



# Office Policy and Procedures Manual Asset Vu, Incorporated

2010

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## 1. About the Company

### **1.1 General**

The company is licensed by the California Department of Real Estate under the following name: Asset Vu, Inc. and doing business as Asset Vu Real Estate Brokerage. Additionally, the brokerage is a member of the National, California, and other local Associations of REALTORS®. The primary objective of this company is to assist clients with the purchase and sale of real estate in the state(s) that the company is properly licensed to do so.

## 2. Policy Manual

### **2.1 General Purpose**

The purpose of this policy and procedure manual is to establish a uniform system of daily conduct by and between us when dealing with each other, other members of the company, our clients, and members of the public.

### **2.2 Responsibilities**

You are responsible to work in accordance with company policies and procedures. Your failure to comply with the policies and procedures within this manual may result in your termination from this company.

### **2.3 Changes in Manual**

This policy and procedures manual may be changed from time to time by the company. Changes can be made at any time and will be distributed periodically through the company's website and all member email lists. The policies online at any time represent the company's current policy and procedures manual.

### **2.4 Exclusions from the Manual**

This manual applies only to salespersons and broker-associates performing work in a sales capacity. This manual does not apply to company staff employees.

## 3. Independent Contractor Relationship

### **3.1 Independent Contractor**

You have signed an Independent Contractor Agreement with the company and are associated with this company as an independent contractor. You do not have an employee-employer relationship with this company. You are considered to be an independent contractor for tax purposes and will receive a 1099 at the end of each calendar year. The company will not withhold taxes or social security from your compensation. Payment of taxes and social security contributions are your responsibility. You are also considered to be an independent contractor for purposes of unemployment insurance. You are not subject to the minimum wage laws. The company will provide worker's compensation insurance for Broker's own benefit.

### **3.2 At-Will Status**

You are associated with the company for an unspecified term on an at-will basis. Except where it is otherwise expressly agreed in writing with the company, either party may terminate your association at any time with or without cause or reason.

## 4. General Office Procedures

### **4.1 DRE License and Requirements**

You are required to maintain a valid California Real Estate Broker or Salesperson License in good standing while associated with this company. If your license expires, you may not engage in any activities on behalf of the company for which a real estate license is required. The Broker may designate another company salesperson to handle your prospects, listings, and transactions during any time your license lapses, and allocate such reasonable compensation to that salesperson for work performed. Your company's Broker is charged by California law to review, supervise, and manage the activity of all salespersons. The Broker may rely on management and staff support to perform this function. You are expected to cooperate with Broker's assistants in the handling of files, documents, and procedures in accordance with the policy manual and California law. It is your responsibility to keep current on changes in industry practices and to take advantage of available education and training programs to maintain your professionalism and your ability to properly represent your clients. It is also your responsibility to obtain all continuing education courses as to renew your license in a timely manner.

### **4.2 Company Business Hours**

Direct Broker support is available Monday through Friday 9am – 5pm.

### 4.3 Business Cards & Signs

You can order company business cards and signs through the vendors used by the company or by means of your own. If you use a vendor of your own choosing to supply these materials you need to follow the rules provided in this manual under the “Advertising” section. These items are one of the costs associated with conducting your business and the company shall not be responsible for any payments relating to such materials. BE AWARE: Certain municipalities, housing developments, and homeowners’ associations have strict guidelines, rules, and ordinances regarding the size and placement of signs. You must determine whether or not the company’s sign and its placement will conform to these requirements before installation. You are responsible to have the sign removed immediately once the listing expires or the property sale is closed.

### 4.4 Professional Conduct

As a member of the National Association of REALTORS®, you are expected to be familiar and comply with the Code of Ethics.

### 4.5 Working Place

Our company does not provide any office space for our agents. As an independent contractor it is permissible to work from your home, own office, car or other places. However, remember that the Broker is required to supervise your activity. Be sure that all files and documents that you work on are in a safe place and can be represented to the Broker within a 24-hour period. You must be reachable by phone, fax, email and regular mail. You are expected to respond to voicemails within 24-hours or less of their receipt. You need to provide us with your home address as well as any office location where you currently perform work.

### 4.6 Alcohol and Drugs

Possession, use, sale or being under the influence of alcohol or drugs on or off company premises while conducting company business is prohibited. Use good judgment. NEVER DRINK AND DRIVE.

### 4.7 Professional Associations

#### A. Multiple Listing Service

The company is a member of many local Multiple Listing Services (MLS). The full list of the associations where the company maintains membership is available on the company website. As an associate with this company, you can join the MLS as well.

As an MLS member, you are required to be familiar with, and adhere to, the rules and regulations of the MLS. A copy of those rules and regulations can be obtained from the association where you currently hold membership. If you fail to comply with those rules and regulations, or fail to pay your MLS bill when due, you and/or the company may be fined, suspended or expelled, and your listings may be removed from the MLS. You will be responsible for payment of any and all fines levied against you and/or the company resulting from your non-compliance. Furthermore, your non-compliance may result in your termination from the company.

### **B. National, California and Local Associations of REALTORS®**

All salespersons that are working in a sales capacity are required to maintain a current membership in the National, California and local Associations of REALTORS® at their own expense. Membership is billed annually through your local Association of REALTORS®.

## **4.8 Fees and Commissions**

All fees and commissions must be made payable to the company. You will be paid out of the fees and commissions earned by you, and for which you are the procuring cause, based on the terms mentioned in your Independent Contractor Agreement. All compliance documents on transactions that have closed escrow must be complete to the satisfaction of Broker prior to the issuance of any payments. Payment by Broker shall occur within 5 business days of receiving a fully compliant file and a written demand for payment by the salesperson.

## **4.9 Tax Reporting**

At the end of each calendar year or as soon thereafter as possible, the company will provide you with an Internal Revenue Service form 1099 setting forth compensation paid to you. Your income earned and expenses incurred have significant tax consequences. You are encouraged to get competent independent tax advice from the proper trade professional and keep accurate records of earnings and expenses.

## **4.10 Deductions**

All expenses of any kind incurred by you with the company; or incurred by the company on your behalf, including unpaid draws and advances, expenses for advertising, supplies, signs, etc., and/or any such expenses that you have agreed to pay the company but have not paid in accordance with company policy, will be deducted from the next commission payments due you.

### 4.11 Trust Fund Handling

As a regular part of the real estate business, you will receive funds on behalf and for the benefit of others, i.e. "trust funds". The Department of Real Estate Reference Book defines trust funds as "*money or other things of value that are received by a Broker or salesperson on behalf of a principal or any other person, and which are held for the benefit of others in the performance of any acts for which a real estate license is required*". The most common types of funds are earnest money deposits. Improper trust fund handling may lead to civil, criminal and Department of Real Estate action against you and the company. Remember, you are handling someone else's money. You are generally required to deposit trust fund money not later than the third business day after receipt, unless specifically authorized to hold the funds un-cashed.

When you are representing a buyer you must ensure that earnest money deposits are made payable directly to escrow and reported to Broker. **IT IS ILLEGAL AND UNPERMISSABLE TO RECEIVE FUNDS IN YOUR OWN PERSONAL NAME OR ACCEPT CASH PAYMENTS FROM CLIENTS.**

### 4.12 Identity Theft

Identity theft is a growing concern. So, it is essential that you treat with care and confidentiality all files containing names, addresses, phone numbers, social security numbers, credit card information or any other personally identifiable information. You must assure that any files containing such information that remain in your possession be kept in a secure location and disposed of properly.

### 4.13 Safe Driving

You are expected to keep your automobile in a clean, properly maintained, and safe operating condition at all times. Remember: You are responsible for damage or injury caused while driving. It is your obligation to drive in a safe, responsible and alert manner.

### 4.14 Personal Transactions

You may buy or sell property for your personal account subject to the same Broker's fee like a regular transaction.

You must disclose in writing that you are a real estate licensee whenever you buy or sell property in which you have an ownership interest, or where you have a special relationship with a buyer, or where there is a possibility that you could acquire indirectly a financial or legal interest in the property.

### 4.15 Vacations

As an independent contractor, you are entitled to schedule vacations. However, if there is any pending transaction, please advise the Broker of your vacation schedule and how any pending business will be handled in your absence.

### **4.16 Anti-Trust Guidelines**

Do not engage in any verbal or written conversations with agents or brokers with other companies regarding: The setting of commissions, charges or other fees to the public; Boycotting or not doing business with a particular competitor; The setting of rates or percentages of shared commission compensation to cooperating brokers.

### **4.17 Transaction Coordinators**

Our company provides a transaction coordinator (T.C.) service at a cost of \$350 per closed transaction. The fee for this service is assessed to the salesperson for which services were provided and will be deducted from their total compensation prior to issuance of payment. There is no requirement to use our transaction coordinator, but if you are not using them, then you are liable for assuring that the transaction file is complete to the satisfaction of the Broker. A compliance fee of \$149 is assessed to a salesperson on each transaction that closes escrow in which the company's transaction coordinator was not utilized. This fee will be used to cover the cost of our required compliance audits.

### **4.18 Risk Management Fee**

Each year, the company shall separately establish the amount per transaction to be paid by all salespersons, as a Risk Management Fee. This fee will be used by the company to offset the costs of the Errors & Omissions Insurance; settlements, judgments, legal fees, costs of claims and litigation; and other risk management costs.

### **4.19 Upfront Membership Fee**

Salesperson is responsible for paying an upfront fee of \$199 at time of enrollment into brokerage. This fee shall cover a portion or all of the costs associated with integrating a new salesperson into the brokerage. Salesperson shall have three (3) business days from issuance of payment to rescind their interest in enrollment and receive a full refund of the upfront fee. Only certified checks will be accepted as payment for the upfront fee. Broker will not initiate integration of salesperson into brokerage until the fourth (4<sup>th</sup>) business day from issuance of check. Salesperson will not be entitled to a refund of any kind once brokerage has begun the integration process.

### **4.20 Annual Membership Fee**

An annual fee of \$199 is assessed to each salesperson on January 1<sup>st</sup> of each calendar year to help offset costs associated with implementation and maintenance of company business tools. This fee will be prorated for those members who have been with the company for less than one year.

### **4.21 Recruitment**

The company would be delighted if you would invite other agents to join. As a way of thanking you for your efforts the company has come up with a recruitment compensation plan also referred to as revenue sharing. You can find the details of this plan in your Independent Contractor Agreement.



## 5. Handling Clients

### **5.1 Proprietary Information**

Treat all client information as confidential and proprietary. You have a fiduciary duty to your clients and must never use any information learned during the course of your representation of your clients in any manner adverse to their interests.

### **5.2 Fair Housing**

The company is committed to equal opportunity, fair housing and complying with all applicable local, state and federal fair housing laws. To that end, we do not discriminate on the basis of any arbitrary classification, including, but not limited to, the following: Race, Color, Religion, Sex, Handicap or Disability, Familial Status, National Origin, or Sexual Orientation.

### **5.3 Agency Relationships and Duties**

#### **A. Recognized Forms of Agency**

The company generally recognizes two forms of agency:

- Single Agency (Seller's Agent exclusively or Buyer's Agent exclusively)
- Dual Agency

If the company has the listing, we represent the seller only, unless you or another licensee working for the company also brings in the buyer, in which case the office represents both the buyer and seller and is a dual agent.

If the company is working with the buyer and does not have a listing agreement with the seller, we represent the buyer exclusively.

Remember, the agency relationship is created through the Broker. If you have listed the property and another salesperson from this company brings an offer from a buyer, a dual agency will be created.

#### **B. Duties and Standards of Conduct**

When you represent a principal in a transaction you have a fiduciary duty to that person. This means you have a duty of utmost care, integrity, honesty and loyalty in dealings with that principal. In addition, a listing agent owes the buyer, and a buyer's agent owes the seller the following duties:

- Honesty
- Good faith and fair dealing
- Disclosure of known facts materially affecting the value or desirability of the property that are not within the diligent attention or observation of the parties
- The exercise of reasonable skill and care in performance of your duties

### **C. Agency Disclosure Requirements**

You must provide a statutory disclosure form entitled “Disclosure Regarding Agency Relationships” (California Association of REALTORS® form AD or similar form) in every applicable transaction.

If you represent the seller, you must provide the disclosure form to the seller BEFORE entering into the listing agreement. Inform the seller of our policy regarding agency as set forth above. If you represent the buyer, the law requires that you must provide the buyer with an agency disclosure as soon as practicable BEFORE executing an offer to purchase. When you present an offer and this office is not the listing agent, you must also provide a new agency disclosure to the seller as soon as practicable BEFORE presenting an offer. Delivery of the disclosure to the listing agent is generally sufficient.

### **5.4 Taking Listings**

California law requires that a compensation agreement be in writing and signed by the party to be charged in order to be enforceable. If someone signs on behalf of another, you must have written evidence of the authority to act, such as a power of attorney or letter of administration. If the property is in escrow, make sure the listing does not expire before close of escrow. Get all modifications or extensions in writing. All listings are taken in the name of the company, which reserves the right to reassign the listing upon request of the seller, or if the listing has not been handled properly.

### **5.5 Negotiating Commissions**

The commissions paid by a principal are negotiable. It is our policy that any salesperson that takes a listing in the name of the company charge no less than two (2) percent for services to be rendered unless otherwise approved in advance by Broker. Without regard to allocation of fee for cooperating brokers the company earned dollar shall be equivalent to no less than two (2) percent of the homes final selling price. No sales activities are exempt from this rule, including but not limited to personal transactions. A salesperson shall never collect any advanced fees from a principal. All commissions earned on a transaction are to be made payable to the company and shall be distributed by a properly licensed escrow company upon closing. The company reserves the right to modify its policies regarding fees charged at any time.

### 5.6 Conducting Open Houses

Open houses are a great way to expose your listing for sale and to meet prospective buyers. Plan your open houses in advance. Be sure they are advertised. In order to assure a successful open house, follow these guidelines:

- Prepare and take sufficient property flyers and information about you and the company.
- Take a list of comparable sales and properties for sale in the immediate area of the open house.
- Suggest that the sellers not be present and that they lock away all valuables that could be targets for theft.
- Place your open house signage in strategic, but permissible, locations.
- Open the house, turn on the lights, and make the house look fresh and inviting.
- Have a sign-in sheet.
- Greet visitors in a friendly manner.
- Be aware of your personal safety. Let someone know where you are and have a plan if a visitor starts to make you feel uncomfortable or threatened.
- Accompany the visitors through the property, especially in furnished properties.
- When the open house is over, close up the home, making sure that all doors and windows are locked.

Never allow a salesperson from another brokerage to hold your listings open. This poses a huge liability risk for you and the company. Instead, allow one of your team members to hold your opens when you are not available to do so. In many cases a fellow team member would be happy to receive this opportunity and your clients may find value in this team approach to getting them the results they desire.

### 5.7 Showing Properties

Whenever possible, preview a property before showing it to prospective buyers. If you are familiar with the property you will be more effective when showing it to your client. Also, you may find that despite contrary representations, the property really is not suitable after all. Your time and your client's and the seller's time are valuable, don't waste it:

- Whenever possible, call the listing agent to alert the seller before showing.
- Give the seller reasonable time to make the property ready for you and your client.
- Listing agents should give the seller an estimated time frame within which you are expected to arrive. Be prompt. If you will be considerably late, call the seller.

- If you have not heard from the seller before arriving, or if you are using the lockbox, go to the door first without your client.
- If the seller is home, explain the situation and ask for access. Remember, be respectful.
- When using a lockbox, always ring the doorbell and/or knock loudly several times and allow time to respond.
- Enter the property first and verify no one is there.
- Open curtains and turn on lights as necessary.
- Allow sufficient time for your clients to view each room and the property. Be mindful to look for any potential “red flags” about the property (disclosure).
- Do not leave your clients unattended in or on the property. You don’t want to be blamed if any items are missing from the property later.
- When you are finished, leave your card inside the property in a conspicuous place, and return the property to its original state (turn off appropriate lights, reset any alarms and lock the doors).
- If for some reason you don’t show the property, call the listing agent as soon as possible to cancel.

### 5.8 Drafting and Negotiating Contracts

- A. When preparing an offer to purchase on a purchase agreement form, or completing an addendum or counter-offer form:
- Fill in all blanks or place a line through them.
  - Review any written sentences or paragraphs to see if they can be clearly understood by someone who is not familiar with the discussions you may have had with your client.
  - Review this document in light of all prior offer terms, addenda and/or counter-offers to make sure that there are no ambiguities or conflicts between the various terms.
  - Review the document to be sure it reflects your client’s wishes prior to asking them to sign.
- B. Remember, as a listing agent, you must present all offers to the seller, even if the property is in escrow, unless the seller has given you written instructions to the contrary. Upon receiving the offer, review it thoroughly for completeness, accuracy and clarity. Pay close attention to time limits set out in the offer, especially the time within which the seller must respond. Make an appointment as soon as possible to present the offer.

- C. As with all contracts, you must obtain all parties' signatures. If a party signs on behalf of another, you must have evidence of that person's authority to do so in writing. If you must present an offer missing a signature, you must disclose this fact to the seller or listing agent. Be sure to condition the offer on obtaining any missing signature(s).
- D. If your clients receive a counter-offer, be sure the terms are clear and complete. Be sure to review it against the original offer to purchase and all previous counter-offers. Act expeditiously to present the counter-offer for consideration, signature and timely delivery to the other agent.

## **5.9 Referral Fees**

The Real Estate Settlement Procedures Act (RESPA) prohibits the payment of cash or anything of value from one settlement provider to another settlement provider (real estate agent, lender, title company, etc.). Furthermore, it is a violation of our company policy, not to mention illegal; to pay fees of any kind to an un-licensed individual for real estate related activities or referrals. One exception is between real estate brokers for the referral of clients, in which case referral fees may be paid or received. Any arrangement for the payment of referral fees to or from another brokerage must be in writing.

## **6. Maintaining Files**

### **6.1 General**

Your files are a record of every event relative to your dealings with your client on a listing or sale transaction. You must retain copies of all listings, deposit receipts, cancelled checks, trust records, and other documents executed by you or obtained by you in connection with a real estate transaction, whether the sale is consummated or not. You must maintain a neat and orderly file on every listing and sale on which you work. All files are the property of the company and are to remain either in your possession or the company's possession until the file is closed. All closed files will be promptly returned to and remain with the company for storage. All files will be held in storage a minimum of three (3) years in accordance with real estate law after which time they may be destroyed in accordance with the company's document storage policy.

### **6.2 Broker Review**

You must submit all required documents to the Broker or his/her designee within 48-hours after receipt by you. The Broker will review the document for completeness and accuracy. Remember, your file must be thoroughly complete to receive compensation. For reference, a transaction check list can be found on the company website or a soft copy will be provided by Broker upon request.

### **6.3 File Requirements**

- A. Transaction file requirements are posted on the company website. For those with limited access to the website a soft copy of these requirements can be provided by Broker upon request.
- B. Be sure all documents contain signatures of all parties required to sign and that each document is dated correctly.
- C. If you are not sure how to maintain a proper file, get help from the company transaction coordinator.

### **6.4 Get It In Writing**

As a general rule, all agreements must be in writing. In fact, if you don't have a written agreement with the principal, you may not receive your commission. If you discuss anything with any party or another broker/agent, always confirm your discussions and understanding with a written follow-up to that party or broker/agent. Never sign anything on behalf of your client, another agent, broker or anyone else.

### **6.5 Do Not Use Outdated Forms**

Always use current forms. Keep your on-line forms database (such as WINForms®/zipForm®) up to date with the most current forms.

## **7. Personal Assistants**

### **7.1 General**

Generally, as your business increases, you may find hiring a personal assistant to be helpful. In hiring a personal assistant, you become an employer and have employer responsibility in that relationship. Interviewing, hiring and contracting with the assistant will be solely up to you. You agree that any assistant you hire will be required to abide by this policy manual. Any compensation due the assistant shall be arranged between you and your assistant, and will be your responsibility.

### **7.2 Unlicensed Assistant**

An unlicensed personal assistant may not engage in any activity which requires a real estate license. The company shall never be obligated to pay your personal assistant.

### **7.3 Salesperson – Personal Assistant Contract**

You are required to have a written agreement with your personal assistant that expresses the nature of the relationship and each party's duties and responsibilities.

#### **7.4 Workers Compensation**

No Workers Compensation insurance is provided by the company for assistants hired by agents. Agents who hire assistants shall be responsible for providing Workers Compensation insurance for those assistants where required. Agents should discuss this situation with a Workers Compensation insurance representative, and/or check out the State of California Division of Workers Compensation website at <http://www.dir.ca.gov/dwc/>.

## **8. Advertising Guidelines**

#### **8.1 General**

All advertising must be approved by the company before your placement or use. Anytime you advertise property you must include the term “broker”, “agent”, “licensee” or “REALTOR®”.

#### **8.2 Legal and Ethical Considerations**

As an associate and licensee, you have both a legal and ethical obligation to be truthful when advertising property or services. All advertising must comply with all state and federal advertising requirements as well as the NAR Code of Ethics. Any false or misleading advertisement will immediately be withdrawn by the company. Legally, you may be held liable for fraud, intentional misrepresentation, or negligent misrepresentation if you make material false statements or material omissions in an advertisement. Additionally, you may face disciplinary action from the Department of Real Estate.

#### **8.3 Company Name and Logos**

The company’s name and/or logo must be included in all advertisings and conform to the company’s graphic standards regarding the style, color and uses of the name and logo. These standards will be provided by the Broker upon request.

#### **8.4 REALTOR® Trademark**

The use of the name REALTOR® must be used in compliance with the National Association of REALTORS® guidelines governing the use of that name and mark. Those guidelines are available on-line at: [www.realtor.org](http://www.realtor.org).

#### **8.5 Telephone: Do-Not-Call Compliance**

You are required to comply with the do-not-call laws which generally prohibit “telephone solicitations” to residential and cell phone numbers registered on the National Do-Not-Call Registry.

- A. You may not call anyone at their home or cell phone number if listed on that registry unless and exemption applies. Exemptions include written permission or an established business relationship in the past 18 month period.
- B. Cold Calling: You are encouraged to explore cold calling as a method of business promotion, but you must comply with the do-not-call rules, as well as other cold calling requirements as follows:
- You may not call a residence before 8:00 AM or after 9:00 PM.
  - You must provide the called party with your identity and telephone number where you may be contacted.
  - You may not call any emergency lines, health care facilities, radio common carrier services (cellular or paging services) or any service for which the called party will be charged for the call.
- C. It is your responsibility to adhere to this policy and will be solely responsible for any violation, including any fines, penalties, damages recovered, settlements or attorney's fees and costs.

### **8.6 Fax Advertising**

There are state and federal laws prohibiting faxing to recipients with unsolicited commercial advertisements or solicitations. Exemptions include prior permission or an established business relationship.

### **8.7 Fair Housing**

The company is committed to equal opportunity and fair housing in all of its advertising. Be aware that the selective use of words, phrases, symbols, visual aids and media in the advertising of real estate may indicate preferences held by the advertiser and lead to allegations of discriminatory housing practices. Words in a real estate advertisement which indicate a particular race, color, sex, handicap, familial status or national origin are considered likely violations of the Federal Fair Housing Act and may not be used in company advertisements.

## **9. Policy Against Harassment**

### **9.1 Company Policy**

It is the policy of the company that its employees, associates and visitors be free of harassment. Harassment is damaging to morale, serves no legitimate business purpose, is unlawful, and exposes the company and the individuals involved to significant legal liability.



## **9.2 Enforcement**

If you believe that you have been harassed, please bring the problem to the attention of the Broker. You do not have to put your complaint in writing, but it is helpful to provide details about dates, times, places, and witnesses to the harassment. All complaints will be investigated promptly by designated company management. If your complaint of harassment is found to be totally and completely without basis, appropriate measures may be taken against you.

# **10. Litigation and Claims Handling**

## **10.1 General**

You are required to:

- A. Promptly notify your Broker of any claim or potential claim made against you and/or the company, including any demand received by you for money or services alleging a negligent act or omission; any notification of the commencement of a lawsuit, arbitration or mediation process; or any written or verbal notice or threat that anyone intends to hold you and/or the company responsible for any alleged wrongdoing.
- B. Cooperate with the company in the defense of a claim.
- C. Promptly pay to the company any amounts due hereunder upon notice to you from the company.

## **10.2 Legal Defense**

- A. When a claim or demand is made, or a lawsuit or other action is filed, against either you or the company by a third party which alleges any breach of any duty, error or omission, or negligence in the performance of "Professional Services", as that term is defined in the company's Errors & Omissions Policy of Insurance, for activities covered by the insurance policy, then the company shall defend the claim, and the cost of such defense shall be allocated as set forth herein.
- B. The company has the right to make all decisions concerning the defense of the claim, including choice of counsel. In the event you object to any decision made by the company, you may obtain your own attorney at your own expense; however, you shall not be relieved from the obligation to pay your portion of the cost of the claim as set forth herein.

**10.3 Allocation of Costs of Defense**

- A. Except as provided below, the cost of defense of the claim, or to defend or protect against any potential or possible claim where the company or you are not involved as a party, including attorney's fees, and the cost of any settlement or a judgment (collectively the "Costs of Defense"), shall be allocated between the company and you in the same percentages as per your Independent Contractor Agreement or prospective transaction that led to the claim, whether or not the transaction actually closed.
- B. You shall be responsible for all costs of a claim if you fail to follow any law, regulation or company policy as set forth in this policy manual, and that failure results in a judgment or other final adjudication based on that failure.
- C. You shall be solely responsible, and shall reimburse the company, for all of the company's costs of defense if a judgment or other final adjudication on any claims adverse to the company and/or you:
- Establishes that dishonest, fraudulent, criminal, or malicious acts, errors or omissions were committed; or,
  - Results in a finding of intentional tort, slander, defamation or any conduct which leads to the imposition of punitive, exemplary or multiple damages, or fines or penalties; or,
  - Establishes discrimination on the basis of race, color, religion, ethnic background, national origin, age, sex, handicap, familial status, physical disability, sexual preference, or any other unlawful classification; or,
  - Results in a finding of pollution or any wrongful act in connection with any such pollution, including the discharge release or escape of any hazardous materials as defined in the insurance policy; or,
  - Result in a finding of any liability for claims for damage to property or death or injury to persons arising out of use, removal or exposure to goods or products, in any form, composed in whole or in part of lead, asbestos or asbestos related materials.

**10.4 Disputes During Escrow**

If a dispute arises during an escrow between seller, buyer, the cooperating broker and/or the company:

- A. Which cannot be resolved by negotiations between the parties and the agent(s) involved; and,

- B. The company determines that it is in the best interest of the company to resolve the matter during escrow rather than risk a potential claim or litigation after close of escrow; then company Broker has the right to negotiate a resolution of the dispute which may involve a reduction in the commission to be received, or a credit given to one of the parties. In that event, and regardless of actual company or agent liability or responsibility in the dispute, the agent(s) and the company will participate in the commission reduction or credit pro rata.

### **10.5 Agent-Owned Property**

Any property in which you have, or will acquire, an ownership, financial or other legal or other interest, is "Agent-Owned Property". The company's E&O insurance policy governs coverage of the sale or purchase of any Agent-Owned Property. In any sale or purchase of Agent-Owned Property not covered by the E&O insurance policy, you shall be solely responsible for costs of defense, settlement or judgment on any claim, suit or action of any nature arising therefore.

In the event you are selling or purchasing Agent-Owned Property, you must:

- A. Notify the Broker in advance;
- B. Obtain, in advance, your Broker's approval of all marketing material and disclosure documents; any purchase contract provisions prior to their execution; and any correspondence or other writings that pertain to the purchase or sale;
- C. Not representing buyers or prospective buyers in the sale of Agent's Property;
- D. Notify the Broker immediately in the event that any of the company's agent's writes an offer on your property.

## **11. Dispute Resolution**

### **11.1 Intra-Office Dispute Resolution**

All disputes involving you and another associate of the company will be promptly reported to the Broker. The Broker, or designated members of the management team, will attempt to resolve the dispute through informal mediation in which all affected salespersons are expected to participate. You agree that all disputes involving another associate that cannot be resolved by the company, and disputes involving the company, will be resolved by binding arbitration with the local Association of REALTORS® in accordance with the bylaws and rules that are in effect.

### **11.2 Third Party Disputes**

You are required to immediately notify your Broker of any dispute or claim involving you, another associate of this office, the office itself, the company, and a third party, including brokers and associates of other brokerages.

The company will make all reasonable efforts to resolve the dispute informally. Any such resolution will be binding on the agents involved in the dispute or claim.

## **12. Termination**

### **12.1 Grounds for Termination**

Your association with the company can be terminated by either party, with or without cause, at any time.

### **12.2 Associate's Compensation on Termination**

If association with the company is terminated while you have any listings or pending transactions that require further work normally rendered by you, the Broker will make arrangements with another salesperson or salespersons in the company to perform the required work. The licensee performing the work shall be reasonably compensated for completing work on those listings or transactions, and such reasonable compensation shall be deducted from your share of the compensation. Except for such offset, you shall receive the compensation due as specified in the Independent Contractor Agreement.

A salesperson who is receiving revenue sharing ("recruitment") benefits under his or her compensation plan will not be eligible for future payments upon termination.

### **12.3 Listings**

Listings are the property of the company, even upon your termination. Within 24-hours after notice of termination by either party, you must provide your Broker with a list of all active listings taken by you, and all pending transactions in which, if completed, you will be entitled to compensation from the company in accordance with the terms of your Independent Contractor Agreement, or other written agreement.

## **13. Legacy Benefits**

### **13.1 General**

Legacy Benefits are described as the qualified benefit that an eligible salesperson is to receive from their recruitment and production activities as set forth in the terms of the Independent Contractor Agreement. \*Legacy Benefits are not offered on all compensation plans.

### **13.2 Exclusion**

Under no circumstances will a former associate be paid future legacy benefits following termination.

### 13.3 Assignment

The company offers those associate's who have qualified under the terms of the Independent Contractor Agreement the opportunity to pre-assign future benefits earned under the revenue sharing ("recruitment") program. The following requirements must be met as a condition of this provision:

- Assignment of benefit can only occur upon the death of the qualified associate;
- Upon qualification of benefit associate must complete an "Assignment of Benefits" form with the company and submit it to the Broker for review and acceptance;
- Individuals that have been assigned this benefit ("assignee") must have a current real estate salesperson or real estate broker license in good standing with the California Department of Real Estate;
- Assignee will be required to file their real estate license with the company as an associate and keep current on any fee schedule due as such.
- The eligible assignee must be no less than eighteen (18) years of age;
- The qualified associate assigning benefits must be current on Annual Membership Fees;
- No benefit will be paid to any assignee until their real estate license has been filed with the company;
- Assignee must have no prior felony convictions and must not be employed or contracted to perform work for any other organization in which a license to sell real estate is required;
- Assignee is not eligible if they are performing work for a company who originates loans on real estate;

The company shall reserve the right to modify this policy at any time. Any modifications shall be expressed in writing and posted on the company website.