

## CHAPTER 28 - REAL ESTATE BROKERS AND SALESMEN

### ARTICLE 1 - GENERAL LICENSING PROVISIONS

33-28-101. Short title; license required.

This act [ 33-28-101 through 33-28-206] shall be known and may be cited as the "Real Estate License Act of 1971". From and after the effective date of this act it is unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker, associate broker or a real estate salesman within this state without first obtaining a license as a broker, associate broker or salesman, as provided in this act.

33-28-102. Definitions.

(a) As used in this act:

(i) "Associate broker" means an individual who has a broker's license and who is employed by another broker, or is associated with another broker as an independent contractor and participates in any activity described in subsection (a)(iii) of this section;

(ii) "Branch office" means a real estate broker's office other than his principal place of business;

(iii) "Broker" means an individual, other than a salesman, or associate broker who, for another and for compensation:

(A) Sells, exchanges, purchases, rents, manages or leases real estate;

(B) Offers to sell, exchange, purchase, rent, manage or lease real estate;

(C) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;

(D) Lists, offers, attempts or agrees to list real estate for sale, lease or exchange;

(E) Auctions, offers, attempts or agrees to auction real estate;

(F) Collects, offers, attempts or agrees to collect rent for the use of real estate;

(G) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate;

(H) Engages in the business of charging an advance fee in connection with any contract he undertakes to promote the sale or lease of real estate either through its listing in a publication issued for that purpose or for referral of information concerning the real estate to brokers, or both;

(J) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon;

(K) Assists or directs in the procuring of prospects calculated to result in the sale, exchange, lease or rental of real estate; or

(M) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, lease or rental of real estate.

(iv) "Commission" means the Wyoming real estate commission;

(v) Repealed by Laws 1983, ch. 156, 3.

(vi) Repealed by Laws 1983, ch. 156, 3.

(vii) "Degree in real estate" means a degree from an accredited degree granting college or university, including a junior or community college, with a business degree and a major course of study in real estate. A business degree shall include successful completion of four (4) core courses of real estate principles and practices, real estate law, real estate appraisal and real estate finance, plus at least two (2) additional real estate related courses. These courses shall total at least eighteen (18) or more semester hours or twenty-seven (27) quarter hours;

(viii) "License" means the document issued by the commission certifying that the person named thereon has fulfilled all requirements prerequisite to licensure under this act;

(ix) "Licensee" means any individual who holds the designation of broker, associate broker or salesman;

(x) "Offer" means and includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

(xi) "Office" means a real estate broker's place of business where records are maintained and licenses displayed;

(xii) "Person" means individuals, corporations, partnerships or associations, foreign and domestic;

(xiii) "Property manager" means one who for a commission manages real estate, including collection of rents, maintenance for the property and accounting of fees received for another;

(xiv) "Real estate" means leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere but shall not apply to nor include mineral lands, rights or leases;

(xv) "Regular employee" means one who is employed on a salaried basis by the owner of real estate whose duties are performed in the ordinary course of the business or the management or operation of its investments;

(xvi) "Salesman" means any person associated or engaged under contract by or on behalf of a licensed broker to participate in any activity included in W.S. 33-28-102(a)(iii) for compensation or otherwise;

(xvii) "Time share" means any arrangement, whether by membership agreement, lease, rental agreement, license, use agreement or other means, whereby the purchaser receives a right to use or a freehold interest in accommodations or facilities or both, in property for a specific period of time during any given year, but not necessarily for consecutive years, and which extends for a period of more than one (1) year;

(xviii) "This act" means W.S. 33-28-101 through 33-28-206.

33-28-103. Exemptions.

(a) The provisions of this act [ 33-28-101 through 33-28-206] shall not apply to:

(i) An owner of real estate or to a member of his immediate family or to his regular employees with respect to property owned by him;

(ii) An attorney in fact under a duly executed and recorded power of attorney to convey real estate from the owner or lessor, or the services rendered by an attorney-at-law in the performance of his duties as an attorney;

(iii) Any individual acting as receiver, trustee in bankruptcy, administrator, executor, or guardian, or while acting under a court order or under the authority of a will or of a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency;

(iv) Any officer or employee of a federal agency in the conduct of his official duties;

(v) Any officer or employee of the state government or any political subdivision thereof performing his official duties;

(vi) Any person or employee acting as the resident manager for the owner or an employee acting as the resident manager for a broker managing an apartment building, duplex, apartment complex or court, when the resident manager resides on the premises and is engaged in the leasing of property in connection with his employment; or

(vii) A home owner's association formed and acting pursuant to its declaration and bylaws or a resort association formed and acting pursuant to its association agreement and bylaws.

33-28-104. Acts constituting person broker, associate broker or salesman.

Any person who, for another, with the intention or upon the promise of receiving any valuable consideration offers, attempts or agrees to perform, or performs any single act defined in W.S. 33-28-102(a)(iii), whether as a part of a transaction or as the entire transaction shall be deemed to be acting as a broker, associate broker or salesman within the meaning of this act [ 33-28-101 through 33-28-206].

33-28-105. Creation of commission; membership; terms; removal; chairman; powers and duties; director and duties thereof; other employees; compensation; disposition of fees.

(a) The Wyoming real estate commission is created to consist of five (5) commissioners, each of whom shall be a citizen of Wyoming, appointed by the governor with the advice and consent of the senate. Not less than three (3) or more than four (4) of the membership shall have been engaged in business as an active salesperson or broker in Wyoming for at least five (5) years immediately preceding appointment. No more than one (1) commissioner shall be appointed from the same county. The term of the members of the commission shall be for three (3) years and until their successors are appointed and qualified. Members appointed to fill vacancies shall be appointed in accordance with W.S. 28-12-101, and no member shall be appointed to succeed himself for more than one (1) full term. The governor may remove any commission member as provided in W.S. 9-1-202. The commission at its first meeting held after September 1 of each year shall select a chairman to serve for the following year. The commission has the power to regulate the issuance of licenses, to revoke or suspend licenses issued under this act [ 33-28-101 through 33-28-206], to censure licensees and may do all things necessary and proper to carry out the provisions of this act. The commission may, from time to time, promulgate and amend necessary and reasonable rules and regulations for these purposes. Effective July 1, 1979, appointments and terms shall be in accordance with W.S. 28-12-101 through 28-12-103.

(b) Repealed by Laws 1983, ch. 156, 3.

(c) The commission shall employ a director. The director is subject to the rules and regulations of the human resources division of the department of administration and information. The director's salary shall be paid from the real estate board account

specified in subsection (g) of this section. The duties of the director shall include the following:

- (i) Maintain and operate a suitable office for the commission;
- (ii) Keep books, records and accounts of all activities of the commission;
- (iii) Issue real estate broker and salesman licenses;
- (iv) Make investigations of complaints and possible violations of the real estate laws and practices of licensees and to furnish information and recommendations to the commission for their action;
- (v) Assist the commission with examinations to be given applicants for real estate broker and salesman licenses, and to conduct the examinations at the direction of the commission;
- (vi) Assist the commission in holding educational clinics or meetings when deemed advisable with the aim of promoting higher standards of practice in the real estate profession;
- (vii) Assist the commission in promulgating rules in compliance with the Wyoming Administrative Procedure Act [ 16-3-101 through 16-3-115], for the operation of the commission and the implementation of this law; and
- (viii) Perform other duties as the commission prescribes.

(d) The commission shall employ other employees to assist in the discharge of the duties imposed upon it by this act and shall prescribe the duties and fix the compensation of its employees, subject to the rules and regulations of the human resources division of the department of administration and information. The office of the commission shall be maintained in Cheyenne and all files, records and property of the commission shall at all times remain in the Cheyenne office. No employee of the commission may be a paid employee of any real estate association or group of real estate dealers or brokers.

(e) Each member of the commission shall receive as compensation from the real estate board account for each day actually spent on his official duties, twenty dollars (\$20.00) and per diem and mileage allowance as allowed to state employees for the performance of official duties.

(f) The commission shall adopt a seal, including the words "Wyoming Real Estate Commission, Office of the Commission" by which the acts of the commission shall be authenticated. Copies of all records and papers in the office of the commission, certified by the signature of the director and the seal of the commission, shall be received in evidence in all cases equally and with like effect as the originals. The presence of three (3) members of the commission shall constitute a quorum. In the absence of the chairman, the member of the commission present who is senior in time of service shall serve as presiding officer. The action of the majority of the members of the commission shall be deemed the action of the commission.

(g) All fees collected by the commission shall be deposited in the state treasury. The state treasurer shall deposit the fees to the credit of the real estate board account. Disbursements from the account shall not exceed the monies credited to it.

33-28-106. Application for license; qualifications; sworn statement; commission approval of course of study; statement of broker; denial of license; license and pocket card.

(a) Any person desiring to act as a real estate broker, associate broker or real estate salesman shall file an application for a license with the commission. The application shall be in the form and detail as the commission shall prescribe.



(b) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of a broker, associate broker or salesman in a manner which will safeguard the interests of the public, and only after satisfactory proof of the applicant's qualifications has been presented to the commission.

(c) Each applicant for a broker's license shall:

(i) Have reached the age of majority;

(ii) Have first served actively for two (2) years as a real estate salesman or shall furnish to the commission proof indicating that the applicant holds a degree in real estate from an accredited university or college; and

(iii) Submit other evidence through the application or otherwise, as the commission deems desirable with due regard to the paramount interests of the public, as to the honesty, truthfulness, integrity and competency of the applicant.

(d) Every officer of a corporation acting as a broker for the corporation and every member of an association or partnership acting as a broker for that association or partnership who engages in the real estate business shall obtain a broker's license.

(e) Every applicant for a broker's license shall furnish a sworn statement setting forth:

(i) The name of the person, firm, partnership, association or corporation with which he will be associated in the business of real estate;

(ii) The location of the place or places for which the license is desired;

(iii) The period of time, if any, which the applicant has been engaged in the real estate business;

(iv) His present address, both of business and residence;

(v) Repealed By Laws 2005, ch. 96, 2.

(vi) A statement that the applicant has or has not been refused a real estate license in this or any other state;

(vii) A statement that the applicant's real estate license has or has not been revoked in this or any other state;

(viii) Evidence that the applicant has completed not less than sixty (60) class hours in a course of study approved by the commission, given by instructors approved by the commission and has satisfactorily passed an examination covering material taught in each course. The commission shall:

(A) Approve courses that cover real estate principles, real estate law, real estate finance and related topics;

(B) Promulgate rules and regulations to provide a process for challenging a course in lieu of evidence of completion of class hours;

(C) Publish a list of approved real estate courses and keep the list updated annually;

(D) On request, evaluate a specific course or courses which are not on the approved list and approve or disapprove the course.

(f) Each applicant for a salesman's license shall have reached the age of majority. The application for a salesman's license shall be accompanied by a written statement by the broker in whose service the applicant is about to enter stating:

(i) The name and place of business of the broker making the statement;

(ii) In his opinion the applicant is honest, truthful and recommends the license be granted to the applicant;

(iii) The broker will actively supervise and train the applicant during the period the requested license remains in effect;

(iv) The period of time, if any, during which the applicant has been engaged in the real estate business;

(v) The name and address of the applicant's last employer;

(vi) The applicant has completed not less than thirty (30) class hours in a course of study approved by the commission, given by instructors approved by the commission and has satisfactorily passed an examination covering material taught in each course. The commission shall:

(A) Approve courses that cover estate principles, real estate law, real estate finance and related topics;

(B) Promulgate rules and regulations to provide a process for challenging a course in lieu of evidence of completion of class hours;

(C) Publish a list of approved real estate courses and keep the list updated annually;

(D) On request, evaluate a specific course or courses which are not on the approved list and approve or disapprove the course.

(vii) Other information as the board may require that relates specifically to real estate transactions.

(g) The commission may consider prior revocation, conduct or conviction in its determination of whether to grant the applicant a license if the applicant:

(i) Has had his real estate license revoked on a prior occasion;

(ii) Is found to have committed any of the practices enumerated in W.S. 33-28-111 during the term of his prior licensure; or

(iii) Has been convicted of any felony.

(h) The commission shall take into account the nature of the offense, any aggravating or extenuating circumstances, the time elapsed since the revocation, conduct or conviction, the rehabilitation or restitution performed by the applicant and other factors as the commission deems relevant.

(j) The commission may deny a license to any person who has been determined by the commission after hearing to have engaged in a licensed real estate activity without a license.

(k) The commission shall issue to each broker and to each salesman licensee a license and pocket card in a form and size as the commission shall prescribe.

(m) A false statement of material fact made in an application shall in itself be sufficient grounds for the refusal of a license.

#### 33-28-107. Examinations; salesmen's and brokers' licenses.

(a) In addition to proof of honesty, trustworthiness and good reputation, each applicant desiring to become licensed as a real estate broker or a real estate salesman shall execute and file an application for examination upon a form prescribed by the commission and shall pass a written examination prepared by or under the supervision of the commission. The examination shall be given at times and at places within the state as the commission shall prescribe. The examination for a salesman's license shall include business ethics, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage, and the provisions of this act [ 33-28-101 through 33-28-206]. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license.

(b) No applicant shall engage in the real estate business either as a broker or salesman until he has satisfactorily passed the examination, complied with the other requirements of this act [ 33-28-101 through 33-28-206] and until a license has been issued to him.

(c) Repealed by Laws 1983, ch. 156, 3.

#### 33-28-108. Fees.

Pursuant to W.S. 33-1-201, the commission shall establish fees for examinations, original licenses, renewals, certifications, change of place of business, transfers, duplicate licenses

and duplicate pocket cards. The fees shall be used to pay the expense of maintaining and operating the office of the commission and the enforcement of this act.

33-28-109. Broker to maintain fixed office; display of licenses; change of address; branch offices; restrictions on associate brokers and salesmen.

(a) Each resident licensed broker shall maintain a fixed office within this state. The original license as broker and the original license of each salesman associated with or under contract to the broker shall be prominently displayed in the office. The address of the office shall be designated in the broker's license and no license issued under this act [ 33-28-101 through 33-28-206] shall authorize the licensee to transact real estate business at any other address except a licensed branch office. In case of removal from the designated address, the licensee shall make application to the commission before the removal or within ten (10) days thereafter, designating the new location of his office and paying the required fee, whereupon the commission shall issue a license for the new location for the unexpired period if the new location complies with the terms of this act.

(b) If a broker maintains more than one (1) place of business within the state a branch office license shall be issued to the broker for each branch office so maintained by him and the branch office license shall be displayed conspicuously in each branch office. Every branch office shall be under the direction and supervision of a licensed broker. A broker requesting a branch office license shall also, in addition to the branch office application, submit a plan of supervision for the branch office.

(c) An associate broker or salesman shall not be associated or engaged under contract to any other broker than is designated upon the license issued to the associate broker or salesman. Upon termination of an associate broker's or salesman's association or contractual relationship, he shall surrender his pocket card to his broker who shall return his license and pocket card to the commission for cancellation. Whenever a licensed associate broker or salesman desires to change his broker or contractual relationship from one licensed broker to another, he shall notify the commission promptly in writing of the facts attendant thereon and pay the required fee. The commission shall issue a new license and pocket card. No associate broker or salesman shall directly or indirectly associate himself with a broker until he has been issued a license to do so with that broker.

(d) No more than one (1) license shall be issued to any salesman to be in effect at one (1) time.

33-28-110. Unlawful to compensate unlicensed person; licensing of nonresidents; service of process on nonresidents.

(a) It is unlawful for any licensed broker to compensate any person who is not a licensed broker, associate broker or salesman for performing any of the acts regulated by this act [ 33-28-101 through 33-28-206]; provided, however, that a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker does not conduct in this state any of the negotiations for which a commission is paid.

(b) A nonresident may be issued a nonresident Wyoming broker's license if:

(i) The individual is a licensed broker in his home state;

(ii) The individual is actively engaged in the real estate business and maintains a place of business in his home state;

(iii) The individual meets all the other requirements of this act; and

(iv) The individual's home state has entered into a reciprocal agreement with the commission relating to the issuance of reciprocal licenses.

(c) A nonresident broker's license may be issued without examination to a real estate broker licensed under the laws of another state if:

(i) The individual is the holder of a broker's license in his home state;

(ii) The standards for registration as a real estate broker in his home state are substantially equivalent to the minimum standards in this state; and

(iii) The broker furnishes the commission a statement under seal of the commission of his home state evidencing that he is an active licensed broker in good standing and has no complaints pending against him in his home state.

(d) A nonresident salesman employed by or associated with a broker holding a nonresident broker's license may be issued a nonresident salesman's license under the nonresident broker if he submits to the commission a statement under the seal of the commission of the state in which he is licensed evidencing that he is an active licensed salesman in good standing and with no complaints pending against him in his home state.

(e) Repealed By Laws 2007, Ch. 171, 2.

(f) Prior to being issued a license, every nonresident broker shall file with the commission a designation in writing which appoints the director of the commission to act as his licensed agent upon whom all judicial and other process or legal notices directed to the licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of the appointment, certified by the director of the commission, shall be received in evidence in any proceeding and shall be given the same force and effect as the original. In the written designation the licensee shall agree that any lawful process against the licensee which is served upon his appointed agent shall be of the same legal force and validity as if served upon the licensee, and that the authority of the agent shall continue in force so long as any liability of the licensee remains outstanding in this state. Upon the receipt of any process or notice, the director shall mail a copy of the same by certified mail, return receipt requested, to the last known business address of the licensee.

(g) No license shall be issued to a nonresident broker until he has agreed in writing to abide by all the provisions of this act with respect to his real estate activities within this state and to submit to the jurisdiction of the commission and this state as provided in



subsection (f) of this section. The agreement shall be filed with the commission and shall remain in force for so long as the nonresident broker is licensed by this state and thereafter with respect to acts or omissions committed while licensed in this state as a nonresident broker.

(h) Prior to the issuance of any license to any nonresident, he shall file with the commission a certified copy of any certificate issued to him authorizing him to conduct real estate business in any other state, and pay to the commission the same license fee as provided in W.S. 33-28-108 for the obtaining of a broker's or salesman's license in this state.

(j) Nonresident licenses granted under reciprocal agreements as provided in this section shall remain in force, unless suspended or revoked by the commission for just cause or for failure to pay the required renewal fee, only as long as a reciprocal agreement is in effect between this state and the resident state of the nonresident licensee.

33-28-111. Censure of licensee and suspension or revocation of license; grounds.

(a) The commission shall upon a written sworn complaint or may upon its own motion investigate the actions of any broker, associate broker or salesman, impose an administrative fine not to exceed two thousand five hundred dollars (\$2,500.00) for each separate offense and may censure the licensee, place the licensee on probation and set the terms of probation, suspend or revoke any license issued under this act and impose an administrative fine for any of the following:

(i) Making any substantial misrepresentation, false promises or false or fraudulent representation;

(ii) Violation of any rule of the commission;

(iii) Failing to disclose an interest in the transaction;

(iv) Soliciting the breach of a listing or a property management contract;

(v) Negotiating a sale, exchange or lease of real estate directly with an owner or lessor if the licensee knows the owner has a written outstanding contract in connection with the property granting an exclusive right to sell to another broker;

(vi) Intentionally using advertising which:

(A) Is misleading or is inaccurate in any material matter; or

(B) Uses a trade name, collective membership mark, service mark or logo name, mark or logo without authorization owned by another person unless authorized to do so.

(vii) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his authorized agent;

(viii) Offering real estate for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(ix) If a broker, failing to supervise the activities of his associate broker or salesman;

(x) Failing to advise the buyer and seller of all terms of the proposed sale at the time an offer is presented including estimated discounts and closing costs;

(xi) Unreasonably failing upon demand to surrender to the rightful owner, any document or instrument in his possession;

(xii) Unreasonably failing to produce documents of record in his possession or under his control concerning any real estate transaction under investigation by the commission;

(xiii) Failing to submit all offers in writing to a seller, if received prior to the written acceptance of any offer;

(xiv) Commingling the money or other property of the licensee's principals with his own;

(xv) Accepting, giving or charging an undisclosed commission, rebate or direct profit on expenditures made for a principal;

(xvi) Engaging in activity as an associate broker or salesman involving the representing or attempt to represent a real estate broker other than his licensed broker;

(xvii) Accepting a commission or other valuable consideration by an associate broker or salesman from anyone other than his employing broker;

(xviii) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom the licensee acts;

(xix) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;

(xx) Failing to obtain written listing agreements identifying the property and containing all terms and conditions under which the property is to be sold including the price, the

commission to be paid, the signatures of all parties concerned and a definite expiration date;

(xxi) Failing to deliver within a reasonable time a completed copy of any document to all parties;

(xxii) Conviction of a felony;

(xxiii) Compensating any unlicensed person for performing the services of a broker, associate broker or salesman;

(xxiv) Failing to specify he is being compensated by more than one (1) party and failing to notify all parties involved;

(xxv) Failing to account for any monies or property entrusted to licensee;

(xxvi) Failing to keep the funds of others in an escrow or trust account;

(xxvii) Failing to deposit all financial instruments in an escrow or trustee account within one (1) banking day in a financial institution in this state;

(xxviii) Failing upon consummation or termination of the transaction to give a full accounting of the monies and property placed in escrow or trust showing dates of deposit, management and withdrawals;

(xxix) If a broker:

(A) Failing to deliver to the seller in every real estate transaction at the time the transaction is closed a complete, detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller unless a clear and accurate accounting is furnished by an escrow agent;

(B) Failing to deliver to the buyer a complete statement showing all money received in every real estate transaction from the buyer and how and for what the same was disbursed unless a clear and accurate accounting is furnished by an escrow agent; and

(C) Failing to retain true copies of statements required by this paragraph in his files.

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

(xxxi) Accepting other than cash as earnest money unless:

(A) The fact is communicated to the owner prior to the owner's acceptance of the offer to purchase; and

(B) The fact is shown in the earnest money receipt.

(xxxii) Refusing to appear or testify under oath at any hearing held by the commission;

(xxxiii) Receiving more than three (3) censures from the commission within a two (2) year period.

(b) Upon receipt from the department of family services of a certified copy of an order from a court to withhold, suspend or otherwise restrict a license issued by the commission, the commission shall notify the party named in the court order of the withholding, suspension or restriction of the license in accordance with the terms of the court order. No appeal under the Wyoming Administrative Procedure Act shall be allowed for a license withheld, suspended or restricted under this subsection.

(c) All administrative fines collected under this section shall be paid to the state treasurer to be credited to the public school fund of the county in which the violation occurred.

33-28-112. Enjoining violations of chapter; penalties for violation of injunction.

(a) Any person who violates or proposes to violate any provisions of this act [ 33-28-101 through 33-28-206], or any rules and regulations promulgated under this act, may be restrained or enjoined from the action at any time by an order issued by the district court. An action may be initiated by the attorney general or the district attorney for the county in which the violation has or is about to occur.

(b) Any defendant so enjoined who violates an injunction shall be punished for contempt of court by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for not more than six (6) months or both.

(c) Repealed by Laws 1983, ch. 156, 3.

33-28-113. Contested cases; independent hearing officers; appeals.

(a) The commission may contract with independent hearing officers to hear all contested cases arising under this act [ 33-28-101 through 33-28-206]. The hearing officer shall not

be an employee of the office of the attorney general, or an employee or member of the commission.

(b) All hearings shall be conducted pursuant to the Wyoming Administrative Procedure Act [ 16-3-101 through 16-3-115]. A hearing officer has the power specified in W.S. 16-3-112(b). The hearing officer shall make in each contested case and forward to the commission written findings of fact and conclusions of law.

(c) Any judicial review of the administrative decision under the Administrative Procedure Act may be in the district court in the county where the violation allegedly occurred.

(d) Repealed by Laws 1983, ch. 156, 3.

33-28-114. Conducting business without license prohibited; penalties; civil liability.

(a) Any person acting as a broker, associate broker or salesman without first obtaining a license is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a term not to exceed six (6) months. Upon conviction of a subsequent violation the person shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a term not to exceed one (1) year or both. If a corporation is convicted it shall be punished by a fine of not more than five thousand dollars (\$5,000.00).

(b) If any person receives any money or the equivalent thereof as a fee, commission, compensation or profit by or in consequence of a violation of any provision of this act [ 33-28-101 through 33-28-206], he shall, in addition, be liable to a penalty of not less than the amount of the sum of money so received and not more than three (3) times the sum so received as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by any person aggrieved.

33-28-115. Unlicensed person may not maintain action for fee.

No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered, which is prohibited under this act [ 33-28-101 through 33-28-206] to other than licensed brokers, licensed associate brokers or licensed salesmen unless the person was licensed under this act at the time of offering to perform any act or service or procuring any promise to contract for the payment of compensation for any contemplated act or service.

33-28-116. Real estate institutes and seminars; assistance in sponsoring studies and programs.

(a) The commission may conduct or assist in conducting real estate institutes and seminars and incur and pay the necessary expenses in connection therewith. The institutes or seminars shall be open to all licensees and the public.

(b) The commission is authorized to assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

33-28-117. Directory of licensees.

The commission shall annually publish a directory of licensees, including a list of licenses suspended and revoked which shall contain other data as the commission may determine to be in the interest of real estate licensees and the public. The lists shall be distributed to all licensed brokers without charge.

33-28-118. License renewals; continuing education; payment of fees; effect of failure to renew; inactive status.



(a) Licenses issued under this act may be renewed for successive three (3) year periods. Application for renewal of any license issued prior to this act shall be made before December 31, 1983. Thereafter the application shall be made before December 31 of the third year of the license period. The commission may establish a grace period for license renewal not to exceed sixty (60) days. The commission may establish a late fee for license renewal not to exceed seventy-five dollars (\$75.00).

(b) Effective December 31, 1983, the commission may adopt rules and regulations providing for mandatory continuing education allocable over each three (3) year period not to exceed sixty (60) hours.

(c) Failure to remit renewal fees when due shall automatically cancel a license, but otherwise the license shall remain in full force and effect continuously from the date of issuance, unless suspended or revoked by the commission for just cause. Presentation of a check to the commission as a fee for either an original or renewal license or for examination for license, which is returned to the state treasurer unpaid, is cause for revocation or denial of license unless it is established that the dishonor of the check was not the fault of the applicant or licensee.

(d) Any licensee whose license has been cancelled for failure to renew as provided in this section shall comply with all requirements of a new applicant, including writing the appropriate examination, before a license will be reissued.

(e) Any real estate associate broker or salesman who is not employed by or associated with a broker, or any broker who desires to become inactive may renew his license in an inactive status prior to the renewal deadline established in this section, by submitting the renewal fee together with a completed renewal application on which he has noted his present inactive status.

(f) A license on inactive status for more than three (3) years shall not be reissued on an active status unless the licensee has first met the educational requirements under subsection (b) of this section.

(g) A license on an inactive status for less than three (3) years may be renewed on an active status prior to the renewal deadline by submitting the renewal fee together with a renewal application.

33-28-119. Advertising; licensing under one name; trade names; advertisement of associate brokers and salesmen.

(a) Every real estate broker, when advertising or promoting his real estate brokerage business, shall use the name under which he is licensed and shall use no slogans or phraseology in a manner which would indicate or suggest to the public that real property may be listed or is being offered for sale, exchange, lease or rent by a private party not licensed by the commission.

(b) No real estate broker licensed under this act [ 33-28-101 through 33-28-206] shall insert in any publication an advertisement which lists only a post office box number, telephone number or street address.

(c) No person, corporation, partnership or association, domestic or foreign, shall act or advertise as a real estate broker or salesman in this state by use of letterheads, billboards, radio or television announcements or any other media of advertising, without first obtaining a real estate broker's or salesman's license from the commission.

(d) Except as provided in subsection (e) of this section, no person shall be licensed as a real estate broker or a real estate salesman under more than one (1) name, and no person shall conduct or promote a real estate brokerage business except under the name under which the person or brokerage business is licensed.

(e) A trade name, with the permission of the owner of the trade name, may be used concurrently with the licensed name of the broker in the promotion or conduct of the licensed broker's business. The broker's licensed name shall be displayed in a conspicuous manner that may be readily identified by the general public.

(f) A licensed broker shall not advertise the sale, purchase, exchange or lease of property, whether owned by him or not, without including in the advertisement the name under which he is licensed.

(g) A licensed associate broker or salesman shall not advertise the sale, purchase, exchange or lease of property, whether owned by him or not, without including in the advertisement the name of the broker with whom he is associated and licensed and the name under which he is licensed.

33-28-120. Assistance of attorney general; independent counsel.

(a) The attorney general shall render opinions to the commission on all questions of law relating to the interpretation and administration of this act [ 33-28-101 through 33-28-206]. The attorney general shall act as attorney for the commission in all actions and proceedings brought by or against it under this act.

(b) In addition to or instead of the attorney general the commission may hire other legal counsel with the approval of the attorney general.

33-28-121. Temporary licenses to complete affairs of deceased brokers.

In the event of the death of a licensed broker who is the sole proprietor of a real estate business, upon application by his personal representative, the director shall issue, without examination and for a specified period of time, a temporary license to the personal representative, or to a licensed individual designated by him and approved by the director. The license shall authorize the holder of the temporary license to continue to transact business for the sole purpose of completing the affairs of the deceased broker.

33-28-122. Broker's trust accounts; disposition of interest; commingling with personal funds prohibited; disputed deposits; cooperative transactions.

(a) Every broker licensed in this state shall:

(i) Maintain a separate account in a financial institution in this state designated as a trust account in which all down payments, earnest money deposits, advance listing fees or other trust funds received by him, his associate brokers or his salesmen on behalf of a principal or any other person shall be deposited unless all persons having an interest in the funds have agreed otherwise in writing. The account shall permit immediate withdrawal of the funds deposited therein;

(ii) Notify the real estate commission on forms it prescribes of the name of the financial institution in which a trust account is maintained and the name of the account. If the broker uses a closing agent and deposits monies with this agent, his intention to use a closing agent shall be disclosed to all parties to any contract, purchase agreement, lease or lease agreement negotiated by him. The broker shall notify the real estate commission in writing that he uses a closing agent and deposits monies with the agent;

(iii) Permit the commission or its representative to examine the trust account records;

(iv) Upon cancellation of his license for any reason, maintain the escrow account until all deposits have been properly disbursed.

(b) If a broker's branch office maintains a separate trust account, the office shall maintain a separate bookkeeping system.

(c) A trust account maintained by a broker under this section may be interest bearing or noninterest bearing. Any interest accrued on any deposit in a trust account shall be paid out as agreed in writing by all persons having an interest in the deposit. In the absence of

a written agreement among all persons having an interest in the deposit, at the time all or any portion of any deposit is withdrawn and paid out, all interest accrued upon the funds withdrawn and paid out shall also be withdrawn and paid out to the person from whom the trust funds were received; provided, if the funds are required to be disbursed to more than one (1) person, each person entitled to receive any portion of the deposit shall also be paid a portion of the interest in the same proportion as the funds withdrawn and paid out to each person bears to the total deposit.

(d) A broker is not entitled to any part of the earnest money or other money paid to him in connection with any real estate transaction as part or all of his commission or fee until the transaction has been consummated or terminated.

(e) No broker shall permit an advance payment of funds belonging to others to be deposited in the broker's personal account or be commingled with his personal funds. It will not be considered commingling if, when establishing the trust account, the broker deposits some of his funds to keep the account open or to avoid charges for a minimum balance, so long as that deposit is identified at the time of deposit. No broker shall use deposits in a trust account for a purpose other than the transaction for which they were provided.

(f) In the event of a dispute over the return or forfeiture of any deposit held by the listing broker, the listing broker may continue to hold the deposit in his trust account until he has a written release from the parties consenting to this disposition or until a civil action is filed, at which time it may be paid to the court.

(g) In a cooperative transaction, in which one (1) broker holds an exclusive right to sell or an exclusive agency on a property and the selling broker receives cash or a check as earnest money or according to a contract, the selling broker shall deliver the contract and the earnest money to the listing broker who shall deposit the cash or check in his trust account. If the selling broker receives a promissory note, or thing of value, the note or thing of value shall be delivered with the contract to the listing broker to be held by the listing broker.

33-28-123. Retention of records.

Every broker licensed in this state shall keep and maintain a full set of records of every real estate transaction in which he participates on behalf of any party to the transaction. The records shall be maintained not less than ten (10) years from the latest date on which the broker participated in the transaction.

33-28-124. Act, error or omission in the rendering of real estate services.

A cause of action arising from an act, error or omission in the rendering of services provided by a licensee under this act shall be brought within the time limits provided under W.S. 1-3-107. Nothing in this section shall be construed to extend the limitation period specified in W.S. 33-28-203 for actions for payment from the real estate recovery account.

## ARTICLE 2 - WYOMING REAL ESTATE RECOVERY AND EDUCATION FUNDS

33-28-201. Real estate recovery account created; funding of account; no liability of state.

(a) There is created a real estate recovery account which shall be under the direction of the commission under W.S. 33-28-201 through 33-28-206.

(b) Beginning January 1, 1984, every person obtaining or renewing a real estate broker's, associate broker's or salesman's license shall pay an additional fee of twenty dollars (\$20.00) which shall be deposited in the real estate recovery fund account. When the balance of the real estate recovery fund account reaches twenty thousand dollars (\$20,000.00) one-half (1/2) of the fee shall be deposited in the real estate recovery fund account and one-half (1/2) of the fee shall be deposited in the educational fund account. When the real estate recovery fund account balance reaches fifty thousand dollars (\$50,000.00) all fees shall be deposited in the education fund account.

(c) No monies shall be appropriated from the general fund for payment of any expenses incurred under W.S. 33-28-201 through 33-28-206 and those expenses shall not be paid by the state.

33-28-202. Real estate recovery account created; payments; pro rata distribution when account insufficient; service of process; joinder of account.

(a) If any person obtains a final judgment in any court of competent jurisdiction against any real estate broker or real estate salesman licensed under this act [ 33-28-101 through 33-28-206] on the grounds of fraud, willful misrepresentation, deceit or conversion of trust funds arising directly out of any transaction occurring after December 31, 1983 which occurred when the broker, associate broker or salesman was licensed and in which the broker, associate broker or salesman performed acts for which a real estate license is required, that person, within one (1) year of termination of all proceedings, including appeals, may file with the commission a verified petition in the court in which the judgment was entered for an order directing payment out of the real estate recovery account in the amount of actual damages included in the judgment and unpaid, and that a writ of execution has been returned unsatisfied, but for not more than four thousand dollars (\$4,000.00).

(b) If the payment from the real estate recovery account is insufficient to pay in full the valid claims of all who have claims on file at any time the money in the account shall be distributed among them in the ratio that their respective claims bear to the aggregate of the valid claims or in a manner that a court deems equitable. Distribution of any monies shall be among the persons entitled to share the monies without regard to the order of priority in which their respective judgments were obtained or their claims were filed.

(c) Any real estate broker, associate broker or real estate salesman who is licensed or renews his license under W.S. 33-28-108 after December 31, 1983, and upon whom personal service cannot be made with reasonable diligence shall be deemed to have appointed the director of the commission as his agent for service of process for purposes of actions filed against him pursuant to subsection (a) of this section. Service of process pursuant to subsection (b) of this section shall be made under the Wyoming Rules of Civil Procedure.

(d) In lieu of the petition under subsection (a) of this section for an order directing payment out of the real estate recovery account, a person filing an action against a licensed real estate broker, associate broker or salesman of a type described in subsection

(a) of this section may join the real estate recovery account as a limited third party defendant and have judgment rendered directly against the account in the amount provided in subsection (a) of this section provided:

(i) Service of summons and complaint is made on the real estate commission;

(ii) The account may assert all defenses available to defendant licensee;

(iii) Plaintiff posts a bond in the amount of ten percent (10%) of the actual damages he seeks from the account to guarantee costs.

(e) The commission may defend any action against the fund on behalf of the fund and in the name of the defendant.

(f) Recovery against the bond required in paragraph (d)(iii) of this section shall be authorized by the court if it rules in favor of the commission on behalf of the fund.

33-28-203. Limitation on action for payment from account; notice of action; order of payment; showing required.

(a) No order for payment from the real estate recovery account shall be issued unless the suit in which the order subsequently results was commenced within one (1) year after the cause of action accrued. If any person commences an action for a judgment which may result in an order for payment from the account, the person shall notify the commission in writing of the commencement of the action. The commission, under W.S. 33-28-111, shall investigate the complaint and may hold a suspension or revocation hearing.



(b) If any person files a petition for an order directing payment from the real estate recovery account, the court may order payment out of the real estate recovery account under subsection (c) of this section if it finds:

(i) The petitioner is not a spouse of the judgment debtor or a person representing the spouse;

(ii) The petitioner has obtained a judgment of the kind described in W.S. 33-28-202(a); and

(iii) The judgment debtor has insufficient property upon which execution may be levied to satisfy the judgment or that a writ of execution has been returned unsatisfied.

(c) Upon receipt of an order by the court directing that payment be made out of the real estate recovery account, the state auditor shall draw a warrant for the payment of the amount directed upon a voucher approved by the commission and the state treasurer shall pay the amount directed out of the real estate recovery account.

33-28-204. Revocation of licenses following payment from account; reinstatement.

If the commission is required to make any payment from the real estate recovery account in settlement of a claim or toward the satisfaction of a judgment, the commission shall immediately suspend the judgment debtor's license. The judgment debtor shall not be licensed as either a broker, associate broker or salesman or have his license reinstated until he has repaid in full the amount paid from the real estate recovery account with interest thereon of eighteen percent (18%) per annum. A discharge in bankruptcy shall not relieve a person from the disabilities and penalties of the section.

33-28-205. Subrogation of commission to rights of judgment creditor.

If, upon order of any court, the commission has caused payment to be made from the real estate recovery account to a judgment creditor, the commission is subrogated to the rights of the judgment creditor with respect to the amount so paid. Any recovery by the commission under this section shall be deposited in the real estate recovery account.

33-28-206. Fund balances; use of education fund and interest from recovery fund.

(a) When the real estate recovery fund and education fund balances exceed fifty thousand dollars (\$50,000.00) each, the commission shall not collect annual fees under W.S. 33-28-201(b).

(b) The commission may use the funds in the education fund, plus interest earned on the recovery fund, as appropriated by the legislature, for the purposes of raising the standards of practice in the real estate profession and the competency of licensees by:

(i) Promoting the advancement of education and research in the field of real estate for the benefit of those licensed under this act [ 33-28-101 through 33-28-206];

(ii) Underwriting educational seminars and all other similar forms of educational projects for the benefit of licensees;

(iii) Establishing a chair in real estate or courses at Wyoming state institutions of higher learning for the purpose of making those courses available to businesses and the general public;

(iv) Contracting for particular education or research projects in the field of real estate to further the purposes of this section.

## ARTICLE 3 - BROKERAGE RELATIONSHIPS

### 33-28-301. Definitions.

(a) As used in this article:

(i) "Broker" means as defined in W.S. 33-28-102(a)(iii), except as otherwise specified in this article. For purposes of this article, "broker" may include an "associate broker" as defined in W.S. 33-28-102(a)(i) or a "salesman" as defined in W.S. 33-28-102(a)(xvi);

(ii) "Buyer" means a person attempting to purchase or exchange real property and includes tenants as that term is commonly used in the rental, leasing or management of real property;

(iii) "Buyer's agent" means a broker who is authorized to represent and act for the buyer in a real estate transaction;

(iv) "Intermediary" means a broker who assists one (1) or more parties throughout a contemplated real estate transaction with communication and the closing of the real estate transaction without being an agent or advocate for any party to the transaction;

(v) "Real estate transaction" means any of the activities identified in W.S. 33-28-102(a)(iii), including the sale, lease and management of real property;

(vi) "Seller" means a person who is attempting to sell or exchange real property and includes landlords as that term is commonly used in the rental, leasing or management of real property;

(vii) "Seller's agent" means a broker who is authorized to represent and act for the seller in a real estate transaction;

(viii) "Subagent" means a broker authorized to represent and act for another broker in performing brokerage tasks for a principal. The subagent owes the same obligations and responsibilities to the principal as does the principal's broker.

### 33-28-302. Relationships between brokers and the public.

(a) A broker shall not be required to offer or engage in any one (1) or in all of the brokerage relationships enumerated in this article.

(b) When engaged in any of the activities enumerated in W.S. 33-28-102(a)(iii), a broker may act as an agent only pursuant to a written agreement with the seller or buyer which discloses the duties and responsibilities set forth in W.S. 33-28-303 or 33-28-304.

(c) When engaged in any of the activities enumerated in W.S. 33-28-102(a)(iii), a broker may act as a subagent with the duties and responsibilities set forth in W.S. 33-28-303(g), only pursuant to a written agreement between the seller and the seller's agent authorizing an offer of subagency to other brokers.

(d) When engaged in any of the activities enumerated in W.S. 33-28-102(a)(iii), a broker may act as an intermediary only pursuant to a written agreement with the seller or buyer which discloses the duties and responsibilities set forth in W.S. 33-28-305.

(e) A broker may work with a single party in separate transactions pursuant to different relationships, including selling one (1) property as a seller's agent and working with that seller in buying another property as an intermediary, buyer's agent or subagent, if the broker complies with this article in establishing the relationships for each transaction.

(f) A broker, associate broker or salesman, licensed pursuant to article 1 of this chapter, may complete standard forms and shall explain to the parties the effects thereof, if the broker, associate broker or salesman is performing the activities enumerated or referred to in W.S. 33-28-102(a)(iii) in the transaction in which the forms are to be used.

(g) Every contract, duty or relationship within this article, including intermediary relationships, imposes an obligation of good faith and fair dealing in its performance or enforcement.

33-28-303. Seller's agent engaged by seller.

(a) A broker engaged by a seller to act as a seller's agent has the following duties and obligations:

(i) To perform the terms of the written agreement made with the seller;

(ii) To exercise reasonable skill and care for the seller;

(iii) To promote the interests of the seller with the utmost good faith, loyalty and fidelity, including:

(A) To seek a price and terms which are acceptable to the seller, except that the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale;

(B) To present all offers to and from the seller in a timely manner regardless of whether the property is subject to a contract for sale;

(C) To disclose to the seller adverse material facts actually known by the broker;

(D) To counsel the seller as to any material benefits or risks of a transaction which are actually known by the broker;

(E) To advise the seller to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of the broker;

(F) To account in a timely manner for all money and property received; and

(G) To disclose to the seller that because the broker or authorized subagent is acting as an agent for the seller, the seller may be liable for the acts of the broker and authorized subagent while acting within the scope of the agency relationship.

(iv) To comply with all requirements of this article; and

(v) To comply with any applicable federal, state or local laws, rules, regulations or ordinances.

(b) The following information shall not be disclosed by a broker acting as a seller's agent without the informed consent of the seller:

(i) That a seller is willing to accept less than the asking price for the property;

(ii) What the motivating factors are for the party selling the property;

(iii) That the seller will agree to financing terms other than those offered;

(iv) Any material information about the seller unless disclosure is required by law or failure to disclose the information would constitute fraud or dishonest dealing.

(c) A broker acting as a seller's agent owes no duty or obligation to the buyer, except that a broker shall disclose to any prospective buyer all adverse material facts actually known by the broker. The adverse material facts may include adverse material facts pertaining to the title and the physical condition of the property, any material defects in the property and any environmental hazards affecting the property which are required by law to be disclosed. The broker acting as a seller's agent shall not perpetuate a material misrepresentation of the seller which the broker knows or should know is false.

(d) A seller's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer and owes no duty to independently verify the accuracy or completeness of any statement made by the seller or any independent inspector.

(e) A seller's agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale and not be deemed to have breached any duty or obligation to the seller.

(f) A seller may agree in writing with a seller's agent to extend an offer of subagency to other brokers to cooperate in selling the property.

(g) Any broker acting as a subagent on the seller's behalf shall have the obligations and responsibilities set forth in subsections (a) through (e) of this section.

33-28-304. Agent engaged by buyer.

(a) A broker engaged by a buyer to act as a buyer's agent shall have the following duties and obligations:

(i) To perform the terms of the written agreement made with the buyer;

(ii) To exercise reasonable skill and care for the buyer;

(iii) To promote the interests of the buyer with the utmost good faith, loyalty and fidelity, including:

(A) To seek a price and terms which are acceptable to the buyer, except that the broker shall not be obligated to seek other properties while the buyer is a party to a contract to purchase property;

(B) To present all offers to and from the buyer in a timely manner regardless of whether the buyer is already a party to a contract to purchase property;

(C) To disclose to the buyer adverse material facts actually known by the broker;

(D) To counsel the buyer as to any material benefits or risks of a transaction which are actually known by the broker;

(E) To advise the buyer to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of the broker;

(F) To account in a timely manner for all money and property received; and



(G) To disclose to the buyer that because the broker is acting as the agent for the buyer, the buyer may be liable for the acts of the broker while he is acting within the scope of the agency relationship.

(iv) To comply with all requirements of this article; and

(v) To comply with any applicable federal, state or local laws, rules, regulations or ordinances.

(b) The following information shall not be disclosed by a broker acting as a buyer's agent without the informed consent of the buyer:

(i) That a buyer is willing to pay more than the purchase price for the property;

(ii) What the motivating factors are for the party buying the property;

(iii) That the buyer will agree to financing terms other than those offered;

(iv) Any material information about the buyer unless disclosure is required by law or failure to disclose the information would constitute fraud or dishonest dealing.

(c) A broker acting as a buyer's agent owes no duty or obligation to the seller, except that a broker acting as a buyer's agent shall not make any material misrepresentation or fraudulent misrepresentation regarding an adverse material fact actually known by the broker.

(d) A buyer's agent owes no duty to conduct an independent investigation of the buyer's financial condition and owes no duty to independently verify the accuracy or completeness of statements made by the buyer or any independent inspector.

(e) A buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty or obligation to the buyer. Nothing in this section shall be construed to prohibit a buyer's agent from showing competing buyers the same property and from assisting competing buyers in attempting to purchase or lease a particular property.

### 33-28-305. Intermediary.

(a) A broker engaged as an intermediary shall not act as an advocate or agent for either party and shall be limited to providing those services described in subsection (b)(ii) of this section.

(b) A broker engaged as an intermediary shall owe to each party with whom the intermediary has contracted the following duties and obligations:

(i) To perform the terms of any written agreement made by the intermediary with any party or parties to the transaction, provided that the terms of the written agreement shall be consistent with this article;

(ii) To exercise reasonable skill and care as an intermediary, including:

(A) Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale;

(B) Advising the parties to obtain expert advice as to material matters about which the intermediary knows but the specifics of which are beyond the expertise of the intermediary;

(C) Accounting in a timely manner for all money and property received;

(D) Keeping the parties fully informed regarding the transaction;

(E) Obtaining the written consent of the parties before assisting the buyer and seller in the same real estate transaction;

(F) Assisting the parties in complying with the terms and conditions of any contract which may include closing the transaction;

(G) Disclosing to the parties any interests the intermediary may have which are adverse to the interest of either party;

(H) Disclosing to all prospective buyers any adverse material facts actually known by the intermediary, including but not limited to adverse material facts pertaining to the title, the physical condition of the property, any defects in the property and any environmental hazards affecting the property required by law to be disclosed;

(J) Disclosing to any prospective seller all adverse material facts actually known by the intermediary, including but not limited to adverse material facts pertaining to the buyer's financial ability to perform the terms of the transaction and the buyer's intent to occupy the property as a principal residence; and

(K) Disclosing to the parties that an intermediary owes no fiduciary duty either to buyer or seller, is not allowed to negotiate on behalf of the buyer or seller, may be required to disclose information he learns about a property to the other party, and may

be prohibited from disclosing information about the other party which if known could materially affect negotiations in the real estate transaction.

(iii) To comply with all requirements of this article; and

(iv) To comply with any applicable federal, state or local laws, rules, regulations or ordinances.

(c) The following information shall not be disclosed by an intermediary without the informed consent of all parties:

(i) That a buyer is willing to pay more than the purchase price offered for the property;

(ii) That a seller is willing to accept less than the asking price for the property;

(iii) What the motivating factors are for any party buying or selling the property; or

(iv) That a seller or buyer will agree to financing terms other than those offered.

(d) An intermediary has no duty to conduct an independent inspection of the property for the benefit of the buyer and has no duty to independently verify the accuracy or completeness of statements made by the seller, or independent inspectors.

(e) An intermediary has no duty to conduct an independent investigation of the buyer's financial condition or to verify the accuracy or completeness of any statement made by the buyer.

(f) An intermediary may do the following without breaching any obligation or responsibility:

(i) Show alternative properties not owned by the seller to a prospective buyer;

(ii) List competing properties for sale or lease;

(iii) Show properties in which the buyer is interested to other prospective buyers; and

(iv) Serve as an agent, subagent or intermediary for the same or for different parties in other real estate transactions.

(g) An intermediary may cooperate with other brokers but shall not engage any subagents.

33-28-306. Broker disclosures.

(a) Prior to engaging in any discussion or arrangement incidental to a sale, purchase, exchange or lease, and prior to entering into any written agreement, with a buyer or seller, a broker shall make a written disclosure of applicable brokerage relationships which must contain at a minimum the following:

(i) A description of all the different brokerage relationships allowed by this article and a statement that the commission for different relationships is negotiable;

(ii) An explanation of the duties and obligations owed under each such relationship;

(iii) A conspicuous statement of duties and obligations owed by an agent but which are not owed by an intermediary;

(iv) A statement that any established relationship cannot be modified without the written consent of the buyer or seller and that the buyer or seller may, but is not required to, negotiate different commission fees as a condition of consenting to a change in relationship; and

(v) A statement that an intermediary is not an agent or advocate for any party and has only the obligations set forth in W.S. 33-28-305.

(b) The written disclosure shall contain a signature line for the buyer or seller to acknowledge receipt of the disclosure. The disclosure and acknowledgment, by itself, shall not constitute a contract or agreement with the broker. Until the buyer or seller executes such acknowledgment, no representation agreement shall be executed or valid.

(c) A broker who has established an agency relationship, a subagency relationship or an intermediary relationship with a seller or buyer shall provide notice of that relationship to any other party to the transaction at the earliest reasonable opportunity.

(d) Disclosures made in accordance with this article shall be sufficient to disclose brokerage relationships to the parties to the transaction and to the public.

33-28-307. Change from agent to intermediary.

(a) A broker acting as an agent to a buyer or seller with respect to a particular real estate transaction may instead act as an intermediary to that party only in instances when:

(i) The broker is or becomes an agent or intermediary for the other party to the prospective real estate transaction creating a potential in-company transaction; and

(ii) Both parties execute a written consent, which contains a conspicuous statement of the duties and obligations that would no longer be owed to the parties if the broker becomes an intermediary and not an agent.

### 33-28-308. Compensation.

(a) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, a third party, or by the sharing or splitting of a commission or compensation between brokers.

(b) Payment of compensation shall not be construed to establish an agency relationship or intermediary relationship between the broker and the party who paid the compensation.

(c) A seller may agree that an intermediary, buyer's agent or subagent may share the commission or other compensation paid by the seller with another broker.

(d) A buyer may agree that a seller's agent, intermediary or subagent may share the commission or other compensation paid by the buyer with another broker.

(e) A buyer's agent shall obtain the written approval of the buyer before the buyer's agent may propose to the seller's agent that the buyer's agent be compensated by sharing compensation paid by the seller.

(f) Prior to entering into a written agreement with the seller and buyer, or prior to entering into a contract to buy or sell, the broker shall disclose in writing to the seller and buyer to the transaction, the brokerage relationship of all parties, persons and entities paying compensation or commissions to the broker.

(g) A broker may be compensated by more than one (1) party for services in a transaction, if those parties have consented in writing to the shared payment prior to seller and buyer entering into a contract to buy or sell.

(h) An agreement authorizing a broker who originally agreed in writing to act as an agent to a buyer or seller with respect to a particular real estate transaction to act instead as an intermediary to that party, shall provide that the party agreeing to the new relationship shall not be liable for any commission greater than the commission the party would have been liable to pay under the initial agreement. Any contract provision in violation of this subsection is void and unenforceable.

33-28-309. Disclosure type.

Any disclosure under W.S. 33-28-306 shall be in a font size of 12 point or greater.

#### ARTICLE 4 - ERRORS AND OMISSIONS INSURANCE

33-28-401. Errors and omissions insurance; rulemaking authority; commission duties; certificate of coverage; administrative fee.

(a) Beginning January 1, 2008, an applicant for a real estate license pursuant to W.S. 33-28-106, a licensee renewing a license or an inactive licensee activating a license pursuant to W.S. 33-28-118, shall submit proof of insurance coverage through the group plan provided pursuant to this section or through certification of optional coverage.

(b) The commission shall make errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after competitive bidding. Any group policy obtained by the commission shall be available to all licensees and shall prevent the insurer from canceling any licensee. Licensees may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.



(c) The commission shall promulgate rules and regulations necessary to specify the terms and conditions of coverage required under this section, including the minimum limits and terms of the coverage, the permissible deductible and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty (30) days prior to the license renewal date. Each licensee who elects not to participate in the group program administered by the commission shall file a certificate of coverage showing compliance with the required terms and conditions with the commission by the license renewal date.

(d) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who elect to participate in the group program, at a reasonable annual premium not to exceed three hundred dollars (\$300.00) per licensee, the errors and omissions insurance requirement of this section shall not apply during the year for which the commission cannot obtain the errors and omissions insurance coverage. The maximum premium amount shall be adjusted annually by the annual rate of inflation in this state for the preceding twelve (12) month period as calculated by the department of administration and information.

(e) The commission shall charge and collect an administrative fee in addition to the premium paid from each licensee who obtains errors and omissions insurance through the commission. This administrative fee shall be of an amount sufficient to cover the administration of this section and shall not exceed ten percent (10%) of the premium. The maximum premium specified in subsection (d) of this section applies only to premium cost and not to any administrative fee charged.