



**COLDWELL  
BANKER**

---

**PLATINUM  
PROPERTIES**

**BROKER'S POLICIES AND PROCEDURES MANUAL**

**COLDWELL BANKER PLATINUM PROPERTIES**

**FOR COLDWELL BANKER PLATINUM PROPERTIES'**

**INDEPENDENT CONTRACTORS**

## **Introduction**

The Broker Manual is to be used as a guide in your daily operations as a member of Coldwell Banker Platinum Properties to help guide you in your activities and hopefully enhance your productivity. Further, it shall serve to satisfy any state specific requirements for such a Broker's Manual as mandated from time to time by the respective Real Estate Commission.

Following the policies described in the Broker's Manual is considered a condition of continued association with Coldwell Banker Platinum Properties. The contents of this Broker's Manual shall not constitute nor be construed as a promise or as a contract. The Broker's Manual is a summary of our policies, which are presented here only as a matter of information.

It shall be personal responsibility of each Coldwell Banker Platinum Properties Independent Contractor to review this Broker's Manual at least once a year (or sooner, in the event of any material changes to the Broker's Policy, as described below) in order to assure compliance. The right to amend and change contents of the Broker's Manual is reserved for the Broker on an as-needed basis. The amendments and changes shall be timely reviewed during staff meetings directly following any change in the policy. It is the responsibility of each Coldwell Banker Platinum Properties Independent Contractor to keep abreast of all meeting discussing changes and to understand the policy set forth. Absence from any meeting discussing changes to policy does not provide an exemption to any Coldwell Banker Platinum Properties Independent Contractor from these responsibilities.

### Notice of Disclaimer

The requirements set forth in the Broker's Manual are based upon a practical application of California laws, rules and customs and are not intended to provide legal advice. From time to time, laws, rules, forms, and requirements referenced in this Broker's Manual may change.

## Definitions

**Definitions of many terms are found in the California current real estate law book.**

**CAR** – California Association of REALTORS.

**BROKER** – A Coldwell Banker Platinum Properties designated broker.

**COMPANY** - Coldwell Banker Platinum Properties

**LISTING** – AN employment contract to represent a seller in the marketing of the seller's property.

**MLS** – Local multiple listing service.

**NAR** – NATIONAL ASSOCIATION OF REALTORS

**INDEPENDENT CONTRACTOR** – A licensed salesperson or Independent Contractor broker working with Coldwell Banker Platinum Properties as either an employee or an Independent Contractor.

**STDS** – Seller's Real Estate Transfer Disclosure Statement.

**SUPRA** – Company that handles lock boxes.

**MATRIX** – System that delivers the MLS

**ZIPFORMS** – Computerized, online real estate form system.

## **State DRE Requirements**

The Independent Licensed Real Estate Sales Agent (hereafter, "Independent Contractor") and Broker each agree to engage in business that promotes the utmost manner of professionalism by promoting positive relations, enhancing the business' reputation and its profits, and increasing community goodwill.

Independent Contractor agrees to put forth the best effort in selling, presenting, exchanging, and representing real estate transactions and business opportunities listed with the Broker and to include the solicitation of new clients and customers for future business. Furthermore, the Independent Contractor agrees to act in lawful and ethical manners promoting the professionalism of him or herself as well as the firm to the greatest mutual benefit of both parties.

Both Broker and Independent Contractor agree to conform to and abide by all laws, rules and regulations, and codes of ethics that are binding on or applicable to, California real estate brokers, salespersons and affiliate brokers.

Strict adherence to the governing rules and regulations of the California Real Estate Commission, The Code of Ethics of the National Association of Realtors, Local Board/Association governing documents (Bylaws, MLS Rules and Regulations, etc.) will be followed by the Broker and each Independent Contractor employed by the Broker.

## Broker's Requirements

It is the responsibility of each Independent Contractor to promptly notify their supervisor of any changes in personnel data changes such as:

- Mailing address
- Telephone numbers
- Email Address
- Legal Name
- Emergency contact information

The California Department of Real Estate requires that Brokers and Sales Agents notify the Department directly within 5 days of a change of legal name, residence or mailing address. The licensee must complete a Salesperson Change Form and return to the BRE. A copy of the completed form should also be provided to the Operations Manager and Broker.

### Advertising

*All advertising must:*

1. Designate that the advertiser is engaged in the real estate business
2. Indicate Independent Contractors are licensed real estate agents
3. Be under the direct supervision of the Broker
4. Must be generated after written authorization from the property owner has been Ensure Independent Contractor names are not presented utilizing letters that are larger than those of the name of Coldwell Banker Platinum Properties
5. Describe the property, NOT THE DESIRED BUYER OR TENANT
6. Shall not have photos of pets or children in the background
7. Clearly and unmistakably indicate:
  - a. The Broker's or the firm's legal name
  - b. Business telephone number & office address
8. Be honest and truthful in real estate communications and shall present a true picture in advertising, marketing, and other representations. You shall ensure that your status as real estate professional is readily apparent in all advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional.
9. Comply with, including but not limited to, the California Real Estate Law, the Federal Truth-in-Lending Act (15 U.S.C. § 1601 et seq.) and Regulation Z (12 C.F.R. Part 226), the regulations from the California Bureau of Real Estate (CalBRE) (10 Cal. Code Regs. §§ 2700 et seq.), the National Association of REALTORS® (NAR) Code of Ethics as well as the California Model MLS (Multiple Listing Service) Rules.
10. All advertising, when not placed through our Marketing Department, requires Broker review.

**All first point of contact or solicitation materials must include:**

1. The name and number of the licensee. This is for both sales-agent and broker associates.
2. The responsible broker's "identity." This means the name under which the broker is currently licensed by CalBRE and conducts business in general or is a substantial division of the real estate firm. The broker's license number is optional.
3. The status of the agent such as "REALTOR" or "agent" (unless the name of the company makes clear that the advertisement is by the licensee)

### Agency Disclosure

Coldwell Banker Platinum Properties has adopted the following agency policy, to be implemented in all transactions involving Coldwell Banker Platinum Properties' Independent Contractors and prospective Buyers or Tenants (collectively "Sellers"). The Coldwell Banker Platinum Properties Broker prior to implementation must approve any exceptions to the policy below:

1. Independent Contractors will disclose their agency status to every prospective Buyer or Seller with whom they work, PRIOR to providing any real estate services to a Buyer or Seller. With Sellers, Independent Contractors will indicate their status as a **Seller's Agent**. With Buyers, Independent Contractors will indicate their status as **Buyer's Agent**.
2. After disclosure, Independent Contractors will immediately negotiate a listing agreement with any Seller that includes a provision that Coldwell Banker Platinum Properties is serving as a **Seller's Agent** in the marketing of that property. Independent Contractors will also explain various options for cooperation in a sale and will secure the seller's instructions and/or authorization for extending cooperative compensation to buyer's agents.
3. Independent Contractors must notify a Buyer of a change in agency status from **Buyer's Agent** to **Dual Agent** if the Buyer wishes to see, or negotiate the purchase of, a company listing; if Buyers desire their own agency representation, they will be referred to another company.
4. Upon initial contact with any other license, Independent Contractors will immediately disclose Coldwell Banker Platinum Properties agency status in the transaction. If the role changes at any time, Independent Contractors will immediately notify any other licenses and parties (involved in the transaction) of this change.
5. Prior to preparation or presentation of an offer, Independent Contractors will confirm Coldwell Banker Platinum Properties status in the transaction as a **Seller's Agent, Buyer's Agent or Dual Agent** for Company listings, with both Buyer and Seller by use of the "**Disclosure Regarding Agency Relationships**" form. This form shall be distributed to the Seller when representing the Seller and to both the Buyer and the Seller when representing the Buyer in any transaction. A signed copy to be filed and retained with the Independent Contractor's files for the transaction.

### Acting as a Principal (Personal Transactions):

- If an Independent Contractor or licensed employee with Coldwell Banker Platinum Properties is representing himself/herself (or a family member or relative) in a transaction, the Independent Contractor or licensed will disclose that the licensee is acting as a principal BEFORE any binding agreement and secure the signatures and consent of all parties to the transaction, giving a signed copy of the form to other parties, and keeping a signed copy for the Independent Contractor's or employee's files on this transaction.

### **Anti-Trust Compliance**

In compliance with federal antitrust legislation, commission rates of Coldwell Banker Platinum Properties are established solely by Coldwell Banker Platinum Properties and are based upon Coldwell Banker Platinum Properties assessment of its costs and market conditions. Commission rates are not subject to agreement with or suggestion from, any person or entity, other than the client with whom a listing or other agreement for sale, purchase or lease of the property is signed.

Coldwell Banker Platinum Properties Independent Contractors are restricted from discussing with anyone the setting of commission rate charges by Coldwell Banker Platinum Properties, or, by any other real estate company. Coldwell Banker Platinum Properties Independent Contractors shall make no reference to a "going" rate for real estate services. If a Coldwell Banker Platinum Properties Independent Contractor is present when other real estate licensees outside of Coldwell Banker Platinum Properties begin a discussion of fees, they must promptly remove themselves from the conversation. At no time shall any Independent Contractor of Coldwell Banker Platinum Properties participate in such a conversation. In the event an Independent Contractor is unsure of how to respond to the concerns of a potential client or customer regarding the discussion of fees, they should immediately contact the Broker for advisement.

### *Summary of Principal Federal Antitrust Laws:*

The basic statutes making up the body of law known as the antitrust laws are the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act.

*The Sherman Act* – This statute enacted in 1890 was the first modern United States antitrust law and remains the cornerstone of all the federal antitrust statutes. It establishes two broadly stated principles of antitrust policy:

1. Section 1 of the Sherman Act prohibits agreements, combinations or conspiracies between two or more persons, firms, corporations, or associations which unreasonably restrain trade.
2. Section 2 of the Act prohibits the monopolization or any attempted monopolization of any market for a particular product or service.

These very general precepts of the Sherman Act have achieved specific meaning through a process of court interpretation, which has continued for more than 90 years. The selected cases most applicable to real estate brokers and the real estate industry have been compiled by the National Association of Realtors as Volume 2 of its publication, *Antitrust and Real Estate*.

It is not necessary to show a written contract to prove a violation of the act. "Understandings," formal or informal, written or oral, expressed or implied, are enough for a court or jury to infer that an agreement has been reached. As the Supreme Court said in a leading antitrust case, "A wink of the eye or a shrug of the shoulder is often more important than a formal handshake."

*The Clayton Act* – The Clayton Act was enacted by Congress in 1914, and was the next major antitrust statute. Its approach differs from the Sherman Act in two basic ways:

1. While the Sherman Act applies to restraints of trade which have a present anti-competitive effect, the Clayton Act represents an effort to stop anti-competitive practices in the beginning by outlawing future conduct resulting in an unreasonable restraint of trade.
2. While the Sherman Act deals in broad principles, the Clayton Act is concerned with a limited number of specific subjects such as exclusive bidding arrangements (Section3); acquisitions or mergers (Section7); interlocking boards of directors (Section8).

*The Robinson-Patman Act* - The Robinson-Patman Act enacted in 1936, amended the Clayton Act and deals with discrimination in prices charged various customers. The basic purpose of the Robinson-Patman Act was to protect small businessmen by putting constraints on the ability of a large company to command price discounts by use of greater purchasing power. The Federal Trade Commission is the enforcing agency for this law.

*The Federal Trade Commission Act* - The Federal Trade Commission Act authorizes the FTC to enforce these federal laws. Such authority is shared with the Department of Justice. The FTC also enforces Section 5 of the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "deceptive practices." Under this general provision, the FTC has enjoined potentially anti-competitive conduct before it could ripen into a violation of any of the antitrust laws.

In addition to having the authority to seek injunctions, the FTC is authorized to sue in federal court to recover refunds for consumers who have been injured by violation of an FTC rule or cease and desist order.

In antitrust cases, whether criminal prosecutions or civil treble damage suits, proof against the defendant is most likely to come from the defendant's own files and records or from statements made by the defendant or his Independent Contractors. Thus, an antitrust compliance program must only avoid actual violations of antitrust laws, but must also avoid creating or permitting the creation of files, records, documents, statements or conversations which might create an appearance of violation.

1. *DO NOT Discuss Your Business With Competitors*- At any time, in any place, or under any circumstances or have any personal or telephone conversations with competitors concerning commissions, fees, charges or any other business practices of your real estate business or those of the firm with which you are Independent Contractor. This applies at social gatherings, on the golf course, while hunting, in the bar, cocktail parties, board functions and at all times and at all places. At Association or Board meetings, confine discussions to topics of Association or Board business directly involved in the purpose of the organization and the meeting.



2. *Written Communications Must Be Clear and Explicit*- When you discuss a real estate transaction or the superiority of your business practices over your business competitors, talk to your Broker or other agents in Coldwell Banker Platinum Properties with whom you are associated. Regardless of how carefully you may phrase your letter or memorandum, things look much different in writing than they should sound when spoken between knowledgeable people. Of course, financial and economic data sometimes must be written but in many instances, any information relevant to business or legal relations can be communicated by talking, and talking only to those who have legitimate justification for receiving the information you are transmitting. More than one antitrust defendant has had his letter, correspondence, memoranda and written notes admitted in evidence against him for purposes for which the writer never intended. It is amazing how differently what you wrote sounds when it is read back to you in the grand jury room or during trial. All correspondence and memoranda must be clear and specific.
3. *DO NOT Talk Unless You Know Who You're Talking To and What You're Talking About*- In any business, complete candor among trusted business Independent Contractors is necessary. It is not necessary, however, to tell everyone your business. Inform only those who need to know such matters as how and in what manner commission or fee contracts were negotiated, how much business you're doing, what business prospects are, how many and which properties you have sold, and anything else which might be of interest to someone investigating your business for a reason you know nothing about. If you receive a telephone call from anyone who refuses to identify himself or who begins what amounts to a probing cross examination about your business practices, terminate the conversation as quickly and courteously as possible. In this day of ever-improved recording devices for both telephonic use and miniature recording devices easily concealed in a room or on the person of an investigator, it is well to make it a rule in discussing business matters to speak as if you were being recorded. The chances are better than you think they are!
4. *DO NOT Deceive Yourself Or Let Anyone Else Deceive You Into Believing That Any Transgression Of The Antitrust Laws Has Little Risk Of Discovery* The federal government possesses extensive investigatory powers, such as grand juries and civil investigative demands, as well as ingenious and dedicated investigators. Also, in private litigation, parties have litigation discovery tools to examine corporate or firm records and documents and to compel testimony. Even though an antitrust violator may not keep records, its competitors or the injured parties may. In this age of photocopying, it is difficult to restrict distribution. Unexpected records such as telephone bills, expense accounts, a secretary's notes, engagement calendars or a forgotten written rep may be uncovered. In a prosecution or suit for antitrust violations, a party may be faced with surprise witnesses such as former Independent Contractors and employees and plea bargainers. Also, an alleged co-conspirator may take advantage of the antitrust division's leniency program and confess, thus perhaps avoiding indictment, a jail sentence and fines and keeping the tax-deductibility of civil damage payments.
5. *DO NOT Use Such Terms As "Please Destroy When Read", "For Your Eyes Only", "No Copies", Or Similar Terms and Phrases*- Experience has demonstrated that even if no

copies are made, the original of such documents eventually end up in somebody's file. Even when marked "personal and confidential," the document is usually retained by the recipient and eventually filed. When an antitrust investigation is underway or documents are produced on a civil investigative demand or in private antitrust litigation, such terms and phrases are red flags for the investigator or opposing counsel. All written documents must comply with the antitrust laws whether inspected or discovered and should not indicate or infer an attempt to conceal any document.

6. *DO NOT-At Any Time-Use Any Of The Words And Phrases Which NAR's Program For Compliance Designated As "Dangerous"-* Since such statements are so improper, incorrect and dangerous. they need to be emphasized here along with some other words and phrases.

- "We would like to charge a lower commission, but the board has a rule..."
- "This is the rate that all Realtors® charge."
- "The MLS will not accept less than a 120 day listing."
- "Before you list with XYZ Realty, you should know that nobody is going to work on their listing."
- "If John Doe is really professional (or ethical) he would have joined the Board."
- "The Board requires that all Realtors® force their sales people to join."
- "The best way to deal with John Doe is to boycott him" or "we don't worry about John Doe; we just don't show his listings."
- "If you valued your services as a professional, you wouldn't cut your commission."
- "No board member will accept a listing for less than 90 days."
- "Let him stay in his own part of town, this is our territory."
- "If he was really a professional, he wouldn't use part timers."
- "X is the going rate in this area."
- "We have to charge that commission since our rates are set by the (Arizona) Real Estate Commission."
- "The standard commission in this area is X."
- "When I see that guy's signs, I just drive the prospect down another street."
- "We've all agreed that any commission below X is unfair."
- "Something's got to be done about that company; nobody can charge such a low commission and make a living."
- "That price-cutter has no business being a member of the board."

- "You will not get a lower commission from a Realtor®."

7. *If in Doubt, Consult*- No compliance program or manual can spell out all the answers to questions, which may arise. Situations are bound to arise which create doubt. If you do not have doubts about the legal of any business practice, procedure or activity, consult your board executive officer, the broker under whose license you work or legal counsel knowledgeable about antitrust matters.
8. *Without Clearance*: Don't Do It – If neither the board executive officer, an executive officer of your firm nor legal counsel will give clearance to a proposed business deal or activity with antitrust implications-don't do it.

### *Document Retention Policy*

Documents should not be kept any longer than reasonably necessary and should be destroyed when their useful life is over. However, you must retain ALL documents in accordance with the Corporate Records Retention Policy, which either meets or exceeds the retention periods set forth by the California statutes.

Consequences and Costs of Failure to Comply- It is going to take a considerable expenditure of money, staff-time, and membership-time to institute and maintain a continuous, on-going antitrust compliance program. To make that judgment, consideration must be given to the awesome consequences and costs of the failure to carry on a continuous antitrust compliance program. Those who choose to ignore the antitrust laws or fail to educate themselves about such laws and develop sensitivity to antitrust risk very serious consequences and costs for themselves, those with whom they are Independent Contractors and their fellow Realtors®.

1. *Criminal Prosecution* - The criminal penalties for violating antitrust laws are severe, and the present enforcement trend is to prosecute not only the association, corporation, or firm involved, but also the officers, directors, staff, and employees personally. A violation of the Sherman Act, for example, is a felony for which any corporation may be fined up to one million dollars for each offense and an individual can be fined up to \$100,000 and imprisoned for up to three years for each offense. The fines are not tax deductible. Also if a taxpayer is indicted and subsequently pleads guilty or nolo contendere or is convicted, payments or damages in civil treble-damage actions are only one-third deductible. Jail sentences and probation, which by now are by no means uncommon, can be great personal tragedies. It is not pleasant trip through the typical arrest, fingerprinting, photographing and bail processes! Furthermore, convicted felons incur many civil disadvantages with respect to voting, holding of public office and the like. The emphasis today in the Justice Department is on stronger and more frequent criminal enforcement. Nolo contendere pleas are usually opposed by the government, and larger fines and sentences are being sought.
2. *Private Treble Damage Suits*- Antitrust laws also provide for civil penalties. executive officer of your firm nor legal counsel will give clearance to a proposed business deal or activity with antitrust implications-don't do it.

3. *Injunctions*- The government and injured persons or businesses may also obtain injunctions against further antitrust violations. The severe requirements of these injunctions will handicap any brokerage business or board of Realtors.
4. *Consent Decrees*- To avoid the shocking expense of defending antitrust suits, some defendants elect to "settle out of court" by agreeing to consent decrees. However, these consent decrees can severely restrict an association's operations or a company's business, and, in some instances, the result is that the officers, directors and staff of a defendant from day-to-day carry on the operations under peril of contempt of court citations or threats of civil penalties of up to \$10,000 per day. Conduct and practices which have not been adjudicated to be unlawful are often prohibited on consent decrees.
5. *Time* -Antitrust litigation usually requires years of preparation before trial and many months of appeals. From the filing of suit to settlement of judgment, on the average may take from 4 to 5 years. Not only may the defendant board or real estate firm in an antitrust case face years of uncertainty, but the valuable time of Realtors® and other personnel almost certainly will be spent in long hours of preparing testimony, giving depositions, producing documents, tabulating statistics and performing other necessary preparations for trial. It is almost impossible for board executives and Realtors® in antitrust cases to appreciate the time lost and the expense involved until they actually experience serious antitrust litigation.
6. *High Cost of Antitrust Litigation* -The cost of defending antitrust suits, civil or criminal, are astonishing. It is not at all unusual in criminal antitrust cases for the cost of litigation to exceed the fines imposed. Even defendants confident of acquittal are faced with the prospect of spending shocking amounts of money and countless days of employee time and effort in establishing their innocence. So called "simple" antitrust cases usually cost hundreds of thousands of dollars to defend. It is, therefore, imperative that Realtors® involved in the real estate brokerage business not only comply with the antitrust laws, but also avoid even the suspicion of any violations.
7. *Adverse Publicity*- Whether the antitrust case is civil or criminal, once the suit is filed, damages to the reputation and public image of both the local board as well as the individual defendants and especially the image of Realtor® as an ethical and responsible business person are incalculable. Even if the government's prosecution or private plaintiffs treble damage suit against a Realtor® is without merit and the cases are eventually won by the defendants, the bad publicity lingers on.
8. *Internal Strife and Tension*- No matter how well organized and managed a local board or Realtor® firm may be, once an antitrust investigation is launched or an antitrust suit is filed, internal strife and tension among the staff and employees are unavoidable. Personnel will be kept busy assisting in matters involving the investigation or in preparing for litigation, and some inevitably will seek to disassociate themselves from others whom they perceive to have contributed to the charge. The loss of work efficiency and production resulting from these conflicts is expensive and can be ruinous to any board or Realtor business.

## **Assistants**

### *Unlicensed assistants MAY:*

- Answer the phone, forward calls and give information contained only on the listing agreement as limited by the Broker
- Fill out and submit listings and changes to the multiple listing service
- Follow-up on loan commitments after a contract has been negotiated and generally secure status reports on the loan progress
- Assemble documents for closing
- Secure public information from courthouses, utility districts, etc.
- Have keys made for company listings
- Write ads for approval of licensee and Broker
- Receive, record and deposit earnest money, security deposits and advance rents under the direct supervision of Broker
- Type contract forms for approval by licensee and Broker
- Monitor licenses and personnel files
- Compute commission checks
- Order repairs as directed by the licensee
- Prepare flyers and promotional information for approval by licensee and Broker
- Deliver documents and pick-up keys
- Schedule appointments for licensee to show listed property
- Gather information for a comparative market analysis (CMA)
- Hand out objective, written information on a listing or rental
- Give a key to a prospect, or unlock property
- Disclose the current sales status of a listed property

### *Unlicensed Assistants MAY NOT:*

- Make cold calls by telephone or in person to potential sellers or purchasers
- Show properties for sale and/or lease to prospective purchasers
- Host public open houses, host licensee open houses, home show booths or fairs

- Answer any questions concerning properties listed with the firm except only that information contained on the listing agreement as limited by the Broker
- Prepare promotional material or advertising or properties for sale or lease without the approval of the Broker
- Discuss or explain listings, offers, contracts, or other similar matters with persons outside of the firm
- Be paid on the basis of real estate activity; such as percentage of commission, or any amount based on listings, sales, etc.
- Act as a "go-between" with a seller and buyer such as when an offer is being negotiated
- Negotiate or agree to any commission split or referral fee on behalf of a licensee
- When discussing real estate transactions, the unlicensed employee must indicate that they are not licensed and can only give out limited factual information and data.

### **Affiliation: Broker and Independent Contractor**

#### Mutual Benefit

For the working relationship of the Broker and Independent Contractor, the following policies will be used to establish mutual benefit to both parties:

#### Broker and Independent Contractor Agreement of Mutual Benefit

- The Independent Contractor and Broker each agree to engage in business that promotes the utmost manner of professionalism by promoting positive relations, enhancing the business' reputation and its profits, and increasing community goodwill.
- The Independent Contractor agrees to put forth the best effort in selling, exchanging, and leasing all real estate and business opportunities listed with the Broker and to include the solicitation of new clients and customers for future business. Furthermore, the Independent Contractor agrees to act in lawful and ethical manners promoting the professionalism of himself as well as the firm to the greatest mutual benefit of both parties.
- The Independent Contractor, as agent for the Broker, agrees to act on the behalf of the Broker. If a conflict of interest occurs, the Independent Contractor will promptly notify the Broker in writing so that the Broker can take appropriate steps in rectifying the conflict for the mutual protection of both parties involved in the transaction.

#### Adhere to the Code of Ethics and Bylaws of Local Board and MLS

- Each Coldwell Banker Platinum Properties Independent Contractor agrees to conform to and abide by all laws, rules and regulations, and codes of ethics that are binding on, or applicable to, California's real estate brokers and affiliate brokers.

- Strict adherence to the governing rules and regulations of the California's Association of Realtors, The Real Estate Broker License Act, The Code of Ethics of the National Association of Realtors®, Local Board/Association governing documents (Bylaws, MLS Rules and Regulations, etc.) will be followed by the Broker and Independent Contractor.
- Each Coldwell Banker Platinum Properties Independent Contractor acknowledges receipt of a copy of the Code of Ethics and Standards of Practice of the National Association of Realtors, The California Association of Realtors, and the Rules and Regulations of the local Multiple Listing Service.

### Independent Contractor Affiliation Requirements

The following provisions will be complied with at the Independent Contractor's personal cost:

- The Independent Contractor shall maintain his or her own current real estate license
- The Independent Contractor shall meet all Continuing Education (CE) requirements as established by the California Real Estate Commission
- Proof of CE compliance and license renewal shall be provided to Broker no later than fifteen (15) days prior to the applicable renewal date
- Coldwell Banker Platinum Properties will maintain the mandatory coverage of errors and omissions insurance set forth by the California Real Estate Commission

### Membership in the Board of REALTORS®

Coldwell Banker Platinum Properties is a member of various boards.

- The Independent Contractor agrees to become a member of the local Board/Association, California Association of REALTORS®, and National Association of REALTORS® and to be responsible for all applicable dues and fees if the office in which they are employed is a member.
- The Independent Contractor expressly understands that they may choose to join any Board/Association in which the Broker holds membership. The Independent Contractor can also join other Boards/Associations as a secondary membership if the broker holds no membership in the particular Board/Association WITH THE Broker's approval.
- The Independent Contractor understands and agrees to abide by the rules and regulation of the following associations:

California Association of REALTORS®

National Association of REALTORS®

CRMLS Rules and Regulations

### **Independent Contractor Expenses**

## Professional/ Business Expenses

The Broker or manager shall determine which expenses shall be paid by the firm and which expenses (if any) shall be paid by the Coldwell Banker Platinum Properties Independent Contractor as outlined in Exhibit 7.

### **Broker Signature Requirements**

#### Authorized Signature

Only the Broker has the authority to sign documents associated with a real estate transaction. Signatory authority will be authorized to a designee of the Broker's choosing in the event the Broker is inaccessible for a period of 24 hours or more.

A Delegation letter will be maintained in each designee's file providing a description of the delegated responsibility including signatory authority. A separate document will be prepared and supplied to the California Department of Real Estate in the event routine signatory responsibility is authorized to another member of the agency. This document will provide a description of the type of authorization granted to the designee and the documents that may be signed on behalf of the Broker.

### **Business Relationships I Vendor Referral Policy (RESPA)**

#### RESPA Policy

Coldwell Banker Platinum Properties Independent Contractors are required to comply with RESPA law requirements at all times. The area of referral fees is specifically addressed in this Broker's Manual in order to explain the sometimes-confusing requirements of the federal law and to emphasize the importance of compliance.

Additional information on RESPA law can be obtained from the U.S. Department of Housing and Urban Development (HUD) website at [www.hud.gov](http://www.hud.gov).

#### Prohibition Against Kickbacks and Unearned Fees

Regulation X details the elements of a RESPA Section 8 violation:

- Pursuant to Section 8, paying or receiving a fee or a "thing of value" for the referral of business related to a mortgage loan settlement without rendering a service is illegal under RESPA.
- Reg. X also prohibits the splitting of any settlement charge except for paying for actual services rendered. If no or nominal services are performed or if duplicative fees are charged, an unearned fee exists and payment of this fee violates Section 8.
- Reg. X makes clear that any agreement or understanding that a thing of value will be given in exchange for a settlement service referral need not be written or even verbalized. This agreement can be established by a practice, pattern or course of conduct.
- Reg. X gives a list of the real estate-related services which are defined to be "settlement services."



These "settlement services" include, without limitation, any services related to:

1. The origination, processing or funding of a federally-related mortgage loan
2. Mortgage broker services such as counseling, taking applications, obtaining verifications and appraisals, lender-borrower communications, etc.
3. Title company services
4. An attorney's legal services
5. Closing document preparation
6. Credit reports and appraisals
7. Property inspections
8. Conducting the settlement
9. Mortgage insurance
10. Hazard, flood or casualty insurance and home owner warranties
11. Mortgage life, disability or similar insurance
12. Real property taxes and assessments
13. Real estate brokers and agents

#### What is Permitted:

*Regulation X specifically does permit:*

- Payments for services actually rendered by attorneys, title companies, lenders, and real estate brokers and also for real estate agents "pursuant to cooperative brokerage and referral arrangements or agreements."

#### Key Referral Fee Reminders

- Don't pay referral fees to providers of settlement services other than pursuant to a referral agreement with another real estate broker. RESPA generally forbids paying someone for the mere referral of business.
- No "gifts" or fees may be given to individuals who refer business to settlement service providers.
- When someone performs a service, that party should be paid a fee that is reasonably related to the benefit received. He or she should not be given an excessive payment that blatantly announces itself as a reward for steering business in the direction of a certain company.
- Don't ask for or receive fees for referring business. There is a statutory exemption for broker-to-broker referrals and agreements between brokers and agents. Therefore a real estate

licensee should never ask to receive or accept fees for referring business unless he or she has an established written broker-to-broker or broker-to-sales agent fee arrangement.

### **Cancellations of Listings & Contracts**

Independent Contractors shall not have the authority to cancel a listing agreement nor amend the listing agreement to provide for an early termination without the written consent of the Broker. In the event a seller desires to cancel a listing agreement, the Independent Contractor must notify the Broker. This shall apply regardless of whether the seller's request is verbal or in writing or whether the seller uses the words "cancel", "terminate", "revoke", etc. If the seller's intent is evident, the Independent Contractor shall report the request to the Broker.

Mutual cancellation of escrow on a contract should be verified that Escrow has cancelled the Contract in addition to the Escrow. A signed mutual cancellation will be required by the Broker to be filed.

### **Closing Procedures**

An Independent Contractor shall not handle the closing of any real estate transaction except under the direct supervision of the Broker.

It is the responsibility of each Independent Contractor involved in a transaction that is closing to make sure that all timelines have been met; all forms, agreements, inspections and repairs have been signed and approved by all parties

#### Failed Transactions

The Independent Contractor shall notify the closing officer in writing immediately if an accepted offer has failed. Earnest money shall be disbursed in a proper manner without unreasonable delay.

#### Attorneys at Closing

It is the policy of the Broker that Independent Contractors always recommend, to both buyers and sellers, that they seek legal advice from an attorney with respect to their legal questions throughout the negotiation process and transaction, and that an attorney attend the closing to represent their legal interests if of interest. Problems often occur that are not necessarily related to title and attorneys are best equipped to solve these problems. Furthermore, for the added protection of all parties involved in the closing transaction, it is beneficial to have qualified legal counsel available to represent the buyer and/or seller as desired to address any last minute legal issues that arise.

### **Commissions**

#### Collection of Commissions

All commission checks are to be delivered to the Broker as soon as practically possible after Close of Escrow. All commission checks are to be made payable to Coldwell Banker Platinum Properties.

#### Payment of Commissions

- Only licensed Independent Contractors can be paid a commission.

- A licensed real estate Sales Associate can only be paid by the Independent Contractor's Broker.
- Commissions are paid to the Independent Contractor in accordance with the Independent Contractor's commission agreement with Coldwell Banker Platinum Properties.
- We determine that a transaction is considered closed on the COE (Close of Escrow) date.
- Broker has the right to withhold fees from commissions.
- We will pay commissions to our Independent Contractors as long as the commission check has been deposited into our bank.
- Independent Contractors understand that all files must be complete before Broker will issue commission checks.
- Broker has the right to withhold a commission entirely or to deduct any and all legal costs if a dispute and or settlement arise between a client and an Independent Contractor. All Independent Contractors will be held to the legal standards of their license.

#### Commissions Shared Between or Among Independent Contractors

It is the policy of the Broker to offer maximum exposure to its selling clients. Therefore, all listed properties shall be offered to all other selling and buyer's brokers on a cooperative basis, unless otherwise specifically directed by the owner. The Broker shall establish compensation fees that are appropriate to the marketplace and will lead to a good working relationship with other brokers.

#### Commission Disputes

If a legitimate dispute exists regarding commission, the Broker will make a determination of action to follow. Coldwell Banker Platinum Properties has created a commission split guideline in the event of a dispute between Coldwell Banker Platinum Properties Sales Associates.

#### Commission Rates Schedule

- Minimum acceptable cooperating commission accepted without prior approval of the Broker when representing buyers is 2.5%.
- Minimum acceptable listing commission without prior approval of the Broker is 5%.

#### Compensation Schedule

Independent Contractors working, as buyer's agents shall be expected to pursue the compensation offered to the buyer's agents through the listing office, any applicable office policy letter agreements or any specific compensation agreements.

### **Confidentiality**

All records of this office, as well as conversations between Associates, Broker and Associates, and Associates and parties to the transaction, are considered confidential. No files shall be removed from

this office without the permission of the Broker and no other information obtained while working for this company shall be used to the detriment of the Broker. All Coldwell Banker Platinum Properties Independent Contractors shall also be obligated to honor the confidential information of any client or non-client party to any transaction, as designated in writing on an Agency Disclosure form or other document. All documents stating a party's confidential information shall be

kept by the Office Manager in a special locked file to guard against any unauthorized sharing of this information. Access to this information shall be limited to the Independent Contractor working with the party.

### **Delivery of Accepted Offers**

When a party has accepted an offer or a counter-offer, the Independent Contractor shall discuss with that party the different methods of delivery available for returning the offer to the other party, and thus creating a binding contract.

### **Disciplinary Notice**

All Independent Contractors of Coldwell Banker Platinum Properties are subject to a Disciplinary Notice along with termination of association if associate is found to have been involved in any misconduct.

### **Disputes**

Misunderstandings about brokerage prospects or sales are to be brought to the attention of the Broker. If a legitimate dispute exists, the Broker will make a determination of action to follow. Once the Broker takes action the Independent Contractor understands that the issue is then resolved and that the Broker will not stand for any misconduct, or slanderous conversation amongst other employees and or Independent Contractors. Personal disagreements not involving business related matters are not the responsibility of the Broker. However, in an effort to promote goodwill, the Broker can counsel the aggrieved parties. Independent Contractors and Employees understand that the Broker will not tolerate disputes that create a hostile environment that affect other Independent Contractors, employees or clients within the office.

### **Distribution and Dissemination of Information**

It is the responsibility of all Independent Contractors to keep themselves informed of all new laws or changes in the laws or regulations as enacted by local, State and federal governmental and regulatory agencies which affect real estate transactions and the duties of Independent Contractors in the conduct of providing real estate brokerage services to the public.

The Broker or office manager shall, from time to time, disseminate to Independent Contractors copies of memoranda, articles, notices or other written materials which relate to information regarding new or changed requirements in the real estate laws and regulations as enacted by local, State and federal governmental and regulatory agencies. Such information will be disseminated by a number and variety of means. These may include, but are not limited to, hard copies in the mailbox of each Independent Contractor as well as transmission by- mail, general postings or by inclusion as a specific topic at a sales meeting or training and education session. It is the responsibility of all Independent Contractors to read and understand all such memoranda, articles, notices or written

materials as distributed and disseminated by the broker or office manager regarding such changes in laws and regulations. If an Independent Contractor has any questions regarding the contents of such memoranda, articles, notices or written materials, the Independent Contractor shall promptly contact the broker or office manager for clarification.

If requested by the broker or office manager, the Independent Contractor shall acknowledge, in writing, their receipt of the memoranda, articles, notices or written materials regarding such changes in the laws and regulations affecting real estate transactions and the provision of real estate brokerage services.

Such changes in laws or regulations affecting real estate transactions and the provision of real estate brokerage services shall be discussed on an as-needed- basis at Coldwell Banker Platinum Properties' established sales meetings or training and education sessions. It is the policy of Coldwell Banker Platinum Properties, as well as the requirement of the law, that Independent Contractors keep themselves informed with respect to changes in the laws and regulations affecting real estate and real estate brokerage services. To that extent, Coldwell Banker Platinum Properties shall exercise reasonable efforts to provide such information to the Independent Contractor. It is the lawful obligation of the broker to ensure that changes in the laws and regulations are made available and discussed with Independent Contractors in order to assist the Independent Contractor in providing appropriate services for the protection of the public and those with whom the Independent Contractor deals. As a consequence, an Independent Contractor who demonstrates a failure to take advantage of the memoranda, articles, notices or written materials, sales meetings and/or education and training sessions regarding such changes in the law and regulations, could constitute grounds for the broker to terminate the Independent Contractor's employment with Coldwell Banker Platinum Properties.

Additionally, on a case-by-case basis, if the broker or office manager determines that an Independent Contractor lacks the basic knowledge or understanding of recent changes in the laws and regulations affecting real estate transactions and the provision of real estate brokerage services, the broker and/or office manager may require that the Independent Contractor complete a course of instruction or self-study course of instruction to better educate the Independent Contractor regarding such changes in the laws and regulations and to demonstrate evidence satisfactory to the broker or office manager that the Independent Contractor has a thorough working knowledge and understanding of such changes in laws and regulations. An Independent Contractor who fails to comply with any such request by the broker or office manager to attend a course of instruction or self-study course of instruction to educate himself/herself on such changes in the laws and regulations could constitute grounds for the broker to terminate the Independent Contractor's affiliation with Coldwell Banker Platinum Properties.

#### Compliance With All Applicable Laws

All Independent Contractors in all transactions and at all times are required to and shall fully comply with all applicable provisions of the California Real Estate Law; the Code of Ethics, as adopted and amended from time to time by the California Real Estate Commission; the Code of Ethics of the National Association of Realtors® as amended from time to time, and all applicable local, State and federal laws and regulations affecting real estate transactions and the legal and ethical duties of a real estate licensee in such transactions.

In furtherance of this mandatory obligation by Independent Contractors, any Independent Contractor who is uncertain as to the legal and ethical obligations of the Independent Contractor in any particular transaction is obligated to seek out the advice of the broker or office manager (or designee of the broker or office manager) in order to ascertain the proper procedures to be followed on a case- by- case basis with respect to each transaction.

Coldwell Banker Platinum Properties makes available to all Independent Contractors, experienced and trained management and legal personnel and numerous methods of contact with such management personnel at all times in order to answer any questions and to assist the Independent Contractor in ensuring compliance with all such legal and ethical obligations of real estate licensees. The availability of experienced management and legal personnel is there to assist the Independent Contractor and all Independent Contractors are required to avail themselves of such service at any time that the Independent Contractor is uncertain about any particular matter regarding the legal and ethical obligations of a real estate licensee.

### Unauthorized Practice of Law

Independent Contractors are not trained in the law and are not qualified to give legal advice to clients or non-clients regarding real estate transactions.

It is the established policy of Coldwell Banker Platinum Properties that an Independent Contractor shall not, under any circumstance, advise a seller, buyer, owner or tenant with respect to any question or inquiry regarding the legal rights and remedies of a party to an existing contract of sale or lease. Under no circumstance is an Independent Contractor authorized to advise a party to an existing contract of sale or lease as to whether there has been a breach of the contract of sale or lease; as to whether any party to the contract of sale or lease has a right to cancel the contract or lease; or as to whether the party to the contract of sale or lease has a valid and enforceable agreement.

In all instances where such questions or inquiries are raised by a party to an existing contract of sale or lease, the Independent Contractor shall promptly, clearly and affirmatively advise the party making such inquiry that the Independent Contractor is not a lawyer and is not trained in the law to answer such questions. Instead, the Independent Contractor shall firmly and affirmatively recommend the party making such inquiry to consult with competent legal counsel for a full review of the contract of sale or lease and to obtain advice from a lawyer with respect to the legal rights, obligations and remedies available to the party under such contract of sale or lease with respect to the dispute involved as well as the existence or non-existence of a valid and enforceable contract of sale or lease.

An Independent Contractor affiliated with Coldwell Banker Platinum Properties is not authorized and shall not, under any circumstance, engage in any practice which may constitute the unauthorized practice of law.

From time to time, an Independent Contractor may find himself or herself in a position of having to draft language by way of an amendment to the preprinted contract of sale or lease form or by way of an addendum to such agreement with respect to a particular issue unique to the transaction and upon which the parties have agreed. In cases where an Independent Contractor has been requested or deems it necessary to draft language regarding a contract of sale or lease or addenda thereto, based upon an agreement or dispute existing between the parties to the contract of sale or lease, the Independent Contractor, if unsure as to how to proceed, shall consult with the broker or office

manager (or the designee of the broker or office manager) regarding such matter and shall receive direction and advice as to the proper procedure to follow. Independent Contractors are only authorized to use approved forms provided by the California Association of Realtors. There are no exceptions.

### **Documents Required - Listing & Sales Files**

For each transaction type, a checklist of necessary documents to be completed and submitted to the Broker is provided to each Independent Contractor. This checklist once initiated becomes a part of the transaction file. Furthermore all documents needed are attached to the pre-made listing packet and sales packet which are available to all Independent Contractors at Coldwell Banker Platinum Properties. It is the responsibility of the Independent Contractor to have the necessary documents completed and submitted per the requirements of the California Department of Real Estate. In addition to DRE requirements, the Broker retains the right to request supplemental documents be procured for each transaction type. A list of documents required for each transaction type is as follows:

#### Listing Agreements

Prior to the seller's signing of the listing agreement, the Independent Contractor shall discuss the different types of agency relationships with the seller, explaining the responsibilities of seller's agents, buyer's agents and subagents, dual agency and facilitators.

The Independent Contractor shall then complete the listing agreement and require that all owners and spouses sign the listing. The Independent Contractor, however, may sign a listing contract provided by the seller or may accept a listing with the signatures of less than all of the owners and spouses, with the prior approval of the Broker. The Independent Contractor shall tender every written offer to purchase or sell until all parties sign a contract.

- All resale land listing agreements shall be written for a minimum period of six (6) months.
- All resale residential listing agreements and custom homes shall be written for a minimum period of six (6) months.
- After the expiration of the listing, the period for which commissions shall be payable should sale, rental, exchange meet requirements outlined in the listing contract shall be one hundred eighty (180) days.

The Independent Contractor shall review the listing agreement in detail with the owners and provide a copy of the signed agreement with them. Any need to negotiate the terms of the listing must be approved by the Broker.

If owners refuse submission of the listing to the MLS or to the Internet, the listing contract must state so. The listing must specify other brokers whom the seller wishes to have excluded from cooperation. The listing shall always obtain specific written instructions from the seller as to any buyers or licensees, which are to exclude from access to showings, or from whom no offers to purchase are to be submitted. This will be written on the additional provisions blank lines in the listing contract form on an addendum to the listing contract, or as a separate memorandum or letter from the seller.

The Independent Contractor will be responsible for verifying that all information provided regarding a listing is accurate. The Independent Contractor will also be responsible for making sure that all marketing of the property has correct and up to date information regarding that property. This includes flyers, internet, magazine ads, newspaper ads etc. If any information is found to be incorrect then the Sales Independent Contractor shall immediately inform Broker and or the marketing division to the error(s).

Listing agreements and the appropriate supporting agency forms and other required documentation shall be turned in to the Broker no later than 24 hours after execution.

If the Broker finds that the listing file is incomplete then the Broker reserves the right to not accept the listing

Files may be accessed with Broker approval. All files must be returned to the filing storage at the close of business. At no time may an Independent Contractor keep original listing documents or files containing original documents in their possession after business hours, nor may these documents be removed from the business office. It is the Independent Contractor's responsibility to keep personal copies of all transaction related documents on an as-needed basis, and all such copies belong to Coldwell Banker Platinum Properties at the time of resignation or termination of the Independent Contractor.

### Sales Contracts

The Independent Contractor shall review the contract in detail with the buyers and leave a copy of the signed contract with them.

Fully executed Purchase Contracts and the appropriate supporting agency forms and other required documentation shall be turned in to the Broker no later than 24 hours after acceptance.

Disclosure that a licensee is acting as a principal must be made before any binding agreement is made and must be in writing and agreed upon by all parties involved. It is the responsibility of the Sales Independent Contractors to disclose agency prior to any real estate information being provided to buyers and or sellers.

Independent Contractors are responsible for providing fully executed sales contracts, counter offers, addendums, agency disclosures and any other pertinent information and or documentation related to any sales transaction to the Broker immediately following execution. Furthermore, Independent Contractors are responsible for obtaining information pertinent to the sales contract such as CLUE reports, STDS, HOA disclosures etc. and to obtain or give such information and or documentation to the parties involved within the timelines referred to and agreed upon in the sales contract. Independent Contractors who do not provide such items within the timelines will be held responsible for any problems that may arise and or legal costs.

### **Duties to Clients I Non-Clients**

#### *Buyer's Representation Agreement*

An Independent Contractor may, at the request of a buyer, act as a buyer's agent if the buyer is interested in a property not listed with Coldwell Banker Platinum Properties.



Independent Contractor shall discuss the different types of agency relationships with the buyer, explaining the responsibilities of the seller's agents and buyer's agents, and dual agency. If a Buyer Representative Agreement has been entered into, the Independent Contractor must comply with the following when showing property or requesting information from listing agents:

1. Notify the listing agent upon first contact that the Independent Contractor is a buyer's agent.
2. The Offer to Purchase must indicate that the Independent Contractor represents the buyer as the buyer's agent.

Independent Contractors working as buyer's agents shall be expected to pursue the compensation offered to buyer's agents through the Multiple Listing Service, any applicable office policy letter agreements or any specific compensation agreements.

### Cooperation as Listing Agents with Buyer's Brokers

As listing agent, the Independent Contractor will cooperate with and compensate the buyer's brokers who procure a buyer or a contract of sale acceptable to the seller, in accordance with the Broker's commission policy. The Independent Contractor shall explain the Broker's policy of sharing the commission with buyer's brokers in exchange for procuring a buyer and producing an offer to purchase acceptable to the seller.

If the Independent Contractor, as listing agent, is advised that a cooperating Broker, employed under a Buyer Agency Agreement, requests to show the listed property, the Independent Contractor must advise the seller of the cooperating Broker's representation.

### Dual Agency

In the event a buyer/client of the Broker wishes to purchase property listed by the Broker, the Broker may act as a disclosed dual agent with one of the Broker's Independent Contractors as a designated agent representing the buyer as a client and one of the Broker's Independent Contractors as designated agent representing the seller as a client. Such a multiple representation (dual agency) requires the informed, written consent of each party. The Independent Contractors working with these parties must explain the limitations of a multiple representation to the parties. Independent Contractors shall stress to the parties the importance of committing to writing any information they wish to be held as confidential. The Independent Contractor shall hold all listings of confidential information from the parties in a multiple representation situation. Every effort shall be made to keep confidential information about the seller away from the buyer's agent and to keep confidential information about the buyer away from the listing agent.

In its most simplistic form, dual agency occurs when a real estate agent represents both the buyer and seller in the same transaction or a landlord and a tenant in the same transaction. California law permits dual agency representation provided appropriate disclosures and consents are satisfied. (Business and Professions Code section 10176(d)). Absent disclosure and consent, dual agency is a conflict of interest. In today's brisk real estate market, dual agency situations are bound to arise. ONLY if handled correctly by the Independent Contractor, the principal (buyer/seller or landlord/tenant) in the real estate transaction will not be disadvantaged.

*Real Estate Professional's Obligations:*

In a dual agency situation, the agent owes a fiduciary duty to both principals. An agent's statutory fiduciary obligations include the duty of utmost care, integrity, honesty and loyalty in dealing with either or both principals. However, dual agents are confronted with difficulties when negotiating certain terms and price in connection with a real estate transaction. For example, the seller wants the purchase price to be higher and the buyer wants it lower. The California Legislature recognized the dual agency dilemma when enacting Civil Code section 2079.21, which reads in part, "[a] dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer."

The following discussion provides protocol the agent and principal should follow in order to comply with California dual agency laws and to complete the transaction.

#### *Suggested Approach:*

When taking a listing to either sell or lease real property, the Independent Contractor should explain the concept of dual agency to the principal and explain that it is permitted with proper disclosure and consent. The Independent Contractor shall emphasize that if a dual agency occurs, prompt notice and disclosure will be given and any confidential information received from one principal will not be disclosed to the other principal without the expressed written consent of that principal. After disclosure of dual agency, all principals must consent in writing. A principal does not have to consent.

If the principal refuses to consent to the dual agency setting, the Independent Contractor may recommend an alternative whereby the supervising broker of the agent's office act as the other principal's agent. Dual agency is still present, however, this alternative may satisfy the non-consenting principal's concern. If the principal continues to reject the dual agency relationship, the Independent Contractor will need to recommend another agent from a different real estate company to represent one of the principals. This approach extinguishes the dual agency setting resulting in the consummation of the transaction.

#### Fiduciary Duties to the Client

Prior to the seller's signing of the listing agreement, the Independent Contractor shall discuss the different types of agency relationships with the seller, explaining the responsibilities of seller's agents, buyer's agents, and dual agency. Independent Contractor shall tender every written offer to purchase or sell until all parties sign a contract.

#### Obligation to the Non-Client (Duty To Deal Fairly)

The Broker's/Independent Contractor's obligation to disclose in writing to all other parties, including:

- Any information that materially and adversely affects the consideration to be paid by any party to the transaction.
- That the seller/lessor is, or may be, unable to perform.
- That the buyer/lessee is, or may be, unable to perform.
- Any material defect existing in the property being transferred.

- The possible existence of a lien or encumbrance on the property being transferred.
- That the Broker/ Independent Contractor is the principal or has a financial or beneficial interest in the property
- That the Broker/ Independent Contractor is related to one of the principals
- That the Broker/ Independent Contractor has a conflict of interest

### **Drafting Offers**

All offers, counter offers and any other forms used shall be completed and handled as per this manual, using standard forms obtained from the California Association of Realtors®. The Coldwell Banker Platinum Properties Independent Contractor shall familiarize himself/herself with the standard forms as well as the rules of the California Real Estate Commission for the use of approved forms. Only Broker approved forms may be used in any transaction. All offers, counter offers and any other forms shall utilize office-approved provisions for contingencies, inspections, warranties, representations, disclosures, etc.

There is no designated amount of earnest money that is required with an offer. It is desirable, however, to obtain a minimum of approximately 3% of the sales price. This is good faith money; consequently, deposits should be larger on loan assumptions, owner financing and all cash offers.

At the consummation of every real estate transaction, the Independent Contractor shall furnish to each buyer and seller a complete, detailed closing statement showing all of the receipts and disbursements involved in such transaction. The furnishing of a closing statement by an attorney, title company, or escrow company will relieve the Independent Contractor of this requirement.

### **Earnest Money**

The amount and type of earnest money deposit must be clearly identified in the offer to purchase and shall be made payable to the specified escrow company. Independent Contractor must acknowledge receipt of the earnest money deposit described in the contract, and must receive the deposit at that time. Independent Contractor is not to give a receipt if funds are not given to him/her. Independent Contractor may not take cash as a deposit.

Earnest money must be delivered to the Escrow Company along with the accepted Real Estate Purchase Contract within 3 days of contract acceptance.

Receipt for earnest money deposited with an Escrow Company must be turned in to the Broker or Transaction Coordinator immediately.

Once the contract has been signed an Independent Contractor is not to hold the check in his/her possession under any circumstance.

A post-dated check is NOT acceptable unless specifically authorized by the Broker and the client and is disclosed to the seller.

Unless otherwise agreed to in the contract by the buyer and seller, all checks received by the Independent Contractor shall be turned over to the Transaction Coordinator as soon after receipt as practicable. Giving to the Transaction Coordinator does not allow for an Independent Contractor to leave on the TC's desk, drawer, etc. Earnest checks must be physically given to the Transaction Coordinator for the TC to acknowledge receipt of check. Checks received after office hours or on weekends will be placed in the Trust Account notebook and logged in. The Transaction Coordinator must be notified of this deposit at first opportunity on Monday morning.

All Earnest Money must be handled in accordance with the terms of the contract and according to the rules of the California Department of Real Estate.

Improper handling of earnest money may be grounds for immediate dismissal of an Independent Contractor. Improper handling could include failing to deposit earnest money by the specified time or falsely representing that earnest money had been deposited and or loss or misplacement of the earnest money check.

Disbursement of earnest money if contract is rejected is the responsibility of the Broker who will make a determination as to the recipients in accordance with provisions of the license law and any earnest money disbursement agreement signed by both parties. In this regard, the Independent Contractor should not commit the Broker to any decision as to the disposition of the earnest money being held except that it will be applied to the amount owed by the purchaser when the sale closes. The Transaction Coordinator will place a copy of all papers relative to disbursement in the canceled file and make a notation on the canceled contract as to how disbursement was made. If there is a dispute in disbursements of such funds, the Broker will be responsible for and will file an interpleader action in a court of competent jurisdiction

### **Federal And State Fair Housing Laws**

The federal Fair Housing Act ("FHA"), the federal Rehabilitation Act of 1973, the federal Americans with Disabilities Act ("ADA"), California Fair Employment and Housing Act ("FEHA"), California Unruh Civil Rights Act ("Unruh"), California Ralph Civil Rights Act, and local fair housing ordinances make up the "fair housing laws." FEHA incorporates into itself the federal and state fair housing laws mentioned above, hence a violation of those laws is also a violation of FEHA. 2 Cal. Code of Regulations ("CCR") §12005(l). FEHA provides broad application of, and protection under the fair housing laws and should not be construed as less protective than FHA. Cal. Gov't Code ("GC") §12955.6. Laws deemed more restrictive shall preempt and/or supersede those deemed less restrictive. Typically, FEHA and its regulations are more extensive.

The following laws work together to prohibit housing providers from discriminating against persons with protected characteristics, or those belonging to a protected class in housing and housing opportunities. Persons with these characteristics, or belonging to these classes, are protected from illegal discrimination in housing:

- Race
- Color
- Religion
- Sex (biologically assigned at birth; includes sexual harassment; ex: male, female)

- Gender (social and legal status set by society about behavior, characteristics, and thoughts based on sex; ex: male, female, non-binary)
- Gender Identity (how you feel inside, may not align with sex; ex: transgender, cisgender)
- Gender Expression (how you outwardly express your gender, may not align with sex)
- Sexual Orientation (sexual identity in relation to the gender you are attracted to; ex: heterosexual, homosexual, bisexual, pansexual)
- Marital Status (ex: married, unmarried persons living together)
- National Origin (your country of birth)
- Ancestry (country of your parent's birth)
- Familial Status (includes pregnant women; families with children under age 18)
- Source of Income (includes Section 8 and VASH vouchers)
- Disability (mental and physical)
- Age (exception for senior housing; typically related to familial status)
- Medical Condition
- Genetic Information
- Citizenship
- Primary Language
- Immigration Status
- Military or Veteran Status (effective January 1, 2020)
- Arbitrary characteristics as protected under Unruh
- Individual perceived to be a member of protected class
- Individual associated with any members of protected class
- Who or what entity is prohibited from committing illegal housing discrimination includes but is not limited to:
  - Person/entity engaged in business as related to housing opportunities, financial services, land use or residential real estate activities under Unruh;
  - person/entity commonly referred to as a "housing provider" in the housing industry (such as those on this list);
    - real property seller;
    - real estate licensee;
    - real estate brokerage firm;
    - sublessor;
    - landlord;
    - property manager;
  - Homeowners Association ("HOA");
  - mobilehome park;
  - banks and insurance companies that provide financial opportunities related to housing; and
  - local, state and federal government providing housing related services.

Two main exceptions include an SFR owner who resides at the property with one lodger; and senior housing as related to age or familial status discrimination only.

"Direct liability" or "Vicarious liability" for discrimination may occur for the following person or entity:

- 1) the person who committed the discriminatory act;

2) supervisor, manager, or principal where they knew or should have known of the discriminatory conduct by their employee or agent because of their role as supervisor, manager or principal

3) person or entity whose relationship with a third party is established through contract, CC&R, leases or laws, if the person or entity knew or should have known of such discriminatory conduct and had the power to correct it

There may also be vicarious liability, based on agency relationship, for discriminatory conduct by an employee or agent for which an employer or principal had no knowledge of. For example, if a property manager employs a handyman who sexually harasses a tenant while on the premises to do repairs, the employing property manager may be held liable even if there was no prior knowledge that discriminatory conduct could occur. There may be vicarious liability even if the conduct does not benefit the principal or employer, willful or malicious, against expressed orders, or outside the scope of official job duties.

If an owner tells the listing agent that he or she does not want to sell or rent to a particular group that is protected by the fair housing laws, this could result in direct liability for the seller client and the listing agent. The listing agent should inform the owner that he or she cannot follow the owner's illegal instructions, as both owner and listing agent must abide by the fair housing laws or can be held liable for resulting violations. The client should be made aware of the fair housing laws. There are pamphlets and books available which are to be given to the client. If a client insists that a listing agent must do as ordered, then the listing agent should terminate the relationship. Following the client's order is not a defense to a violation of the fair housing laws by the real estate licensee. In a reverse scenario where a listing agent is not showing a property to certain protected persons but the seller principal knew that was happening, the seller and agent would be directly liable.

#### Prohibited Acts:

Housing providers are prohibited from discriminating against protected persons in housing and housing opportunities. Examples of illegal discrimination in housing include but are not limited to:

- refusing to sell, rent, or lease
- misrepresenting that housing is not available for inspection, sale or rent including "channeling" and "steering" to or away from particular neighborhoods because of a person's protected characteristics or because of the demographic composition of the neighborhood
- inducing, for a profit, listing, sale or rental based on the grounds of loss of value of property, increase in crime, or decline in school quality due to the present or prospective entry of people with protected characteristics, also known as "blockbusting" or "panic selling"
- denying a home loan or homeowner's insurance
- offering inferior terms, conditions, privileges, facilities or services
- harassing a person in housing context based on protected characteristic
- taking an adverse action based on protected characteristic
- having housing practices that may not be motivated by discriminatory intent but have a discriminatory effect without legally sufficient justification
- retaliating for asserting rights under fair housing laws including requesting reasonable modification or reasonable accommodation

- refusing to permit a reasonable modification to the premises as requested by a person with a disability
- refusing to make reasonable accommodation for a person with a disability

### Disability:

It is illegal for a housing provider to discriminate by refusing to make “reasonable accommodations” in rules, policies, practices or services when such accommodations may be necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling unit and public and common areas.

A person with a disability, or their representative, must make an affirmative request for accommodation unless the disability or disability-related need is obvious or known. The housing provider must have a process to handle the request and must do so in a timely (best practice is within 10 days) and confidential manner. The request may be made at any time: at application for rental, during tenancy, during an unlawful detainer action, or post-unlawful detainer action.

Only requests for non-obvious disability and disability-related requests are required to be stated in an affirmative manner. For non-obvious situations, the request itself may be oral or be in writing. However, the housing provider should document in writing the handling of a request even if the request itself was made orally.

A verification may be provided by (1) the person with the disability under limited circumstances or (2) a third party in a position to know. First, the individual with disability may self-certify the disability when there is credible and reliable documentation such as Supplemental Security Income (“SSI”) receipt for disability benefits, a handicap parking placard or some other credible statement that a reasonable person would perceive as true based on available information.

Second, any “reliable third party who is in a position to know about the disability or disability-related need” may provide the verification. Such person can be, but is not limited to, a medical professional; healthcare provider; a peer support group (mutual support groups developed as alternatives to traditional medical or psychological treatment (such as grief support group or Alcoholics Anonymous); non-medical services agency such as Support Living Services providers; other reliable third party such as a relative caring for an elderly family member with dementia or other caregiver.

Reliability of the third party is determined on a case by case basis and may take into account three factors: (1) show how the third party is familiar with the disability and disability-related need; (2) specify functional limitation without necessarily going into specific medical information; and (3) provide means to contact the third party to verify he or she did provide the documentation and answer any questions permitted by law.

Whenever a housing provider cannot immediately accommodate a request, the housing provider shall engage an “interactive process,” in good faith, to gather additional information to evaluate and implement the request. The housing provider may seek additional information to establish the disability or disability-related need. If the initial request cannot be granted for permitted reasons, the housing provider must try to identify “an equally effective” alternative. The individual with disability is in best position to determine whether a proposed alternative is “equally effective.” Requests must be addressed in prompt manner and any undue delay in this process may be deemed as an unreasonable denial. Recommended best practice is to handle the request within 10 days. If the person making the request unreasonably fails to provide additional, relevant information as requested under this interactive practice, then the housing provider may deny the request.

Requests may be denied if:

- 1) The individual on whose behalf request is made does not have a disability.
- 2) There is a determination that the disability-related need for the requested accommodation cannot be established. For a non-obvious disability and disability-related need, the requester fails to provide a written verification from a reliable third party or self-verification based on credible evidence when such verification is requested by the housing provider.
- 3) The requested accommodation would constitute a “fundamental alteration of the services.” For example, a housing provider is requested to drive a mobility impaired tenant to the grocery store. The housing provider is not in the transportation business; however, a request for the property manager to pick up the rent check from the mobility impaired tenant is within the scope of the housing business.
- 4) The requested accommodation would impose “an undue financial and administrative burden.” Some costs are expected to be borne by a housing provider
- 5) The requested accommodation would constitute “a direct threat to the health or safety of others” or would cause “substantial physical damage” to property, and such risks cannot be sufficiently mitigated or eliminated by other accommodation.

### Assistance Animals as a Reasonable Accommodation

California and federal fair housing laws require a landlord to reasonably accommodate an individual (tenant, occupant or their guest) with a disability, who requests a disability-related accommodation in housing. “Disability” is defined broadly in California and includes any mental or physical disorder or condition that makes it difficult to perform a major life activity such as equal use and enjoyment of a dwelling.

A “support animal” as a disability-related need provides emotional, cognitive or similar support that alleviates one or more identified symptoms or effects of a person’s disability. A support animal does



not need to be trained to perform any task to achieve this effect. Although the most common types of support animals are cats and dogs, there is no type, breed or size restriction. Support animals may be also known as comfort, therapy or emotional support animals.

If a landlord has a general and strict “no pets” policy, the landlord must allow a disabled tenant to keep a support animal and have an equal opportunity to use and enjoy the rental.

California and federal laws require landlords to make a reasonable accommodation for a tenant’s disability, if requested to do so, in housing. For non-obvious disability and disability-related need, a landlord may ask the tenant for a written verification that (1) he or she is disabled within the meaning of the law, (again, not requiring identification of the disability), and (2) that the animal is needed to reasonably accommodate the tenant’s disability. As a general rule a landlord may not inquire about a tenant’s disability or the severity of that disability. If a tenant with a known or obvious disability asks for a reasonable accommodation to keep a support animal, the disability-related need is also known or obvious; i.e., the animal alleviates effect(s) or symptoms of the disability that makes the tenant “feel better” and thus better able to use and enjoy the dwelling. In such situation, the landlord must allow the support animal with no further inquiry.

However, if a tenant asks for an animal as a reasonable accommodation and the tenant’s disability is not readily apparent (thus, the need for the accommodation not readily apparent), the landlord may ask for further information. This is the typical case involving a request for a support animal. Most mental disabilities for which support animals are required are not readily apparent. Examples include: anxiety disorders (phobias, panic attacks); mood disorders (depression, bipolar); attention deficit disorder (ADD); and post-traumatic stress disorder (PTSD). In this scenario, the landlord may ask for a written verification that the tenant is disabled (without requiring disclosure of the disability itself), within the meaning of the law and that there is a need for the reasonable accommodation being requested. For support animals, the disability-related need is to provide emotional, cognitive or similar support to alleviate one or more identified symptoms or effects of a person’s disability.

Typically, this written verification is obtained from a medical practitioner, although it is not required that it be from a doctor or therapist. The written verification may be provided by any reliable third party in a position to know of the disability or disability-related need and whose information is credible. It may even be possible for a caretaker relative to write the verification based on their credible knowledge of a person’s previous medical diagnosis and on-going condition that a support animal alleviates certain symptoms or effects of the disability. A good example of a tenant with a non-apparent disability is a tenant with an anxiety disorder. A tenant with such a disorder may require a cat as a support animal. When the tenant requests that the landlord allow the cat and the tenant’s disability is not readily apparent, the landlord may then ask the tenant for a written verification that he or she is disabled within the meaning of the law, (again, not requiring identification of the disability),

and for verification that the animal is needed to reasonably accommodate the tenant's disability. Once that is provided the landlord must allow the tenant to keep the cat.

Fair housing laws discourage a strict adherence to an "official" form; denials on technical grounds such as failure to use specific procedure, forms, words or phrases are considered invalid. However, a landlord may seek a written verification containing language and elements similar to those found in the following example:

1st element: Identify the writer with an explanation of how they are in a position to know of the disability and disability-related need]. Examples:

I am a licensed therapist and (name of disabled person) has been under my care since (date); or I am a group leader of a peer support group and (name of disabled person) has been a member of the support group since (date). I am intimately familiar with (name of disabled person)'s history and with the functional limitations imposed by his/her emotional/mental related illness.

[2nd element: Establish person has a disability. Example: He/She meets the definition of a disabled person under the Americans with Disabilities Act, the Fair Housing Act, the Rehabilitation Act of 1973, California Fair Employment and Housing Act, and California Unruh Civil Rights Act.

[3rd element: Describe the needed accommodation and how it is necessary to afford the person with disability an equal opportunity to use and enjoy the dwelling.] Example: Due to His/Her emotional/mental disability, (disabled person) has certain limitations related to [social interaction/coping with stress/anxiety, depression, etc.]. In order to help alleviate these symptoms of disability, and to enhance his/her ability to live independently and to fully use and enjoy the dwelling unit, I have recommended a support animal (identify the animal) to reside with (disabled person). The presence of this animal is necessary for the emotional/mental health of (disabled person) because its presence will mitigate the symptoms, he/she is currently experiencing.

[4th element: Provide writer's contact information for verification.] Example: You may reach me at (insert contact information) to verify that I have provided the statement above and to answer any other questions permitted by law.

#### Animal vests and/or online certificates:

The only clearly defined cases where verification have been deemed insufficient as not being reliable are online certificates or "animal vests" purchased without any individualized assessment of the condition of the disabled by a medical profession. However, if a landlord is presented with a vest or online certificate, he or she should not reject the accommodation request outright but engage in an interactive process and request additional information be provided. If additional information that is sufficient is not provided, then the request may be denied.

Landlords should exercise extreme caution if he or she desires to deny the request based on “insufficiency” of the written verification. The very narrow grounds for rejection are: the writer of the note denies writing the note, there is no clear objective evidence that the information contained in it is credible, or it’s not based on an individualized assessment by the writer. This conclusion should only be reached after a good faith interactive process to obtain additional information to cure the information deficiency. There are very limited grounds for denying a request for a support animal. A landlord would likely be able to refuse a disabled tenant’s request for a required support animal: 1) if that specific animal is vicious with a recent history of violence and as such poses a direct threat to the health and/or safety of others; or 2) if that specific animal would cause substantial physical damage to the property of others. However, while the landlord could likely refuse permission for that particular animal to remain on the premises, the tenant may still have a right to obtain a different animal, without those characteristics, under an interactive process. Speculative prejudices based on breed, size, or weight, and not based on actual known facts regarding the specific vicious behavior of a particular animal, is insufficient grounds for denial. A “vicious dog” is one that has, when unprovoked, in an aggressive manner, inflicted severe injury on or killed a human being. A “severe injury” means any physical injury to a human being that results in muscle tears or disfiguring laceration or requires multiple sutures or corrective or cosmetic surgery.

Prior to refusing any request or asking a disabled tenant to remove an animal, it is strongly advisable for a landlord to discuss the matter with an attorney. Because each request must be evaluated on a case-by-case basis, there is no bright line rule that a landlord may follow. Thus, greater caution is advised for a landlord who may decide to deny a request for accommodation.

#### Service Animals as a Civil Right, Not as a Reasonable Accommodation:

A landlord must allow any disabled person (tenant, occupant, guest, or persons licensed to train service animals) to keep a service animal or service animal in training on the premises, both within the dwelling and in public areas. Unlike support animal requests, no request for “reasonable accommodation” is required for a service animal. Disabled persons have a civil right to be accompanied by their service animal when accessing the premise

#### Service animal defined:

Under California law, a service animal is a dog, miniature horse or any other animal that has been specifically trained to perform tasks to assist a person with his or her disability-related needs. A service animal may be trained to perform disability-related tasks that include, but are not limited to: guiding a vision impaired person; pulling a wheelchair or fetching dropped items for a mobility impaired person; alerting a deaf person to the presence of people or sounds; assisting individual who may need help during possible seizures; alerting a person suffering from diabetes that his or her blood sugar level is low; waking up a person suffering from night terror due to PTSD; and preventing acts of self-mutilation by persons with psychological issues. The animal must have been trained

specifically to assist a person with a disability. There are no formal requirements as to who may train the animal; the trainer does not have to be a certified professional.

California law provides for an assistance dog identification tag. However, such tag is not required for a disabled person to claim that his or her animal is a service animal. Although many service animals wear vests, a vest is not a legal requirement nor proof that the animal is a service animal. There is no official California or national registration or certification program.

#### Verifying a person has a disability in compliance with fair housing laws:

There are only two legally permissible oral questions that may be asked by the landlord to verify that a person has a disability and the right to be accompanied by a service animal:

- 1) Does the individual have a disability?
- 2) What is the disability-related task the animal has been trained to perform?

It is not permissible to ask the person to demonstrate the task or ask additional questions about the diagnosis, medical condition or severity of his or her disability. These two questions may not be asked if the disability and disability-related need are obvious, apparent or known. For example, if a blind person with a guide dog walks into a property manager's office and applies for a lease, the disability and disability-related need are obvious. Therefore, the landlord may not ask any questions, nor prohibit the service animal from accompanying or residing with the disabled person on the premises. The questions may only be asked if the disability or disability-related need is not obvious. Some examples of non-obvious disabilities are epilepsy (physical), diabetes (physical), and PTSD (mental). Some examples of non-obvious disability-related tasks are alerting a person with diabetes his or her blood sugar is low; seeking assistance for a person with epilepsy during a seizure; and waking a person with PTSD during a night terror episode. If the answer to the first question whether the person has a disability is a "No," then there is no disability involved and therefore there is no right to access the premises with that animal. If the second question cannot be properly answered, the animal in question may be a support animal and subject to a reasonable accommodation request. Oftentimes, people confuse a support animal with a service animal and erroneously refer to the former as a service animal. Support animals, unlike service animals, are not trained to perform any disability-related tasks. The mere fact a person with disability misidentifies the type of assistance animal in of itself is not an automatic ground for denial. The landlord should engage in an interactive process and seek additional information to verify whether the animal is a support animal.

#### Deposits and Assistance Animal Rules Applying to both Service & Support Animals:

California law prohibits a landlord from charging a tenant additional fees (rent, deposit, etc.) for keeping an assistance animal. However, the tenant is still responsible for any damage caused by the assistance animal and the landlord may charge the tenant for any repair costs that would otherwise be permitted under California's security deposit laws.

If a landlord allows an assistance animal under fair housing laws, that does not preclude the landlord from enforcing the overall “no pets” policy against other tenants who do not have a disability that requires an assistance animal.

#### Interactive Process and Undue Burden: Homeowner’s insurance policy animal restrictions:

Certain insurance companies will deny coverage if a property contains certain breeds of dogs such as German Shepherds, Rotweillers, or Pitbulls. In addition, there may be limitations based on weight or size of the animal. In some cases, a tenant will request to have an assistance animal that is not allowed by the landlord’s insurance policy. Since the landlord cannot give immediate consent to the request due to the insurance issue, the landlord should now start an interactive process, in good faith. He or she should contact the insurance company and explain the circumstances. Insurance companies are similarly obligated to follow fair housing laws and should provide a waiver to their general policy for disabled tenants requiring an assistance animal. If the insurance company refuses to do so, the landlord should try to find an insurance company that will cover the property at a comparable cost, without similar restrictions. Alternatively, the landlord may consider a separate animal liability insurance, if available. It is likely that the insurance company will make an exception or that comparable coverage can be found. If, however, a waiver cannot be obtained, no comparable coverage or separate animal liability insurance is available or only attainable for an exorbitant fee, the request may be considered an undue financial and administrative burden on the landlord. Undue burden is a possible ground for denial. The financial and administrative ability of the particular landlord should be taken into consideration. For instance, the owner of a large apartment complex is likely better equipped to absorb the additional exorbitant cost of insurance, and thus, would be obligated to take on the extra burden whereas it may not be reasonable for the owner of a single rental unit to do so. Some additional financial and administrative costs for the landlord isn’t considered an undue burden.

In a situation where the exorbitant additional cost is considered an undue financial and administrative burden for a particular landlord, as part of the continuing interactive process, they should discuss with the tenant if another animal within the insurance policy limitations may be acceptable to the tenant. If the landlord has gone through the interactive process but remains unsuccessful in obtaining a waiver, finding alternative insurance coverage or determining a feasible alternative acceptable to the tenant, then the landlord may be able to reasonably deny the tenant’s request. However, before doing so, a landlord is to be advised to consult with an attorney regarding the situation.

#### Additional rules to keep in mind regarding Assistance Animals:

It is possible that a tenant may have more than one assistance animal. For example, a tenant may have a service animal to assist with visual impairment and a support animal to provide comfort and aid for a psychological impairment. The number of requested assistance animals may be subject to an undue burden analysis. A guest of a tenant, not just the tenant or occupant, may have a support

animal that can be subject to a reasonable accommodation request. All reasonable accommodation requests and interactive processes should be kept confidential and addressed in a timely manner (10 days).

It is generally permissible to impose certain behavioral control policies such as requiring timely waste pickup and disposal, implementing a leash requirement, and a “no excessive noise” rule, unless such rules interfere with the assistance animal’s ability to perform its normal duties. For instance, a service animal whose disability-related task consists of fetching items cannot be required to be on a leash. A service animal whose disability-related task is to bark in order to alert its owner cannot be prohibited from barking under an “excessive noise” policy. Landlords should consider having an attorney draft an addendum that pertains directly to their situation

#### Other common reasonable accommodation requests for a disability:

Mobility impairment (disability). This type of disability-related accommodation request may be for a closer reserved parking spot, for repair to a broken elevator in the complex, or permission to move from a 2<sup>nd</sup> floor walk-up to a ground level unit. The disability may be obvious if tenant is in a wheelchair, but what the disabled person most likely desires will not be obvious unless affirmatively stated.

#### Financial accommodation:

A tenant may receive Supplemental Security Income (“SSI”) benefits due to his or her disability. As a reasonable accommodation, such tenant may request the landlord to waive late fees and/or change a rent due date because the disability check arrives later than the rent due date. For a tenant applicant, he or she may request to be allowed to have a co-signer to meet the minimum income requirement during the application process due to his or her low income which stems from a disability. Financial accommodation as a disability-related need is not be obvious. The disability itself also may not be obvious. However, the tenant may be able to provide self-verification for the disability and disability-related need with the SSI statement. Such statement from a governmental agency is credible as reliable evidence that the tenant has a disability (for which he or she qualified for SSI) and that a prospective tenant’s income is sufficient low due to disability requiring a co-signer or that the SSI payment date is such that requires adjustment for the rent due date or a waiver of late fees. It is highly recommended that the housing provider consult with an attorney as soon as possible if they wish to deny such a request.

#### Structural modifications:

The ADA and the broader FEHA, require a landlord to allow a tenant, at his or her cost and upon request, to make reasonable modifications to the unit as necessary for his or her condition. A request to make reasonable modification is a change to the physical living space such as installing a

wheelchair ramp or a grab bar in the bathroom. This is different from a “reasonable accommodation,” which is a request to change the landlord’s rules, policies or procedures.

While the landlord must reasonably allow the tenant to make necessary modifications, the landlord does not have to pay for them. Depending on the type of modification, the landlord can insist that the work be performed by licensed contractor, if required by law. When the tenant leaves the unit, then the tenant must remove any modifications and repair any damage that may be caused by the removal of the modifications. However, a landlord may not be able to ask for the removal of certain alterations if they are of the sort that should not interfere with the future use and enjoyment of the premises by the landlord or future tenants. For example, if a tenant requested permission to widen a doorway to allow for a wheelchair and the landlord permitted such a change, at the termination of the tenancy the landlord would likely not be able to ask the tenant to narrow the doorway, as the wider doorway in no way interferes with the use and enjoyment of the premises by the owner or future tenants.

#### Apartment complex not compliant with current ADA standards:

Title III of the ADA prohibits discrimination based on disability in goods, services, facilities, and accommodation of places of public accommodation. Public accommodation covers buildings and public areas open to the general population such as commercial properties, hotels and common areas of residential complexes, but not residential units themselves unless the property itself is government subsidized. If an apartment complex was built before the most current ADA rules, the property is grandfathered in and the landlord does not have to bring the building up to the most current standards. If significant improvements are done to a property, however, that may trigger the requirement to bring the complex up to code.

#### Race: Steering & Use of Criminal History Information:

Illegal steering by race occurs when there’s a misrepresentation that housing is not available for inspection, sale or rent based on a person’s race or the racial composition of the neighborhood in which the real property is located. Although steering is common associated with race and color, it could cover any protected characteristics. This type of activity is specifically prohibited in FHA, FEHA, DRE regulations and NAR Code of Ethics (“Ethics Code”).

The law and ethics are clear: It is both illegal and unethical for a real estate agent to influence a prospective buyer’s choice of housing by failing to show, or failing to provide or volunteer information to any person, or channeling or steering any person away from real property on account of the person’s race or the racial composition of the community in which the property is located. Unequal treatment through imposing greater financial requirements on account of a person’s race is illegal.

#### Steering:

It is unlawful to perpetuate the segregation of housing patterns or to discourage a buyer or renter's choice in neighborhoods. Some specific examples of illegal steering include but are not limited to:

- Discouraging purchase or rental by exaggerating drawbacks or failing to inform any person of desirable features;
- Communicating to any prospective buyer that he or she would not be comfortable or compatible with existing residents of the neighborhood;
- Assigning any person to a particular section of a community, neighborhood, or floor of a building because of the person's protected characteristic;
- Refusing to show listings in certain areas because of protected characteristics; and
- Denying or delaying processing of an application to buy or rent due to a person's protected characteristics.

### Blockbusting:

Blockbusting or panic selling occurs when an owner of a property is induced to sell or rent a dwelling and move out of the neighborhood due to the entry into the neighborhood of a person(s) with protected characteristics with a particular focus on racial, religious and ethnic characteristics. Specific examples of prohibited behavior include claims of loss of value of property, increase in crime, or decline in school quality due to the present or prospective entry of people with protected characteristics. Although blockbusting is commonly associated with race and color, it could cover any protected characteristics. Like steering, this particular type of illegal discrimination is specifically prohibited. FHA specifically prohibits blockbusting by implying declining of a school system. However, factual discussion based in objective facts of schools in the area, given equally to all prospective clients, is permissible. The sharing of racial, religious and ethnic demographic information in sales or rental is prohibited. The best practice advice would be to direct clients with questions about school districts or demographics to reliable 3<sup>rd</sup> party sources so they may make an informed decision themselves as to which neighborhood they would like to be shown. Prospective buyers or renters are free to choose which neighborhood they would like to live in.

### Criminal History:

A "blanket ban" on a prospective occupant or tenant with prior felonies, prior misdemeanors or criminal record has been deemed to cause a disparate impact on persons of color and race, and as such is considered illegal housing discrimination. No actual intent to discriminate by the landlord is necessary. A policy or practice, even a facially neutral one, may constitute illegal discrimination if it has discriminatory effect on a protected class.

The practice of using criminal history may be allowed under very narrow circumstances if the following legally sufficient justification test is met. First, it must be necessary to serve a substantial, legitimate, nondiscriminatory business interest of the landlord. Landlord's interest in protecting the safety of its residents, employees or property meets this requirement. Second, it must "effectively carry" out that



interest. To effectively carry out a business interest, only directly-related conviction records may be used and there is “no feasible alternative” practice with “less discriminatory effect.” The following specific guidelines should be used:

1. Shall not use prior arrests records, may only use only directly-relevant convictions.
2. Consider length of time since the conviction. With few exceptions, 7 years is the maximum look-back period that will be available on an investigative consumer report. The actual look-back period depends on the crime and circumstances and may need to be shorter.
3. Must consider nature and severity of the conduct. Policy must accurately distinguish between criminal conduct that indicates a demonstrable risk to resident safety and conduct that doesn't i.e. directly relevant to meet lease requirements. For example, a 10-year-old misdemeanor driving offense is not relevant to a person's ability to be good tenant; however, a two-year-old residential arson conviction may be considered to determine whether an applicant poses a risk to others or property.
4. Provide a written notice of opportunity to review and correct for factual accuracy of the criminal history information. This requirement is typically met by the third-party company that compiles the investigative report containing the criminal history information.
5. Provide written notice of opportunity to present mitigating information such as circumstances surrounding criminal conviction; age at time of conviction; time lapse since conviction; evidence of good tenant history; employment; rehabilitation efforts; and other relevant factors.
6. Criminal background check should be conducted only after applicants have passed financial and other screening processes to prevent being prejudiced by information contained in a criminal background check.
7. Apply rules equally. For example, accepting a white applicant with a 4-year-old burglary conviction record while rejecting a black applicant with same record is discrimination unless mitigating circumstances for the white applicant warranted the exception and no such circumstances existed for the black applicant.

Criminal history information such as an arrest record or investigation by law enforcement may not be sought or used adversely against a tenant during tenancy. For a property manager, a problem may arise when one resident alleges criminal conduct such as selling drugs or threatening bodily harm by another resident. At that point, there's no criminal conviction yet but there may be an arrest or investigation by the police. Committing illegal acts or posing harm to others or property are violations of covenants under the C.A.R. lease agreement, thus the property manager should issue a three day notice to cure covenant or quit (C.A.R. form PCQ), or any equivalent California form under California law, based on the detailed reporting of witnesses or victims but not based on any arrest or detention records. Issuance of any notices such as PCQ that may result in an eviction proceeding is considered an adverse action.

#### Familial Status: Occupancy Limits:

The Uniform Housing Code (“UHC”) sets the minimum square footage required for habitability. Every residential unit must have one room that is at least 120 square feet. Other rooms used for living must be at least 70 square feet. Any room used for sleeping must increase the minimum floor area by 50 square

feet for each occupant in excess of two. (1997 UHC § 503(b).) Under this standard, a bedroom of 70 square feet would be appropriate for one person, 120 square foot room for two, and three people could fit in a 170 square foot room. This standard can be the base for minimum square footage per occupant. In addition to the Uniform Housing Code Standards, your city may also have occupancy standards that are either looser or more restrictive.

The DFEH uses the “two person per bedroom plus one” rule which is presumed to be non-discriminatory. Other factors may come in to play to determine discrimination such as:

- size of rooms and unit;
- age of kids (small kids);
- configuration of unit – separate den, living room aside from “bedrooms” that may be used for sleeping;
- limits of septic, sewer or other bldg. systems;
- state/local laws for occupancy; and
- other special circumstances e.g., discriminatory statements or treatment by landlord.

Let’s use an example of a 1200 sq. ft loft without a bedroom but equivalent in size to a 3-bedroom condo unit. It would be improper to state that only one person is permitted to reside there. It may be permissible for seven persons to reside in such a unit. At minimum, a landlord should follow the “2P/BR plus 1” set by DFEH. However, larger units should allow for more occupants. For example, a 3-bedroom 2,400 sq. ft. SFR can house more occupants than a 3-bedroom 1,200 sq. ft. condo unit.

To not violate fair housing laws, the property manager must treat all potential tenants the same and standards of occupancy should be the same regardless of the type of tenants applying.

The basic practice tips for the issue of occupancy are:

- do not advertise an occupancy number or anything about children;
- do not inquire about any personal characteristic that delves into applicants’ cultural background or family makeup;
- do not ask how many kids (since this may imply discriminatory intent), but you may ask about number of occupants;
- do have reasonable space-to-person ratio; and
- do take applications from all adults over the age of 18.

### Source of Income:

Source of income refers to verifiable income that is paid directly to a tenant. It is illegal for a landlord to treat certain types of income differently as “earned” verses “paid to” income for purposes of financial qualification for a rental. Examples of protected source of income are: alimony, child support, SSI income, and government housing vouchers. For government subsidies, financial income standard for assessing eligibility for the rental must be based on the portion of rent to be paid by the tenant.

A prospective tenant who has a government housing voucher such as “Section 8” or Veterans Affairs Supportive Housing (“VASH”) may not be rejected. Government housing assistance programs such as Section 8 and VASH are protected as sources of income statewide.

To participate in these programs, the landlord and the property must be approved by PHA. The property must meet basic habitability and safety requirements such as having smoke detectors, locks on doors and windows, and no peeling paint chips that contain lead. An additional requirement of note is for landlords to provide a functioning stove and oven. The landlord is separately screened with a background check and must sign a contract with PHA to become an approved owner. The fact that the landlord or property has yet to be pre-approved by PHA for participation in either Section 8 or VASH, is not sufficient grounds to reject a lease applicant with such a voucher. Furthermore, it is illegal to advertise “No Section 8” and deny an application simply on the basis of an applicant’s participation in such programs.

Expected or fear of delay in the approval process does not give a landlord an automatic reason for denial of an otherwise qualified prospective tenant with a voucher. Approval process and timeframe differ by the local PHA running the program.

#### Harassment:

Harassment in the context of housing is a type of illegal housing discrimination. Most people associate the idea of harassment with sexual harassment only. However, harassment may arise out of any protected characteristic such as race, religion, and citizenship. As in employment law, there are two types of harassment in housing: quid pro quo and hostile environment. Harassing conduct may be verbal, physical or visual. It is an unwelcome request or demand to engage in certain conduct conditioned to a real estate activity. For example, a property manager asking a tenant out on a date in exchange for doing repairs is a form of sexual quid pro quo harassment and is considered illegal housing discrimination. Hostile environment is an unwelcome conduct that is so severe or pervasive, it interferes with real estate activities. There is no transactional component; the victim is not expected to do something in exchange for anything. For example, a listing agent that makes racially derogatory comments to a buyer during a property inspection may be creating a hostile environment based on race and thus, considered engaging in illegal housing discrimination. In another example, a resident manager who only responds to request for repairs from those who speak English may be creating a hostile environment based on language. Hostile environment harassment is based on a totality of the circumstances, looking at frequency, severity, and other factors. A single instance, if sufficiently severe, may show hostile environment or quid pro quo harassment.

#### Military and Veteran Status:

Prospective tenants cannot be rejected based upon active duty military service or based upon a spouse’s military status. The refusal based on military status would be considered illegal

discrimination. Special protections for active-duty military tenants include limiting the maximum-security deposit that may be collected from an active duty military tenant to one month's rent as compared to two months' rent under CC 1950.5 for non-military tenants. Again, a landlord may not deny a rental application from an active-duty military personnel because they will not be able to collect more than one month's rent as security deposit.

Sellers and listing agents should act with extreme caution when rejecting any offer with a VA loan to make sure they have a non-discriminatory basis for the rejection.

## **Fair Housing Advertising**

### Advertising:

FHA, FEHA, DRE regulations, NAR Code of Ethics all prohibit any advertising that places limitations, preferences or discrimination based on protected characteristics.

These rules apply to any and every type of advertising that real estate licensees decide to use, including, but not limited to, flyers, postcards, newspapers, magazines, "For Sale" signs, billboards, business cards, e-mails, faxes, radio, television, and social media.

Fair housing laws specifically prohibit affirmative statements that may discourage a protected class from seeking housing opportunities. As such, language used in "for rent" advertising must be especially mindful. For example, it would be illegal to advertise:

- "No Section 8"
- "No Kids" or "Adults Only"
- "No unmarried persons"
- "Christians Only"
- "No Pets" – without a fair housing caveat
- "Maximum number \_\_\_"
- "No felons"
- "No active military"

These examples in advertising are red flags for fair housing investigators and direct evidence of discriminatory intent.

### Advertising for Sale Property:

There are certain permissible and impermissible words and phrases. The following are examples of common words that are permissible without violating FHA.

- family room
- mother-in-law suite

- bachelor apartment
- master bedroom
- two bedroom
- great view
- fourth-floor walk-up
- walk-in closet
- walk to bus-stops
- jogging trails
- wheelchair ramp
- quiet street
- cozy
- rare find
- desirable neighborhood
- apartment complex with Chapel
- kosher meals available
- no bicycles allowed
- non-smoking (conduct required of resident)
- sober (conduct required of resident)

The following are examples of words that cannot be used in advertising:

- no Irish
- White Only
- no Jews
- Christian home
- no wheelchairs
- limitation based on number or ages of children
- Preference for adults, couples or singles

#### Exceptions to advertising rules:

Gender preference is the only allowable exception in advertising when the living space will be shared in a single dwelling unit. For example, "female preferred" is permissible if an owner who resides in the house is advertising for a roommate. There is no exemption for an agent who advertises on behalf of a client. Senior housing may state age restrictions in advertising as long as it meets other legal requirements.

All parties must act with caution and treat all persons fairly and equally.

#### Equal Opportunity Slogans and Logos

Independent Contractors shall use the Equal Opportunity slogan or logo in all advertising. Independent Contractors shall use publications which reach large audiences and does not limit to a small select audience. The "Share the Dream" logo may only be used in California where such materials will not be used or distributed outside of California.

### Prohibited Advertising Language

Advertising copy used by Independent Contractors must describe the property, NOT THE DESIRED BUYER OR TENANT. Examples of prohibited advertising language are:

1. Race, color, national origin: Real estate advertisements may not state a discriminatory preference or limitation on account of race, color, national origin or any other protected class, and shall not describe the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms. However, Independent Contractors may use phrases such as "master bedroom" "rare find" or "desirable neighborhood."
2. Religion: Independent Contractors shall not use advertisements which contain an explicit preference, limitation or discrimination on account of religion. Advertisements which use the legal name of an entity which contains a religious reference (i.e., Sisters of God Catholic Home) or a religious symbol (such as a cross) must contain an appropriate disclaimer against any religious preference or limitation. Independent Contractors may use descriptions of the property (apartment complex with chapel) or the services (kosher meals available), and terms (Merry Christmas or Happy Easter) or symbols (Santa Claus or Easter Bunny) relating to certain religious holidays.
3. Sex: Independent Contractors shall not advertise single family dwellings or separate dwelling units in multifamily housing in a manner which explicitly indicates a preference, limitation or discrimination on the basis of sex. Independent Contractors may, however, use terms such as "master bedroom," "mother-in-law suite" and "bachelor apartment" which describe a property type.
4. Handicap: Independent Contractors' real estate advertisements shall not contain exclusions, limitations or other indications of discrimination based on handicap. Independent Contractors may describe the property (great view, fourth floor walk-up, walk-in closets), the services or facilities (Jogging trails), the neighborhood (walk to the bus stop), the conduct required of residents (nonsmoking), and accessibility features, such as a wheelchair ramp.
5. Familial Status: Independent Contractors shall not place advertisements which contain limitations on the number or ages of children or state a preference for adults (unless the property meets the housing for older person's exemption), couples or singles. Independent Contractors may use descriptions of the property (two bedroom, cozy, and family room), services and facilities (no bicycles allowed) or neighborhoods (quiet streets)

### **Home Previews**

A tour of new listings should be made by every Independent Contractor every week. The purpose of this tour is to familiarize the Independent Contractors with the new listing and to assist them in describing these listings to prospective purchasers.

It is equally important for all Independent Contractors to show a genuine interest and enthusiasm to the owner of the listed property. All Independent Contractors are expected to participate in previewing homes every week.

Independent Contractors should not consume food or beverages while homes are being toured and any comments made by Independent Contractors while in homes should be of a complimentary nature only.

### **Independent Contractors**

Association with Coldwell Banker Platinum Properties is "at will", which means that Coldwell Banker Platinum Properties does not guarantee you will be working here for any specific length of time and does not expect you to make any such guarantees. A successful working relationship depends on the mutual satisfaction of both parties. Instead, either you or Coldwell Banker Platinum Properties may terminate the relationship at any time. As much as we like to think of all Independent Agents as part of the "Coldwell Banker Platinum Properties Family", we need to remember that we all depend on the success of Coldwell Banker Platinum Properties and that each of us is here because of the contribution we can make to that success, not as a matter of entitlement.

Upon affiliation with this Broker, the Independent Contractor shall enter into a written Independent Contractor's agreement with the Broker setting forth the duties and responsibilities of both parties (Exhibit 3) This agreement shall include, but shall not be limited to, the following:

- The terms of compensation for work performed during the time of affiliation with the Broker.
  - The terms of compensation for work in progress but not completed prior to termination of affiliation with the Broker.
  - The disposition after termination of affiliation of all active listings, buyer agency contracts, and pending sales the Independent Contractor obtained during affiliation with the Broker.
  - A written accounting to the Broker, at the time of termination of affiliation, of the names of all prospective purchasers, sellers, lessees and lessors which the Independent Contractor encountered during affiliation with the Broker.
  - A provision for the return to the Broker, at the time of termination of affiliation, all property of the Broker in Independent Contractor possession or control, including but not limited to: all property files, computerized files, keys, for sale signs, notebooks, lock boxes and records of any kind used in connection with the listing and sale or leasing of property.

### **Information Provisions**

#### *Non- Licensed Employees*

Secretaries, receptionists and other unlicensed employees may be permitted to provide factual information on listings, which is normally found in newspaper ads and property data sheets. These staff members shall indicate that they are not licensed agents, can give out only limited factual data and that further requests for information must be relayed to a Licensed Sale Agent.

### **Insurance**

#### Errors & Omissions Insurance

Coldwell Banker Platinum Properties will obtain the Errors & Omissions Insurance. Independent Contractors should be cautioned that there are circumstances where E & O may not provide coverage, i.e., fraud, commercial environmental issues, transaction where Independent Contractor acts as principal.

Included are:

- Claims or litigation
- Legal Defense Fund Agreement
- Indemnification from the Sales Independent Contractor
- Association of REALTORS® Complaints

### **Lead Based Paint**

The requirement by the U.S. Department of Housing and Urban Development (HUD) requires that every seller of residential property built prior to 1978 disclose to the potential buyer/tenant the possibility for or the existence of lead based paint on the property.

Every buyer/tenant is to receive a copy of the pamphlet "Protect Your Family From Lead In Your Home" and the Lead Based Paint Disclosure Addendum, available from the respective state's real estate department's web site. Buyer initials or signatures are required to acknowledge receipt of notice. Independent Contractors are required to initial and sign the receipt.

### **Legal and Tax Advice Prohibited**

No Coldwell Banker Platinum Properties Independent Contractor shall give legal advice to a party, offer opinion, or give advice regarding legal rights or obligations of a party. Parties may be referred to the Default section in the Offer to Purchase form and advised to consult with their own attorneys. The Independent Contractor also may explain the preprinted provisions of the standard listing and offer to purchase and any other approved forms the parties may be asked to complete and/or sign.

### **Tax Advice**

No Coldwell Banker Platinum Properties Independent Contractor shall give tax advice to a party, including advice pertaining to deductions, exemptions, and/or tax liabilities resulting from the purchase or sale of real estate. If a tax question, beyond the scope of real estate practice, and an explanation is asked for, the Independent Contractor should suggest that the party consult an attorney, tax accountant or other appropriate expert having expertise in the area addressed by the client's or customer's question.

### **Lock Boxes**

Lockboxes may only be used once a Listing Agreement has been executed and must be agreed upon and initialed in the appropriate box on the Listing Agreement. Furthermore, the lockbox must be removed immediately following

the expiration or cancellation of the Listing Agreement or at the Close of Escrow.



## **Maintaining Contact with the Office**

In the course of business, it is necessary for Coldwell Banker Platinum Properties Independent Contractors to be away from the office. However, the Independent Contractor must provide a means of communication for the Community Representative to contact the Independent Contractor during the course of the day. When Independent Contractors are absent from the office, they should notify the Community Representative, Broker, or office as to when they can be expected.

### **Meetings**

The Broker's policy concerning Independent Contractors' attendance at Company meetings is mandatory unless stated otherwise.

### **Military Airports**

Independent Contractors are required to inform the buyer/tenant that a property is within the area of a military or other airport. Independent Contractors at Coldwell Banker Platinum Properties are required to disclose the airport proximity on all purchase contracts.

### **Offers**

#### Presenting Offers

All offers, counter offers must be completed and handled using standard forms obtained from the California Association of Realtors. Each Independent Contractor must familiarize himself/herself with the standard forms approved for use by Coldwell Banker Platinum Properties as well as the rules of use of these approved forms. Only Broker approved forms may be used in any transaction. All offers, counter offers and any other forms must utilize office-approved provisions for contingencies, inspections, warranties, representations, disclosures, etc.

There is no designated amount of earnest money that is required with an offer. It is desirable, however, to obtain a minimum of approximately three percent (3%) of the sales price for residential resale properties for home sites or custom home properties. This is good faith money; consequently, deposits should be larger on loan assumptions, owner financing and cash offers.

### **Confidentiality of Offers**

In an effort to avoid problems Independent Contractors are encouraged to:

- Refrain from discussing the possibility of receiving an offer with any Independent Contractor prior to obtaining a signed Offer to Purchase
- Refrain from discussing details pertaining to an offer presented with anyone other than the listing agent or the Broker
- Refrain from inquiries to another Independent Contractor about his/her offer unless you are the listing agent

#### Cooperating Brokers

Independent Contractors must disclose the existence of accepted offers to cooperating brokers upon first contact, unless the seller has given the Independent Contractor written direction to keep the existence accepted offers confidential.

### Timeliness of Offers

All offers and counter offers must be presented in a timely manner. Although an offer may allow 2 or 3 days for acceptance, the Independent Contractor must make every effort to present offers or counter offers as soon as possible. If timing, distance or other circumstances make personal presentation impractical, presentation by fax, express mail, e-mail or verbal presentation over the telephone may need to be done. Any verbal presentation should be followed as soon as possible with a hard copy forwarded by fax, express mail or whatever means of communication is most expedient in the circumstances.

The time and date of presentation must be noted on each offer or counter-offer, and the receiving party must, as soon as possible, sign and date the form to indicate an acceptance, or initial and date the form to indicate a rejection or counter-offer. A copy of these notations on the offer or counter-offer must be furnished to the cooperating broker.

With a counter- offer, only the terms which vary from the original offer are written out and all terms remaining the same from the original offer are incorporated by reference. Any terms from previous counter-offers which are intended to be carried forward must also be written out. When a party has accepted an offer or a counter-offer, the Independent Contractor must discuss with that party the different methods of delivery available for returning the offer to the other party, and thus creating a binding contract. Independent Contractors must explain that delivery by mail is considered delivered upon deposit in the mail. Whenever an offer is being handled by an Independent Contractor for the purpose of personally delivering it back to the cooperating office or to the other party, a copy of that accepted offer must also be mailed as soon as possible following the Independent Contractor's receipt of the same.

### Multiple Offers

When multiple offers have been received, each offer must be presented to the seller unless the seller provides written instruction describing the circumstances in which an offer need not be presented. An example of this would be instruction provided by the seller advising only full price offers be presented. When such instruction has been received, this direction can be disclosed to the buyer's Broker.

### Rejected Offers

The offer should be initialed and dated and include the notation REJECTED or VOID across the face of the contract.

Rejected offers on Company listings must be turned into the Broker

## **Open Houses**

Open Houses for homes listed by Independent Contractors are optional and held at the discretion of the Independent Contractor utilizing their own resources. Open houses are usually scheduled

between 1:00 and 5:00 on Saturdays and Sundays. Independent Contractors are responsible for placing and removing their own open house signs as well as advertising.

### **Personal Interest Provisions**

If an Independent Contractor with Coldwell Banker Platinum Properties is representing himself/herself (or a family member or relative) in a transaction, the Independent Contractor will disclose that the licensee is acting as a principal BEFORE any binding agreement and secure the signatures and consent of all parties to the transaction, giving a signed copy of the form to other parties, and keeping a signed copy for the Independent Contractor's files on this transaction

### **Personal Transaction Procedure**

Any Independent Contractor or employee who participates in the Personal Transaction Program must have an active real estate license in the state in which they are listing or purchasing. The Designated Broker of this state must approve the transaction prior to listing a property or entering into an escrow with a purchase property and a Personal Transaction Approval Form needs to be signed by both the Independent Contractor or employee and Designated Broker

### **Personal Safety & Conduct**

#### Safety

Safety in our workplace is everyone's business. We expect you to pay attention not only to your safety but also the safety of the work environment around you. Report any safety hazards you observe to the Talent Department. If you are injured on the job, no matter how slightly, you must report the situation to your manager and the Talent Department immediately and fill out an incident report describing what happened. Do not engage in horseplay at work.

#### Drugs and Alcohol

The Company is committed to maintaining a safe and productive work environment, which includes a workplace free of the influences of drugs and alcohol. The use, possession, manufacture, purchase, sale or transfer of illegal drugs in the work environment is prohibited. The unauthorized consumption of alcoholic beverages in the workplace is prohibited. The workplace includes all land, parking lots, buildings, vehicles, equipment, and all other property owned or leased by the Company, as well as any job sites and instances in which an Independent Contractor is representing the Company, whether on or off Company property. The Company also requires that all Independent Contractors come to work unimpaired by alcohol and without illegal drugs in their system. If you believe that you may have an alcohol or substance abuse problem, the Company encourages you to seek assistance before it affects your work.

#### Harassment

The Company wants to maintain a work environment that is based on mutual respect and encourages productive and cooperative work. Harassment based on an associates race, sex, religion, age, national origin, or disability will not be tolerated.

Sexual harassment is conduct of a sexual nature that is unwelcome and offensive to the person to whom it is directed. It includes unwelcome sexual advances, requests for sexual

favors, and conduct or remarks of a sexual nature when: 1) submission to such conduct is made a condition of affiliation; 2) submission to or rejection of such conduct is used as a basis for a compensation decision; or 3) such conduct unreasonably interferes with an associate's work performance or creates an offensive, hostile or intimidating work environment. Some examples of the type of conduct that can create a hostile work environment include sexually explicit language, jokes or gestures; degrading sexual language or conduct; graphic or suggestive comments about an associate's dress or body; touching; sexual advances; display of sexually explicit or suggestive materials, and other similar conduct.

All associates are responsible for keeping our workplace free of sexual harassment. If you believe that you or another associate has been sexually harassed by a co-worker, manager or even an outsider (i.e., consultants or vendors), you must alert the Broker or any manager with whom you feel comfortable discussing the matter. The Company is required by law to promptly investigate all reports of sexual harassment and take remedial action where appropriate. The Company will not permit any retaliation against associates who make such reports or furnish information to the Company in good faith. Any associate whom the Company believes has violated this policy is subject to appropriate disciplinary action, up to and including termination.

#### Representing Coldwell Banker Platinum Properties

Each of us reflects an image of the Company in how we appear and how we conduct ourselves. We expect you to dress neatly, professionally and appropriately for the work environment and to conduct yourself with the highest ethical standards and in a manner that will reflect positively on the Company.

#### *Business attire for women includes:*

- Suits
- Dresses
- Jackets
- Coats
- Skirts
- Slacks
- Sweaters
- Blouses
- Golf Shirts

#### *Inappropriate attire for women includes:*

- Leggings
- Shorts
- Sweatpants
- Sheer, low cut or revealing clothing
- Open-backed dresses or tops
- Spaghetti strapped, halter or tank topped blouses
- Shirts with messages, signs, etc. (other than small, company or project logo)
- Mini-Skirts

*Business attire for men includes:*

Suits  
Blazers/Sports Coats  
Shirts/Ties  
Golf Shirts  
Slacks  
Sweaters

*Inappropriate attire for men includes:*

Shorts  
Sweatpants  
Shirts with messages, signs, etc. (other than small, Company or project logo)

### **Pre-Possession and Post-Possession of Property**

- All Pre-Possession and Post Possession agreements between Sellers and Buyers shall be in writing.
- Independent Contractors must recommend to their clients to seek appropriate counsel (including tax, legal, insurance, etc.) concerning risks associated with pre-possession or post-possession
- Coldwell Banker Platinum Properties' policy prohibits Independent Contractors from negotiating pre and post possession of properties. If such terms need to be addressed then the Independent Contractor shall bring it to the attention of the Broker.

### **Problem Reporting Procedures**

Immediately report problems to the Broker that pertain to the following and the Broker, in consultation with Management, shall address such issues with the Corporate Legal Department and/or outside counsel as so instructed:

- A party having complaints involving real estate transactions
- Automobile accidents occurring while the Independent Contractor is participating in real estate brokerage transactions
- Criminal charges against the Independent Contractor, with the exception of traffic offenses
- Civil lawsuits or administrative actions involving real estate brokerage transactions
- California Real Estate Department's contacts concerning disciplinary actions or other purposes
- Party default under an accepted contract
- Threatened legal or administrative actions involving the parties and/or a real estate transaction

- Acts of discrimination committed by Independent Contractors or parties to transactions
- Unresolved disputes between Sales Agents, within or outside the office
- Physical injuries within the office or while in performance of services or duties in the name of the Broker
- Local Board/Association contacts concerning disciplinary action or other purposes.
- Client/Customer Complaint Letters
- Attorney Letters
- Production of Records Subpoena
- Lawsuit Subpoena
- California Department of Real Estate or Association of REALTORS® Complaints
- Internal Revenue Service or California Franchise Tax Board Levy

### **Professional Association Affiliations/Membership**

It is mandatory that each Independent Contractor required to hold a California Real Estate License maintain the following:

- Current real estate license in the state of California.
- Proof of continuing education compliance no later than fifteen (15) days prior to the applicable license renewal date.
- Current Membership to a local Board/Association, the California Association of REALTORS® and the National Association of REALTORS®
- Automobile Insurance Coverage

### **Property Management I Rental Agreements**

The discussion and execution of all Property Management and Rental Agreements are to be directed to the Leasing Coordinator or Broker. At this time, it is not company policy to engage in any activity that is considered to be Property Management by nature. Any activity that could be defined as being related to Property Management needs to be discussed and approved by the Broker. At no time and not under any circumstance should any Independent Contractor or employee conduct any business regarding Property Management or Rental Agreements, unless Independent Contractor is deemed to be the company's official Leasing Representative.

For Rental Relationships the following documentation shall be provided:

*Rental Listing:*

- Residential Rental Listing Agreement
- Keysafe/Lockbox Addendum and Tenant Permission to Access Property

- Rental Agreement (When representing Tenant):
- Rental Agreement and Receipt for Deposit
- Water Heater Statement of - Compliance
- Homeowner Association Information Request
- Smoke Detector Statement of Compliance
- Addendums (if applicable)
- Miscellaneous walk through inspection forms- for leases of three weeks or more

*Coldwell Banker Platinum Properties provides leasing services limited to:*

1. Offering a property for lease through MLS or by other means of advertisement.
2. Showing the property to potential tenants.
3. Preparing a lease agreement on behalf of either lessor or lessee.
4. Presenting the lease agreement to the lessor.
5. Accepting certified funds to secure the property on behalf of the lessor.
6. Providing said funds directly to the lessor.

The Leasing Coordinator must not acknowledge receipt of earnest money until which time they are in receipt of the deposit. Receipts are only issued after which time funds have been received. Earnest money may be in the form of a bank draft or certified funds, cash deposits are not acceptable and must never be accepted. Funds cannot be post-dated unless specifically authorized by the Broker and the client.

Funds must be secured for payment directly to the Lessor. Coldwell Banker Platinum Properties does not deposit funds nor guarantee funds received in relation to any lease transaction.

Transaction records for rental and leasing transactions must be kept for 3 years. Records for transactions that do not close must be kept for one year. The records that must be kept include listing/rental agreements; copies of earnest money receipts; closing statements (showing receipts, disbursements, adjustments).

### **Reasonable Accommodation Requests Made by or on Behalf of Tenants for a Subject Property**

A Notice of Right to Reasonable Accommodation shall be provided all applicants requesting an accommodation.

The individual requesting the accommodation shall be provided with a Request for a Reasonable Accommodation Form. Individuals may submit their reasonable accommodation request(s) in writing, orally or by any method of communications. We will ensure that all reasonable accommodation

requests will be reduced to writing. If needed, as a reasonable accommodation, we will assist the individual in completing the Request for a Reasonable Accommodation Form.

A response within ten (10) days of receipt shall be provided the individual whom submitted the reasonable accommodation request(s).

If additional information or documentation is required, notification will be sent, in writing, of the need for the additional information or documentation. The written notification should provide the resident with a reply date for submission of the outstanding information or documentation.

Within thirty (10) days or sooner following receipt of the request and, if necessary, all supporting documentation, written notification shall be provided approving or denying the request.

If approved, the notification of the projected date for implementation shall be included in the response.

If the accommodation is denied, notification shall be provided for the reasons of the denial. In addition, the notification of the denial will include information regarding grievance procedures.

All requests for reasonable accommodation that are approved will promptly be implemented or begin the process of implementation.

Verification of a reasonable accommodation request may be used when independent verification of an accommodation is required.

The housing provider may verify a person's disability if the disability is not known, only to the extent necessary to ensure that individuals who have requested a reasonable accommodation have a disability-based need for the requested accommodation/ modification.

We may only request documentation to confirm the disability-related need(s) for the requested reasonable accommodation(s). We may not require individuals to disclose confidential medical records in order to verify a disability. In addition, we may not require the individual to disclose the specific disability (ies); or the nature or extent of the individual's disability (ies). A Verification of Need for a Reasonable Accommodation, which requires execution by the individual requesting accommodation, shall be provided.

Requested accommodations will not be approved if one of the following would occur as a result:

A violation of State and/or federal law;

An undue financial and administrative burden for the property owner;

A structurally infeasible or potentially dangerous alteration; or

An alteration requiring the removal or alteration of a load-bearing structural member.

Residents with disabilities are permitted to have assistance animals, if such animals are necessary as a reasonable accommodation for their disabilities. Residents or potential residents who need an assistance animal as a reasonable accommodation must request the accommodation. Assistance animals are not subject to the requirements of a Pet Policy.



An applicant/individual or resident may, at any time, exercise their right to appeal a decision through and including but not limited to the local HUD office or the State of California Department of Fair Employment & Housing at:

State of California  
Department of Fair Employment & Housing  
2218 Kausen Drive, Suite 100| Elk Grove | CA \ 95758  
1.800.884.1684 (voice) | 1.800.700.2320 (TTY) | California Relay Service at 711  
<http://www.dfeh.ca.gov> | Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

U.S. Department of Housing and urban Development  
Office of Fair Housing and Equal Opportunity – Region IX  
One Sansome Street, Suite 1200  
San Francisco, CA 94104-4430  
Voice: (800) 347-3739  
TTY: (415) 489-6400

### **Referral and Finders' Fees**

The Coldwell Banker Platinum Properties Independent Contractor will have many opportunities to send and receive prospective buyers and sellers via the referral process. All referral fees must go through the Broker. If a referral company requests that an Independent Contractor pay or accept an amount other than the amount set forth in the Broker's commission and compensation schedules, the Independent Contractor must first consult the Broker or office manager. Independent Contractors shall always confirm a referral fee agreement in writing prior to sending or accepting a referral. When dealing with brokers from other states, Independent Contractors shall request written evidence that the broker is licensed (copy of current license) and that the broker is actively practicing real estate in his or her state, before agreeing to pay that broker a fee.

### **Risk Management**

Whatever situation a Coldwell Banker Platinum Properties Independent Contractor finds themselves in, they can't go wrong asking for advice from their Broker, other highly experienced brokers within Coldwell Banker Platinum Properties, Coldwell Banker Platinum Properties' attorney, or the legal hotline hosted by or posted by the California Association of REALTORS®. In many cases, common sense advice such as keeping a good paper trail is all you need. Situations need to be promptly documented and brought to the attention of the Coldwell Banker Platinum Properties Broker before a situation gets out of hand. When in doubt, immediately notify your Coldwell Banker Platinum Properties Broker at the first sign of a problem or concern and do not wait for a situation to escalate. Sometimes saying "I'm sorry" works wonders and it is all the angered buyer or seller really wanted to hear. Given the power of an apology to defuse a tense situation, make it part of your standard practice to wield it when a conversation is heated. Think before speaking and carefully consider your responses (and seek experienced advice, when unsure). If someone calls a Coldwell Banker Platinum Properties Independent Contractor and alleges he/she made a mistake, you might avoid a lawsuit or

further issues simply by finding out the facts, saying you're sorry for the problem (saying you are "sorry" for their problem is not one and the same as accepting responsibility for the problem) and, even if you don't believe you or Coldwell Banker Platinum Properties did absolutely anything wrong, taking accountability and immediately searching for/gathering assistance from others for a prompt and positive resolution. Such a proactive response might not only forestall a lawsuit, it might help you keep a client. Individuals like to know that you are taking their issue (whatever it is) seriously and that they are not being ignored.

## **Security**

All employees and Independent Contractors are responsible for maintaining confidentiality with regard to Company records for the security of Company property. The last employee or Independent Contractor to leave an area should be sure that all entry doors are locked and that all confidential material is locked in a file cabinet or drawer. All unusual happenings noticed should be reported to the security guard or building management. The safeguarding of personal property is the responsibility of each employee and Independent Contractor.

*Important areas of security:*

- Client Data and information are strictly confidential.
- Access codes allowing entry into office premises, computer systems. Only Coldwell Banker Platinum Properties employees and Independent Contractors are to have these codes.
- Security codes for alarm systems for listings are to be kept confidential and under no circumstance are they to be given to anyone

## **Seller Property Disclosure Statement**

The owner of the residential property shall furnish a purchaser one of the following:

A seller transfer disclosure statement- Provides for the condition of the property including any material defects known to the owner. The disclosure form must contain:

1. Notice to prospective purchases and owners that the prospective purchaser and the owner may wish to obtain professional advice or inspection of the property
2. Notice to purchasers that the information contained are representation of the owner solely

Note: The owner is not required to undertake or provide any independent investigations or inspections of the property in order to make the disclosure.

- A property disclaimer- States the owner makes no representations or warranties as to the condition of the property and that the purchaser will be receiving the property "as is" unless provided in the real estate purchase contract. A disclaimer statement may only be permitted where the purchaser waives the required disclosure.

*Disclosure of Adverse Facts:*

An "adverse fact" means a condition or occurrence that is generally recognized by a competent licensee as:

- Significantly and adversely affecting the value of the property
- Significantly reducing the structural integrity of improvements to real estate
- Presenting a significant health risk to occupants of the property

"Material" means any statement, representation or fact relative to a transaction that would affect a reasonable person's decision to enter into an agreement and which has been identified by such person as being of significance to a particularly party. Written disclosures must be given as soon as is reasonably possible and always before the writing of any offers to purchase.

### **Servicing the Prospects**

When Coldwell Banker Platinum Properties Independent Contractors have inspected a listed property, they shall review their prospect sheets and call any prospects that may have ANY interest. In this manner, Independent Contractors can keep in contact with their prospects and provide them with more incentive to work with the Independent Contractor. There is a psychological advantage when an Independent Contractor calls a prospective buyer and says, "We just listed a beautiful property that I think will meet your needs and requirements. Would you be interested in seeing this property?"

I confirm that I have read, understand and agree to the above

### **POLICIES AND PROCEDURES**

**For**

**COLDWELL BANKER PLATINUM PROPERTIES**

---

By:

Date: