup> These groups claim that consumers can receive adequate representation only through exclusive agency arrangements. Nader, in particular, has charged that non-agency and dual agency contracts compromise consumers' rights and limit the services that can be provided buyers. Similar arguments are the central theme of the marketing efforts of a national franchise organization that asserts buyer brokers can save homebuyers money and reduce search time. Traditional brokers have argued that these promotional activities are inaccurate and misleading, and have challenged these claims.<sup>2</sup>

Despite the claims, sparse empirical evidence exists to substantiate the impact of buyer brokerage. Since there are significant policy and market efficiency implications involved with these arguments, determining the actual impact of exclusive buyer brokerage is extremely important. Toward this end, this paper focuses on the impact of buyer brokers on home selling process by examining the effects of broker representation on the prices paid by buyers and on buyer search duration.

This study uses cross-section data from a 1996 nationwide survey of recent transactions by homebuyers and sellers conducted by the Research Division of the National Association of Realtors. This database includes both broker-assisted sales and sales by owners. Broker assisted sales are further

categorized as either buyer broker or non-buyer broker assisted transactions, with the latter category consisting of mostly traditional seller-subagent arrangements. The data are used to estimate a house selling price model as a function of house characteristics, buyer characteristics, and the type of broker employed by the buyer. The estimates also take into account the possible impact of the buyer choice decision on prices, since other estimates indicate that such selection bias may affect these estimates (see Zumpano, Elder and Baryla, 1996). The analysis then examines the factors determining the length of search by a buyer; the model estimated includes household characteristics, the nature of the move and whether there is broker representation and the type of representation, if used.

The results of our study indicate that buyers with high opportunity costs of search as well as buyers who are more experienced and less knowledgeable about local market conditions are the most likely to choose a buyer broker. Although real estate brokers, no matter the type, do not appear to influence home selling prices, they can and do reduce buyer search time as the literature on market intermediation suggests. Buyer brokers, however, appear to be more effective at reducing buyer search time than other types of brokers.

The layout of this study is as follows. The relevant literature is reviewed in section two. In section three the data, variable selection, and model are described. Section four presents the empirical results and the final section contains the conclusions of the paper.

## **II. The Impact of the Real Estate Broker**

There has now developed a substantial body of research that examines the role of the real estate broker. Most of this research is theoretical and can be found in the literature on search theory, market intermediation, the principal-agent problem, and time on the market studies.

Only a few studies, however, have tried to measure the direct effects that real estate brokers have on the residential housing' market when acting as intermediaries.<sup>3</sup> In an early empirical study, Janssen and Jobson (1980) find that real estate agents do have an impact on price. Using data from the Canadian housing market, Janssen and Jobson's results indicate that with real estate firms of comparable size, brokers who list comparable properties for higher prices than competing brokers tend to realize significantly higher selling prices. The higher selling prices tend to be associated with transactions involving executive transfers and broker arranged secondary financing. These results suggest that brokers obtain higher home prices when dealing with buyers who are both less knowledgeable about local market conditions and less sensitive to

price. The sample used in Janssen and Jobson's study does not contain information on purchases via for sale by owner (FSBO) transactions, so no price comparisons to broker assisted purchases can be made.

Jud (1983) estimates the demand for real estate brokerage services using housing transactions data from three urban areas in North Carolina. Jud finds that brokers do not affect the prices of the houses they sell, although they do appear to influence the level of housing consumed by buyers. In a subsequent study, Jud and Frew (1986), using different data, find that brokers obtain higher prices for the homes they sell. The paper also finds that broker-assisted buyers have a greater demand for houses than those who purchase without the assistance of a broker. They conclude that broker intermediation has an effect analogous to that of advertising in markets with imperfect information. Another way to view these results is that a broker plays a screening role for the seller, matching up buyers whose demand for housing coincides with the level of housing provided by the homes of the sellers they represent. These disparate results may reflect the fact that these early studies were based on local data with relatively small sample sizes.

In a more recent study using a national database, Zumpano, Elder and Baryla (1996) examine the decision to use a real estate broker. They find that home buyers with high opportunity costs and the least amount of information about local housing market conditions are more likely to seek out the services of real estate professionals, a finding that is consistent with the role of the real estate broker as a market intermediary. Of greater import, this study also shows that after taking into account the buyer's choice process, the real estate broker has no appreciable, independent impact on selling price, suggesting a non-segmented, competitive housing market.<sup>4</sup>

Brokers can also have an effect on the search process that transcends the price dimension. Baryla and Zumpano (1995) use a national sample of broker-assisted and non-broker sales transactions to assess the impact of intermediation by the agent on search. This study finds that information asymmetries are present in the residential real estate market and intermediation by agents does affect buyer search effort. First-time buyers and out-of-town buyers search longer than more experienced and local homebuyers. Equally important, real estate brokers are able to reduce search time for virtually all classes of consumers, whether first-time, experienced, local, or out-of-town buyers.<sup>5</sup> A subsequent study by Elder, Zumpano, and Baryla (1999) finds that the mechanism by which agents reduce buyer search duration is an increase in search intensity. Having more market access and housing information than buyers working without brokers, broker-assisted consumers are able to visit more homes during a given time period. These results suggest that buyers with high information and search costs are more likely to seek out the services of real estate brokers.

### **Buyer Brokers: Are They Different?**

The earlier empirical studies, however, do not distinguish the type of broker used in a real estate transaction. Until recently, this was not a significant problem: virtually all brokered transactions were handled in the traditional manner through the Multiple Listing Service (MLS), which implied an exclusive seller/sub-agency marketing arrangement. Now, with a growing movement toward alternative types of brokerage relationships, the broker no longer can be assumed to represent only the interests of the seller. The next logical step, therefore, is to examine whether the type of brokerage relationship between the buyer and the broker has an effect on price and on the effectiveness of the search process.

In particular, we wish to determine whether the assertions by the Buyer's Agent franchise that buyer brokers can save homebuyers time and money are true. What is it about buyer brokers that might account for their greater effectiveness as intermediaries as compared to the more traditional seller-sub agents, dual agents, and non-agent brokers and facilitators? As hypotheses, we offer the following possibilities. First, because buyer agents work only for the buyer, they may be more motivated and more focused on making the sale than other brokers who deal with both buyers and sellers. Brokers whose income is also predicated upon generating listings cannot devote the same amount of time or attention to buyers as brokers who are their sole representatives.

Equally important, the incentive structure for buyer agents is different from that faced by brokers who also work with sellers. Within the traditional MLS framework, brokers with listings are compensated when their listed properties sell, even if others accomplish the actual sale. Brokers with a large inventory of listed houses can, to some degree, rest on their laurels and still be assured of some income coming in over time as other agents sell these properties. Buyer brokers do not have this additional source of income. Therefore, buyer agents have a stronger incentive to find a suitable house for their clients than traditional agents, since income from buyer clients is the only source of income, so long as they work exclusively for buyers.

Having an agency relationship with the buyer legally obligates the broker to achieve the objectives of the buyer, which usually include a good price and a short search. Certainly, seller agents and non-agent facilitators are under no such obligation to the buyers they work with. Even in the case of dual agency, the broker's loyalty must be divided between the buyer and seller. Closing a transaction that is mutually agreeable to both parties involves compromise and may prove not only more difficult, but more time consuming as well.

On the other hand, an argument can be made the intermediation of buyer brokers may not lead to lower home prices for their clients. The current compensation arrangement for most buyer brokers presents a moral hazard problem. In the majority of MLS transactions that involve buyer brokers, the commission,

which is usually paid by the seller, is evenly split between the listing agent and the selling agent. A percentage commission based upon selling price is not an incentive compatible contract for buyer agents. To the extent that this compensation structure influences broker behavior, it provides no inducement for buyer brokers to negotiate lower prices for their clients.<sup>6</sup>

There may also be other factors that have nothing to do with the buyer broker per se that may work to expedite buyer broker assisted transactions. It is possible that buyers who choose to work with buyer brokers are motivated to purchase more quickly than are buyers who work with other types of brokers. These buyers maybe more experienced and knowledgeable about the housing market and or have higher time-related opportunity costs than other homebuyers. How the actual effectiveness of buyer brokers is modeled is discussed in the next section of the paper.

### **III. Data and Methodology**

This study uses cross section data from a 1996 survey of 10,000 recent homebuyers who purchased a home in the latter part of 1995. The survey was conducted by the Research Division of the National Association of Realtors and canvassed over 600 counties, including most of the 250 largest metropolitan areas in the United States. The response generated 1,445 usable responses. The data include both broker-assisted transactions and sales by owners. Respondents who indicated they used a broker were then asked to indicate whether the broker was a buyer broker and if so, how the broker was compensated.<sup>7</sup> Table 1 displays summary statistics from the survey sample, both for the full sample and divided into the three categories of buyers. Depending upon the particular model and the number of variables included in the equations, the number of observations used in our estimations vary from 558 to almost 900, after accounting for missing data in the sample.

During the search process, a buyer must make a number of important choices. Obviously, the initial decision is whether to buy or rent, which, for our sample, has already been decided. Next, the buyer has to decide how to conduct the search. In the past, this would have involved either undertaking a self-conducted search of FSBO properties or seeking out the assistance of a real estate broker. Now, however, there is an additional element present. If a homebuyer searches with broker assistance, it can be with a traditional broker (who usually represents the seller's interests), with a buyer broker, or a facilitator, who represents neither party. As other research has shown,<sup>8</sup> this decision may be part of a self-selection process that is potentially related to prices paid by buyers. The possibility of self-selection occurs at two, rather than one,

stages of the process, however. Self-selection may arise out of the choice as to whether to search with a broker's assistance, and also, for those who choose to search with a broker's assistance, in the decision about the use of a buyer broker. Since the decision process is now more complex, the conventional Heckman approach to control for selection effects is no longer appropriate. The remedy is a similar technique, but one that uses a bivariate probit model (as opposed to the univariate probit) to examine the choices of the buyer: (i) whether to use a broker to assist in the search and then (ii) whether to use a buyer broker in the search.<sup>9</sup> The process to correct for selection bias in this case is analogous to that of a single-equation first stage, but the procedure produces two inverse Mills ratio values in the selection equation (see Greene, 1993, 660).

Thus, the first set of estimates examines the search choices made by buyers. The primary reason for undertaking these estimates is to determine whether selection bias is present in the prices paid by these buyers (and to control for it, if present), rather than to provide a detailed examination of the determinants of these choices. Since these models have been described in earlier work only brief discussions of the methodology and the variable set are presented here.<sup>10</sup> The buyer choice equations are specified as a function of buyer income, the demographic characteristics of buyers, experience and information variables, the presence or absence of agency disclosure, and whether relocation was employer mandated. Specifically, the buyer's choice and the choice of the type of broker are specified as follows:

$$RE, \text{BUYER} = f(\text{INCOME}, \text{AGE}, \text{SINGLE}, \text{WHITE}, \text{TWOINC}, \text{NUMKIDS}, \text{PREVOWNER}, \text{DISTANCE}; \text{EXISTING}, \text{DISCLOSE}, \text{NEWHH}, \text{EMPMAN}) \quad (1)$$

The next goal is to determine the effect buyer brokers have on selling price. Selling price is modeled as a function of buyer income, proxies for housing market information and search costs of the buyer, the physical characteristics of the house, the presence or absence of agent assistance, and whether the broker was a buyer's agent.<sup>11</sup>

Specifically, the selling price equation is specified as

SP = f(INCOME, AGE, SINGLE, WHITE, TWOINC, NUMKIDS, PREVOWNER, DISTANCE, EXISTING, DISCLOSE, NEWHH, EMPMAN, CHAR, RE, BUYER) (2)

where SP is the log of selling price and **CHAR** is a vector of variables representing the size and physical characteristics of the house (including number of bedrooms and baths, location and type).<sup>12</sup> All the other variables are as defined in the estimates of broker usage. RE and **BUYER** are included in the price equations to indicate agent-assisted transactions and whether the broker represented the

buyer. As specified, **BUYER** should capture the marginal effect of using a buyer broker on selling price.<sup>13</sup>

The third, and final, component of this study is to assess the impact of buyer brokers on search duration. Employing a technique developed for survival analysis this analysis examines the factors determining the number of weeks that a buyer searches for a new residence.<sup>14</sup> These models assess the impact of these covariates on the duration or "spell length" much in the way that one does with regression analysis. In essence, the model estimates the effect that the set of variables has on the probability that the search will terminate at any point in time.<sup>15</sup>

In the context of our framework, the search ends when this buyer finds the property that they ultimately chose to purchase. In this case, we have chosen a flexible probability distribution, the Weibull distribution, for the hazard function:

$$h(t) = \lambda t^{\lambda-1} \quad (3)$$

It should be observed that the value  $\lambda$  determines the shape of this distribution, while the spread is determined by the value  $\lambda$ . Note that if  $\lambda = 1$ , then the Weibull specification of the hazard function collapses to the exponential form which implies that the probability of finding a residence is constant throughout the search period.<sup>16</sup>

The specification of the duration equations follows from the implications of search theory models and the related literature examining the effects of intermediaries on the search process.<sup>17</sup> The primary determinants of search duration are information and search costs, which can include both the direct costs (actual outlays) and the opportunity costs related to the search itself.

These models imply the following specification of the search duration equation:

$SD = f(\text{INCOME, AGE, SINGLE, WHITE, TWOINC, NUMKIDS, PREVOWNER, DISTANCE, EXISTING, DISCLOSE, NEWHH, EMPMAN, CHAR, RE, BUYER})$  (4)

### *The Variable Set*

Buyer income (**INCOME**) is a categorical variable employed as a measure of the opportunity cost of search. Although buyer search duration can be shortened using a broker, are high income buyers more inclined to work with buyer agents? While buyer income and price should be positively related, the linkages between income and search duration are less certain. Higher opportunity costs, as measured by income, should decrease duration. On the other hand, higher income individuals will have a larger universe of homes to choose from (with a potentially higher level of price dispersion) and can realize larger benefits from a more effective search (through a lower than expected price). This could prompt such buyers to search for a longer period.

Buyers relocating from a distance (**DISTANCE**) are at an informational and travel disadvantage relative to local buyers, and hence, have higher search costs. Such buyers should have a greater incentive to use the services of a real estate agent as well as reduce search time. Will out-of-town buyers also be more likely to choose buyer brokers and, if so, how will selling price and search duration be affected?

First-time homebuyers, without prior home ownership experience, are not as familiar with the housing market as are more experienced, previous homeowners, (**PREVOWNER**). In contrast to more experienced buyers, they may seek out the services of a real estate agent to improve their market access and acquire more information about the market. First-time buyers also may not negotiate as well nor search as effectively as more experienced households. If a broker is used, it remains to be seen whether first-time homebuyers are more likely to choose a buyer's agent. <sup>18</sup>

Buyer characteristics such as age (**AGE**), race (**WHITE**), marital status (**SINGLE**), family size (**NUMKIDS**), are included to assess whether any of these factors systematically affect home buying decisions. Whether both spouses work (**TWOINC**) and motivational considerations, such as urgency to purchase a home, may also affect these decisions. To capture this last factor, we include changes in family status resulting from marriage or divorce (**NEWHH**) as a control variable.

Buyers relocated by their employers (**EMPMAN**) often have less time to search for a home and seek out real estate brokers to help expedite the search. Since many of those transferred have employer-provided relocation assistance, this group of buyers may also be less sensitive to price than homebuyers not

receiving any relocation assistance. This variable may also affect the choice of type of broker. A number of employers now require relocated workers to only use buyer agents. **EXISTING** indicates that the transaction involves a previously occupied home. This variable is included to control for the fact that the majority of existing homes are sold through brokers while most newly constructed homes are marketed by builders without broker assistance, or built directly by property owners.

**DISCLOSE** is a categorical variable indicating whether the buyer received an agency disclosure notification from the broker. **DISCLOSE** is included to assess the impact that such disclosure has on the buyer's decision to employ a broker and the type of brokerage services used.

Finally, our interest in the effects of intermediation on the length of search is measured by two variables. **(RE)** indicates whether a broker (of any type) was used in the purchase. The second consideration is whether a buyer broker (**BUYER**) is used in the search process. A complete description of the variables used in the choice equation can be found in the appendix.

#### **Iv. Empirical Results**

##### ***The Broker Choice Estimates***

The results for the bivariate probit model of broker choice and buyer broker usage are shown in Tables 2 and 3. The first set of estimates do not distinguish between types of brokers, so buyer choice is modeled as either a broker-assisted transaction or a non-broker assisted, for sale by owner transaction.<sup>19</sup> These estimates were undertaken for two reasons; to check for the presence of selection bias, and second, to see if the earlier broker choice estimates using the 1987 NAR home buying and selling survey data are stable over time.

The results show that the use of a real estate agent is clearly influenced by buyer search and information costs and corroborate many of the earlier findings of the Zumpano, Elder and Baryla (1996) study. As expected, **(DISTANCE)**, the lack of home buying experience **(PREOWN)**, and employer-mandated moves **(EMPMAN)** are positively associated with the decision to use a broker.

In contrast to the earlier study, income does not seem to play an important role in the choice process. This result may emerge because income is measured by categorical variables indicating income ranges in the 1996 survey, whereas in the 1987 database. income is measured as a continuous variable. The number and size of the income ranges may dilute the impact of income as a measure of the opportunity cost of search.<sup>20</sup> Somewhat surprising, two income households **(TWOINC)**, a variable not included in the earlier

study, are not more likely to use a broker, despite the expectation that these buyers would have less time available to search.

Demographic characteristics of buyers such as age, race, marital status, and family size, do not appear to influence this decision either. This was also true in the earlier study, but as information on race and marital status was not available in the 1987 survey, it is not possible to assess whether these latter variables are stable over time.

A new variable, **DISCLOSE**, which indicates whether the buyer was informed about the real estate broker's agency status, was highly significant and positively signed. In this first set of equations, this outcome probably reflects the fact that more of the consumers who use a real estate broker now receive agency disclosure information. The more important insight, however, is that even after disclosure, consumers continued to use the services of brokers.

The next set of estimates considers the choice of using a buyer broker. The statistical estimates of these equations are shown in Table 3, where the dependent variable is whether a buyer uses a buyer broker. The estimates are based on the same samples used for the broker choice estimates, as well as another, smaller sample that excludes all FSBO transactions.

A noticeable difference between the sets of estimates in Tables 2 and 3 is that most of the income variables are statistically significant and positively signed in the latter set of estimates. Here, income appears to have its principal impact on the type of broker chosen, given that the transaction is broker assisted. Higher income homebuyers, with high opportunity costs of search, may expect better service from a buyer broker, as compared to more traditional brokers, who represent either the seller or act as neutral facilitators.

Somewhat surprisingly, employer mandated movers do not appear more likely to use a buyer broker, despite the requirement of some employers to use buyer brokers for employee transfers. It is also important to observe that given the decision is made to work with a broker, agency disclosure strongly increases the probability that the homebuyer chooses to use a buyer broker. Once informed about the available differences in brokerage representation, buyers are more likely to hire buyer brokers. This appears to be true regardless of the demographic characteristics of the buyer.<sup>21</sup>

### ***The Selling Price Equations***

The estimates of the selling price equations can be found in Table 4. Columns 1 and 2 include both FSBO and broker assisted sale transactions; the estimates in column 3 are based upon a sample restricted to only broker assisted sales. The estimates show that there is no evidence of selection bias in the estimates, so only

the ordinary least squares results are presented.<sup>22</sup> The results are flilly consistent with the earlier estimations from the 1987 survey as well as conceptually rigorous.

The income variables are all positive and generally highly significant, with the coefficients becoming larger as the income category increases. Similarly, the variables included to control for the physical characteristics and size of the house are also correctly signed and highly significant.

With the exception of race, buyer characteristics do not have a strong impact on selling price. White households are more likely to pay more than non-white buyers; a finding consistent with the differences in the economic status of white households as compared to black families.<sup>23</sup> First time homebuyers pay less for their homes than more experienced buyers, an outcome that appears to be related to the age and earnings of less experienced buyers. In contrast to the earlier study, sales resulting from employer mandated moves do not appear to be associated with higher selling prices.

Our primary interest here, however, is what effect, if any, buyer brokers have on selling price. Simply put, the results indicate that real estate brokers do not have any independent effect on selling price, no matter the type of broker assistance. Consumers who use buyer brokers do not pay less for comparable homes than do buyers who purchase without broker assistance or who use the more traditional seller-subagents, non-agent facilitators, or limited consensual dual agents. As shown in column 3, although the sign of the buyer broker variable is negative, it is not statistically significant at any meaningful level.

### **Search Duration Equations**

If buyer agents have no impact on price, what do they do for buyers? The final element of our investigation of search duration is directed at answering this question. The parameter estimates for the duration equations are presented in Table 5. These estimates must be interpreted carefully, as the results are sensitive to the inclusion or exclusion of a small number of observations. Specifically, there are 9 observations where search duration far exceeds those of the other households in the sample. These homebuyers, whom we have labeled "casual buyers," are households whose search for a home lasted two or more years. The longest search reported for this group was 5 years. This group appears to be made up of people who are not sensitive to time related search costs. Consequently, these buyers do not purchase quickly no matter the type of intermediation employed. It is also possible that these buyers are very demanding, disliked their brokers, or simply were not senous enough for brokers to invest a great deal of time in the search process.<sup>24</sup> All but one of the casual buyers used a real estate broker, none of whom were buyer agents. There is, however, nothing. present from an inspection of the data suggests that these are

invalid responses. Rather, these individuals simply took a much longer period to complete their search than any of the other homebuyers in the sample and, for this reason, are atypical. What is noteworthy is that inclusion of these casual buyers in the estimates alters the conclusions that can be drawn about the impact of the real estate agent in the search process (RE). This is the case because the length of the search by this very small group of buyers is sufficiently long to offset any time saving realized by the rest of the sample that used a broker. The estimated parameters for the other variables are, for the most part, consistent across different samples.

Buyers who use brokers appear to search for a shorter time, no matter the type of broker. If the set of casual buyers is excluded from the estimates, the RE variable attains statistical significance at the 10% level or above. This result is also totally consistent with the earlier research using the 1987 NAR survey data.

Of much greater import for this study is the fact that the use of buyer brokers have a differentially impact on search time, relative to other brokers. The buyer broker variable (**BUYER**) is statistically significant and indicates that search time is, in fact, shorter for buyers who use a buyer broker to assist them in the search process. A simple comparison of the means shows that unassisted FSBO transactions took on average 14.9 weeks to consummate, using traditional brokers required 12.2 weeks, and the use of buyer agents 11.2 weeks. We have also calculated predicted search times for the three buyer types from the parameter estimates of the search model.<sup>25</sup> These calculations point at even larger differences between the three buyer groups: Non-broker assisted buyers are predicted to search for 18.6 weeks; buyers using a traditional broker are predicted to search for 15.1 weeks and buyers assisted by a buyer's agent are predicted to search for 12.7 weeks. This is the first time that any evidence has been presented which shows that there is a small, but statistically meaningful difference in search time when different types of brokers are used in the search process.

The results for the other parameter estimates presented here are consistent with the earlier findings of Baryla and Zumpano (1995). All of the coefficients on the set of income variables are positive, and are generally highly significant. Higher income buyers have a larger set of homes available and search longer than lower income households. Opportunity costs may be captured in the variable **TWOINC**; households composed of two income-earning members probably do not have as much time to search as single income households. Buyers who are not able to search intensively due to high sampling costs are more likely to extend their search to longer periods. This variable does, however, become statistically insignificant when casual buyers are eliminated from the sample.

Other factors also capture search and information costs. Buyers who move greater distances have higher search duration costs, and search for shorter periods. similar result is found for those whose move is at the direction of an employer. On other hand, first time homebuyers do not search significantly longer than more experienced buyers. Some of the variables are affected by the particular sample used. The variables for disclosure and those purchasing existing homes are statistically significant in the full sample, but when reduced samples are estimated, these variables lose their significance.

Household characteristics have mixed effects. Age, marital status and the number of children in a household are not significantly related to the length of the search. White households in the sample search for a shorter period than do nonwhite buyers.

Finally, values for  $p$  shown in the last row in Table 5 imply that one cannot reject the hypothesis that the probability of finding a residence during the search remains constant over the course of the search process. This finding is consistent with earlier results in time-on-the-market

studies (see for instance Cubbin (1974) or Belkin, Hempel and McLeavey (1976), but is in contrast to the results produced by Baryla and Zumpano (1995).

## **V. Conclusions**

This study represents an attempt to empirically assess the effects of buyer brokers on the home search process. As part of this research, we had the opportunity to revisit the question of the role of the residential real estate broker. The results of the current study are generally consistent with the estimates obtained using the 1987 database with respect to the decision to use a real estate broker. The sample size of the 1996 survey is smaller than the 1987 sample, and, therefore, may not be as representative of the home buying public. Nevertheless, the estimates show that search and information costs remain an important factor in the decision to use a broker.

The results are more revealing when the choice of broker type is examined. Here, higher income buyers are significantly more likely to employ a buyer agent. Information and experience variables here too are significant, and buyer and demographic factors are not.

The disclosure variable proved highly significant in all the buyer broker equations. Disclosure does not discourage buyers from using brokers, and, significantly, buyers who receive agency disclosure as part of a broker-assisted transaction are more likely to choose a buyer broker.

The selling price equations reveal that real estate brokers, regardless of type, do not have any effect on price. Despite arguments to the contrary, there is no evidence that buyer brokers are able to negotiate lower prices for their principals than buyers who work with traditional brokers or negotiate directly with sellers. From a pragmatic standpoint, our results imply that consumers should use a broker to locate a home, since broker-assisted sales do not appear to carry a premium price relative to FSBO sales.

It is also true, however, that the role of the buyer broker is not played out solely in the price dimension. Previous research that does not distinguish between types of agents finds that brokers are able to reduce search time for all classes and types of buyers. This study lends support to this contention, especially when the group of "casual" buyers is excluded from the sample. More importantly, buyer brokers appear to be more effective at reducing search time for their clients than more traditional seller/subagents or facilitators. This remains true even after buyer income, a proxy for the buyer's opportunity costs of search and buyer motivation is taken into account. To the extent that search costs are reduced as search duration falls, then claims that buyer agents can save their clients money have some empirical support. The validity of such a statement, however, rests upon the twin and very important assumptions that buyers do not pay fees to agents for services rendered and that broker-assisted sales do not carry higher prices than FSBO transactions.

The results of this and earlier studies suggest that the latter assumption is valid, while current industry practice is for brokers, regardless of type, to look to the transaction for compensation. So long as sellers continue to pay the full sales commission, buyers can save money with exclusive buyer agents. If compensation arrangements change, as anecdotal evidence seems to suggest may be happening, buyer broker services may no longer be costless for homebuyers in the future. Then another question will have to be addressed; whether the services of buyer brokers are commensurate with their cost.

Given that the size of the data sample used in this study was relatively small and the search duration estimates sensitive to how the models are specified, the conclusions regarding the efficacy of buyer brokerage warrant further corroboration.

## Footnotes

<sup>1</sup>See the press release by the Consumer Federation of America, "Changes in Real Estate Agent Representation: Implications for Consumers," October 18, 1994; and the statements by Nader are discussed in *Agency Law Quarterly*, August 1996. The remarks by Nader were at a roundtable discussion on "Re-Creating the Real Estate Industry."

<sup>2</sup>The Buyer's Agent franchise organization has asserted in a promotional pamphlet that buyer agents can save homebuyers money as well as reduce search time for their clients. These statements have recently been disputed by traditional brokers, who argue that this pamphlet, "The Buyer's Agent Gives You An Edge," contains false and deceptive material. The Oklahoma Real Estate Commission has, in part, agreed with traditional brokers by ruling that some statements in the buyer brokers brochure are misleading or cannot be substantiated. Since this writing new, revised editions of this pamphlet may have been published.

<sup>3</sup>This is the case despite the fact that there is an extensive literature on the determinants of housing prices. This includes traditional estimates of housing demand, hedonic modeling of housing prices, the determinants of the tradeoff between price and time on the market and models of the search process. Other literature has examined the welfare and/or moral hazard implications of broker intermediation and the search process itself. See Zumpano and Hooks (1988) and Baryla and Zumpano (1995) for a review of this literature.

<sup>4</sup>A number of possible outcomes were possible. One is that buyers who use brokers also tend to purchase, more expensive homes; this was the finding by Zumpano, Elder and Baryla (1996) for the 1987 sample. The presence of selection bias could imply a number of possibilities. One is that the bias exists, and that after taking into account self selection by these buyers, housing prices are still higher for the group using a broker. This result would imply that there are separate residential real estate markets: one for broker-assisted properties, a second, the for-sale-by-owner (FSBO) properties, and, possibly, (separate) markets for different types of brokerage services. In this study, once the Heckman method was used to control for selection bias, no price differentials were found to exist between broker assisted sales and FSBO's. In the absence of selection bias, higher prices may reflect value added by the broker, or alternatively, no price differentials would reflect the competitive impact of FSBO properties.

<sup>5</sup>An interaction term for search intensity and the presence of a broker was positive and significant, indicating that visiting more homes per week with an agent may actually extend search time. This finding would be consistent with the argument that brokers reduce buyer search costs.

<sup>6</sup>For an example of an incentive compatible contract for buyer agents see the working paper by Henry Menneke and Abdullah Yavas "Incentive and Performance in Real Estate Brokerage."

<sup>7</sup>The survey asks whether the buyer had a buyer broker arrangement with a real estate agent, and a second question inquired as to how the buyer broker was compensated. The choices on the latter include payment by the buyer, either as a flat fee or as a percentage of the sale price, by the seller or by another party, such as an employer. In the data set used in this study, approximately 80% of buyer brokers were compensated by the seller.

<sup>8</sup> See Zumpano, Elder, and Baryla (1996).

<sup>9</sup>These two decisions can be independent, and separate probit estimates are sufficient for this portion of the estimation process, or the two decisions are linked (and the error terms are correlated) and some form of bivariate probit model would be required. We use the bivariate probit approach since the estimates will collapse to independent probit equations if this is the outcome.

<sup>10</sup>The variable sets used here are comparable to those used by Zumpano, Elder and Baryla (1996) and Baryla and Zumpano (1995), but not identical, since there is different information contained in the database that is used for this study.

<sup>11</sup>The sample does include information about the location of the house, but the data (unlike previous surveys of buyers) are based upon a nationwide sample of buyers. Because of this, it is not possible for the estimates to control for the impact of location on price. Earlier surveys were drawn from specific metropolitan areas, thus allowing the inclusion of location-specific variables as controls. It should be noted, though, that estimates based upon this data are unaffected by the inclusion of these control variables. See, for instance, Zumpano, Elder and Baryla (1996).

<sup>12</sup> We include house characteristics along with household information in order to control of price differences attributable to the house purchased. An alternative would be to first estimate a hedonic model using house characteristics and then use these estimates for our selling price. Our approach effectively accomplishes the same goal, despite the mixing of individual and housing attributes.

<sup>13</sup> An unfortunate drawback of this database is the inability to identify, and thus control for, the location of the buyer. Similar research using this survey from earlier years provides information that locational differences are important in determining the sales price of a

house, but that their inclusion or exclusion has little impact on the coefficients of the other variables included in the specification used here.

<sup>14</sup> There is large related literature on duration, or time on the market, from the perspective of the seller. See Baryla and Zumpano (1995) for a discussion of this literature.

<sup>15</sup> A useful discussion of these models can be found in Greene (1993), pp. 71&725. Kiefer (1988) describes a variety of applications that have been made to economic data.

<sup>16</sup> See the findings in Baryla and Zumpano (1995) relative to the results of time on the market studies.

<sup>17</sup> This literature is discussed in detail in Baryla and Zumpano (1995) and Elder, Zumpano, and Baryla (1997).

<sup>18</sup> Many buyers choose to search without broker assistance to seek for sale by owner homes because they believe they can obtain a better price on a FSBO since the seller does not have to pay a commission to an agent. Empirical evidence on this point is mixed, with some studies indicating that broker listed homes do sell for more than FSBO's and other studies indicating that commissions are not shifted forward to consumers in higher price. See previous literature review for more information on this issue.

<sup>19</sup> These estimates also highlight some of the difficulties in the use of survey information. Presumably, individuals who use a buyer broker would answer a question about how they purchased their home as being carried out through a real estate agent or broker. Yet, there are nine responses in the sample by those who answer this question as having purchased directly from the previous owner or from the builder (without real estate agent involvement), but then later in the survey answer a question about their use of a buyer broker as being "yes." In other words, they apparently used a buyer broker but consider the purchase to have been conducted without the assistance of a real estate broker. If these nine observations are included in our estimates, a conventional bivariate probit model is appropriate; if not, then another model is necessary, since it presumes that all of the individuals answering yes to buyer broker also answer yes to the use of a broker in the first equation. See the discussion of these models in Greene (1993, p.664). This is of significance because the correlation between the equations is significant for the estimates that include these nine unusual responses, while correlation for the estimates of the model with these observations omitted is not significant. The parameter estimates for these two equations, in contrast, do not change between the two sets of estimates, and only the estimates including the nine observations are shown.

<sup>20</sup> Reducing the number of categories does not, however, materially affect the impact of income in the estimates.

<sup>21</sup> Interestingly, when the same analysis was performed using data from a 1991 survey, the disclosure variable was not statistically significant. At the time that the 1991 survey was conducted, few buyers knew what their representational options were, as few states had enacted mandatory agency disclosure statutes. It is also possible that, given the novelty of the buyer broker form of representation at that time, many buyers who indicated that they were using a buyer broker were probably not.

<sup>22</sup> The estimates corrected for selection bias show essentially the same results. These are not presented in the paper, but are available from the authors.

<sup>23</sup> This is also consistent with the evidence provided in Jud (1983).

<sup>24</sup> 8 of these 9 households were involved with broker-assisted transactions, only one relied on just one agent. Most used 2 or 3 agents, one worked with 5 brokers, and another used 16 brokers.

<sup>25</sup> The calculations are made from the parameters in column 1 in Table 5. We chose to specify a specific type of buyer consistent with the mean values of the buyer characteristics. This implies that the buyer is in the 25 to 34 year age group; has a household income between \$40,000 and \$50,000; that the buyer is married, has one child, is white and is a previous homeowner, who purchased an existing home and a state where disclosure is required. This buyer's move was 200 miles. Other characteristics could be chosen, but would leave the search differential between the groups unchanged.

**Table 1**  
**Descriptive Statistics**  
**(Number of Observations 894)**

<b>Purchaser Characteristics</b>	<b>Full Sample Mean</b>	<b>Non-Broker Assisted Buyers Mean</b>	<b>Broker Assisted (Traditional) Mean</b>	<b>Buyer Broker Assisted Mean</b>
Age of Household Head <sup>#</sup>	4.18 (sd=1.93)*	4.35 (sd=2.08)	4.12 (sd=1.94)	4.20 (sd=1.84)
Household Income <sup>#</sup>	7.01 (sd=2.80)*	7.08 (sd=2.66)	6.86 (sd=2.86)	7.19 (sd=2.77)
Married	75.8%	82.3%	74.7%	74.4%
Previous Homeowner	41.0%	64.0%	58.0%	58.1%
Two Income Household	57.6%	65.3%	56.0%	56.2%
Number of Children	0.9 (sd=1.14)*	0.8 (sd=1.07)	0.9 (sd=1.11)	0.9 (sd=1.21)
Percentage White	92.5%	95.2%	91.7%	92.3%
Percentage Black	4.8%	2.7%	5.9%	4.3%

<b>Reasons for Move<sup>***</sup></b>				
New Household formed	14.1%	21.0%	18.2%	14.9%
Job Change	9.9%	10.5%	14.0%	16.1%
Employer-Mandated Move	9.9%	3.6%	14.8%	13.8%
**Note: only 667 in this sample information				
<b>House Characteristics</b>				
Number of Bedrooms	3.2	3.3	3.2	3.2
Number of Baths	2.8	2.2	2.1	2.2
Detached Single Family House	86.0%	87.1%	86.0%	85.5%
Urban Location	26.3%	13.6%	28.6%	29.0%
Suburban/Subdivision Location	66.4%	78.2%	63.3%	65.1%
Existing House	79.9%	46.9%	86.8%	86.1%
Purchase Price	\$148,979 (Sd= \$96852)*	\$145,802 (sd=\$80163)	\$146,830 (sd=\$97916)	\$153,225 (sd=\$102344)

Use of Real Estate Broker	83.6%	-	-	-
Use of Buyer Broker	37.2%	-	-	-
Disclosure Agreement	65.2%	-	65.5%	89.8%

\*Note: sd indicates standard deviation.

<sup>#</sup>Explanation of Age and Income Measures: Responses to buyer's survey for age and income are in categorical ranges rather than questions that report actual age or income values. What is reported here for age~a value of approximately ~indicates that the buyer-respondent is between age 35 and 39. The value 7 reported for income implies that household income is between \$50,000 and \$59,999. 'values do not total to 100% because they come from overlapping categories that are responses to a question about the buyer's reason for move.

**Table 2**  
**Probit Estimates of Broker Use**

	Model 1	Model 2
Constant	-.6413 (1.012)	-.6381 (0.735)
Inc40	-.0199 (0.061)	-.3882 (0.813)
Inc50	-.3333 (1.070)	-.5804 (1.326)
Inc60	.2424 (0.731)	-.0361 (0.079)
Inc 80	-.0081 (0.024)	-.3462 (0.736)
Inc 100	.0737 (0.168)	.0183 (0.027)
Inc 125	.5070 (0.855)	.0172 (0.024)
Inc 150	.3831 (0.807)	.7997 (0.895)
Age30	.0178 (0.044)	.1535 (0.331)
Age 40	.0648 (0.149)	.1900 (0.378)
Age 50	-.2820 (0.645)	-.1147 (0.217)
Age 65	-.1757 (0.245)	-.3649 (0.168)
Single	.2025 (0.797)	.3530 (1.109)
White	-.1352 (0.472)	-.1659 (0.463)
Twoinc	-.0784 (0.381)	.0516 (0.205)
Numkids	.0725 (0.989)	.0878 (1.016)
Prevowner	.2822 (1.612)	.3631 (1.615)
Distance	.0003 (1.816)	.0004 (1.056)
Existing	(1.089) (6.682)	1.069 (5.410)
Disclose	1.732 (10.136)	1.749 (7.262)
NewHH	-	-.0816 (0.332)
Empman	-	.8457 (1.839)
? <sup>2</sup>	324.0	260.8
N	894	670

Note: t-statistics in parenthesis. Model 2 differs from Model I with the addition of information on formation of new households and employer mandated move. These additions reduce the sample size from 894 for Model I to 670 for Model 2.

**Table 3**  
**Probit Estimates of Buyer Broker Use**

	Model 1	Model 2	Model 3
Constant	-1.888 (5.110)	-1.904 (4.512)	-1.746 (3.716)
Inc40	.4138 (1.942)	.4621 (1.894)	.5618 (2.230)
Inc50	.1065 (0.487)	.0496 (0.195)	.0300 (.113)
Inc 60	.4186 (2.005)	.4758 (2.004)	.4841 (1.983)
Inc 80	.2407 (1.099)	.1961 (0.779)	.2301 (.893)
Inc 100	.7137 (2.614)	.6966 (2.229)	.7478 (2.436)
Inc 125	.3911 (1.060)	.9308 (2.069)	1.071 (2.329)
Inc 150	.3360 (1.212)	.1266 (0.384)	.1123 (.331)
Age 30	-.0269 (0.115)	.0519 (0.209)	.1692 (.565)
Age 40	.0290 (0.115)	.1402 (0.514)	.3106 (.974)
Age 50	-.2134 (0.817)	-.0861 (0.300)	.1697 (.513)
Age 65	.0985 (0.185)	-.2881 (0.421)	-.0490 (.061)
Single	.1863 (1.336)	.1776 (1.091)	.1635 (.951)
White	.0840 (0.464)	.1375 (0.638)	.2508 (1.152)
Twoinc	.0381 (0.334)	-.0146 (0.107)	.0296 (.207)
Numkids	.0228 (0.480)	-.0290 (0.534)	-.0235 (.411)
Prevowner	.1589 (1.266)	.1722 (1.188)	.2247 (1.560)
Distance	.0002 (2.931)	.0002 (1.816)	.0002 (1.378)
Existing	.2025 (1.512)	.2491 (1.493)	.0340 (.194)
Disclose	1.177 (10.005)	1.091 (8.144)	.8013 (5.728)
NewHH		-.1200 (0.731)	-.1450 (.861)
Empman		-.0964 (0.541)	-.1382 (.706)
N	894	670	558

Notes: t-statistics in parenthesis. Model 1 and 2 are for full sample, and include non-broker assisted transactions. Model 3 includes only broker assisted transaction 5, and is an independent probit estimate of buyer broker equation. Model 2 differs from Model 1 with the addition of information on formation of new households and employer mandated move.

**Table 4**  
**Sale Price Estimates**  
**(Dependent Variable: Log of Sale Price)**

	Model 1	Model 2	Model 3
Constant	10.687 (89.765)	10.722 (80.668)	10.645 (80.166)
Inc40	.1455 (2.843)	.1402 (2.421)	.1572 (2.494)
Inc 50	.3303 (6.295)	.3395 (5.714)	.3686 (5.627)
tnc60	.4282 (8.426)	.4497 (7.820)	.4697 (7.579)
Inc 80	.6543 (12.349)	.6733 (11.203)	.7212 (10.996)
Incl00	.8733 (13.333)	.9119 (12.405)	.9480 (11.881)
Inc125	.9098 (~10.430)	.9271 (9.128)	.9917 (8.546)
InciSO	1.188 (17.152)	1.309 (15.831)	1.370 (15.484)
Age 30	.0457 (0.772)	.0471 (0.751)	.0678 (.882)
Age40	.0666 (1.002)	.0590 (0.832)	.0941 (1.144)
AgeSO	.0221 (0.327)	.0421 (0.577)	.0788 (.930)
Age 6~	.0118 (0.099)	.0820 (0.458)	.0376 (.179)
Single	-.0515 (1.438)	-.0375 (0.916)	-.0050 (.113)
White	.0628 (1.449)	.1148 (2.277)	.1532 (2.814)
Twolnc	-.0748 (2.630)	-.0708 (2.163)	-.0755 (2.059)
NumKids	-.0276 (2.291)	-.0327 (2.360)	-.0243 (1.583)
Numbr	.0566 (2.970)	.0576 (2.705)	.0533 (2.233)
Numbath	.1793 (8.242)	.1489 (5.861)	.1415 (5.164)
Detsf	.0962 (2.662)	.0658 (1.555)	.0647 (1.389)
Suburb	-.0196 (0.441)	.0080 (0.163)	.0244 (.795)
Urban	-.0843 (1.783)	-.0468 (0.890)	-.0579 (0.778)
RE	.0567 (1.508)	.0189 (0.434)	-
Buyer	-.0131 (0.514)	-.0159 (0.547)	-.0222 (.735)
Distance	.5xE-05 (0.283)	.2xE-04 (0.995)	-.3xE-04 (.953)
Prevown	-.0850 (2.932)	-.1016 (3.106)	-.0744 (2.027)
Existing	-.0813 (2.575)	-.0950 (2.563)	-.1180 (2.619)
Disclose	.0011 (0.038)	.0340 (1.043)	.0473 (1.357)
NewHH	-	-.0555 (1.492)	-.0395 (.933)
Empman	-	.0170 (0.373)	.0409 (.819)
Adj. R <sup>2</sup>	.6319	.6360	.6403

N	894	667	558
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Note: t-statistics in parenthesis. Model 1 and 2 differ due to inclusion of new household and employer mandated moves. Model 3 is only for broker assisted transactions.

**Table 5**  
**SEARCH DURATION ESTIMATES**  
**Log of Search Time, (Dependent Variable: in weeks)**

	Model 1	Model 2	Model 3
Constant	2.488 (8.072)	2.143 (6.208)	1.851 (4.785)
Inc 40	.3713 (2.119)	.3703 (1.915)	.4886 (2.159)
Inc 50	.5168 (3.022)	.4874 (2.687)	.5983 (2.676)
Inc 60	.5651 (3.461)	.5058 (2.951)	.5796 (2.806)
Inc 80	.3596 (2.097)	.3730 (2.096)	.4398 (2.031)
Inc 100	.2432 (1.268)	.1462 (0.702)	.2449 (0.986)
Inc 125	.3675 (1.290)	.5694 (1.927)	.3636 (0.971)
Inc 150	.7657 (4.113)	.5277 (2.232)	.6331 (2.378)
Age 30	-.0208 (0.081)	.1082 (0.434)	.1146 (0.398)
Age 40	.0113 (0.043)	.1325 (0.511)	.2068 (0.702)
Age 50	.2306 (0.853)	.1232 (0.461)	.2309 (0.766)
Age 65	-.6119 (1.171)	-.3706 (0.308)	-.2810 (0.223)
Single	-.0210 (0.226)	-.0104 (0.087)	-.0317 (0.235)
White	-.2934 (2.436)	-.0327 (0.197)	.0444 (0.249)
Twoinc	.0930 (1.208)	.1401 (1.489)	.1080 (0.988)
Numkids	.0298 (0.987)	.0702 (1.952)	.0613 (1.562)
Prevowner	.1165 (1.427)	.0899 (1.011)	.1425 (1.404)
Distance	-.0002 (5.783)	-.0003 (5.545)	-.0003 (5.056)
Existing	-.0787 (0.880)	.0377 (0.355)	-.0415 (0.305)
Disclose	.1119 (1.247)	.0904 (0.938)	.0561 (0.519)
NewHH	-	-.3965 3.419	-.4773 (3.616)
Empman	-	-.2364 (1.813)	-.2115 (1.466)
RE	-.2086 (1.828)	-.1979 (1.677)	-
Buyer	-.1698 (2.185)	-.1577 (1.834)	-.1496 (1.617)
N	881	662	554
?	.9787	.9261	.9344

Note: t-statistics in parenthesis. Models 1 and 2 differ due to inclusion of new household and employer mandated moves. Model 3 is only for broker assisted transactions.

## References

- Baryla, E.A. and Zumpano, L.V. (1995). Buyer Search Duration in the Residential Real Estate Market: The Role of the Real Estate Agent. *Journal of Real Estate Research*. 10: 1-14.
- Belkin, Jacob, Hempel, Donald J. and McLeavey, Dennis W (1976). An Empirical Study of Time on the Market Using Multidimensional Segmentation of Housing Markets, *AREUEA Journal* 4:57-75.
- Cubbin, John. (1974). Price, Quality and Selling Time in the Housing Market. *Applied Economics* 6: 171-187.
- Elder, Harold, Zumpano, L.V. and Baryla, Edward A., (1997). Buyer Search Intensity and the Role of the Residential Real Estate Broker, *Journal of Real Estate Finance and Economics*, (forthcoming).
- Greene, William H., (1993). *Econometric Analysis* (MacMillan Publishing Company, New York).
- Janssen, C.T.L. and Jobson, J.D. (1980). Applications and Implementation on the Choice of Realtor. *Decision Sciences* 11: 299-311.
- Jud, G. D. (1983). Real Estate Brokers and the Market for Residential Housing. *AREUEA Journal* 11: 69-82.
- \_\_\_\_\_ and Frew, J. (1986). Real Estate Brokers, Housing Prices, and the Demand for Housing. *Urban Studies* 23: 21-31.
- Kiefer, Nicholas. (1988). Economic Duration Data and Hazard Functions. *Journal of Economic Literature*. 26: 646-679.
- Munneke, Henry and Abdullali Yavas. Incentives and Performance in Real Estate Brokerage. Working Paper, 1999
- Zumpano, L.V., Elder, H. and Baryla, E. A. (1996). Buying a House and the Decision to use a Real Estate Broker. *Journal of Real Estate Finance and Economics*, 13:169-181.
- Zumpano, L. V. and D. Hooks. (1988). "The Market of Residential Real Estate Brokerage Services: A Critical Reevaluation." *The AREUEA Journal* 16: 1-17.

## **Exhibit D**

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**SURVEY OF RECENT HOMEBUYERS**  
CONDUCTED FOR THE NATIONAL ASSOCIATION OF REALTORS®

**OCTOBER 14, 1999**

Hart-Riehle-Hartwig Research  
1724 Connecticut Avenue, NW  
Washington, DC 20009

#### RESEARCH OBJECTIVES

Hart-Riehle-Hartwig Research was commissioned by the National Association of Realtors® to study **recent homebuyers'** satisfaction with the home-buying process and the relationship between the homebuyer and the real estate salesperson or agent. Objectives were as follows:

- Measure homebuyers' satisfaction with the home-buying process
- Measure homebuyers' satisfaction with the real estate salesperson
- Quantify the methods that homebuyers use to select a real estate salesperson
- Quantify the preferences that homebuyers have for their relationships with a real estate salesperson
- Understand homebuyers' expectations of brokerage relationships with real estate salespeople.

#### SURVEY CRITERIA

Hart-Riehle-Hartwig, a division of Peter D. Hart Research Associates, conducted a telephone survey among 800 recent homebuyers for the National Association of Realtors®. Homebuyers were interviewed from September 7 to September 12. All respondents met the following requirements to participate in the study:

- Own their current residence
- Purchased their current residence within the past two years
- Played a major role in the home-buying process (96% are primary decisionmakers)
- Had at least one real estate salesperson involved in the home's sale

#### SAMPLE DESCRIPTION

The sample is a mix of new and seasoned homebuyers.

- 45% are first-time homebuyers.
- 26% are second-time homebuyers.
- 28% have purchased more than two homes.

Most home sales were less than \$150,000.

- 58% of homes purchased had a value of less than \$150,000 at the time of purchase.
- 31% of homes purchased had a value of more than \$150,000 at the time of purchase.
- 11% refused to give their home's value.

Homebuyers are well educated. More than three-quarters (78%) have some level of higher education.

- 47% have at least a four-year college degree.
- 31% have a two-year college degree, a technical school degree, or some college coursework.
- 21% have a high school diploma or less.

Three in five respondents bought a home in a large city or a suburb of a large city.

- 22% bought a home in a large city.
- 39% bought a home in a suburb of a large city.
- 22% bought a home in a medium-to-small city.
- 16% bought a home in a small town or rural area.

The home-buying process is a positive one for most buyers. More than two-thirds had an *excellent* or *very good* experience.

- 21% had an excellent experience.
- 48% had a very good experience.
- 25% had just an okay experience.
- 6% had a not very good or poor experience.

### THE REAL ESTATE SALESPERSON

The real estate salesperson is the most important ingredient in any home sale. Homebuyers' overall satisfaction is linked directly to their satisfaction with the real estate salesperson's performance. Among homebuyers who say their salesperson's performance was *excellent*, 81% rate the home-buying experience as *excellent*. But among those who rate their salesperson as *just okay*, *not very good*, or *poor*, just 29% rate the home-buying experience as either *excellent* or *very good*.

### Perception Of Home-buying Process by satisfaction with salesperson

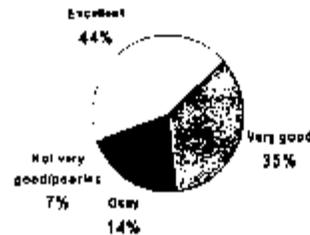


The real estate salesperson is the dominant force in drawing customers to a brokerage firm. By a margin of two to one, it is more common for a real estate salesperson to bring a customer into a brokerage firm than it is for a brokerage firm to draw a customer, and in turn, to direct that person to a salesperson. Two in five (40%) recent homebuyers contacted a specific real estate salesperson first, while only 17% contacted a brokerage firm and asked to be assigned a salesperson. The salesperson draws customers through personal contact—either through friendship, a referral from someone else, or an open house. Even when the initial contact is through a brokerage firm, 15% of recent homebuyers say they already know a salesperson who works at the firm.

Homebuyers are very satisfied with the performance of their real estate salesperson: 44% rate the salesperson's performance as *excellent*, and 35% rate it as *very good*. Only 6% of homebuyers

believe that their salesperson's performance was *not very good* or *poor*. Nearly three-quarters (72%) of buyers say that they would use the same salesperson again if they were buying a home today.

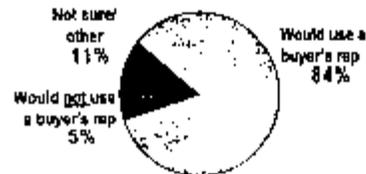
### Satisfaction With Salesperson



### BUYER REPRESENTATION

Buyer representation is a relatively new development to the real estate industry, but it has been overwhelmingly embraced by homebuyers. Close to four in five (78%) homebuyers report that, during their most recent home purchase, their salesperson worked solely for them. And if they were buying a home today, 84% would want to work with a buyer's representative.

### If you were buying a home today...



Among those who say they worked with a buyer's representative, 71% had an *excellent* or *very good* experience buying a home, and 83% are very satisfied with their salesperson's performance. By comparison, 58% of those who did *not* use a buyer's representative had an *excellent* or *very good* experience buying a home, and only 67% are very satisfied with their salesperson's performance.

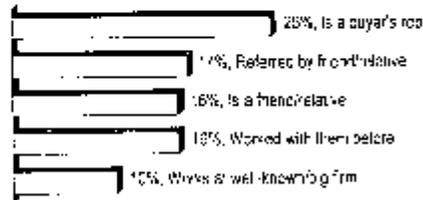
### SATISFACTION WITH THE HOME-BUYING PROCESS

	Used A Buyer's Representative	Did Not Use A Buyer's Representative
Excellent/Very good	71	58
Just okay	28	42
Poor	1	-
Not sure	1	-

Buyer representation is popular among homebuyers because it addresses a primary concern—trust. With unfamiliar terminology, a multitude of details to consider, and often the buyer's life savings at stake, purchasing a home can be a stressful event. More than anything, homebuyers need someone to whom they can look for guidance, someone who they can be confident will help them make the right decisions. This is why many salespeople are contacted through personal associations—it gives buyers more confidence that they have chosen someone whom they can trust to work on their behalf.

Buyer representation addresses issues of confidentiality and trust—ideas that appeal strongly to potential homebuyers. When asked to select the best of seven reasons for choosing a real estate salesperson, the number-one response is "the salesperson is a buyer's representative"; this reason beats "the salesperson was referred by a friend or relative" and "the salesperson is a friend or relative."

### Best Reasons For Choosing A Salesperson



### RELATIONSHIPS WITH THE BUYER

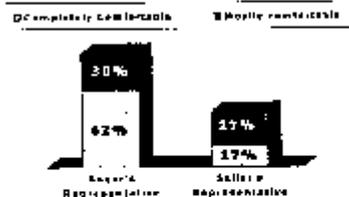
#### Buyer's Representative

Among the different relationships that real estate salespeople can have with a buyer, buyer representation is the most comfortable for the buyer. Nine in ten (92%) recent homebuyers are *completely or mostly* comfortable working with a salesperson whose primary responsibility is to the buyer. This figure is in sharp contrast to the mere 44% who are *completely or mostly* comfortable working with a salesperson whose main responsibility is to the seller, and if no buyer representative was involved and both seller representatives worked at the same firm, buyer confidence dropped even lower (38%).

#### Seller's Representative

Many buyers are uncomfortable working with a seller's representative (52% uncomfortable) or in a situation in which both buyer's and seller's representatives work at the same firm and are not prevented from sharing confidential information (58%). In fact, three in five homebuyers feel that it would be a major concern if salespeople and brokers at the brokerage firm did not operate with total confidentiality. And about half would have a major concern under those circumstances as a seller.

#### Homebuyers' Comfort With Salesperson



Homebuyers appreciate the advantages that buyer representation brings. The greatest values to the prospective buyer are the representative's negotiating on behalf of the buyer and complete confidentiality between the salesperson and buyer. Helping the buyer understand and complete the paperwork and providing

information on other service providers are also important services to homebuyers.

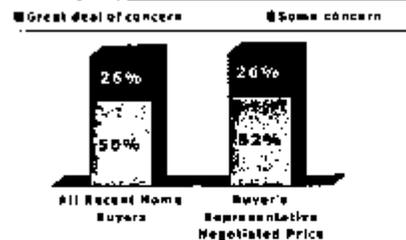
Most homebuyers who work with a buyer representative understand that no other salesperson at the brokerage firm represents them. Two in three are comfortable with this arrangement, possibly because buyers choose a representative based on the individual and not the brokerage.

### Do you care whether more than one salesperson at a firm works for you?



Of greater concern to homebuyers is the lack of incentive for buyer's representatives to negotiate the best possible sale price. The buyer cares most about getting the lowest price, while the perception is that the salesperson is motivated to complete the transaction and be paid a commission based on the final sales price. Sales price-based commissions create a minor financial incentive toward a higher sales price (at least in theory). In fact, most (64%) recent homebuyers say they used a buyer's representative who helped negotiate such things as price and closing date, and negotiation is the number-one service that homebuyers feel is important for salespeople to offer. When asked about this possible conflict of interest, 76% of homebuyers say that it is a concern. The proportion is virtually the same (78%) for homebuyers whose buyer's representative negotiated their most recent home purchase.

### Concern Over Representative's Price Negotiation



### CONCLUSION

Whether one is a first-time homebuyer or a seasoned one, or whether one buys a \$90,000 home or a \$900,000 home, the most important quality that a salesperson must have is trustworthiness. Buyer representation supports salespeople with the legal backing they need to show to the client that they can be fully trusted.

Buyer representation also is a boon to real estate brokerage firms. Currently, buyers reach more real estate salespeople through personal contact than through brokerage firms, but buyer representation guarantees prospective clients a legal foundation for trust in brokerage firms' sales force. This gives more leverage to brokerage firms to draw clients through advertising and brand imaging, without having to rely as heavily on the personal contacts of its sales force.

Increasing customer confidence in the home-buying process is a win-win situation: it benefits brokerage firms, real estate salespeople, and future homebuyers. More consumers will have greater confidence when entering the marketplace, which will help expand the real estate market and increase the overall level of homeownership in America.

## **Exhibit E**

## **WHAT YOU MUST DISCLOSE**

By:

Seth G. Weissman  
WEISSMAN, NOWACK, CURRY & WILCO, P.C.  
Two Midtown Plaza, 15<sup>th</sup> Floor  
1349 West Peachtree Street  
Atlanta, Georgia 30309  
404-885-9215

You are the LISTING AGENT and are representing the Seller. Assuming you know the facts below, which of the following must you disclose to the buyer?

- | <u>Yes</u> | <u>No</u> |                                                                               |
|------------|-----------|-------------------------------------------------------------------------------|
|            | X         | 1. The seller is getting a divorce.                                           |
|            | X         | 2. The seller will take less for the house.                                   |
| *          | X         | 3. The seller has received another offer on the house.                        |
|            | X         | 4. The roof is in obvious need of repair.                                     |
| *X         |           | 5. The house was built with synthetic stucco.                                 |
| *X         |           | 6. A quarry will soon be built nearby.                                        |
| *X         |           | 7. A portion of the property is in a flood plain.                             |
|            | X         | 8. There have been many complaints that the seller/builder does shoddy work.  |
|            | X         | 9. The builder is experiencing financial difficulties.                        |
| *          | X         | 10. A previous contract on the property fell through due to a bad inspection. |
|            | X         | 11. The seller is a member of a racial minority group.                        |
| *          | X         | 12. The school district in which the house is located may change.             |
|            | X         | 13. A murder took place on the property two years ago.                        |
| *X         |           | 14. The adjoining property was just rezoned for a shopping center.            |

\*Arguable

You are a BUYER'S AGENT and are representing the buyer. Assuming you know the facts below, which of the following must you disclose to the buyer?

- | <u>Yes</u> | <u>No</u> |                                                                               |
|------------|-----------|-------------------------------------------------------------------------------|
| X          |           | 1. The seller is getting a divorce.                                           |
| X          |           | 2. The seller will take less for the house.                                   |
| X          |           | 3. The seller has received another offer on the house.                        |
| X          |           | 4. The roof is in obvious need of repair.                                     |
| X          |           | 5. The house was built with synthetic stucco.                                 |
| X          |           | 6. A quarry will soon be built nearby.                                        |
| X          |           | 7. A portion of the property is in a flood plain.                             |
| X          |           | 8. There have been many complaints that the seller/builder does shoddy work.  |
| X          |           | 9. The builder is experiencing financial difficulties.                        |
| X          |           | 10. A previous contract on the property fell through due to a bad inspection. |
|            | X         | 11. The seller is a member of a racial minority group.                        |
| X          |           | 12. The school district in which the house is located may change.             |
| X          |           | 13. A murder took place on the property two years ago.                        |
| X          |           | 14. The adjoining property was just rezoned for a shopping center.            |

You are a DUAL AGENT and are working with both the buyer and seller. Assuming you know the facts below and have not been specifically asked to keep any of these facts confidential, which of the following must you disclose to the buyer?

- | <u>Yes</u> | <u>No</u> |                                                                               |
|------------|-----------|-------------------------------------------------------------------------------|
| X          |           | 1. The seller is getting a divorce.                                           |
| X          |           | 2. The seller will take less for the house.                                   |
| X          |           | 3. The seller has received another offer on the house.                        |
| X          |           | 4. The roof is in obvious need of repair.                                     |
| X          |           | 5. The house was built with synthetic stucco.                                 |
| X          |           | 6. A quarry will soon be built nearby.                                        |
| X          |           | 7. A portion of the property is in a flood plain.                             |
| X          |           | 8. There have been many complaints that the seller/builder does shoddy work.  |
| X          |           | 9. The builder is experiencing financial difficulties.                        |
| X          |           | 10. A previous contract on the property fell through due to a bad inspection. |
|            | X         | 11. The seller is a member of a racial minority group.                        |
| X          |           | 12. The school district in which the house is located may change.             |
| X          |           | 13. A murder took place on the property two years ago.                        |
| X          |           | 14. The adjoining property was just rezoned for a shopping center.            |

You are the LISTING AGENT and are representing the seller. Assuming you know the facts below, which of the following must you disclose to the seller?

Yes

No

- |   |    |                                                                       |
|---|----|-----------------------------------------------------------------------|
| X | 1. | The buyer is getting a divorce.                                       |
| X | 2. | The buyer's earnest money check has bounced.                          |
| X | 3. | The buyer is willing to pay more for the house.                       |
| X | 4. | The buyer has a contract on another house.                            |
| X | 5. | The buyer must sell buyer's current home before buying another house. |
| X | 6. | The buyer filed for bankruptcy three years ago.                       |

You are a BUYER'S AGENT and are representing the buyer. Assuming you know the facts below, which of the following must you disclose to the sellers?

Yes

No

- |   |   |    |                                                                       |
|---|---|----|-----------------------------------------------------------------------|
|   | X | 1. | The buyer is getting a divorce.                                       |
| X |   | 2. | The buyer's earnest money check has bounced.                          |
|   | X | 3. | The buyer is willing to pay more for the house.                       |
|   | X | 4. | The buyer has a contract on another house.                            |
| X |   | 5. | The buyer must sell buyer's current home before buying another house. |
|   | X | 6. | The buyer filed for bankruptcy three years ago.                       |

You are a DUAL AGENT and are working with both the buyer and sellers. Assuming you know the facts below and have not been specifically asked of them to keep confidential, which of the following must you disclose to the seller?

Yes

No

- |   |    |                                                                       |
|---|----|-----------------------------------------------------------------------|
| X | 1. | The buyer is getting a divorce.                                       |
| X | 2. | The buyer's earnest money check has bounced.                          |
| X | 3. | The buyer is willing to pay more for the house.                       |
| X | 4. | The buyer has a contract on another house.                            |
| X | 5. | The buyer must sell buyer's current home before buying another house. |
| X | 6. | The buyer filed for bankruptcy three years ago.                       |

## **Exhibit F**

**DRAFT - PROPOSED REVISIONS**

**CHAPTER 6A. BROKERAGE RELATIONSHIPS IN REAL ESTATE TRANSACTIONS**

**10-6A-1 Short title.**

This chapter shall be known as and may be cited as the "Brokerage Relationships in Real Estate Transactions Act."

**10-6A-2 Legislative findings, determinations, and declarations; chapter as basis for private rights of actions and defenses.**

(a) The General Assembly finds, determines, and declares that application of the common law of agency to the relationships between real estate brokers and persons who are sellers, buyers, landlords and tenants of rights and interests in real property has resulted in misunderstandings and consequences that have been contrary to the best interests of the public; the General Assembly further finds, determines, and declares that the real estate brokerage industry has a significant impact upon the economy of the State of Georgia and that it is in the best interests of the public to provide codification of the relationships between real estate brokers and consumers of brokerage services in order to prevent detrimental misunderstandings and misinterpretations of such relationships by both consumers and real estate brokers and thus promote and provide stability in the real estate market. The provisions of this chapter are enacted to govern the relationships between sellers, landlords, buyers, tenants, and real estate brokers and their affiliated licensees to the extent not governed by ~~individual written agreements.~~ specific written agreements between and among the parties.

(b) The General Assembly further finds, determines, and declares that the provisions of this chapter are not intended to prescribe or affect the contractual relationships as between real estate brokers and the broker's affiliated licensees.

(c) The provisions of this chapter may serve as a basis for private rights of action and defenses by sellers, buyers, landlords, tenants, and real estate brokers.

### **10-6A-3 Definitions.**

As used in this chapter, the term:

(1) "Agency" means every relationship in which a real estate broker acts for or represents another as a client by the latter's ~~express~~-written authority in a real property transaction.

(2) "Broker" means any individual or entity issued a broker's real estate license by the Georgia Real Estate Commission pursuant to Chapter 40 of Title 43. The term "broker" includes the broker's affiliated licensees except where the context would otherwise indicate.

(3) "Brokerage" means the business or occupation of a real estate broker.

(4) "Brokerage engagement" means an ~~express~~ written or oral contract wherein the seller, buyer, landlord or tenant becomes the client of the broker and promises to pay the ~~real estate~~ broker a valuable consideration or agrees that the ~~real estate~~ broker may receive a valuable consideration from another in consideration of the broker producing a seller, buyer, tenant, or landlord ready, able, and willing to sell, buy, or rent the property or performing other brokerage services.

(5) "Brokerage relationship" means the ~~resulting~~ agency and non-agency relationships which may be formed between the broker and the broker's ~~client as a result of the brokerage engagement.~~ clients and customers, as described in this chapter.

(6) "Client" means a person who ~~has entered into a brokerage engagement with~~ is being represented by a real estate ~~broker.~~ broker in an agency capacity pursuant to a brokerage engagement.

(7) "Common source information companies" means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes but is not limited to multiple listing services.

(8) "Customer" means a person who ~~has not entered into a brokerage engagement with a broker~~ is not being represented by a real estate broker in an agency capacity pursuant to a brokerage engagement, but for whom a broker may perform ministerial acts in a real estate transaction pursuant to either a verbal or written agreement.

~~(9) "Dual~~ (9) "Designated agent" means one or more licensees affiliated with a broker who are assigned by the broker to solely represent one client to the exclusion of all other clients in the same transaction and to the exclusion of all other licensees affiliated with the broker.

(10) "Dual Agent" means a broker who ~~has a brokerage~~ simultaneously has a client relationship with both seller and buyer or ~~both~~ landlord and tenant in the same real estate transaction.

~~(10) "Limited agent" means a broker who, acting under the authority of a brokerage engagement, solicits offers to purchase, sell, lease, or exchange real property without being subject to the control of the client except as to the result of the work.~~

(11) "Material facts" means facts that a party does not know, could not reasonably discover, and would reasonably want to know.

(11) ~~(12)~~ "Ministerial acts" means those acts ~~which a broker or affiliated licensee performs for a person~~ described in 10-6A-10 and such other acts which do not require discretion or the exercise of the broker or affiliated licensee's own judgment. the exercise by the broker or the broker's affiliated licensees of professional judgment or skill.

~~(12)~~ "Timely" means ~~seasonable~~; (13) "Timely" means a reasonable time under the particular circumstances.

(14) "Transaction broker" means a broker who has not entered into a client relationship with any of the parties to a particular real estate transaction and who performs only ministerial acts on behalf of one or more of the parties, but who is paid valuable consideration by one or more parties to the transaction pursuant to a verbal or written agreement for performing brokerage services.

#### **10-6A-4 Broker's legal relationship to customers or clients.**

(a) A broker who performs ~~services under a brokerage engagement for another is a limited agent, unless a different legal relationship between the broker and the person for whom the broker performs the service is intended and is reduced to writing and~~ brokerage services for a client or customer shall owe the client or customer only the duties and obligations set forth in this Chapter, unless the parties expressly agree otherwise in a writing signed by the parties. If a A broker is not a limited agent, then notice of said different relationship shall be timely furnished to all parties to the proposed real estate transaction. Except as set out in this chapter, a limited agent shall not be deemed to have a fiduciary relationship with any party or fiduciary obligations to any party but shall only be responsible for exercising ~~ordinary~~ reasonable care in the discharge of its specified

duties ~~under~~ as provided in this chapter and, in the case of a client, as specified in the brokerage engagement. ~~Unless a broker enters into a brokerage engagement with a person, it shall be presumed that the person is a customer of the broker rather than a client.~~

~~(b) Whenever a broker's relationship to customers or clients changes among broker and customer, limited agent and client, dual agent, or such other different legal relationship as the parties may agree, the broker shall disclose that fact~~ (b) Whenever a broker with an existing brokerage relationship with either a customer or client enters into a new brokerage relationship with the customer or client, the broker shall timely disclose that fact and the new brokerage relationship to all brokers, customers, or clients involved in the contemplated ~~transaction and~~ real estate transaction. ~~set out the nature of the new relationship to the customers or clients and the broker's duties under this chapter.~~

#### **10-6A-5 Duties and responsibilities of broker engaged by seller.**

(a) A broker engaged by a seller shall:

(1) Perform the terms of the brokerage engagement made with the seller;

(2) Promote the interests of the seller by:

(A) Seeking a ~~sale~~ buyer at the price and terms stated in the brokerage engagement or at a price and terms acceptable to the seller; provided, however, the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless the brokerage engagement so provides;

~~(B) Timely presenting all offers to and from the seller, even when the property is subject to a contract of sale;~~

~~———— (C) Disclosing to the seller material facts which the broker has actual knowledge concerning the transaction;~~

~~———— (D) Advising the seller to obtain expert advice as to material matters which are beyond the expertise of the broker;~~

~~———— (E) Timely accounting for all money and property received in which the seller has or may have an interest;~~

~~———— (3) Exercise reasonable skill and care; and~~

~~———— (4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes.~~

~~———— (b) Brokers shall treat all prospective buyers honestly and shall not knowingly give them false information. A broker engaged by a seller shall timely disclose to prospective buyers with whom the broker is working all material adverse facts pertaining to the physical condition of the property including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer. A broker shall not be liable to a buyer for providing false information to the buyer if the false information was provided to the broker by the broker's seller-client and the broker did not have actual knowledge that the information was false. Nothing in this subsection shall limit any obligation of a seller under any applicable law to disclose to prospective buyers all material adverse facts actually known by the seller pertaining to the physical condition of the property nor shall it limit the obligation of prospective buyers to inspect the physical condition of the property. No cause of~~

action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection.

~~— (c) A broker engaged by a seller in a real estate transaction may provide assistance to the buyer by performing such ministerial acts as preparing offers and conveying them to the seller; locating lenders, inspectors, attorneys, insurance agents, surveyors, schools, shopping facilities, places of worship, and all such other like or similar services; and performing such ministerial acts shall not be construed in such a manner as to violate the broker's brokerage engagement with the seller nor shall performing such ministerial acts for the buyer be construed in such a manner as to form a brokerage engagement with the buyer.~~

~~— (d) A broker engaged by a seller does not breach any duty or obligation by showing alternative properties to prospective buyers.~~

(B) Timely presenting all offers to and from the seller, even when the property is subject to a contract of sale;

(C) Disclosing to the seller adverse material facts of which the broker has actual knowledge concerning the transaction;

(D) Advising the seller to obtain expert advice as to material matters which are beyond the expertise of the broker;

(E) Timely accounting for all money and property received in which the seller has or may have an interest;

(3) Exercise reasonable skill and care in performing the duties set forth herein and such other duties, if any, as may be agreed to by the parties in the brokerage engagement;

(4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes.

(5) Keep confidential all information received by the broker, during the course of the engagement which is made confidential by an express request or instruction from the seller unless the seller permits such disclosure by subsequent word or conduct, or such disclosure is required by law; provided, however, that disclosures between a broker and any of the broker's affiliated licensees assisting the broker in representing the seller shall not be deemed to breach the duty of confidentiality described above.

(b) A broker engaged by a seller shall timely disclose the following to all parties with whom the broker is working:

(1) all adverse material facts pertaining to the physical condition of the property and improvements located thereon including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer, and (2) all material facts pertaining to existing adverse conditions in the immediate neighborhood of the property which are actually known to the broker and which could not be discovered by the buyer upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation: land use maps and plans; zoning ordinances; recorded plats and surveys; transportation maps and plans; maps of flood plains; crime statistics; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions. Brokers shall

not knowingly give prospective buyers false information; provided however, that a broker shall not be liable to a buyer for providing false information to the buyer if the broker did not have actual knowledge that the information was false and discloses to the buyer the source of the information. Nothing in this subsection shall limit any obligation of a seller under any applicable law to disclose to prospective buyers all adverse material facts actually known by the seller pertaining to the physical condition of the property nor shall it limit the obligation of prospective buyers to inspect and to familiarize themselves with potentially adverse conditions related to the physical condition of the property, any improvements located thereon, and the neighborhood in which the property is located. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. No broker shall be liable for failure to disclose any matter other than those matters enumerated in this subsection. Violations of this section shall not create liability to the broker absent a finding of fraud on the part of the broker.

(c) A broker engaged by a seller in a real estate transaction may provide assistance to the buyer by performing ministerial acts of the type described in 10-6A-10; and performing such ministerial acts shall not be construed to violate the broker's brokerage engagement with the seller nor shall performing such ministerial acts for the buyer be construed to form a brokerage engagement with the buyer.

(d) A broker engaged by a seller does not breach any duty or obligation by showing alternative properties to prospective buyers.

#### **10-6A-6 Duties of broker engaged by landlord.**

(a) A broker engaged by a landlord shall:

(1) Perform the terms of the brokerage engagement made with the landlord;

(2) Promote the interests of the landlord by:

~~A) Seeking a tenant at the price and terms stated in the brokerage engagement or at a price and terms acceptable to the landlord; provided, however, the broker shall not be obligated to seek additional offers to lease the property while the property is subject to a lease, or letter of intent to lease, unless the brokerage engagement so provides;~~

~~(B) Timely presenting all offers to and from the landlord, even when the property is subject to a lease or a letter of intent to lease;~~

~~(C) Disclosing to the landlord material facts which the broker has actual knowledge concerning the transaction;~~

~~(D) Advising the landlord to obtain expert advice as to material matters which are beyond the expertise of the broker;~~

~~(E) Timely accounting for all money and property received in which the landlord has or may have an interest;~~

~~(3) Exercise reasonable skill and care; and~~

~~(4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes.~~

~~————(b) Brokers shall treat all prospective tenants honestly and shall not knowingly give them false information. A broker engaged by a landlord shall timely disclose to prospective tenants with whom the broker is working all material adverse facts pertaining to the physical condition of the property including, but not limited to, material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property~~

~~by the tenant. A broker shall not be liable to a tenant for providing false information to the tenant if the false information was provided to the broker by the broker's landlord-client and the broker did not have actual knowledge that the information was false. Nothing in this subsection shall limit any obligation of the landlord under any applicable law to disclose to prospective tenants all material adverse facts actually known by the landlord pertaining to the physical condition of the property nor shall it limit the obligation of prospective tenants to inspect the physical condition of the property. No cause of action by any person shall arise on behalf of any person against a broker for revealing information in compliance with this subsection.~~

~~—— (c) A broker engaged by a landlord in a real estate transaction may provide assistance to the tenant by performing such ministerial acts as preparing offers and conveying them to the landlord; locating inspectors, attorneys, insurance agents, schools, shopping facilities, places of worship, and all such other like or similar services; and performing such ministerial acts shall not be construed in such a manner as to violate the broker's brokerage engagement with the landlord nor shall performing such ministerial acts for the tenant be construed in such a manner as to form a brokerage engagement with the tenant.~~

~~—— (d) A broker engaged by a landlord does not breach any duty or obligation by showing alternative properties to prospective tenants.~~

(A) Seeking a tenant at the price and terms stated in the brokerage engagement or at a price and terms acceptable to the landlord; provided, however, the broker shall not be obligated to seek additional offers to lease the property while the property is subject to a lease, or letter of intent to lease, unless the brokerage engagement so provides;

(B) Timely presenting all offers to and from the landlord, even when the property is subject to a lease or a letter of intent to lease;

(C) Disclosing to the landlord adverse material facts of which the broker has actual knowledge concerning the transaction;

(D) Advising the landlord to obtain expert advice as to material matters which are beyond the expertise of the broker;

(E) Timely accounting for all money and property received in which the landlord has or may have an interest;

(3) Exercise ordinary skill and care in performing the duties set forth herein and such other duties as may be agreed to by the parties in the brokerage agreement; and

(4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes.

(5) Keep confidential all information received by the broker, during the course of the engagement which is made confidential by an express request or instructions from the landlord unless the landlord permits such disclosure by subsequent word or conduct, or such disclosure is required by law; provided, however, that disclosures between a broker and any of the broker's affiliated licensees assisting the broker in representing the seller shall not be deemed to breach the duty of confidentiality described above

(b) A broker engaged by a landlord shall timely disclose the following to prospective tenants with whom the broker is working: (1) all adverse material facts pertaining to the physical condition of the property and improvements located thereon, including, but not limited to, material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the tenant, and (2) all material facts pertaining to existing adverse

conditions in the immediate neighborhood of the property which are actually known to the broker and which could not be discovered by the tenant upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation: land use maps and plans; zoning ordinances; recorded plats and surveys; transportation maps and plans; maps of flood plains; crime statistics; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions. Brokers shall not knowingly give prospective tenants false information; provided, however, that a broker shall not be liable to a tenant for providing false information to the tenant if he broker did not have actual knowledge that the information was false and discloses to the tenant the source of the information. Nothing in this subsection shall limit any obligation of the landlord under any applicable law to disclose to prospective tenants all adverse material facts actually known by the landlord pertaining to the physical condition of the property nor shall it limit the obligation of prospective tenants to inspect and to familiarize themselves with potentially adverse conditions in the physical condition of the property, any improvements located thereon, and the surrounding neighborhood.. No cause of action by any person shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. No broker shall be liable for failure to disclose any matter other than those matters enumerated in this subsection. Violations of this section shall not create liability to the broker absent a finding of fraud on the part of the broker.

(c) A broker engaged by a landlord in a real estate transaction may provide assistance to the tenant by performing ministerial acts of the type described in 10-6A-10; and performing such ministerial acts shall not be construed as to violate the broker's brokerage engagement with the landlord nor shall

performing such ministerial acts for the tenant be construed to form a brokerage engagement with the tenant.

(d) A broker engaged by a landlord does not breach any duty or obligation by showing alternative properties to prospective tenants.

#### **10-6A-7 Duties of broker engaged by buyer.**

(a) A broker engaged by a buyer shall:

(1) Perform the terms of the brokerage engagement made with the buyer;

(2) Promote the interests of the buyer by:

(A) Seeking a property at a price and terms acceptable to the buyer; provided, however, the broker shall not be obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase property, unless the brokerage engagement so provides;

(B) Timely presenting all offers to and from the buyer, even when the buyer is a party to a contract to purchase property;

(C) Disclosing to the buyer adverse material facts of which the broker has actual knowledge concerning the transaction;

(D) Advising the buyer to obtain expert advice as to material matters which are beyond the expertise of the broker;

(E) Timely accounting for all money and property received in which the buyer has or may have an interest;

(3) Exercise ~~reasonable skill and care~~; ordinary skill and care in performing the duties set forth herein and such other duties as may be agreed to by the parties; and

(4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes.

(5) Keep confidential all information received by the broker, during the course of the engagement which is made confidential by an express request or instruction from the buyer unless the buyer permits such disclosure by subsequent word or conduct, or such disclosure is required by law; provided, however, that disclosures between a broker and any of the broker's affiliated licensees assisting the broker in representing the buyer shall not be deemed to breach the duty of confidentiality described above.

~~—(b) Brokers shall treat all prospective sellers honestly and shall not knowingly give them false information.~~ (b) A broker engaged by a buyer shall timely disclose to a prospective seller with whom the broker is working as a customer and who is selling property which will be financed either by a loan assumption or by the seller's providing a part or all of the financing all material adverse facts actually known by the broker concerning the buyer's financial ability to perform the terms of the sale and, in the case of a residential transaction, the buyer's intent to occupy the property as a principal residence. A Brokers shall not knowingly give prospective sellers false information; provided, however, that a broker shall not be liable to a seller for providing false information to the seller if the ~~false information was provided to the broker by the broker's buyer-client and the broker did not have actual knowledge that the information was false~~ and discloses to the seller the source of the information. Nothing in this subsection shall limit the obligation of the prospective buyer under any applicable law to disclose to the prospective seller all material adverse facts actually known by the buyer concerning the buyer's financial ability to perform the terms of the sale and, in the case of a residential transaction, the buyer's intent to occupy the property as a principal residence. No cause

of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. Violations of this section shall not create liability to the broker absent a finding of fraud on the part of the broker.

(c) A broker engaged by a buyer in a real estate transaction may provide assistance to the seller by performing such ministerial acts ~~as preparing and conveying offers to the buyer; locating inspectors, attorneys, surveyors, and all such other like or similar services;~~ of the type described in 10-6A-10; and performing such ministerial acts shall not be construed ~~in such a manner~~ as to violate the broker's brokerage engagement with the buyer nor shall performing such ministerial acts for the seller be construed ~~in such a manner~~ as to form a brokerage engagement with the seller.

(d) A broker engaged by a buyer does not breach any duty or obligation by showing properties in which the buyer is interested to other prospective buyers.

#### **10-6A-8 Duties of broker engaged by tenant.**

(a) A broker engaged by a tenant shall:

(1) Perform the terms of the brokerage engagement made with the tenant;

(2) Promote the interests of the tenant by:

~~———(A) Seeking a lease at a price and terms acceptable to the tenant; provided, however, the broker shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a letter of intent to lease unless the brokerage engagement so provides;~~

~~———(B) Timely presenting all offers to and from the tenant, even when the tenant is a party to a lease or a letter of intent to lease;~~

~~———(C) Disclosing to the tenant material facts which the broker has actual knowledge concerning the transaction;~~

~~————(D) Advising the tenant to obtain expert advice as to material matters which are beyond the expertise of the broker;~~

~~————(E) Timely accounting for all money and property received in which the tenant has or may have an interest;~~

~~————(3) Exercise reasonable skill and care; and~~

~~————(4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes.~~

~~——(b) Brokers shall treat all prospective landlords honestly and shall not knowingly give them false information. A broker engaged by a tenant shall timely disclose to a prospective landlord with whom the broker is working all material adverse facts actually known by the broker concerning the tenant's financial ability to perform the terms of the lease or letter of intent to lease or intent to occupy the property. A broker shall not be liable to a landlord for providing false information to the landlord if the false information was provided to the broker by the broker's tenant-client and the broker did not have actual knowledge that the information was false. Nothing in this subsection shall limit any obligation of the prospective tenant under any applicable law to disclose to a prospective landlord all material adverse facts actually known by the tenant concerning the tenant's financial ability to perform the terms of the lease or letter of intent to lease or intent to occupy the property. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection.~~

~~——(c) A broker engaged by a tenant in a real estate transaction may provide assistance to the landlord by performing such ministerial acts as preparing and conveying offers to the tenant; locating draftsmen or architects, attorneys, surveyors, and all such other like or similar services;~~

~~and performing such ministerial acts shall not be construed in such a manner as to violate the broker's brokerage engagement with the tenant nor shall performing such ministerial acts for the landlord be construed in such a manner as~~

(A) Seeking a property to lease at a price and terms acceptable to the tenant; provided, however, the broker shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a letter of intent to lease unless the brokerage engagement so provides;

(B) Timely presenting all offers to and from the tenant, even when the tenant is a party to a lease or a letter of intent to lease;

(C) Disclosing to the tenant adverse material facts of which the broker has actual knowledge concerning the transaction;

(D) Advising the tenant to obtain expert advice as to material matters which are beyond the expertise of the broker;

(E) Timely accounting for all money and property received in which the tenant has or may have an interest;

(3) Exercise ordinary skill and care in performing the duties set forth herein and such other duties as may be agreed to by the parties; and

(4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes.

(5) Keep confidential all information received by the broker, during the course of the engagement which is made confidential by an express request or instructions from the tenant unless the tenant permits such disclosure by subsequent word or conduct, or such disclosure is required by law; provided, however, that disclosures between a broker and any of the broker's affiliated licensees

assisting the broker in representing the seller shall not be deemed to breach the duty of confidentiality described above.

(b) A broker engaged by a tenant shall timely disclose to a prospective landlord with whom the broker is working all adverse material facts actually known by the broker concerning the tenant's financial ability to perform the terms of the lease or letter of intent to lease or intent to occupy the property. Brokers shall not knowingly give prospective landlords false information; provided, however, that broker shall not be liable to a landlord for providing false information to the landlord if the broker did not have actual knowledge that the information was false and discloses to the landlord the source of the information. Nothing in this subsection shall limit any obligation of the prospective tenant under any applicable law to disclose to a prospective landlord all adverse material facts actually known by the tenant concerning the tenant's financial ability to perform the terms of the lease or letter of intent to lease or intent to occupy the property. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. No broker shall be liable for failure to disclose any matter other than those matters enumerated in this subsection. Violations of this section shall not create liability to the broker absent a finding of fraud on the part of the broker.

(c) A broker engaged by a tenant in a real estate transaction may provide assistance to the landlord by performing ministerial acts of the type described in 10-6A-10; and performing such ministerial acts shall not be construed to violate the broker's brokerage engagement with the tenant nor shall performing such ministerial acts for the landlord be construed to form a brokerage engagement with the landlord.

(d) A broker engaged by a tenant does not breach any duty or obligation by showing properties in which the tenant is interested to other prospective tenants.

**10-6A-9 Duration of relationships between brokers and clients.**

(a) The relationships set forth in Code Sections 10-6A-4 through 10-6A-8 and 10-6A-14 shall commence at the time that the client engages the broker, and shall continue until:

(1) Completion of performance of the engagement; or

(2) If paragraph (1) of this subsection is not applicable, then the earlier of:

(A) Any date of expiration agreed upon by the parties in the brokerage agreement ~~agreement~~ engagement or in any amendments thereto;

(B) Any authorized termination of the relationship; or

(C) If no expiration is provided and no termination has occurred, then one year after initiation of the engagement.

(b) Except as otherwise agreed in writing and as provided in subsection (a) of this Code section, a broker owes no further duties to the client after termination, ~~withdrawal~~, expiration, or completion of performance of the engagement, except:

(1) To account for all moneys and property relating to the engagement; and

~~———— (2) To keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the client, unless:~~

~~———— (A) The client permits the disclosure by subsequent word or conduct;~~

~~———— (B) Such disclosure is required by law; or~~

~~———— (C) The information becomes public from a source other than the broker.~~

**~~10-6A-10 Duties of brokers prior to entering into brokerage engagement relationships.~~**

~~———— (a) Prior to entering into any of the brokerage engagement relationships enumerated in Code Sections 10-6A-4 through 10-6A-8, a broker shall:~~

~~———— (1) Advise the prospective client of the types of brokerage relationships available through the broker;~~

~~———— (2) Advise such prospective client of any other brokerage relationships held by such broker which would conflict with any interests of the prospective client actually known to the broker; and~~

~~———— (3) Advise such prospective client as to the broker's compensation and whether the broker will share such compensation with other brokers who may represent other parties to the transaction.~~

~~—— (b) An offer of cooperation with another broker or to compensate another broker shall not be made to other brokers without timely disclosure to the party engaging the broker.~~

**~~10-6A-11 Creation of relationship not determined by payment or promise of compensation.~~**

~~—— The payment or promise of payment of compensation to a broker does not determine whether a brokerage engagement relationship has been created between any broker and a seller, landlord, buyer or tenant.~~

**~~10-6A-12 Broker acting as dual agent.~~**

~~—— (a) A broker may act as a dual agent only with the written consent of all clients. Such written consent shall be presumed to have been given and to be informed as against any client who signs a writing or writings which contains the following:~~

~~———— (1) A description of the transactions or types of transactions in which the broker will serve as a dual agent;~~

~~———— (2) A statement that, in serving as a dual agent, the broker represents two clients whose interests are or at times could be different or even adverse;~~

~~———— (3) A statement that a dual agent may not disclose to any client information made confidential by request or instructions from another client, except information allowed to be disclosed by this Code section or required to be disclosed by this Code section or required to be disclosed by this chapter;~~

~~———— (4) A statement that the broker or the broker's affiliated licensees have no material relationship with either client other than that incidental to the transactions, or if the broker or the broker's affiliated licensees have such a relationship, a disclosure of the nature of such a relationship. For the purposes of this Code section, a material relationship shall mean any actually known personal, familial, or business relationship between the broker or the broker's affiliated licensees and a client which would impair the ability of the broker or affiliated licensees to exercise fair and independent judgment relative to another client;~~

~~———— (5) A statement that the client does not have to consent to the dual agency; and~~

~~———— (6) A statement that the consent of the client has been given voluntarily and that the engagement has been read and understood.~~

~~—— (b) No cause of action shall arise on behalf of any person against a dual agent for making disclosures allowed or required by this chapter and the dual agent does not terminate any agency by making such allowed or required disclosures.~~

~~—— (c) A broker may assign different licensees affiliated with the broker to represent exclusively different clients in the same transaction. The licensees may not disclose, except to the licensee's broker, information made confidential by request or instructions of the client the licensee is representing, except information allowed to be disclosed by this Code section or required to be disclosed by this chapter.~~

~~—(d) In the case of dual agency, each client and broker and their respective licensees possess only actual knowledge and information. There shall be no imputation of knowledge or information among or between the clients, brokers, or their affiliated licensees.~~

~~—(e) In any transactions, a broker may without liability withdraw from representing a client who has not consented to a disclosed dual agency at any time prior to the existence of the dual agency. Such withdrawal shall not prejudice the ability of the broker to continue to represent the other client in the transaction, nor limit the broker from representing the client in other transactions not involving a dual agency. When such withdrawal as contemplated in this subsection occurs, the broker shall not receive a referral fee for referring a client to a broker employed by a different real estate brokerage firm.~~

~~—(f) Every broker shall develop and enforce an office brokerage relationship policy among affiliated licensees which either specifically permits or rejects the practice of disclosed dual agency, which office brokerage relationship policy shall be disclosed pursuant to Code Section 10-6A-10 and paragraph (1) of subsection (a) of this Code section.~~

**~~10-6A-13 Affiliation with common source information company.~~**

(2) To keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the client, unless:

(A) The client permits the disclosure by subsequent word or conduct;

(B) Such disclosure is required by law; or

(C) The information becomes public from a source other than the broker.

(c) Notwithstanding any other provision to the contrary contained in the chapter in the event a conflict arises between a broker's duty to keep the confidence of a client and the duty not to give customers false information, the broker's duty to the customer shall prevail and shall govern the broker's actions.

No cause of action shall arise on behalf of any person against a broker or the broker's affiliated licensees for revealing information in compliance with this subsection.

### **10-6A-10 Duties and Responsibilities of a Transaction Broker**

(a) A broker acting as a transaction broker may provide assistance to buyers, sellers, tenants and landlords by performing ministerial acts. Examples of ministerial acts which can be performed by the transaction broker on behalf of any of the parties in a real estate transaction include without limitation the following:

(1) Identifying property for sale, lease or exchange;

(2) Providing real estate statistics and information on properties;

(3) Providing pre-printed real estate form contracts, leases and related exhibits and addenda;

(4) Acting as a scribe in the preparation of real estate form contracts, leases and related exhibits and addenda;

(5) Locating architects, engineers, surveyors, inspectors, lenders, insurance agents, attorneys and other professionals; and

(6) Identifying schools, shopping facilities, places of worship and other similar facilities on behalf of any of the parties in a real estate transaction

(b) A broker acting as a transaction broker shall do the following:

(1) Timely present all offers to and from the parties involving the sale, lease and exchange of property;

(2) Timely account for all money and property received by broker on behalf of a party in a real estate transaction;

(3) Timely disclose the following to all buyers and tenants with whom the broker is working:

(A) all adverse material facts pertaining to the physical condition of the property and improvements located thereon including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer, and

(B) all material facts pertaining to existing adverse conditions in the immediate neighborhood of the property which are actually known to the broker and which could not be discovered by the buyer upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation; land use maps and plans; zoning ordinances; recorded plats and surveys; transportation maps and plans; maps of flood plains; crime statistics; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions.

(c) Transaction brokers shall not knowingly give any party in a real estate transaction false information; provided however, that a broker shall not be liable to a party for providing false information to the party if broker did not have actual knowledge that the information was false and discloses to the party the source of the information. Nothing in this subsection shall limit any obligation of a seller under any applicable law to disclose to prospective buyers all adverse material

facts actually known by the seller pertaining to the physical condition of the property nor shall it limit the obligation of prospective buyers to inspect and to familiarize themselves with potentially adverse conditions related to the physical condition of the property, any improvements located thereon, and the neighborhood in which the property is located. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. No broker shall be liable for failure to disclose any matter other than those matters enumerated in this subsection. Violations of this section shall not create liability to the broker absent a finding of fraud on the part of the broker.

**10-6A-11 Duties of brokers prior to entering into brokerage engagement relationships.**

(a) All brokerage engagements must:

(1) Advise the prospective client of the types of agency relationships available through the broker;

(2) Advise such prospective client of any brokerage relationships held by such broker with other parties which would conflict with any interests of the prospective client actually known to the broker (but excluding the fact that the broker may be representing other sellers and landlords in selling or leasing property or that the broker may be representing other buyers and tenants in buying or leasing other property); and

(3) Advise such prospective client as to the broker's compensation and whether the broker will share such compensation with other brokers who may or may not represent other parties to the transaction in an agency capacity.

(4) Advise the prospective client of the broker's obligations to keep information confidential under this chapter.

**10-6A-12 Creation of relationship not determined by payment or promise of compensation.**

The payment or promise of payment of compensation to a broker by a seller, landlord, buyer or tenant shall not determine whether a brokerage relationship has been created between any broker and a seller, landlord, buyer or tenant.

**10-6A-13 Dual Agency Prohibited.**

(a) A broker may not act as a dual agent in a real estate transaction; provided, however, the practice of designated agency as described in 10-6A-14 shall not be deemed to be dual agency hereunder.

(b) A broker who refers a client to another broker to avoid a dual agency may receive a referral fee from that broker.

**10-6A-14 Designated agents within a firm**

(a) A broker may assign directly or through the adoption of a company policy different licensees affiliated with the broker as designated agents to exclusively represent different clients in the same transaction. In addition, the broker may delegate such assignment responsibility to other management level personnel acting under a company policy. Any company policy adopted to fulfill the requirements of the subsection shall contain provisions reasonably calculated to ensure each client is represented in accordance with the requirements of this chapter. A designated agent of a seller, landlord, buyer, or tenant shall owe his or her client the duties set forth in sections 10-6A-5, 10-6A-6, 10-6A-7, or 10-6A-8 of this Chapter respectively. A broker shall not appoint himself or herself as a designated agent.

(b) If a broker appoints different, designated agents in accordance with subsection (a) of this Section, neither the broker, the broker's licensees nor the real estate brokerage firm shall be deemed to be dual agents.

(c) When designated agents are appointed in accordance with subsection (a) of this Section, the broker, the clients, and the designated agents shall be considered to possess only actual knowledge and information; there shall be no imputation of knowledge or information between and among the broker, the designated agents, and the clients. Designated agents shall not disclose, except to the designated agent's broker, and the designated agent's broker shall not disclose to any of the parties to the transaction, information made confidential by request or instructions of the client whom the designated agent is representing, except information allowed to be disclosed by this Code section or required to be disclosed by this Chapter.

(d) The designation of one or more of a broker's affiliated licensees as designated agents shall not permit the disclosure by the broker or any of the broker's affiliated licensees of any information made confidential by an express request or instruction by a party prior to the creation of the designated agency. The broker and the broker's affiliated licensees shall continue to maintain such confidential information unless the party from whom the confidential information was obtained permits such disclosure by subsequent word or conduct or such disclosure is required by law. No liability shall be created as a result of a broker and the broker's affiliated licensee's compliance with this subsection.

**10-6A-15 Affiliation with common source information company.**

Except as may be provided in a written agreement between the parties, a broker shall not be deemed to have an agency relationship with a common source information company. No broker shall be deemed

to be a subagent of any client of another broker solely by reason of membership or other affiliation by such brokers in a common source information company, including but not limited to multiple listing services.

**~~10-6A-14~~ 10-6A-16 Regulation.**

Nothing contained in this chapter shall limit the Georgia Real Estate Commission in its regulation of brokers and the broker's affiliated licensees pursuant to Chapter 40 of Title 43 and the substantive rules and regulations adopted by the commission pursuant thereto.

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